



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-08-91-T
Date: 21 October 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 21 October 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART AND DENYING IN
PART THE PROSECUTION'S SIXTH MOTION FOR
PROTECTIVE MEASURES FOR VICTIMS AND
WITNESSES**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“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 “Prosecution’s sixth motion for protective measures for victims and witnesses with annex A”, filed confidentially on 25 September 2009 (“Motion”) whereby the Prosecution seeks “orders granting the assignment of the pseudonyms together with voice and facial distortion measures for witnesses ST-080, ST-121 and ST-161”,¹ who have not previously testified in person before the Tribunal;

RECALLING that, after being informed by the Prosecution that ST121 was expected to be heard the following week, the Trial Chamber in an oral decision on 14 October 2009 granted the protective measures of pseudonym and voice and facial distortion for Witness ST121;²

NOTING that the Defence did not respond to the Motion within the time limit laid down in Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

NOTING Article 20, paragraph 1, of the Statute of the Tribunal (“Statute”) which provides that the Trial Chamber shall guarantee the rights of the accused and ensure the protection of victims and witnesses, while Article 21, paragraph 2, guarantees a public trial to all accused, subject to the provisions of Article 22 of the Statute concerning the protection of victims and witnesses;

NOTING that Rule 75(A) of the Rules allows the Trial Chamber to “order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused” and that the Trial Chamber has a duty to strike a fair balance between the protection of victims and witnesses on the one side, and the right of the public to access information and the right of the Accused to a fair trial as provided for in Article 21 on the other side;

CONSIDERING the Trial Chamber’s duty to strike an appropriate balance between the protection of victims and witnesses on one side and the right of the Accused to a fair trial on the other;

CONSIDERING that the more extreme the protection sought, the more onerous will be the obligation upon the application to establish the risk asserted;³

¹ Prosecution’s sixth motion for protective measures for victims and witnesses with annex A, confidential, 25 Sep 2009, para. 17.

² Hearing, 14 Oct 2009, T. 1472-1473; see also Hearing, 14 Oct 2009, T. 1474

CONSIDERING that a party seeking protective measures must demonstrate that a *real* fear for the security of the witness or that of his family exists,⁴ in the sense 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”,⁵

CONSIDERING therefore that the Trial Chamber is satisfied that the concerns expressed in the Motion and in Annex A thereto in relation to the request for the use of pseudonym and facial and voice distortion for Witness ST080 are legitimate and justify the use of pseudonym and facial and voice distortion in the course of the testimony of this witness;

CONSIDERING however that the Trial Chamber is not satisfied that the concerns expressed in the Motion and in Annex A therefore in relation to the request for protective measures for Witness ST161 establish the existence of an objectively grounded risk to the security or welfare of the witness or his family and that, therefore, the granting of protective measures does not appear to be justified for this witness;

PURSUANT to Articles 21 and 22 of the Statute and Rules 69 and 75 of the Rules and for the foregoing reasons;

HEREBY GRANTS the Motion in part, **CONFIRMS** the oral decision of 14 October 2009 and **ORDERS** as follows:

1. Witnesses ST080 and ST121 shall be given a pseudonym and shall be referred to by such pseudonym at all times in the course of his or her testimony or whenever referred to during the proceedings or in documents including the transcript of the proceedings;
2. Witnesses ST080 and ST121 shall be screened from the public and granted facial and voice distortion in all audio-visual recording and transmission of the testimony of such witnesses;

³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-PT, Decision on Prosecution’s motion for trial related protective measures (Bosnia), 30 Jul 2002, para. 5.

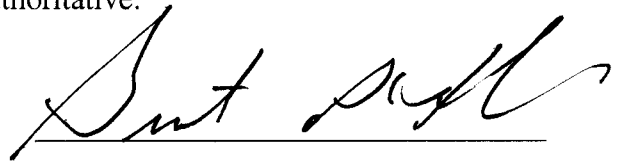
⁴ Decision on Prosecution’s third motion for protective measures, filed confidentially on 14 February 2008; Decision on Prosecution’s sixth motion for protective measures, filed confidentially on 11 September 2008; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Prosecution’s motion requesting protective measures for victims and witnesses, 10 August 1995, para. 62.

⁵ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on urgent motion for protective measures, filed confidentially on 13 March 2008; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on protective measures for Defence witnesses, 11 June 2007; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence motion for protective measures for witnesses MM-096, MM-116 and MM-090, 18 August 2006; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on motion for clarification and motion for protective measures, 13 October 2003; *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.

3. The name, address, whereabouts of and identifying information concerning Witnesses ST080 and ST121 shall be sealed and not included in any public records of the Tribunal;
4. To the extent that the name, address, whereabouts of, or other identifying data of Witnesses ST080 and ST121 is contained in existing public records of the Tribunal, that information shall be expunged from those documents;
5. The public and media may not photograph, video-record or sketch or in any manner record or reproduce images of Witnesses ST080 and ST121 while they are in the precincts of the Tribunal; and

DENIES the remainder of the Motion insofar as it relates to Witness ST161, without prejudice to the filing of a further application supported by additional information specifying the circumstances of Witness ST161 to illustrate the need for the ordering of protective measures.

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



Judge Burton Hall
Presiding

Dated this twenty first day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]