



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-05-87-T

Date: 3 August 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 3 August 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON LAZAREVIĆ MOTION FOR PROTECTIVE MEASURES
FOR WITNESS SD1**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS 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") is seised of the confidential "Vladimir Lazarević's Motion for Protective Measures with Confidential Annex", filed on 25 June 2007 ("Motion"), requesting certain trial-related protective measures for a witness identified as SD1 ("witness"), and hereby renders its decision thereon.

1. In the Motion, the Defence for the Accused Vladimir Lazarević ("Defence") requests that the witness, who is identified in a confidential annex to the Motion, be granted the following protective measures:

- (A) A pseudonym in all proceedings before the Tribunal and in discussions among the parties;
- (B) That the name and other identifying data relating to this witness not be disclosed to the public, and that, to the extent the witness's identity and whereabouts are known to any or all of the Accused and/or Defence Counsel and the Prosecutor, his identity and whereabouts not be disclosed to the public by any of the Accused and/or Defence Counsel and the Prosecutor;
- (C) All material pertaining to this witness be returned to Registry following the closure of the proceedings;
- (D) Representatives of the public and/or the media not photograph, video-record or sketch the witness while he is on the premises of the Tribunal;
- (E) The names, addresses, whereabouts of and identifying data concerning the witness be sealed and not included in any public record of the Tribunal;
- (F) The witness testifies in closed session.¹

2. On 6 July 2007, the Prosecution filed its confidential "Prosecution Response to Vladimir Lazarević's Motion for Protective Measures with Confidential Annex" ("Response"), in which it opposes the Motion in part.² The Prosecution argues that the request for protective measures appears to be founded "solely on subjective 'concern' expressed by the witness, while failing to demonstrate any objective foundation for such general concern."³ However, the Prosecution does

¹ Motion, para. 1.

² Response, para. 3.

³ Response, para. 3.

not oppose the protective measures listed under items (a) to (e) above, but objects to the request for the witness to testify in closed session.⁴

3. Article 20, paragraph 1 of the Statute of the Tribunal (“Statute”) requires that the Trial Chamber ensure that “proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”; and, Article 20, paragraph 4 provides that “[t]he hearing shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.” Moreover, Rule 75(A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that “[...] a Chamber may [...] order appropriate measures for the privacy and protection of [...] witnesses, provided that measures are consistent with the rights of the accused”. In addition, Rule 79(A) provides that “[t]he Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of [...] safety, security or non-disclosure of the identity of a [...] witness as provided in Rule 75”.

4. It has been held previously that it is of great importance that proceedings before this Tribunal should be public as far as possible, and that non-public proceedings should be the exception and only allowed in certain limited instances.⁵ Furthermore, the more extreme the protection sought for a witness, the more onerous the obligation upon the applicant to establish the risk asserted.⁶ It has also been recognised that the party requesting protective measures must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness’s family, should it become publicly known that the witness testified before the Tribunal.⁷

5. On the basis of an assessment of the circumstances surrounding this witness set out in the confidential submissions of the Defence, the Trial Chamber considers that the Defence request for some protective measures is warranted.

6. Having said that, the Trial Chamber considers that the circumstances of the witness do not justify the extraordinary level of protection that testimony in closed session affords. Rather, the Trial Chamber finds that the other protective measures sought, plus the use of voice and image distortion during his testimony, would provide adequate protection for the witness. In addition, the

⁴ Response, paras. 4–5.

⁵ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23&23/1, Order on Defence Motion Pursuant to Rule 79, 22 March 2000, para. 5.

⁶ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Prosecution’s Motion for Protective Measures, 12 February 2007, paras. 10–11.

⁷ *Prosecution v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-90, 18 August 2006, pp. 2–3; *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case No. IT-95-13/1-T, Decision on Prosecution’s Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

Trial Chamber notes that, if portions of the testimony of the witness relate to sensitive information that might identify him or other protected witnesses, the Defence or other parties cross-examining him may request that these parts of his testimony be heard in private session.

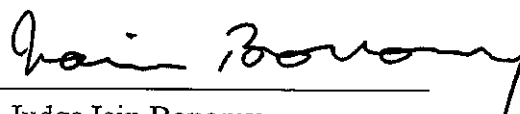
7. For these reasons, the Trial Chamber, pursuant to Rules 54 and 75 of the Rules, hereby **GRANTS** the Motion, in part, and **ORDERS** as follows:

- (a) Representatives of the public shall not photograph, video-record, or sketch the witness while he is on the premises of the Tribunal.
- (b) The witness described in the confidential annex to the Motion shall be identified by the pseudonym SD1 in all proceedings before the Tribunal and in discussions among the parties.
- (c) Witness SD1 shall give his testimony with the use of image distortion.
- (d) Witness SD1 shall give his testimony with the use of voice distortion.
- (e) The parties shall not disclose to the public any protected material, including information and documents, pertaining to SD1 except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the case or the knowledge of the parties. If the parties find it directly and specifically necessary to make disclosures pursuant to this limited purpose, they shall inform each person among the public to whom non-public material or information is shown or disclosed that such person is not to copy, reproduce, or publicise such material or information, and is not to show, disclose, or convey it to any other person. If provided with the original or any copy or duplicate of such material or information, such person shall return it to the party when continued possession of the material or information is no longer necessary for the preparation and presentation of the case.
- (f) The Prosecution and the other five Accused, and their representatives and agents who are acting pursuant to their instructions or requests, shall notify the Defence of any requested contact with the witness referred to herein, in order to enable the Defence to make the necessary arrangements for such contact, in the event the witness agrees to contact with the Prosecution or counsel for the other Accused.
- (g) The names, whereabouts, and other identifying information concerning the witness shall be sealed and not included in any public record of the Tribunal. To the extent that the name and other identifying information concerning the witness are

- contained in existing public documents of the Tribunal, that information shall be expunged from those documents.
- (h) If a member of the Prosecution or any of the Defence teams withdraws from the case, all material in his or her possession shall be returned to the person serving as lead counsel for that party at that time.
 - (i) All materials pertaining to SD1, including those materials disclosed under subsection (e) above, shall be maintained on a confidential basis, destroyed, or returned to the Registry following the close of the above-referenced proceedings.
 - (j) Except as provided for by subsection (e) above, any person who knowingly and wilfully discloses the identifying information of SD1, or any other information sufficient to identify this witness, shall be in violation of this Order, and may be subject to prosecution for contempt of the Tribunal pursuant to Rule 77 of the Rules.
 - (k) All provisions of this Decision shall apply equally to the Prosecution; the *Amici Curiae* (where necessary); the six accused and their Defence counsel, co-counsel, and other members of the Defence teams; and the public.
 - (l) For the purposes of this decision, the “public” means all persons, including corporations; governments and organs/departments thereof; organisations; entities; associations; groups; the Accused’s family members, friends, and associates; accused and defence counsel in other proceedings before the Tribunal; and the media. However, for the purposes of this Decision, the “public” does not mean Judges of the International Tribunal; staff of the Registry and the Office of the Prosecutor; the *Amici Curiae*; or the Accused and their Defence counsel, co-counsel, and other members of the Defence team.

8. The Chamber hereby **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge Iain Bonomy
Presiding

Dated this third day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]