

VIEW FROM THE HAGUE

PRISON AND 100.000 EUROS FOR REVEALING WITNESS' IDENTITY

Disclosing the name or identity of a protected witnesses who testified before the ICTY or publishing the transcripts of testimony given in closed session before the Tribunal can all be considered contempt of court. Such acts are punishable by a fine of up to 100,000 Euros, imprisonment of up to 7 years or both.

This is provided for in rule 77 of the Tribunal's Rules of Procedure and Evidence. Why protect witnesses and who are they protected from?

In proceedings before the Tribunal, as before national courts, there are measures for the protection of witnesses. These measures have been introduced in order to make it possible for individuals to testify before the court without fear. People might be afraid to testify for various reasons.

One such reason may be fear of further and public humiliation. During the war in the former Yugoslavia, many atrocities were committed, among them, many rapes. A woman or a man who suffered this horrible crime may feel that he or she will be further humiliated and in some instances even ostracised by their family and community if they were to talk about their suffering publicly. Testifying about such traumatic events is difficult enough without the added humiliation and stigmatisation of the victim that might occur if the person's identity were to be revealed to the public.

Another reason for concern might be fear of reprisals. A soldier testifying against his superior or his comrades may be afraid for his safety or the safety of his family should the perpetrators find out that he is disclosing information which they may be seeking to hide. The same may be true of political associates of a suspect or an accused. This is an unfortunate, but sadly not uncommon occurrence. This is why, in some cases, the only way a court may obtain valuable evidence from such individuals is if their identities are not revealed when they testify.

In these and similar situations, the Judges of the Tribunal have several measures at their disposal to protect the witness and can issue orders to that effect. One such measure may be testimony under a pseudonym. This is a situation in which the court orders that a witness' name is not disclosed to the public, but the testimony is given in open session. Another measure may be voice distortion in which the witness' voice is electronically altered in the public broadcast and thus unrecognizable. Yet another possibility is image distortion in which the face of the witness is concealed in the public broadcast. It is also possible to combine these measures. The most extreme measure at the disposal of the Tribunal's judges is to conduct proceedings in closed session. This means that neither the identity of the witness nor the content of their testimony will be made available to the public.

In all of these cases, however, the identity of the witness is known to both parties in the proceedings and the lawyers representing them are allowed to cross-examine all witnesses, including those who are testifying under protection measures.

Once these orders on the protection of witnesses are issued by a Chamber, they are binding on all participants in the court proceedings and all members of the public.

Unfortunately, periodically, journalists or other individuals decide to place themselves above the law and reveal the identity of a witness or publish the transcript of Tribunal's proceedings held in closed session.

They often try to justify such activity by claiming that the public has an absolute right to information. This is not true. As is the case with most rights, the right to information is not absolute. In certain instances it can and is limited by various considerations – security of individuals, national issues, concerns of legal entities, the interest of justice. In this case, the public's right to information is limited by the court order that protects an individual's security or dignity or is otherwise in the interest of justice.

Therefore, regardless of one's personal opinion on the matter, violating court orders is illegal and will be treated in the same way as any other illegal activity – with an investigation and possible charges being brought against those believed responsible for the violation of said court orders. As stated above, the maximum penalty can be up to 100,000 Euros and 7 years in prison, or both.

Outreach Programme

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