



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

Case No.: IT-04-81-PT

Date: 26 July 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick L. Robinson, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Order of: 26 July 2007

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC FILING

**DECISION ON PROSECUTION MOTION FOR ORDER OF NON-
DISCLOSURE WITH RESPECT TO PROTECTED WITNESSES**

The Office of the Prosecutor

Mr. Mark B. Harmon

Counsel for the Defence

Mr. James Castle

Mr. Novak Lukić

I, Patrick Robinson, Judge 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 the partly confidential and *ex parte* “Prosecution’s Motion for Non-Disclosure with Confidential Annex A and Confidential and Ex Parte Annex B” filed on 8 June 2007 (“Motion”), hereby render a decision thereon.

1. The Prosecution files the Motion pursuant to Articles 20 and 22 of the Statute of the Tribunal (“Statute”) and under Rules 53, 69, 73 and 75 of the Rules of Procedure and Evidence of the Tribunal (“Rules”).¹ The Prosecution submits that, at this stage of the proceedings, it is in the interests of justice that the redacted witness statements the Prosecution intends to disclose to the Defence on 27 June 2007 pursuant to Rule 66(A)(ii) be in conformity with the protective measures granted to the following witnesses, either by this Trial Chamber or in other proceedings before the Tribunal: MP 001, MP 002, MP 005, MP 006, MP 008, MP 011, MP 013, and MP 015 (“Protected Witnesses”).²
2. In its Motion, the Prosecution requests the following conditions be ordered with respect to the Protected Witnesses: (1) that redacted witness statements of witnesses contained in the Confidential Annex and disclosed to the Defence pursuant to Rule 66(A)(ii) not be disclosed to the public, except to the limited extent such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Defence case;³ (2) that the Chamber order that “the Defence, as a pre-condition for release of the material to them, obtain from any third-party identified non-disclosure agreements, the content of which will be notified to the Trial Chamber;”⁴ (3) that the Defence be required to maintain a log indicating the name, address and position of each person or entity outside the Defence team which receives a copy of, or information from, a redacted witness statement, as well as the date of disclosure;⁵ (4) that, to the extent the Protected Witnesses’ identities and whereabouts are known to the Accused and Defence Counsel, or their representatives, those identities and whereabouts not be disclosed to the public;⁶ (5) that the Defence be ordered that “redacted written statements of protected witnesses, or the substance, in whole or in part, of said statements disclosed to the Defence, pursuant to Rule 66(A)(ii), not be disclosed to the public save as is directly and specifically necessary for the

¹ Motion, para. 2.

² Motion, para. 7.

³ Motion, para. 9.

⁴ Motion, para. 10.

⁵ Motion, para. 11.

⁶ Motion, para. 12.

preparation and presentation of the Defence case;”⁷ (6) that if a member of the Defence team withdraws from the case, all material in his or her possession be returned to the lead Defence Counsel.⁸

3. The Defence did not file a response to the Motion.

4. The Trial Chamber notes that Rule 53 states, in relevant parts:

(A) In exceptional circumstances, a Judge or a Trial Chamber may in the interests of justice, order the non-disclosure to the public of any documents or information until further order ...[and]

(B) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of ... all or part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

5. Further, the Trial Chamber notes that Rule 75 states, in relevant parts:

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but

(ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.

6. Based upon the submissions of the Prosecution,⁹ the Trial Chamber is satisfied that protective measures have been previously granted to the Protected Witnesses by this Chamber or by a “first proceeding” Chamber, and therefore, apply *mutatis mutandis* to this case. The Trial Chamber considers that the conditions requested by the Prosecution with respect to the disclosure of the witness statements of the Protected Witnesses should be granted in light of the protective measures in place.

7. For the foregoing reasons and pursuant to Articles 21 and 22 of the Statute and Rules 53, 69, 73 and 75 of the Rules, the I hereby **GRANT** the Motion and **ORDER** as follows:

⁷ *Ibid.*

⁸ Motion, para. 1.

(a) Pursuant to Rule 66(A)(ii), the redacted witness statements of the Protected Witnesses witnesses identified as MP 001, MP 002, MP 005, MP 006, MP 008, MP 011, MP 013, and MP 015 shall not be disclosed to the public, except to the limited extent such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Defence case.

(b) In case disclosure is directly and specifically necessary for the preparation and presentation of the Defence case, the Defence shall obtain from any identified third party non-disclosure agreements, as a precondition for release of the statement. The Trial Chamber shall be notified of the contents of such non-disclosure agreement(s). Such non-disclosure agreement(s) shall include a direction that the third party may not copy, reproduce, or publicise such material, in whole or in part, and may not show or disclose the material to any other person. If a third party is provided with the original or a duplicate of any such protected statement, the third party shall, before receiving the original or duplicate, agree to return it to the Defence when such material is no longer directly and specifically necessary for the preparation or presentation of the Defence case.

(c) The Defence shall maintain a log indicating the name, address and position of each person or entity outside the Defence team which receives a copy of, or information from, a redacted witness statement as well as the date of the disclosure.

(d) To the extent that the Protected Witnesses' identities and whereabouts are known to the Accused, Defence Counsel, or their representatives, those identities and whereabouts shall not be disclosed to the public.

(e) If a member of the Defence team withdraws from the case, all redacted witness statements of the Protected Witnesses identified in this order, including redacted witness statements disclosed pursuant to Rule 66(A)(ii), shall be returned to the lead Defence Counsel.

(f) The term "public" as defined in this order shall include all persons, governments, organisations, entities, clients, associations and groups other than the Judges of this Tribunal, the staff of the Registry (assigned to either Chambers or the Registry), the

⁹ Motion, Confidential Annex A.

Prosecutor and her representatives, the accused Momčilo Perišić, the Defence Counsel, legal assistants, and other members of this Defence team, their agents or representatives. The term “public” specifically includes, without limitation, families, friends and associates of the accused Momčilo Perišić, Accused in other cases or proceedings before the Tribunal, Defence counsel in other cases or proceedings before the Tribunal, the media, and journalists.

(g) The term “media” shall be defined in this order as all video, audio, and print media personnel, including journalists, authors, television and radio personnel, and their agents and representatives.¹⁰

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



Patrick Robinson
Presiding
Pre-Trial Judge

Dated this 26th day of July 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ *Prosecutor v Milan Martić*, Case No. IT 95-11-PT, Order on Prosecution’s Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66(A)(II)(sic) And 68 and for Protective Measures for Witnesses During the Pretrial Phase, 18 December 2003, p.4