



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: 15 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: 15 November 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR PROTECTIVE MEASURES
FOR MILADIN TRIFUNOVIĆ**

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 Image Distortion for Witness Miladin Trifunović (KW515)” filed on 12 November 2012 (“Motion”), and hereby issues its decision thereon.

I. Submissions and Background

1. In the Motion, the Accused requests the Chamber to grant the protective measure of image distortion to Miladin Trifunović (“Witness”) pursuant to Rule 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) on the basis that it is necessary to ensure the safety of the Witness.¹

2. The Accused submits that when the Witness arrived in The Hague, he informed the Accused that he wished to have the protective measure of image distortion during his testimony in this case.² The Accused states that the Witness operates a wood supply business in the Sarajevo area and that he travels to the Federation of Bosnia and Herzegovina (“Federation” and “BiH”, respectively) two to three times per week for his work.³ The Accused also submits that as this trial is broadcast on television in BiH, the Witness fears that “there is a strong likelihood that people would recognize him and verbally and physically harass him during his travels in the Federation”.⁴ Finally, the Accused submits that three witnesses who testified for the Office of the Prosecutor (“Prosecution”) were granted the protective measure of image distortion based only on the fact that they were police officers in Sarajevo who travelled to “Serbian areas” for their work, and thus, the same principle should be applied to the Witness.⁵

3. Having been ordered to file an expedited response,⁶ the Prosecution filed publicly with confidential appendix the “Prosecution Response to Karadžić’s Motion for Image Distortion for Witness Miladin Trifunović (KW515)” on 13 November 2012 (“Response”), in which it opposes the Motion.⁷ The Prosecution argues that the Accused does not provide any specific details regarding how the Witness’s circumstances could affect his security or welfare.⁸ The Prosecution also submits that the assertion made by the Accused regarding three Prosecution

¹ Motion, paras. 1–2.

² Motion, para. 2.

³ Motion, para. 2.

⁴ Motion, para. 2.

⁵ Motion, para. 3.

⁶ On 12 November 2012, the Chamber ordered the Prosecution to file an expedited response to the Motion no later than 13 November 2012. T. 30140 (12 November 2012).

⁷ Response, para. 1.

witnesses who were granted the protective measure of image distortion based on similar circumstances to the Witness is incorrect and it attaches further information about the particular circumstances surrounding these witnesses in a confidential appendix to the Response.⁹

II. Applicable Law

4. Article 20(1) of the Statute of the Tribunal (“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

5. Rule 75(A) of the 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”. Pursuant to 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 image distortion.

III. Discussion

6. As the Chamber has previously noted, 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 he or she testified before the Tribunal.¹¹

⁸ Response, para. 1.

⁹ Response, paras. 1–2, Confidential Appendix.

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.

7. The Chamber recalls that it is essential that the trial should not only be fair, but should also be perceived as such.¹² It is therefore important that the proceedings are open to the public, and that image distortion is only granted in cases where the witness provides an objective basis for the necessity of such a measure. Having considered the circumstances of the Witness, including his place of residence and employment, the exposure he has to persons of all ethnic backgrounds through his work and personal life, the frequent visits he makes to the Federation, and his genuine fear for his welfare given the public profile and media coverage of this case, the Chamber is satisfied that there is an objectively grounded risk to the security or welfare of the Witness should he be recognised through images circulated by the media.

8. Taking into consideration that the protective measure of image distortion does not significantly affect the public nature of the trial, the Chamber is satisfied that the granting of the protective measure of image distortion for the Witness under Rule 75 is necessary and appropriate.

IV. Disposition

9. Accordingly, the Trial Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 54 and 75 of the Rules, hereby:

- a) **GRANTS** the Motion;
- b) **ORDERS** that Miladin Trifunović testify using image distortion; and
- c) **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge O-Gon Kwon
Presiding

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

[Seal of the Tribunal]

¹² See *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Second Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Witness List to Add Wesley Clark, 16 February 2007, para. 30.