



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: 13 November 2009
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 13 November 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING IN PART THE
PROSECUTION'S EIGHTH 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 eighth motion for protective measures for victims and witnesses with annex A”, filed confidentially on 19 October 2009 (“Motion”), whereby the Prosecution seeks “orders granting the assignment of a new pseudonym for witness ST-180; and granting the assignment of pseudonyms together with voice and facial distortion measures for witnesses ST-175 and ST-028”;¹

RECALLING that on 22 October 2009, after having heard an objection from the Defence of Mićo Stanišić (“Stanišić Defence”) as to the relief sought in relation to ST028,² and noting that the Defence of Stojan Župljanin (“Župljanin Defence”) took no position on the matter,³ the Trial Chamber decided to question ST028 about his fears when he appeared to testify;⁴

RECALLING that in an oral decision on 5 November 2009 after hearing ST028 on this matter, the Trial Chamber granted the protective measures of pseudonym and voice and facial distortion for the witness;⁵

CONSIDERING, therefore, that the present decision is only in relation to ST175 and ST180;

NOTING that the Stanišić Defence, in its oral response of 22 October 2009,⁶ did not object to the relief sought in relation to ST180, but did object to the grant of protective measures sought in respect of ST175 based on the fact that the only information provided by the witness is that “I live in the hometown of Mićo Stanišić and I fear for my safety”, and that the Prosecution, therefore, failed to “provide relevant information demonstrating genuine fear for his safety or safety of his family”;⁷

NOTING that the Župljanin Defence did not respond to the Motion with regard to ST180 and ST175 within the time limit laid down in Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

¹ Prosecution’s eighth motion for protective measures for victims and witnesses with annex A, filed confidentially, 19 Oct 2009, para. 14(a) and (b).

² Hearing, 22 October 2009, T. 1929.

³ Hearing, 22 Oct 2009, T. 1898.

⁴ Hearing, 22 Oct 2009, T. 1932.

⁵ Hearing, 5 November 2009, T.2689.

⁶ Hearing, 22 Oct 2009, T. 1929-1931.

⁷ Hearing, 22 Oct 2009, T. 1930.

NOTING that pursuant to Article 20(1) of the Statute the Trial Chamber shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

NOTING that in accordance with Rule 75(F)(i) of the Rules, protective measures granted to a witness in previous proceedings before the Tribunal shall continue to have effect *mutatis mutandis*, until they are specifically rescinded, varied or augmented by proper procedure;

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;

NOTING that the protective measures already granted to ST180 in the *Slobodan Milošević* case consist of the use of a pseudonym, facial and voice distortion and private session where necessary;⁸

CONSIDERING that the Stanišić Defence does not raise objections to the grant of a new pseudonym to ST180;

CONSIDERING that it is justified to grant the request for a new pseudonym for ST180;

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;⁹

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,¹⁰ in the sense of “an objectively grounded risk to

⁸ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s motion for trial related protective measures for witness identified as B-1098, B-1237, B-1775 and B-1518, 6 May 2003.

⁹ *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.

¹⁰ 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.

the security or welfare of the witness or the witness' family, should it become publicly known that the witness gave evidence";¹¹

CONSIDERING that the Trial Chamber is not satisfied that the concerns expressed in the Motion and in Annex A thereto justify the grant of pseudonym and facial and voice distortion in the course of the testimony of ST175;

CONSIDERING however, that it is appropriate to ask the witness when present to testify and in private session regarding the request for protective measures;

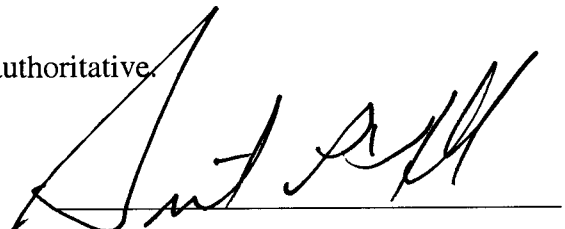
PURSUANT to Articles 21 and 22 of the Statute and Rules 69 and 75 of the Rules:

GRANTS the Motion **IN PART**;

ORDERS that ST180 be referred to by this pseudonym at all times in the course of his or her testimony or whenever otherwise referred to during the present proceedings or in documents including the transcript of the proceedings, and in all other respects **AFFIRMS** the protective measures granted to this witness in the case of *Prosecutor v. Slobodan Milošević*;¹² and

REMAIN SEISED of the Motion in respect of ST175.

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



Judge Burton Hall
Presiding

Dated this thirteenth day of November 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

¹¹ *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.

¹² *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution's motion for trial related protective measures for witness identified as B-1098, B-1237, B-1775 and B-1518, 6 May 2003.