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**UNITED
NATIONS**



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: 31 July 1996

Original: ENGLISH AND FRENCH

IN THE TRIAL CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal C. Vohrah

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 31 July 1996

PROSECUTOR

v.

DUŠKO TADIĆ A/K/A "DULE"

**DECISION ON THE PROSECUTOR'S MOTION REQUESTING
FACIAL DISTORTION OF BROADCAST IMAGE OF WITNESS**

The Office of the Prosecutor:

Mr. Grant Niemann
Mr. Alan Tieger

Mr. Michael Keegan

Counsel for the Accused:

Mr. Michail Wladimiroff
Mr. Alphons Orie
Mr. Steven Kay

I. INTRODUCTION

Pending before the Trial Chamber is the Motion For Facial Distortion of Broadcast Image of Witness ("the Motion") filed by the Prosecutor on 17 July 1996.

The Motion was heard *in camera* on 19 July 1996 at which time the Defence indicated its consent to the prayers contained in the Motion. At the hearing the Trial Chamber gave an oral decision granting the Motion, reserving the written decision on the Motion to a later date.

THE TRIAL CHAMBER, HAVING CONSIDERED the written submissions and oral arguments of the parties,

HEREBY ISSUES ITS DECISION.

II. DISCUSSION

A. Factual Background

1. The accused is charged with crimes arising out of a series of incidents which are alleged to have occurred in the opština of Prijedor between May and December 1992. These charges relate to events at the Omarska, Keraterm and Trnopolje camps, an incident arising out of the surrender of the Kozarac area in May 1992 and events in the villages of Jaskići and Sivci in June 1992. The charges involve the commission of serious violations of international humanitarian law including, *inter alia*, wilful killing, murder, wilfully causing grave suffering or serious injury, persecution, torture, cruel treatment and the commission of inhumane acts. These acts are alleged to constitute grave breaches of the Geneva Conventions of 12 August 1949 as recognised by Article 2 of the Statute of the International Tribunal ("the Statute"), violations of the laws or customs of war as recognised by Article 3 of the Statute and crimes against humanity as recognised by Article 5 of the Statute.

2. According to the Prosecutor, witness Halid Mujkanović will be testifying about a particular heinous event. The witness is said to be extremely concerned that the dissemination of his image will expose him to undue risk of potential reprisal.

B. The Pleadings

3. The Prosecutor in the Motion has requested the Trial Chamber to grant two protective measures in respect of witness Halid Mujkanović, as follows:

- (1) the broadcast image of the witness will be accompanied by facial distortion through technical means so that his face is not broadcast to the public.
- (2) the public and the media shall not photograph, video-record or sketch witness Mujkanović while he is in the precincts of the International Tribunal.

C. Applicable Provisions

4. The power to provide appropriate protection for victims and witnesses during the proceedings is derived from provisions of Articles 20 and 22 of the Statute and Rules 69, 75 and 79 of the Rules of Procedure and Evidence (“the Rules”). This Trial Chamber, in fulfilling its affirmative obligation to provide such protection, has to interpret the provisions within the context of its own unique legal framework in determining where the balance lies between the accused’s right to a fair and public trial, the right of the public to access of information and the protection of victims and witnesses. How the balance is struck will depend on the facts of each case. *Prosecutor v. Tadic*, No. IT-94-1-T, Decision on the Prosecutor’s Motion Requesting Protective Measures for Witness L of 14 November 1995 ICTY Tr.Ch. II (“*Witness L Decision*”) para. 11.

D. Reasons For Decision

5. With regard to the limitation of the accused’s right to a public trial, this Trial Chamber has to ensure that any curtailment of the accused’s right to a public hearing and the public’s right to information is justified. In the present case, the measures sought place only a very limited restriction on these rights. This Trial Chamber is of the view that the grounds on which the Prosecutor has based his application and to which the Defence has not objected, are well-founded. In balancing the interests of the accused, the public and the witness, this Trial Chamber considers that the public’s right to information and the accused’s right to a public hearing must yield in the present circumstances to the interests of the witness in light of the affirmative obligation under the Statute and the Rules to afford protection to victims and witnesses. The Trial Chamber recognises that the widespread dissemination of the broadcast of its proceedings may raise issues of security concern for witnesses. This Trial Chamber must therefore take into account the witness’ fear of the consequences if his image is released to the public or the media in this way. The Trial Chamber is of the considered view that the measures sought by the Prosecutor and agreed to by the Defence are appropriate and, accordingly, makes an order in terms of the prayers sought.

III. DISPOSITION

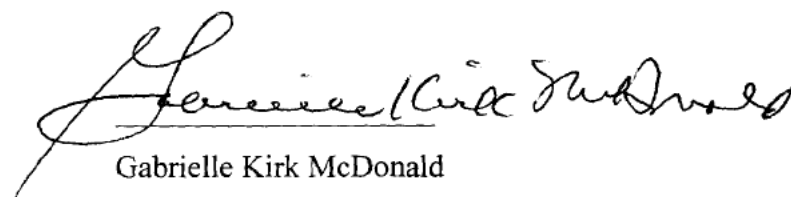
For the foregoing reasons, **THE TRIAL CHAMBER**, being seized of the Motion filed by the Prosecutor, and

PURSUANT TO RULE 75,

HEREBY GRANTS the Prosecutor's Motion and **ORDERS AS FOLLOWS:**

- (1) when witness Halid Mujkanović testifies, his broadcast image will be accompanied by facial distortion through technical means so that his face is not broadcast to the public; and
- (2) the public and the media shall not photograph, video-record or sketch witness Halid Mujkanović while he is in the precincts of the International Tribunal.

Done in both English and French, the English version being authoritative.



Gabrielle Kirk McDonald
Presiding Judge

Dated this thirty-first day of July 1996
At The Hague
The Netherlands

[Seal of the Tribunal]