



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: 20 September 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: 20 September 1996

PROSECUTOR

v.

DUŠKO TADIĆ a/k/a "DULE"

**DECISION ON THE THIRD CONFIDENTIAL
MOTION TO PROTECT DEFENCE WITNESSES**

The Office of the Prosecutor:

**Mr. Grant Niemann
Ms. Brenda Hollis**

**Mr. Alan Tieger
Mr. Michael Keegan**

Counsel for the Accused:

**Mr. Michail Wladimiroff
Mr. Alphons Orié**

Mr. Steven Kay

I. INTRODUCTION

Pending before 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 Former Yugoslavia since 1991 ("International Tribunal") is a Confidential Motion to Protect Defence Witnesses filed by the Defence on 12 September 1996 ("the Motion"). The Motion consists of 15 separate prayers. The parties presented oral arguments on the Motion during closed session on 17 September 1996, at which time the Office of the Prosecutor ("the Prosecution") indicated that it had no objection to the requested relief given certain conditions.

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

HEREBY ISSUES ITS DECISION.

II. DISCUSSION

1. The trial of the accused, Duško Tadić, commenced on 7 May 1996. He is charged with crimes arising from incidents alleged to have occurred in opstina Prijedor in Bosnia and Herzegovina between May and December 1992. The Indictment against the accused is comprised of allegations 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 as recognised by Articles 2, 3, and 5 of the Statute of the International Tribunal ("the Statute").

2. On 18 April 1996, the Defence filed a motion in which it requested that the Trial Chamber summon and issue protection orders on behalf of 28 Defence witnesses on the grounds that the witnesses were exposed to a serious risk of reprisal and were fearful of arrest by the Prosecution. The Trial Chamber issued a decision on 25 June 1996 that granted most of the Defence requests. *Prosecutor v. Tadic*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link (No. IT-94-1-T, Tr. Ch. II, 25 June 1996) ("*Defence Protection Decision I*"). A subsequent Defence motion followed on 30 July 1996 in which the Defence sought protection of nine additional witnesses on the basis that the circumstances as stated in the 18 April 1996 motion still existed. The Trial Chamber granted the request in part on 16 August 1996. *Prosecutor v. Tadic*, Decision on Defence Motion to Protect Defence Witnesses (No. IT-94-1-T, Tr. Ch. II, 16 Aug. 1996, as am'd 4 Sept. 1996) ("*Defence Protection Decision II*").

3. In its current Motion, the Defence requests that the Trial Chamber: (1) summon fourteen witnesses; (2) issue orders for the safe conduct of three witnesses to travel to the seat of the International Tribunal and testify before the Trial Chamber; (3) order two witnesses to give testimony by video-link; and (4) protect the identity of two witnesses from disclosure to the public and the media. The Prosecution has no objection to these requests provided that they are granted in accordance with the *Defence Protection Decision II* and, with regard to the request for confidentiality, assuming that the two witnesses have not had previous media contact. The Defence confirmed the absence of any such contact.

4. The Trial Chamber derives its power to provide protection for witnesses during proceedings from Articles 20 and 22 of the Statute, which provide:

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

...

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the victim's identity.

These two Articles are reflected in Rules 75 and 79¹ of the Rules of Procedure and Evidence of the International Tribunal ("the Rules"). These provisions provide in relevant part as follows:

Rule 75

Measures for the Protection of Victims and Witnesses

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

...

Rule 79

Closed Sessions

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of

- (i) public order or morality;
- (ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
- (iii) the protection of the interests of justice.

(B) The Trial Chamber shall make public the reasons for its order.

¹ Rule 69 also provides for the protection of victims and witnesses. However, it is only applicable to the Prosecutor ("In exceptional circumstances, the Prosecutor may apply to a Trial Chamber . . .") and is thus not relevant to the Motion.

5. Each of the requests set forth in the current motion was addressed in the *Defence Protection Decision II*, wherein the Trial Chamber explained at length its reasons in support of its decisions. *See id.* at ¶¶ 5-18. Considering that Decision and the Prosecution's acquiescence in this matter, the Trial Chamber shall grant the Motion of the Defence.

III. DISPOSITION

For the foregoing reasons, **THE TRIAL CHAMBER**, being seized of the Motion filed by the Defence, **ORDERS AS FOLLOWS:**

PURSUANT TO RULE 54,

- (1) witnesses 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 shall be summoned;
- (2) witnesses 19, 40 and 43, while in the Netherlands for the purpose of appearing before the International Tribunal to testify, shall not be prosecuted, detained, or subjected to any other restriction of their personal liberty in respect of acts or convictions prior to their departure from their home country. This immunity shall commence fifteen (15) days before the witness is to appear before the International Tribunal and cease when the witness, having had for a period of fifteen (15) consecutive days from the date when his presence is no longer required by the International Tribunal an opportunity of leaving, has nevertheless remained in the Netherlands, or having left it, has returned. When in the Netherlands, the freedom of movement of these Defence witnesses is restricted to the area around the location of their lodging and to travelling between the port of entry or of exit and their lodging, and between their lodging and the International Tribunal; and
- (3) witnesses 52 and 53 may give testimony through video-link provided that the necessary equipment can be made available to the International Tribunal and subject to the conditions set out in paragraph 22 of the *Defence Protection Decision I*;

and **PURSUANT TO RULE 75,**

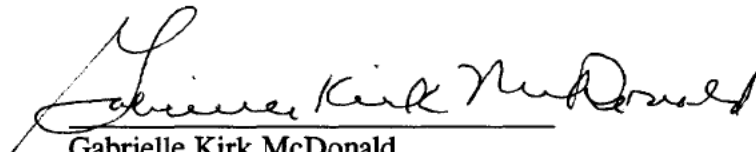
- (4) the name, address, whereabouts of, and other identifying data concerning witnesses 30 and 39 shall not be disclosed to the public or to the media;
- (5) all hearings to consider the issue of protective measures for witnesses 30 and 39 shall be in closed session, however, edited recordings and transcripts of the session(s) shall, if

possible, be released to the public and to the media after review by the Defence in consultation with the Victims and Witnesses Unit;

- (6) the name, address, whereabouts of, and identifying data concerning witnesses 30 and 39 shall be sealed and not included in any of the public records of the International Tribunal;
- (7) to the extent the name, address, whereabouts of, or other identifying data concerning witnesses 30 and 39 is contained in existing public documents of the International Tribunal, that information shall be expunged from those documents;
- (8) documents of the International Tribunal identifying witnesses 30 and 39 shall not be disclosed to the public or to the media;
- (9) the testimony of witness 39 shall be heard in open session using image-altering devices to the extent necessary to prevent his identity from becoming known to the public and to the media;
- (10) the testimony of witness 30 shall be given in closed session; edited recordings and transcripts of the session(s) shall, if possible, be released to the public and to the media after review by the Defence in consultation with the Victims and Witnesses Unit;
- (11) pseudonyms shall be used whenever referring to witnesses 30 and 39 in proceedings before the International Tribunal and in discussions among parties to the trial;
- (12) the names of witnesses 30 and 39 shall be released to the Prosecution immediately;
- (13) the Prosecution and its representatives who are acting pursuant to its instructions or requests shall not disclose the names or any other identifying data of witnesses 30 and 39 to the public or to the media, except to the limited extent such disclosure to members of the public is necessary to investigate the witness adequately. Any such disclosure shall be made in such a way as to minimise the risk of the witness's name being divulged to the public at large or to the media;

- (14) the Prosecution and its representatives who are acting pursuant to its instructions or requests shall notify the Defence of any requested contact with witnesses 30 and 39 or the relatives of witnesses 30 and 39 and the Defence shall make arrangements for such contact as may be determined necessary;
- (15) the public and the media shall not photograph, video-record, or sketch witnesses 30 or 39 while they are in the precincts of the International Tribunal; and
- (16) while in the Netherlands to give testimony, Defence witnesses must refrain from contacting Prosecution witnesses or their relatives.

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


Gabrielle Kirk McDonald
Presiding Judge

Dated this twentieth day of September 1996
At The Hague
The Netherlands

[Seal of the Tribunal]