



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-95-5/18-T

Date: 12 November 2012

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 12 November 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR
PROTECTIVE MEASURES FOR WITNESS KW194**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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”) is seised of the Accused’s “Motion for Protective Measures for Witness KW194”, filed publicly with a confidential annex on 30 October 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the Chamber grant the protective measures of pseudonym and closed session for witness KW194 (“Witness”) pursuant to Rules 75 and 79 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ The Accused requests that the Chamber grant the protective measures at the commencement of the Witness’s testimony.² In support of this application, the Accused attaches in a confidential annex to the Motion a declaration from his case manager (“Declaration”), who spoke to the Witness on the telephone.³ In the Declaration, the Witness expresses concerns that his testimony before the Chamber would “disturb his professional career, all his professional relationships, and could put his job at risk”.⁴ According to the Declaration, the Witness requests the protective measure of closed session because the nature of his testimony would easily identify him.⁵

2. On 1 November 2012, the Office of the Prosecution (“Prosecution”) filed publicly with confidential appendix the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW194”, in which it opposes the Motion.⁶ The Prosecution argues that the Accused did not demonstrate an objective basis that the Witness may be in danger or at risk in order to warrant the requested protective measures.⁷ The Prosecution contends that the information provided in the Motion is insufficiently specific and substantiated because the Declaration only contains general assertions about the Witness’s professional concerns and provides no details as to how his testimony could affect the security or welfare of the Witness or his family.⁸ The Prosecution also notes that the Accused “yet again” requests that the Chamber grant protective measures at the

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, Confidential Annex A.

⁴ Motion, Confidential Annex A, para. 4.

⁵ Motion, para. 3; Motion, Confidential Annex A, para. 4.

⁶ Response, paras. 1, 4.

⁷ Response, para. 2.

⁸ Response, Confidential Appendix, paras. 1–4.

commencement of the Witness's testimony and requests that the Chamber again deny such a request.⁹

II. Applicable Law

3. Article 20(1) of the Tribunal's Statute ("Statute") requires that proceedings be conducted "with full respect for the rights of the accused and due regard for the protection of victims and witnesses". Article 21(2) entitles the accused to a fair and public hearing, subject to Article 22, which requires the Tribunal to provide in its Rules for the protection of victims and witnesses, including the conduct of *in camera* proceedings and the protection of identity. As has clearly been established in previous Tribunal cases, these Articles reflect the duty of Trial Chambers to balance the right of the accused to a fair trial, the rights of victims and witnesses to protection, and the right of the public to access to information.¹⁰

4. Rule 75(A) of the Tribunal's Rules permits a 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". Under Rule 75(B) of the Rules, these may include measures to prevent disclosure to the public and the media of identifying information about witnesses or victims, including voice and image distortion, and the assignment of a pseudonym, as well as the presentation of testimony in private or closed session pursuant to Rule 79 of the Rules.

III. Discussion

5. As the Chamber has noted on previous occasions, the party requesting protective measures must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness's family, should it become publicly known that the witness testified before the Tribunal.¹¹ Having reviewed the Declaration, the Chamber notes that the Witness's only contention is that his statement contains information about the activities of the Sarajevo-Romanija Corps and believes that this testimony would "put [his] career in a great danger" because it would damage the relationships and "atmosphere of unity" within the organisation in which he currently

⁹ Response, para. 3.

¹⁰ See Decision on Motion for and Notifications of Protective Measures, 26 May 2009, para. 11, citing *Prosecution v. Tadić*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Witness L, 14 November 1995, para. 11; *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Witness R, 31 July 1996, para. 5; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para. 7.

¹¹ See Decision on Prosecution's Motion for Protective Measures for Witness KDZ487, 24 November 2009, para. 13, citing *Prosecution v. 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, pp. 2-3; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

works.¹² The Chamber is not satisfied, on the basis of the information before it, that there is an objectively grounded risk to the security or welfare of the Witness should he testify in open session.

6. Moreover, the Chamber has already ruled that it “will categorically not entertain” requests to postpone the granting of protective measures.¹³ That discussion will not be repeated here.

IV. Disposition

7. Accordingly, the Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 54, 75, and 79 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twelfth day of November 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² Motion, Confidential Annex A, para. 4.

¹³ See Decision on Protective Measures for Witness KW456, 12 October 2012, para. 12. See also Pre-Defence Conference, T. 28827 (15 October 2012).