

UNITED  
NATIONS

Y-98-29/1-T  
D 4562 - D 4559  
11 June 2007

4562 KB.



International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-98-29/1-T

Date: 11 June 2007

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Frederik Harhoff

**Registrar:** Mr. Hans Holthuis

**Date:** 11 June 2007

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

***PUBLIC***

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**DECISION ON PROTECTIVE MEASURES FOR  
DEFENCE WITNESSES**

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**The Office of the Prosecutor:**

Mr. Stefan Waespi  
Ms. Carolyn Edgerton  
Mr. John Docherty

**Counsel for the Accused:**

Mr. Branislav Tapušković  
Ms. Branislava Isailović

**TRIAL CHAMBER III** (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

**BEING SEISED** of “Requête de la Défense aux Fins d’Ordonner les Mesures Appropriées pour Protéger la Vie Privée et la Sécurité des Témoins et de Prendre en Compte les Mesures Ordonnées en Faveur des Témoins ayant Comparu dans le Cadre de l’Affaire IT-98-29-T”, filed confidentially on 25 May 2007 (“Motion”), in which the Defence requests the Trial Chamber to grant protective measures for a number of witnesses to be called to testify;

**NOTING** that, in the Motion, the Defence notifies the Trial Chamber that other witnesses testifying in this case were granted protective measures at the time that they testified in the case of *Prosecutor v. Stanislav Galić*;

**NOTING** that the Prosecution in its Response to the Motion, filed on 31 May 2007, states that it does not object to the Chamber granting the requested protective measures;

**NOTING** that the Defence requests the protective measures of pseudonym and image distortion for witnesses T2, T5, T12, T15, T19, T24, T37, T44, T50, T53 and T57;

**NOTING** that on 5 June 2007, witness T53 was granted the measures of pseudonym and image distortion;<sup>1</sup>

**NOTING** that the Defence requests the protective measures of pseudonym, image distortion and voice distortion for witnesses T31, T39 and T41 and insofar as the Motion pertains to witness T60, it requests pseudonym and closed session;

**NOTING** that the Defence submits that witnesses T7, T9, T47, T48, T52, T61 were granted the protective measures of pseudonym and image distortion during the case of *Prosecutor v. Stanislav Galić*;

**NOTING** that during the trial hearing of 7 June 2007, the Defence stated that it would provide further information in relation to the grounds underpinning the request for protective measures for witnesses T5, T24 and T44;

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<sup>1</sup> Trial Hearing, 5 June 2007, T. 6148.

**CONSIDERING** that a party seeking protective measures “must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness’ family, should it become publicly known that the witness gave evidence”.<sup>2</sup>

**CONSIDERING** that the Trial Chamber finds the current information as to the grounds underpinning the Motion insofar as it concerns T5, T24 and T44 insufficient, it will defer its decision on that part of the Motion until such time it received said additional information;

**CONSIDERING** that the Defence has shown an objectively grounded risk to the security or welfare of the witnesses T2, T12, T15, T19, T31, T37, T39, T41, T50, T57, T60;

**CONSIDERING**, furthermore, that the more extreme the protection sought for a witness, the more onerous the obligation upon the applicant to establish the risk asserted<sup>3</sup> and that the minimum measure required to protect the witness’s legitimate fears should be utilised;<sup>4</sup>

**CONSIDERING** that the Trial Chamber is not convinced that the circumstances underpinning the Motion in relation to witness T60 are sufficient to justify the high level of protection that closed session provides;

**CONSIDERING** that the measures of pseudonym, voice distortion and image distortion will provide a sufficient level of protection, are appropriate and consistent with the rights of the Accused;

**NOTING** that it remains open to the Defence to request that the Trial Chamber hear witness T60 on concerns for his safety or welfare, prior to the start of his testimony and in private session, in order to assess whether at that time the protective measure of providing testimony in closed session is necessary;

**CONSIDERING** that the requested protective measures for witnesses T2, T12, T15, T19, T31, T37, T39, T41, T50, T57 are appropriate and consistent with the rights of the Accused;

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<sup>2</sup> *Prosecutor v. Milan Martić*, Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-090, 18 August 2006, p.2; *Prosecutor v. Tihomir Blaškić*, Decision on Application for Protective Measures and Motion to Enlarge Time, 8 November 2005, p.5; *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Decision on Prosecution’s Additional Motion for Protective Measures of Sensitive Witnesses, 26 October 2005, para. 5; *Prosecutor v. Dario Kordić and Mario Čerkez*, Decision on Motion for Clarification and Motions for Protective Measures, 13 October 2003, para. 23; *Prosecutor v. Slobodan Milošević*, Decision on Prosecution’s Motion for Trial Related Protective Measures (Bosnia), 30 July 2002, para. 5; *Prosecutor v. Duško Tadić*, Decision on Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para.62.

<sup>3</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Motion for Trial Related Protective Measures (Bosnia), 30 July 2002, para. 5; *Prosecutor v. Vojislav Šešelj*, Decision on the Prosecution’s Motion for Protective Measures for Witnesses during the Pre-Trial Phase, 16 December 2004, para. 16.


<sup>4</sup> *Ibid.*

**PURSUANT TO** Articles 20 and 22 of the Statute and Rules 54, 75 and 79 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART** and **ORDERS** that

1. Witnesses T2, T12, T15, T19, T37, T50, T53 and T57 shall testify using a pseudonym and with image distortion;
2. Witnesses T31, T39, T41 and T60 shall testify using a pseudonym and using voice distortion and image distortion.

**NOTES** the protective measures granted to witnesses T7, T9, T47, T48, T52, T61 in the case *Prosecutor v. Stanislav Galić* and **REQUESTS** the Registrar to assign new pseudonyms to these witnesses, consistent with pseudonyms to other Defence witnesses in the present case.

Done in English and French, the English version being authoritative.



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Judge Patrick Robinson  
Presiding

Dated this eleventh day of June 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**