



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-94-1-T  
Date: 15 November 1995  
Original: ENGLISH ONLY

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**IN THE TRIAL CHAMBER**

**Before:** Judge McDonald, Presiding  
Judge Stephen  
Judge Vohrah

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Decision of:** 15 November 1995

**PROSECUTOR**

v.

**DUŠKO TADIĆ a/k/a "DULE"**

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**DECISION ON THE PROSECUTOR'S MOTION REQUESTING PROTECTIVE  
MEASURES FOR VICTIMS AND WITNESSES**

**ERRATUM**

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**TRIAL CHAMBER II,**

*Proprio Motu,*

CONSIDERING its decision in the case of Dusko Tadic a/k/a "Dule" concerning the Prosecutor's Motion Requesting Protective Measures For Victims And Witnesses pronounced on 10 August 1995,

NOTING that there are typographical errors in the said decision, which are suitable for rectification,

FOR THESE REASONS,

DECIDES that, in the said decision, at page 14, paragraph 27,

FOR:

"These considerations are unique: neither Article 14 of the ICCPR nor Article 6 of the European Convention of Human Rights ("ECHR"), which concerns the right to a fair trial, list the protection of victims and witnesses as one of its primary considerations."

READ:

"These considerations are unique: neither Article 14 of the ICCPR nor Article 6 of the European Convention of Human Rights ("ECHR"), which concerns the right to a fair trial, lists the protection of victims and witnesses as one of its primary considerations."

DECIDES that, in the said decision, at page 22, paragraph 46,

FOR:

“It has been noted further that testifying about the event is often difficult, particularly in public, and can result in rejection by the victim s family and community.”

READ:

“It has been noted further that testifying about the event is often difficult, particularly in public, and can result in rejection by the victim’s family and community.”

DECIDES that, in the said decision, at page 26, paragraph 58,

FOR:

“Within the context of the Rules, anonymity of witnesses at the trial stage is provided for in Sub-rules 75 (A) and (B)(iii).”

READ:

“Within the context of the Rules, anonymity of witnesses at the trial stage is provided for in Rule 75, Sub-rules (A) and (B)(iii).”

DECIDES that, in the said decision, at page 27, paragraph 62,

FOR:

“Judicial concern motivating a non-disclosure order may be based on fears expressed by persons other than the witness, e.g., the family of the witness, the Prosecutor, the Victims and Witnesses Unit, as well as by the witness himself.”

READ:

“Judicial concern motivating a non-disclosure order may be based on fears expressed by persons other than the witness, e.g., the family of the witness, the Prosecutor and the Victims and Witnesses Unit.”

DECIDES that, in the said decision, at page 27, paragraph 63,

FOR:

“[T]he evidence must be sufficiently relevant and important to make it unfair to the prosecution to compel the prosecutor to proceed without it.”

READ:

“[T]he evidence must be sufficiently relevant and important to make it unfair to the prosecution to compel them to proceed without it.”

DECIDES that, in the said decision, at page 29, paragraph 71,

FOR:

“The release of nicknames used in the camps clearly falls into this latter category and the majority of the Trial Chamber will therefore not allow the release of this information concerning witnesses who have been granted anonymity without the express consent of these witnesses.”

READ:

“The release of nicknames used in the camps would make the true names of the witnesses traceable and the majority of the Trial Chamber will therefore not allow the release of this information concerning witnesses who have been granted anonymity without the express consent of these witnesses.”

DECIDES that, in the said decision, at page 30, paragraph 72,

FOR:

“If this information is released, knowledge of the identities of the witnesses would not add considerably to the information which the defence needs to cross-examine them about the events to which they testify. It may prevent questioning them about their past history, which could go to their credibility, but such restriction of the right of the accused would seem to be permissible in the light of the circumstances.”

READ:

“If information about the reliability and the relationship of the witness to the accused is released to the defence, knowledge of the identities of the witnesses would not add considerably to the information which the defence needs to cross-examine these witnesses about the events to which they testify. Not releasing the identities of the witnesses may prevent the defence from questioning the witnesses about their past history, which could go to their credibility, but such restriction of the right of the accused would seem to be permissible in the light of the circumstances.”

DECIDES that, in the said decision, at page 30, paragraph 74,

FOR:

“In this Rule, perhaps more than anywhere else in the Rules, there is a departure from some common law systems where technical rules of evidence predominate. Sub-rules 89 (C) and (D) provide that the only limit on the receipt of relevant evidence is that it has probative value, and it may be excluded only if it is substantially outweighed by the need to ensure a fair trial.”

READ:

“In this Rule, perhaps more than anywhere else in the Rules, there is a departure from the practice of some common law systems where technical rules of evidence predominate. Rule 89, Sub-rules (C) and (D) provide that the only limit on the receipt of relevant evidence is that it has probative value, and it may be excluded only if it is substantially outweighed by the need to ensure a fair trial”

DECIDES that, in the said decision, at page 31, paragraph 75,

FOR:

“If the party offering anonymous testimony is able to meet the guidelines set out herein, the testimony should be allowed.”

READ:

“It is the view of the majority of the Trial Chamber that if the party offering anonymous testimony is able to meet the criteria set out in this decision, the testimony should be allowed.”

DECIDES that, in the said decision, at page 31, paragraph 77,

FOR:

“Initially, the Trial Chamber must consider the factors that apply to all witnesses.”

READ:

“Initially, the Trial Chamber must consider the criteria that apply to all witnesses.”

DECIDES that, in the said decision, at page 32, paragraph 78,

FOR:

“His former identity need not be withheld from the Defence because that identity is already known to them.”

READ:

“His former identity need not be withheld because that identity is known to the Defence.”

DECIDES that, in the said decision, at page 32, paragraph 79,

FOR:

“The Defence asserts that it believes that it knows the identity of witness H, who has refused to testify unless: “[the] identity and that of [the] family is completely protected”. Because of the reasonable fear of retaliation felt by the witness and because the Prosecutor has met the guidelines for anonymity set out above, the majority decision of the Trial Chamber is to order that the identity of witness H and other identifying information be withheld from the Defence.”

READ:

“The Defence asserts that it believes that it knows the identity of witness H, who has refused to testify unless his identity and the identity of his family are completely protected. Because the Defence could not conclusively indicate the identity of witness H and because of the reasonable fear of retaliation felt by the witness and because



the Prosecutor has met the criteria for anonymity set out above, the majority decision of the Trial Chamber is to order that the identity of witness H and other identifying information be withheld from the Defence.”

DECIDES that, in the said decision, at page 33, paragraph 81,

FOR:

“The Trial Chamber has declined to allow witness I to testify anonymously but has granted full confidentiality to protect against public disclosure.”

READ:

“The Trial Chamber has declined to allow witness I to testify anonymously but has granted full confidentiality to protect him against public disclosure.”

DECIDES that, in the said decision, at page 33, paragraph 81,

FOR:

“At this stage of the proceeding, however, the accused is not denied a fair trial by the decision to permit witness H to testify anonymously.”

READ:

“At this stage of the proceedings, however, the accused is not denied a fair trial by the decision to permit witness H to testify anonymously.”

DECIDES that, in the said decision, at page 33, paragraph 82,

FOR:

“Witness K has also requested that the identity and the identity of family members be protected.”

READ:

“Witness K has also requested that her identity and the identity of her family members be protected.”

DECIDES that, in the said decision, at page 33, paragraph 82,

FOR:

“Because of the reasonable fear of retaliation felt by these witnesses and because the Prosecutor has met the guidelines for anonymity set out above, the Trial Chamber, by majority decision, orders the non-disclosure of the identities and other identifying information relating to witnesses J and K.”

READ:

“Because of the reasonable fear of retaliation felt by these witnesses and because the Prosecutor has met the criteria for anonymity set out above, the Trial Chamber, by majority decision, orders the non-disclosure of the identities and other identifying information relating to witnesses J and K.”

DECIDES that, in the said decision, at page 34, paragraph 83,

FOR:

“Providing the Defence with their general locality meets the requirement of contextual identification, for this information will be sufficiently precise to allow the Defence to make enquiries of others in the vicinity as to what they saw of the incidents of which J and K speak.”

READ:

“Providing the Defence with information on the general locality of J and K where they saw the events about which they testify meets the requirement of contextual identification, for this information will be sufficiently precise to allow the Defence to make enquiries of others in the vicinity as to what they saw of the incidents of which J and K speak.”

DECIDES that, in the said decision, at page 34, paragraph 83,

FOR:

“The Prosecutor is directed to provide the Defence with the above general locality for witnesses J and K not less than thirty (30) days in advance of the firm trial date.”

READ:

“The Prosecutor is directed to provide the Defence with the information on the general locality of witnesses J and K where they saw the events about which they testify not less than thirty (30) days in advance of the firm trial date.”

DECIDES that, in the said decision, at page 34, paragraph 84,

FOR:

“The Trial Chamber, by majority, finds that the Prosecutor has met the necessary standard to warrant anonymous testimony in respect of witnesses H, J and K. If, after considering the proceedings as a whole, as suggested in *Kostovski*, the Trial Chamber considers that the need to assure a fair trial substantively outweighs this testimony, it may strike that testimony from the record and not consider it in reaching its finding as to the guilt of the accused.”

READ:

“The Trial Chamber, by majority, finds that the Prosecutor has met the necessary criteria to warrant anonymous testimony in respect of

witnesses H, J and K. If, after considering the proceedings as a whole, as suggested in the *Kostovski* case, the Trial Chamber considers that the need to assure a fair trial substantively outweighs this testimony, it may strike that testimony from the record and not consider it in reaching its finding as to the guilt of the accused.”

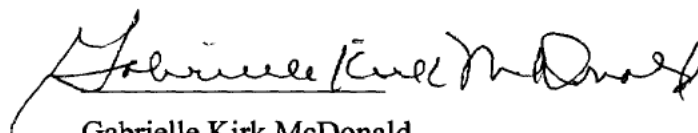
DECIDES that, in the said decision, at page 35, paragraph 86,

FOR:

“As Lord Justice Beldam in the judgement given by the Queen's Bench Divisional Court in the British case of *R. v. Watford Magistrates' Court* [1992] T.L.R. 285 stated:”

READ:

“As stated by Lord Justice Beldam, in a case before the Queen's Bench Divisional Court, *R. v. Watford Magistrates' Court* [1992] T.L.R. 285:”



Gabrielle Kirk McDonald

Presiding Judge,

Trial Chamber II

Dated this fifteenth day of November 1995,

At The Hague

The Netherlands

[Seal of the Tribunal]

Case No. IT-94-1-T