



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: 16 June 2010

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

Decision of: 16 June 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION FOR SAFE CONDUCT FOR WITNESS
MOMČILO MANDIĆ**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

**The Government of the Kingdom of
The Netherlands**

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”) is seised of the “Prosecution’s Motion for Safe Conduct for Witness Momčilo Mandić”, filed confidentially on 2 June 2010 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Prosecution requests that the Trial Chamber order safe conduct for witness Momčilo Mandić for the period 25 June 2010 to 3 July 2010. It submits that Momčilo Mandić is presently subject to a European Union travel ban,¹ that he is expected to provide evidence regarding the Accused’s alleged contribution to the Joint Criminal Enterprise to permanently remove non-Serbs from Bosnian Serb claimed territory,² and that he has previously been the subject of confidential orders for safe conduct in two other cases before the Tribunal.³

2. On 4 June 2010, the Accused filed his “Response to Safe Conduct Motion: Momčilo Mandić” (“Response”), opposing the relief requested in the Motion on the basis that the remedy sought by the Prosecution was wrong and requesting that the Chamber should “instead issue a binding order to the European Union directing it to remove Momčilo Mandić from its travel ban.”⁴ The Accused further requests the Trial Chamber to file its decision on the Motion publicly and reclassify the Motion as a public document,⁵ and that the Motion and the Response be served on Momčilo Mandić, who should then be “given the opportunity to be heard on this issue.”⁶

3. The Prosecution requested leave to reply to the Response on 8 June 2010, which the Chamber granted orally on the same day.⁷ The Prosecution filed the “Prosecution’s Reply to Karadžić’s Response to Safe Conduct Motion: Momčilo Mandić” (“Reply”) on 9 June 2010. In the Reply, the Prosecution submits that a request for safe conduct is the appropriate remedy because the “lifting of a travel ban in member states of the European Union is not directly within the power of the Trial Chamber”.⁸ It is also not “necessary” for the conduct of the trial, which is

¹ Motion, para. 1.

² Motion, para. 4.

³ Motion, para. 6. The Chamber notes that on 3 June 2010, the Prosecution filed the “Corrigendum to Prosecution’s Motion for Safe Conduct for Witness Momčilo Mandić” in which it withdrew its reliance on a particular decision from another case before the Tribunal, which was cited in paragraph 1 of the Motion.

⁴ Response, paras. 2, 4-6.

⁵ Response, para. 3.

⁶ Response, para. 3.

⁷ Hearing, T. 3464 (8 June 2010).

⁸ Reply, para. 2.

the standard articulated in Rule 54 of the Tribunal's Rules of Procedure and Evidence ("Rules"), as the "less interventionist measure of an order for safe conduct is sufficient to achieve the same purpose."⁹ The Prosecution further submits that there is no basis for serving the Motion and Response on Momčilo Mandić and giving him an opportunity to be heard on this issue, as he is not a party to these proceedings.¹⁰ It also argues that the Motion should remain confidential "because it refers to the substance of confidential decisions of other Trial Chambers."¹¹

II. Applicable Law

4. Orders for safe conduct have been previously issued by Trial Chambers in accordance with Articles 20, 29 and 30 of the Tribunal's Statute ("Statute"), and Rule 54 of the Rules. Article 20 of the Statute provides for the protection of witnesses. Article 29(1) requires states to co-operate with the Tribunal "in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law" and to comply with orders issued by a Trial Chamber, including those related to "the taking of testimony and the production of evidence". Article 30(4) provides that persons required at the seat of the Tribunal shall be accorded immunities and privileges "as it is necessary for the proper functioning of the International Tribunal". Rule 54 of the Rules grants a Trial Chamber authority to issue such orders "as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

5. The Chamber further notes that international law permits the protection of witnesses appearing before judicial authorities of a state other than their state of residence from prosecution, detention, or any other restrictions of their liberty in respect of acts or convictions committed or entered before their departure from the territory of their state of residence to the state where they are supposed to testify.¹²

⁹ Reply, paras. 2-3.

¹⁰ Reply, paras. 5-7.

¹¹ Reply, para. 8.

¹² See, e.g., *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 26 June 1996 ("Tadić Decision"), paras. 8-16; *Model Treaty on Mutual Assistance in Criminal Matters*, adopted by the General Assembly on 14 December 1990 (A/RES/45/117), Art. 15; *European Convention on Mutual Assistance in Criminal Matters* (Strasbourg, 20 April 1959, ETS No. 30), Art. 12(1); *Inter-American Convention on Mutual Assistance in Criminal Matters* (Nassau, 23 May 1992), Art. 22; *United Nations Convention against Transnational Organized Crime*, adopted by the General Assembly on 15 November 2000 (A/RES/55/25), Art. 18(27). This practice has also been widely followed at bilateral and national levels. It is also reflected in Articles XVIII and XXIII of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the former Yugoslavia since 1991, 27 May 1994.

III. Discussion

6. According to the Motion and the Prosecution's Rule 65 *ter* witness list, Momčilo Mandić will testify, *inter alia*, that in April 1992 the Ministry of Internal Affairs ("MUP") of Bosnia and Herzegovina was divided and a Bosnian Serb MUP was formed; that he received information about abuse of the non-Serb population detained in detention facilities; that he informed the Accused in 1992 of the detention of 300 Muslims in the Kula prison and that police and military structures continually informed the Accused of what was going on in the territory; and that the Accused worked very closely with Momčilo Krajišnik and that they, along with Biljana Plavšić and Nikola Koljević, determined state policy. Accordingly, the Chamber is satisfied that Momčilo Mandić's expected testimony is relevant and of probative value to this case, as described in the Third Amended Indictment.

7. In light of the European Union travel ban in place for Momčilo Mandić, it is clear that he will be unable to testify before the Chamber without an order from the Chamber. Therefore, the Chamber is satisfied that an order for safe conduct is necessary to ensure Momčilo Mandić's appearance before the Tribunal.

8. In this regard, the Chamber notes that safe conduct orders are a common device in international law and in the practice of this Tribunal for granting witnesses limited immunity under specific circumstances to, as the Trial Chamber explained in the *Tadić* case, "secure the attendance of witnesses from areas beyond" the Tribunal's jurisdiction.¹³ The Chamber considers that it is not within its power to order the European Union to lift its travel ban. Furthermore, given the availability of the mechanism of a safe conduct order for ensuring Momčilo Mandić's presence at the Tribunal, there is no need for the Chamber to consider the Accused's request to lift the European Union's travel ban on Momčilo Mandić.

9. The Chamber does not see any need to serve the parties' filings in this matter on Momčilo Mandić, as requested by the Accused. As noted by the Prosecution in the Reply, Momčilo Mandić will appear before the Chamber as a Prosecution witness, and there is no basis for a witness to be served with filings on a procedural matter before the Chamber or to be heard on this matter. Furthermore, the Accused provides neither any justification nor any authority for his request, and the Chamber cannot see any reason to grant it.

¹³ *Tadić* Decision, para. 10. See also, e.g., *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Order Granting Safe Conduct to Defence Witnesses, 25 June 1998; *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13a-T, Order on Defence Motion for Safe Conduct, 12 June 1998. Furthermore, states are generally familiar with the administration of safe conduct provisions, as they "have been included in nearly all treaties of mutual assistance and several multilateral agreements." *Tadić* Decision, para. 9.

10. With regard to the Accused's request to change the status of the filings in this matter from confidential to public, and for the Chamber to file this Decision publicly, the Chamber considers that the proceedings in this case should be public to the extent possible.¹⁴ This includes safe conduct orders, which in the absence of protective measures or other compelling reasons, should be public.¹⁵ In light of the references in the Motion and the Reply to a number of confidential decisions from different cases before the Tribunal, the Chamber is of the view that it would not be appropriate to reclassify these confidential filings as public. However, Momčilo Mandić is not a protected witness, and the Response does not contain any confidential information. Furthermore, the Prosecution has not provided any basis for either keeping the Response confidential or issuing the Decision confidentially. As such, the Chamber is satisfied that the Response may be reclassified as public, and that this Decision should be public.

IV. Disposition

11. Accordingly, the Trial Chamber, pursuant to Articles 20, 29, and 30(4) of the Statute and Rule 54 of the Rules, hereby **GRANTS** the Motion, and:

a) **ORDERS:**

- i. Safe conduct for Momčilo Mandić such that, while in or travelling to The Netherlands from 25 June 2010 to 3 July 2010, and while returning to Serbia thereafter, he shall not be arrested, detained, prosecuted, or subjected to any other restriction, whether physical or legal, of his personal liberty, in respect of alleged acts or convictions prior to his departure from Serbia.
- ii. The safe conduct order shall apply prior to his departure from Serbia to The Netherlands, during his transit between Serbia and The Netherlands, upon his arrival at, and during his entire stay in, The Netherlands, during his return transit from The Netherlands to Serbia.
- iii. The Chamber may vary or extend the dates for which the order for safe conduct is valid in light of any change in the current witness schedule.

b) **REQUESTS** the Registrar of the Tribunal to:

¹⁴ See, e.g., *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj's Application for Provisional Release, 25 May 2009, para. 5.

¹⁵ See *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Order to Lift the Confidential Status of the Trial Chamber's Order of 3 November 2008, 12 May 2009, p. 2.

- i. Take all necessary measures for the implementation of the order for safe conduct.
- ii. Reclassify the Response as a public document.

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



Judge O-Gon Kwon
Presiding

Dated this 16th day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]