



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: 18 February 2016

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: 18 February 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR DISCLOSURE OF INFORMATION
ON VARIATION OF PROTECTIVE MEASURES**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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”);

BEING SEISED of the “Motion for Disclosure of Information on Variation of Protective Measures” filed by the Accused on 8 December 2015 (“Motion”), wherein he asks the Chamber to order the Registrar to disclose to him a list of witnesses in the present case for whom an application for variation of protective measures has been filed pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) to enable disclosure of confidential material in connection with investigations or cases conducted by national authorities (“Requested List”);¹

NOTING that the Accused submits the following arguments in support of the Motion, namely i) he has an important interest in being heard on all requests for the variation of protective measures; ii) knowledge that a witness in this case is giving evidence in domestic proceedings may assist him in discovering new material; iii) the Accused may be prompted to request the variation or rescission of the protective measures of a witness who has consented to the same in a domestic proceeding; and iv) the Accused can be of assistance in pointing the applicant to contradictory evidence of the concerned witness;²

NOTING the “Prosecution Response to Motion for Disclosure of Information on Variation of Protective Measures” filed on 21 December 2015 (“Response”), in which the Prosecution opposes the Motion and submits that the Accused failed to demonstrate a need for the Requested List that outweighs the special interests justifying the *ex parte* status of such material in that i) the Motion is overly broad and speculative; ii) the material the Accused seeks includes “a range of sensitive information for which the Accused has no conceivable legitimate use”; and iii) the information sought by the Accused is available through narrower means already available to him;³

RECALLING that Rule 75(H) of the Rules provides the basis pursuant to which domestic judicial authorities can request from the Chamber the variation of protective measures of witnesses who have testified in these proceedings in order to use the information provided by these witnesses for the purpose of domestic investigations and prosecutions;

¹ Motion, paras. 1, 18. The Accused also seeks “the date of the application and decision, and the ICTY or MICT case name and number if the protective measures for the *Karadžić* case witness originated, and thus were modified, in a different case”. Motion, para. 18.

² Motion, paras. 4–7.

³ Response, paras. 1–8.

NOTING that, as such and in substantiating their requests under Rule 75(H), domestic authorities include sensitive detailed information as to the investigation or proceedings for which the requested variation of protective measures is said to be relevant to;

NOTING that *ex parte* material enjoys a higher degree of confidentiality than *inter partes* material, that “the party on whose behalf the *ex parte* status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed”, and that for access to be granted, a showing must be made that the need of the requesting party for the material outweighs the special interests grounding its *ex parte* status;⁴

CONSIDERING that the Motion is overly broad and speculative and that the alleged legitimate interests put forth by the Accused encompass being heard on motions for variation of protective measures which have already been ruled upon, obtaining hypothetical additional material, as well as providing assistance to domestic authorities;

CONSIDERING that the Accused has not demonstrated any legitimate interest in obtaining the Requested List that would outweigh the *ex parte* nature of that information related to domestic proceedings in which the Accused is not involved;

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54 and 75(H) of the Rules,

HEREBY

DENIES the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this eighteenth day of February 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ Decision on the Accused’s Motion for Access to *Ex parte* Filings in the Slobodan Milošević Case (Srebrenica Intercepts), 28 February 2011, paras. 9, 13.