



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: 3 December 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

Order of: 3 December 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER FOR SAFE CONDUCT

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of the Kingdom of the Netherlands

via the Ministry of Foreign Affairs
Ambassador for International Organisations

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 Safe Conduct Orders”, filed on 26 November 2012 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused moves for an order, pursuant to Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), for the safe conduct of defence witnesses Vladimir Radojčić and Milorad Šehovac (“Witnesses”).¹ Specifically, the Accused requests that the Witnesses “not be arrested, detained, prosecuted, or subjected to any other restriction, whether physical or legal, of their personal liberty in respect of any acts or convictions prior to their departure from their home country, while in transit to and from The Netherlands and while in The Netherlands”.²

2. The Accused notes that the Witnesses both served as commanders in the Sarajevo Romanija Corps of the Army of Republika Srpska.³ Each of the Witnesses is expected to testify about the activities of his respective brigade and about allegations in the Third Amended Indictment (“Indictment”) relating to the indiscriminate and disproportionate shelling of Sarajevo.⁴ According to the Accused, the Witnesses are not willing to travel to The Hague to testify unless they are guaranteed that they will not be arrested, as each believes there is an outstanding arrest warrant against him in Bosnia and Herzegovina for events related to the shelling of Sarajevo.⁵ The Accused contends that an order for safe conduct is necessary to secure the presence of the Witnesses and submits that the Witnesses’ testimony is relevant and of probative value to his defence case.⁶ The Accused further notes that the dates of travel of the Witnesses are forthcoming.⁷

3. On 26 November 2012, the Office of the Prosecutor (“Prosecution”) informed the Chamber *via* email that it would not respond to the Motion.

4. The Chamber recalls that orders for safe conduct are a common device in the practice of the Tribunal for granting witnesses limited immunity under specific circumstances to “secure the

¹ Motion, paras. 1, 7.

² Motion, para. 1.

³ Motion, paras. 2, 4.

⁴ Motion, paras. 2, 4.

⁵ Motion, paras. 3, 5; Motion, Annex A, pp. 2–10; Motion, Annex B, paras. 5–8.

⁶ Motion, para. 7.

⁷ Motion, para. 8.

attendance of witnesses from areas beyond” the Tribunal’s jurisdiction.⁸ Such orders are issued by Trial Chambers when deemed in the interests of justice.⁹

5. The Chamber is satisfied that the expected testimony of the Witnesses is relevant and of probative value to the charges in the Indictment. Furthermore, in light of the circumstances as set out in the Motion, the Chamber finds that it is in the interests of justice to issue orders for safe conduct for the Witnesses to ensure the Witnesses’ appearances before the Tribunal.

6. Finally, the Chamber notes that the Motion was filed only one week before the Witnesses are expected to travel to The Netherlands. The Chamber strongly urges the Accused to be more timely when filing such motions in the future.

Disposition

7. Accordingly, the Chamber, pursuant to Articles 20, 29, and 30(4) of the Tribunal’s Statute and Rule 54 of the Rules, hereby:

a) **GRANTS** the Motion and **ORDERS**:

- (i) Safe conduct for the Witnesses such that, while in or travelling to The Netherlands for the sole purpose of his testimony in the present case, and while returning to Serbia thereafter, the Witnesses shall not be arrested, detained, prosecuted, or subjected to any other restriction, whether physical or legal, of their personal liberty, in respect of alleged acts or convictions prior to their departure from Serbia;
- (ii) The safe conduct order shall apply prior to the Witnesses’ departure from Serbia to The Netherlands, during their transit between Serbia and The Netherlands, upon their arrival at and during their entire stay in The Netherlands, during their return transit from The Netherlands to Serbia; and

⁸ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 26 June 1996 (“*Tadić* Decision”), para. 10. *See also, e.g.*, Decision on the Prosecution’s Motion for Safe Conduct for Witness Momčilo Mandić, 16 June 2010; *Prosecutor v. Zejnir Delalić et al.*, Case No. IT-96-21-T, Order Granting Safe Conduct to Defence Witnesses, 25 June 1998; *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13a-T, Order on Defence Motion for Safe Conduct, 12 June 1998. Furthermore, states are generally familiar with the administration of safe conduct provisions, as they “have been included in nearly all treaties of mutual assistance and several multilateral agreements.” *Tadić* Decision, para. 9.

⁹ *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Request for the Safe Transfer of Defence Witness Zoran Dražilović, 1 June 2011, p. 2; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Order for Safe Conduct, 3 November 2008, p. 2; *Tadić* Decision, para. 12.

- b) **REQUESTS** the Registrar of the Tribunal to take all necessary measures for the implementation of the order for safe conduct.

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



Judge O-Gon Kwon
Presiding

Dated this third day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]