



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-03-67-T
Date: 11 January 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr Hans Holthuis

Decision of: 11 January 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON VOJISLAV ŠEŠELJ'S MOTION FOR RECONSIDERATION
OF THE DECISION OF 30 AUGUST 2007 ON ADOPTING PROTECTIVE
MEASURES**

The Office of the Prosecutor

Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

1. Trial Chamber III (“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 seized of a motion to reconsider the Decision on Adopting Protective Measures of 30 August 2007 (“Decision of 30 August”) presented by Vojislav Šešelj (“Accused”) and registered confidentially on 9 November 2007 (“Motion”).¹

I. PROCEDURAL BACKGROUND

2. In the Decision of 30 August, the Chamber ordered a number of protective measures for Prosecution witnesses, including the delayed disclosure of their identity to the Accused 30 days before they give evidence, the delayed disclosure of their identity to the Accused 30 days before the firm trial date, a pseudonym, voice and/or image distortion and closed session.²

3. Following a motion by the Office of the Prosecutor (“Prosecution”) dated 8 October 2007,³ the Chamber made a reconsideration of the Decision of 30 August in its decision of 16 October 2007 (“Decision of 16 October”).⁴

4. During the pre-trial conference, the Accused requested a reconsideration of the Decision of 16 October to the effect that, before the Prosecution’s opening statement, the identity of all the witnesses that the Prosecution intends to call to testify be disclosed to him, including witnesses who have been granted delayed disclosure of their identity to the Accused 30 days before they give evidence (“Request to Reconsider the Decision of 16 October”).⁵

¹ “Professor Vojislav Šešelj’s Motion for Review of the Decision of 30 August 2007 on Adopting Protective Measures” presented on 2 November 2007 and registered confidentially on 9 November 2007.

² Decision on Adopting Protective Measures, confidential, 30 August 2007 (“Decision of 30 August”), p. 8.

³ “Prosecution Motion Regarding Protective Measures for Concerned Witnesses”, confidential and *ex parte*, 8 October 2007.

⁴ Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007, confidential, 16 October 2007.

⁵ Pre-trial conference of 6 November 2007, CT(F) (“Court Transcript in French”), 1757-1764.

5. The request to reconsider the Decision of 16 October was the subject of an oral decision on 7 November 2007 (“Oral Decision”).⁶ This same day, the Accused filed an oral motion for certification to appeal the Oral Decision, which the Chamber granted on 14 November 2007.⁷

6. Parallel with this procedure, on 2 November 2007, the Accused filed his Motion for reconsideration of the Decision of 30 August. The Prosecution did not respond to the Motion.

II. ARGUMENTS OF THE PARTIES

7. In the Motion, the Accused requests reconsideration of the Decision of 30 August on the grounds that:

(a) the Decision of 30 August is a decision and not an order, and protective measures may only be ordered by means of an order;⁸

(b) no witness or victim has run any danger or risk since the Accused was transferred to the Tribunal on 24 February 2003;⁹

(c) pursuant to Rule 69 (C) of the Rules, the identity of the victims and witnesses should be disclosed to him “prior to the trial” and not in the course of it;¹⁰

(d) Rule 75 (E) of the Rules has allegedly been systematically violated in the case against him;¹¹

(e) the public should be able to see the victims and witnesses in order to form their own judgement about them;¹²

⁶ Oral decision on the request to reconsider the Decision on the Prosecution Request for Reconsideration of the Decision on Adopting Protective Measures of 30 August 2007, 7 November 2007, CT(F) 1784-1786.

⁷ Decision on the Accused’s Motion for Certification to Appeal the Oral Decision of 7 November 2007, 14 November 2007 (“Decision of 14 November”).

⁸ Motion, p. 5.

⁹ *Ibid.*

¹⁰ *Id.*, p. 6.

¹¹ *Ibid.*

¹² *Id.*, p. 8.

(f) the provisions of the Statute and the Rules regarding protective measures apply essentially to victims and not to witnesses who do not have the status of victims;¹³

(g) in the Decision of 30 August, the Chamber made an erroneous application of the law and thus abused its discretionary power, as shown by the following cases:

- (i) the identity of certain witnesses who were not granted delayed disclosure of their identity to the Accused had not been disclosed to the Accused as of the date of the Motion;¹⁴
- (ii) witnesses VS-016, VS-045, VS-1112 and VS-1141 were assigned protective measures without the Prosecution requesting them, and witnesses VS-1057, VS-016, VS-045, VS-054, VS-1064, VS-1035 and VS 1111 do not appear as Prosecution witnesses in the final version of the Prosecution pre-trial brief of 25 July 2007¹⁵ (“Prosecution’s Pre-Trial Brief”);¹⁶
- (iii) paragraph (iii) of the disposition of the Decision of 30 August extends the usage of the pseudonyms assigned to certain witnesses only until their testimony to cover all the hearings before the Tribunal and during discussions between the parties;¹⁷
- (iv) there is no reason to grant voice and image distortion, or a closed session unless, in the latter case, it involves the victims of sexual violence.¹⁸

8. Thus, with the exception of protective measures required for the victims of sexual violence,¹⁹ the Accused requests the cancellation of the ordered protective since they are inapplicable, erroneous and violate his right to a fair trial.²⁰

¹³ *Ibid.*

¹⁴ *Id.*, pp. 9-10.

¹⁵ Prosecution’s Final Pre-trial Brief and corrigendum, presented on 31 July 2007 and filed in French on 20 August 2007.

¹⁶ Motion, pp. 9-10.

¹⁷ *Id.*, pp. 10.

¹⁸ *Ibid.*

¹⁹ *Id.*, pp. 7-8.

III. APPLICABLE LAW

A. The Reconsideration Procedure

9. The Chamber recalls that it

has an inherent power to reconsider its own decisions. It can receive a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error or reasoning in the impugned decision or of particular circumstances, new facts or new arguments, justifying its reconsideration in order to avoid injustice.²¹

10. The reconsideration procedure consequently is not intended to provide the parties with a supplementary recourse when the deadline to request a certification of appeal has passed but rather when exceptional circumstances exist as noted above.

B. Protective Measures for Victims and Witnesses

11. Article 20(1) of the Statute of the Tribunal (“Statute”) requires the Trial Chamber to ensure that the proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses, while Article 21(2) of the Statute guarantees the accused a public hearing, subject to the provisions of Article 22 on the protection of victims and witnesses.

12. Rule 69 of the Rules provides that a Chamber may order the non-disclosure of the identity of a victim or witness before the commencement of the trial insofar as the time-limit allows the defence adequate time for preparation.

13. Rule 75 of the Rules allows a Chamber to grant various protective measures for the privacy and protection of victims and witnesses provided that the measure do not violate the rights of the accused.

IV. DISCUSSION

²⁰ *Id.*, p.10.

²¹ *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Branislav Pušić*, Case No. IT-04-74-T. Decision on Request for Reconsideration and Certification to Appeal the Decision for Admission of the Statement of Jadranko Prlić, 8 October 2007, p. 11 (footnotes omitted), citing *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, pp. 3-4.

A. General Considerations

14. With regard to the argument presented by the Accused whereby the provisions of the Statute and the Rules regarding protective measures apply essentially to victims, neither the Statute nor the Rules make any distinction that would result in the fact that only witnesses having the status of victims may be granted protective measures.²²

15. With regard to the nature of the legal act used by the Chamber, neither the Statute nor the Rules sets out that the Chamber shall rule on a motion regarding protective measures by means of an “order” and not a “decision”. All pronouncements, be they an order or a decision by the Chamber, are binding.

16. The Chamber furthermore recalls that the pre-trial Judge, in the Decision of 30 August, granted protective measures only insofar as they achieved the right balance between the protection of witnesses and the rights of the Accused.²³

B. On Disclosing the Identity of the Witnesses to the Accused

17. With regard to the delayed disclosure of identity, the question of the Chamber respecting Rule 69 (C) of the Rules was the subject of the Oral Decision, to which the Chamber granted certification to appeal in its Decision of 14 November.²⁴ The question of the delayed disclosure of the identity of Prosecution witnesses to the Accused after the commencement of the trial is currently pending before the Appeals Chamber.

18. With regard to the witnesses who were not granted the delayed disclosure of their identity to the Accused pursuant to Rule 69 of the Rules, it ensues from the Decision of 30 August and Rule 65*ter* of the Rules that their identity should have been disclosed to the Accused immediately after the Decision of 30 August, or at a minimum immediately after the Prosecution had exhausted the means of recourse against this Decision.

²² Article 22 of the Statute and Rules 69 and 75 of the Rules.

²³ Decision of August 30, p. 7.

²⁴ Decision of 14 November, p. 3.

C. On the Measures Granted Pursuant to Rule 75 of the Rules

19. With regard to the violation of Rule 75 (E) of the Rules, this rule deals with the utilisation and disclosure of transcript statements. It does not decide in advance on the need in a case, pursuant to Rule 75 (F) of the Rules, to apply *mutatis mutandis* the protective measures ordered within the scope of another case previously heard before the Tribunal.

20. With regard to the fact that certain witnesses are not the subject of a request for protective measures or are not mentioned in the Prosecution's Pre-Trial Brief, the Chamber notes that requests for protective measures have been submitted for witnesses VS-016, VS-045, VS-1112 and VS-1141,²⁵ and that witnesses VS-1057, VS-045, VS-1035 and VS-1111 appear as Prosecution witnesses in the Prosecution's Pre-Trial Brief. These latter are also mentioned on the list of 65 *ter* witnesses filed by the Prosecution on 29 March 2007, in the same way as witnesses VS-016, VS-054 and VS-1064.²⁶

21. With regard to the possible extension of paragraph (iii) of the Decision of 30 August to the usage of pseudonyms granted under paragraph (i), the Chamber simply notes that the third paragraph of the disposition should be read in conjunction with the first. Thus, the pseudonyms granted pursuant to paragraph (i) will be used during the hearings and discussions between the Parties only until the witnesses concerned give evidence.

22. Therefore, the Accused has not established the existence of a clear error or new circumstances justifying the Chamber's reconsideration of the Decision of 30 August.

V. DISPOSITION

23. For the foregoing reasons, pursuant to Articles 20(1), 21(2) and 22 of the Statute and Rule 75 of the Rules, **DENIES** the Motion.

²⁵ These witnesses are mentioned in annex to the confidential and partially *ex parte* "Corrigendum to Consolidated Motion for Protective Measures with Confidential and *Ex Parte* Annexes and Notice of *Inter Partes* Filing of Confidential Redacted Annex to Consolidated Motion", 20 September 2007.

²⁶ "Prosecution's Submission of Revised Witness List with Confidential Annex A", 29 March 2007.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]