



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: 2 October 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: 2 October 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER IN RELATION TO ACCUSED'S NOTICE OF REQUEST OF PROTECTIVE
MEASURES FOR WITNESSES**

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”);

BEING SEISED of the request in the “Notice of Request for Protective Measures for Witnesses KW-285, KW-341, and KW-456” filed by the Accused on 24 September 2012 (“Notice”) in which the Accused informs the Chamber that witnesses KW-285, KW-341, and KW-456 (“Witnesses”) have indicated that they will ask for the protective measures of pseudonym, image distortion, and voice distortion when they testify in October 2012,¹ and requests that they be given an opportunity to orally provide the reasons for which they are seeking protective measures prior to giving testimony (“Request”);²

NOTING that the Accused states that “[w]hile he prefers that all testimony be given in public under a person’s true name, he understands the fears expressed by the witnesses and leaves it to the Trial Chamber to determine whether the requested protective measures are warranted”;³

NOTING the “Prosecution Response to Karadžić’s Notice of Request for Protective Measures for Witnesses KW-185, KW-341, and KW-456” filed on 27 September 2012 (“Response”), wherein the Office of the Prosecutor (“Prosecution”) opposes the Request on the basis that there is no information in the Notice justifying granting protective measures to the Witnesses and argues that the Accused should be ordered to file timely motions requesting protective measures for his witnesses;⁴

NOTING the Chamber’s instruction communicated to the parties *via* email on 21 September 2012 wherein the Chamber reminded the Accused that motions for protective measures of witnesses should be filed sufficiently in advance to allow the Prosecution to respond and the Chamber to issue a decision prior to the witness’s testimony;

RECALLING that 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’ family, should it become publicly known that he or she testified before the Tribunal;⁵

¹ Notice, para. 1.

² Notice, para. 5.

³ Notice, para. 5.

⁴ Response, paras. 1, 8, 9.

⁵ 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

CONSIDERING that the Notice does not contain any basis for the Chamber to assess whether there exists an objectively grounded risk to the security of the Witnesses or that of their family;

CONSIDERING further that in the Notice, the Accused does not request protective measures for the Witnesses but barely conveys the Witnesses' wish to ask orally for these protective measures when they come to testify;

CONSIDERING that implementing the procedure set out in the Request would not only prevent the Chamber from making an informed decision on the forthcoming requests for protective measures based on substantiated submissions from the parties but would also result in an inefficient use of the limited court time;

PURSUANT TO Articles 20, 21, and 22 of the Statute of the Tribunal and Rule 75 of the Tribunal's Rules of Procedure and Evidence,

HEREBY DENIES the Request and **ORDERS** the Accused to file timely and substantiated motions requesting protective measures for the Witnesses, and any other witness on his Rule 65 *ter* witness list who he is aware wishes to request protective measures, sufficiently in advance to allow the Prosecution to respond and the Chamber to issue a decision on the said requests prior to the witness's testimony.

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



Judge O-Gon Kwon
Presiding

Dated this second day of October 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

Witnesses MM-096, MM-116 and MM-90, 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.