IT-95-14/2-A
A 3080 - A 3077
19 MARCH 2002
IT-95-14-A
A14247 - A14244
19 MARCH 2002

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UNITED NATIONS

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-95-14/2-A

Date: 19 March 2002

Original: English

IN THE APPEALS CHAMBER

Before: **Judge David Hunt, Pre-Appeal Judge**

Registrar: **Mr Hans Holthuis**

Decision of: **19 March 2002**

PROSECUTOR

v.

DARIO KORDIĆ
MARIO ČERKEZ

ORDER ON PROSECUTION REQUEST FOR VARIATION OF WITNESS PROTECTIVE MEASURES

Counsel for the Prosecutor
Mr Norman Farrell

Counsel for Dario Kordić
Mr Mitko Naumovski

Counsel for Mario Čerkez
Mr Božidar Kovačić

I, Judge Hunt, Pre-Appeal Judge in this case,

NOTING the "Prosecution's Urgent Request for Variation of Witness Protection Measures Imposed by the Trial Chamber in *Prosecutor v. Dario Kordić and Mario Čerkez* for the Purpose of Use in the Appeal of *Prosecutor v. Blaškić*" ("Prosecution's Request"), dated 6 December 2001, whereby the Prosecution sought from the President a variation of the protective measures imposed in relation to seven witnesses who testified in the *Kordić* case for the purpose of the appeal proceeding in the *Blaškić* case;

NOTING the "Order of the President on the Prosecution's Urgent Request for Variation of Witness Protection Measures Imposed by the Trial Chamber in *Prosecutor v. Dario Kordić and Mario Čerkez* for the Purpose of Use in the Appeal of *Prosecutor v. Blaškić*", dated 21 February 2002, whereby the President requests the Registrar to forward the Prosecution's Request to the Appeals Chamber;

NOTING that, pursuant to Rule 75(D), during appellate proceedings before a Trial Chamber in which an order has been made for protective measures, the Appeals Chamber is in the same position as the Trial Chamber to vary or rescind the order made by the Trial Chamber;

NOTING that the Appeals Chamber is presently seized of an appeal from the Judgment in the *Blaškić* trial;

NOTING that the Prosecution wishes to identify each of these witnesses by name for the purpose of the *Blaškić* appeal;

NOTING the Prosecution's request that the protective measures which were granted by the *Kordić* Trial Chamber should continue to apply in respect of these witnesses and that, in light of what the Prosecution considers to be a pattern of non-compliance with Chambers' orders by the Defence in the *Blaškić* case, additional protective measures should be granted;

CONSIDERING, however, that the obligation of Counsel not to disclose the name of protected witnesses or the content of protected material is, in any case, implicit in his or her responsibility as Counsel, and that this obligation underlay any order of a Chamber rendered pursuant to Rule 75;

NOTING that the Defence did not respond to the Prosecution's Request and has not opposed the protective measures requested by the Prosecution;

NOTING that the Defence in this case has in the past undertaken to comply with protective measures similar to those presently sought by the Prosecution;[1]

NOTING FURTHER that protective measures similar to those requested by the Prosecution in the present instance were granted by the Appeals Chamber in respect of material from the *Aleksovski* case to which access was sought by the *Blaškić* Defence;[2]

PURSUANT TO Article 20(1) of the Statute and Rule 75 of the Rules of Procedure and Evidence;

HEREBY ORDER that

1. The required use of pseudonyms of the seven (7) witnesses known during the trial by the pseudonyms AD, AO, I, T, J, Z, CW1 is lifted for the purpose of the *Blaškić* appeal, and the Prosecution is permitted to refer to them by name on a confidential basis.
2. The protective measures ordered by the Trial Chamber in *Kordić* in respect of these witnesses shall remain in place and Counsel for both sides are therefore bound thereby.
3. These witnesses are to be given fresh pseudonyms for the purpose of any publicly filed document, and there should be no reference to the fact that they testified in the *Kordić* case under a different pseudonym.
4. The following additional protective measures shall apply: the Appellant, his counsel and any employee at Latham & Watkins or at the office of Mr Anto Nobilo, who have been instructed or authorised by counsel to access the disclosed materials shall:

(a) Sign and file with the Registry a written undertaking stating:

(1) that he/she shall not disclose to any third party either the identities of protected witnesses or the content of protected documents, unless sub-paragraph (c) has been complied with, and

(2) that he/she is fully aware that if the measures provided for in this decision are violated he/she could be found to be in contempt of the International Tribunal pursuant to Rule 77 of the Rules;

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[1] Undertaking Re Access to Non-Public Material in Accordance with Judge Mumba's Decision of 20 February 2002, 14 March 2002.

(b) Third parties exclude:

(i) the Appellant;

(ii) persons employed by counsel's law firms who have signed and filed such a written undertaking;

(iii) personnel from the International Tribunal; or

(iv) members of the Office of the Prosecutor;

(c) In the event that the Appellant considers it necessary to grant access to any of the disclosed material to third parties, the Appellant shall file with the Registry, *at least four working days prior to granting such access*, a signed written undertaking by that third party in the terms set out in sub-paragraph (a), as well as a written undertaking stating that the disclosed material will not be copied, reproduced or publicised. Such an undertaking shall not be made on an *ex parte* basis.

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

David Hunt

David Hunt
Pre-Appeal Judge

Done this 19th of March 2002,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

[2] Decision on Appellant's Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits from the *Aleksovski* Case, 8 March 2002. *See* also, *Prosecutor v. Blaškić*, Decision Granting Access to Non-Public Material, 20 February 2002.