



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-04-74-T
Date: 28 January 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr John Hocking

Decision of: 28 January 2010

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION TO RESCIND PROTECTIVE MEASURES
ORDERED IN PREVIOUS PROCEEDINGS**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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”),

SEISED of the confidential “Motion of Milivoj Petković for Rescission of Protective Measures Ordered in Previous Proceedings”, filed by Counsel for the Accused Petković (“Petković Defence”) on 16 December 2009 (“Motion”),

NOTING the confidential “Petković Defence Notice to the Trial Chamber in Connection with its Motion for Rescission of Protective Measures Ordered in Previous Proceedings”, filed by the Petković Defence on 14 January 2010 (“Notice),

NOTING the “Order for Protective Measures” issued on 13 November 2000 by the Trial Chamber seised of the *Prosecutor v. Kordić & Čerkez* Case (“*Kordić* Trial Chamber”),¹

CONSIDERING that by the Motion, the Petković Defence seeks the rescission of the protective measures of confidentiality and closed session ordered by the *Kordić* Trial Chamber for the testimony of Milivoj Petković on 13 and 14 November 2000 when he gave evidence as a witness in the *Kordić* Case,²

CONSIDERING that, in support of its Motion, the Petković Defence submits that in the light of the time passed and the change in circumstances since the Accused Petković testified before the *Kordić* Trial Chamber, the continuation of the protective measures is no longer needed for any of the purposes applicable pursuant to the Rules of Procedure and Evidence (“Rules”) and the Statute of the Tribunal,³

CONSIDERING that the Petković Defence submits that the rescission of these protective measures will not cause risk to the safety or security of any person

¹ *The Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-T, “Order for Protective Measures”, 13 November 2000 (“Order of 13 November 2000”).

² Motion, paras. 2 and 10.

³ Motion, par. 4.

including Milivoj Petković or prejudice the interests of justice, public order or morality,⁴

CONSIDERING that it furthermore notes that it may be in the interest of justice to make the testimony public,⁵

CONSIDERING that the Petković Defence further states that although by letters dated 4 November 2009 and 16 December 2009, it notified the authorities of the Republic of Croatia of its intention to apply for the lifting of the protective measures in question and asked them to confirm that they had no objection, it did not receive a response from the Croatian authorities; that, because of the efficacy of the proceedings, it nevertheless decided not to wait any longer and to file the Motion,⁶

CONSIDERING that it submits in the end that similar protective measures, ordered on the same grounds for Milivoj Petković for the purpose of his testimony in the *Prosecutor v. Blaškić* Case, were rescinded by the Pre-Trial Judge in the present case,⁷

CONSIDERING that in the Notice, the Petković Defence imparted a letter sent by the Government of the Republic of Croatia on 7 January 2010 in which it gave its consent to the rescission of the relevant protective measures,⁸

CONSIDERING that the Office of the Prosecutor (“Prosecution”) did not file a written submission in response to the Motion,

CONSIDERING that Rule 75(G) of the Rules stipulates that “a party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply [...] (ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.”

CONSIDERING that in the Order of 13 November 2000, the *Kordić* Trial Chamber in particular ordered that 1) the testimony of Milivoj Petković shall be heard in closed session; 2) edited records and transcripts of the sessions may only be released to the

⁴ Motion, para. 4.

⁵ Motion, para. 4.

⁶ Motion, paras. 5 and 7.

⁷ Motion, para. 8, referring to *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, “Order to Rescind Protective Measures”, 5 October 2004.

public with the leave of a Trial Chamber; 3) no part of the testimony of Milivoj Petković may be disclosed to the public, the media or to third parties, other than as necessary for the purposes of the judgement in this matter; 4) the name, address, whereabouts and other identifying information concerning Milivoj Petković shall be sealed and not included in any of the public records of the Tribunal,⁹

CONSIDERING that the aforementioned protective measures were ordered by the *Kordić* Trial Chamber at the request of the Government of the Republic of Croatia, which also requested that Milivoj Petković give evidence in closed session,¹⁰

CONSIDERING that, by its letter of 7 January 2010, the Government of the Republic of Croatia notified the Petković Defence that it gave its consent to the rescission of the protective measures ordered by the *Kordić* Trial Chamber,¹¹

CONSIDERING that the Accused Petković wishes that the public have access to his testimony,

CONSIDERING that the Prosecution did not object to the Motion,

CONSIDERING that, in the light of the circumstances put forth in the Motion and the Notice, the Chamber consequently holds that the grounds that led the *Kordić* Trial Chamber to order protective measures no longer exist and that, therefore, there are reasons to grant the Motion,

FOR THE FOREGOING REASONS,

PURSUANT to Rule 75(G)(ii) of the Rules,

GRANTS the Motion, and

RESCINDS the protective measures ordered by the *Kordić* Trial Chamber for the testimony of Milivoj Petković in the *Kordić* Case.

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

⁸ See Confidential Annex to the Notice.

⁹ Order of 13 November 2000, pp. 2 and 3.

¹⁰ Order of 13 November 2000, p. 2.

¹¹ See Confidential Annex to the Notice.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-eighth day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]