



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-PT

Date: 20 May 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 20 May 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION TO EXCLUDE TESTIMONY OF
WAR CORRESPONDENTS**

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”) is seised of the Accused’s “Motion to Exclude Testimony of War Correspondents”, filed on 18 May 2009 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused argues that war correspondents should not be allowed to give evidence before the Tribunal unless the party calling them demonstrates that (i) they will give evidence that is direct and important to the core issues of the case, and (ii) the evidence is not reasonably available from a source other than the war correspondents in question. In support, the Accused cites a decision of the Appeals Chamber in the *Brđanin* case where the issue was one of a war correspondent refusing to give evidence and where the Appeals Chamber found that he could be compelled to give evidence only when these two conditions were satisfied.¹ He argues that the same reasoning should apply to war correspondents who are in fact willing to testify, and that they should not have the right to give evidence voluntarily and waive the privilege established in *Brđanin*, as doing so would render this privilege meaningless for other war correspondents.²

2. The Office of the Prosecutor (“Prosecution”) has not yet filed a response to the Motion. However, in order to avoid unnecessary waste of Prosecution resources, the Chamber issues this decision without hearing from the Prosecution.

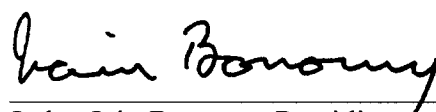
3. The Trial Chamber considers this Motion to be both frivolous and vexatious. It is wholly lacking in merit and is a wasteful use of resources. It seeks to exclude from giving evidence potential witnesses who are plainly competent to do so on the basis of a decision in *Brđanin* which has no relevance to this Motion, other than establishing clearly that the privilege enjoyed by war correspondents is a matter which is for them personally to choose to exercise or not. It contains no tenable argument in support of the relief sought. Whether or not any witness should give evidence is a matter to be determined by a Trial Chamber on a case by case basis depending on the particular circumstances that apply to each individual witness.

¹ Motion, paras. 2–8; see also *Prosecutor v. Brđanin*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal, 11 December 2002, para. 48.

² Motion, paras. 9–16.

4. For those reasons, the Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence, hereby **DENIES** the Motion.

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


Judge Iain Bonomy, Presiding

Dated this twentieth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]