



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: 22 February 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 22 February 2008

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ESTABLISHING GUIDELINES FOR REQUESTS FOR
PROTECTIVE MEASURES FOR DEFENCE WITNESSES**

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 Ćorić
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”),

PROPRIO MOTU

NOTING the “Scheduling Order” issued on 14 February 2008 (“Order of 14 February 2008”), in which the Chamber *inter alia* recalled the schedule for the filing of lists pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”) and decided to hold two meetings pursuant to Rule 65 *ter* on 17 and 26 March 2008,

NOTING the “Decision on the Agenda of the Status Conference of 17 and 26 March 2008” rendered today (“Decision of 22 February 2008”), in which the Chamber informed the Parties of the agenda for the meetings scheduled on the said dates,

CONSIDERING that these two meetings will allow for a discussion on the issues related to the filing of lists pursuant to Rule 65 *ter* (G) of the Rules and to the conduct of the Defence case, as set out in the agenda contained in the Decision of 22 February 2008,

CONSIDERING nonetheless that, in an effort to ensure that the trial is fair and expeditious, the Chamber considers it necessary to specify forthwith to the Defence several guidelines to be followed for any potential requests for protective measures for its witnesses,

CONSIDERING that this question is closely linked to the application of Rule 65 *ter* (G) (i) (a) of the Rules which stipulates that “[a]fter the close of the Prosecutor’s case and before the commencement of the Defence case, the pre-trial Judge shall order the Defence to file the following (i) a list of witnesses the Defence intends to call with (a) the name or pseudonym of each witness”;

CONSIDERING first that the Chamber recalls that a distinction must be made between protective measures which, on one hand, are intended to prevent disclosure of a witness’s identity or location to the public (“Category A Protective Measures”) and, on the other hand, protective measures which are intended to delay the disclosure

of a witness's identity to the other Parties to the trial ("Category B Protective Measures"),

CONSIDERING that it is incumbent upon a Defence team, at the time it files the Rule 65 *ter* (G) lists, to disclose to the other Parties to the trial and to the Chamber the identity of witnesses whom it intends to call to testify, unless the Chamber has given the Defence prior authorization to depart from this obligation,

CONSIDERING that in the event the Defence would like to file its 65 *ter* (G) lists publicly and use pseudonyms in order to prevent the disclosure of the identity of certain witnesses to the public, the Chamber invites the Defence to file the requests for Category A Protective Measures at the latest at the same time as it files the Rule 65 *ter* (G) lists, i.e. on 31 March 2008,

CONSIDERING that the Category B Protective Measures involve an exception to the obligation to disclose, at the time the Rule 65 *ter* (G) lists are filed, the identity of witnesses to the other Parties to the trial, which requires authorization from the Chamber,

CONSIDERING as a result that the Chamber invites the Defence to file, as appropriate, the requests for Category B Protective Measures no later than 17 March 2008, which will allow the Chamber to rule on the exception to the disclosure obligation prior to the filing of the 65 *ter* (G) lists,

CONSIDERING moreover that in an effort to avoid using the same pseudonyms, the Chamber invites the Defence teams to propose the assignment of pseudonyms that were not assigned by the Chamber during the presentation of the Prosecution case, and also to agree amongst themselves so as not to propose the assignment of identical pseudonyms,

CONSIDERING that for this purpose the Chamber invites the Defence to request the assistance of the Registry,

CONSIDERING finally that regarding the choice of pseudonyms, the Chamber invites the Defence to go in the order of Defence teams, in other words, the Defence for the Accused Prlić (1D) first proposes pseudonyms for its witnesses, followed by

the Defence for the Accused Stojić (2 D), which proposes pseudonyms for its witnesses, and so on and so forth,

FOR THESE REASONS,

PURSUANT TO Rules 54, 65 *ter*, 70 and 75 of the Rules,

ADOPTS the guidelines as set out in this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]