



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: 21 September 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: 21 September 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE MEASURES FOR
WITNESS BOGDAN VIDOVIĆ**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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 Motion for Protective Measures for Witness Bogdan Vidović” filed confidentially on 14 September 2010, (“Motion”), and hereby issues its decision thereon.

I. Submissions and Background

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests the Chamber to grant the protective measure of image distortion to witness Bogdan Vidović (KDZ438) (“Witness”).¹ The Prosecution requests the Chamber to grant the protective measure pursuant to Rule 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), on the basis that the measure requested is necessary to ensure the safety of the Witness and his family.²

2. According to the Prosecution, the Witness worked as a criminal technician in the Criminal Department of the Security Services Centre (CSB) in Sarajevo, during the war. He has testified previously without protective measures in two cases before the Tribunal.³ The Prosecution submits that the Witness lives and works in the Sarajevo canton and that in his role as an officer of the Bosnian Ministry of the Interior (“MUP”), he has regular contact with people of all ethnic groups, including Serbs.⁴ The Prosecution also notes that the Witness makes regular private trips to and through the Republika Srpska and Serbia.⁵ As the trial of the Accused enjoys a “much higher public profile on television and in the print media in Bosnia and Herzegovina and Serbia” than the two cases in which he previously testified,⁶ the Witness fears that he will be recognized as a “Prosecution witness by persons sympathetic to the Accused or opposed to his cooperation with the Prosecution”, which could put him and his family at risk.⁷ It is for this reason that image distortion is requested, although the Witness is willing to testify publicly, under his own name. The Prosecution argues that image distortion, as a protective measure, has little impact on the Accused’s right to a public trial.⁸

3. On 15 September 2010, the Accused filed his confidential “Response to Motion for Protective Measures: Bogdan Vidović” (“Response”). In the Response the Accused does not

¹ Motion, para 1.

² Motion, para. 6.

³ Motion, para. 6, citing *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, 21 February 2002 and *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, 13-14 February 2007.

⁴ Motion, para. 7.

⁵ Motion, para. 9.

⁶ Motion, para. 9.

⁷ Motion, para. 10.

object to the Prosecution's Motion, on the condition that the protective measures are limited to image distortion and that the witness not be granted a pseudonym.⁹

II. Applicable Law

4. Article 20(1) of the Statute requires that proceedings be conducted with full respect for the rights of the accused, and due regard for the protection of victims and witnesses. Article 21(2) entitles the accused to a fair and public hearing, subject to Article 22, which requires the Tribunal to provide in its Rules for the protection of victims and witnesses, including the conduct of *in camera* proceedings and the protection of identity. As has clearly been established in previous Tribunal cases, these Articles reflect the duty of the Trial Chamber to balance the right of the accused to a fair trial, the rights of victims and witnesses to protection, and the right of the public to access to information.¹⁰

5. Rule 75(A) of the Rules permits a Trial Chamber to "order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused".

III. Discussion

6. It has been well-observed in previous Tribunal cases that the party requesting protective measures must demonstrate the existence of an objectively grounded risk to the security or welfare of the witness or the witness' family, should it become publicly known that he or she testified before the Tribunal.¹¹

7. Having considered the circumstances of the Witness, including his place of residence and employment, the exposure he has to persons of all ethnic backgrounds through his work and personal life, the frequent visits made by the Witness to Republika Srpska and Serbia, and his genuine fear for his and his family's welfare given the public profile and media coverage of this

⁸ Motion, para. 11.

⁹ Response, para. 1.

¹⁰ See Decision on Motion for and Notifications of Protective Measures, 26 May 2009, para. 11, citing *Prosecution v. Tadić*, Case No. IT-94-1-T, Decision on Prosecution's Motion Requesting Protective Measures for Witness I, 14 November 1995, para. 11; *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Witness R, 31 July 1996, p. 4; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para. 7.

¹¹ See Decision on Prosecution's Motion for Protective measures for Witness KDZ487, 24 November 2010, para. 13, citing *Prosecution v. Martić*, Case No. IT-95-11-T, Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-90, 18 August 2006, pp. 2-3; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

case, the Chamber is satisfied that there is an objectively grounded risk to the security or welfare of the Witness or his family, should he be recognized through images circulated by the media.

8. The Chamber recalls that it is essential that the trial should not only be fair, but should also be perceived as such.¹² It is therefore important that the proceedings are open to the public, and that the protective measure of image distortion is only applied in cases where the witness provides an objective basis for the necessity of such a measure. Taking into consideration that the protective measure of image distortion does not significantly affect the Accused's right to a public trial, and the fact that the Accused has not objected to the use of image distortion for this particular Witness, the Chamber is satisfied that the granting of the protective measure of image distortion for the Witness under Rule 75 is necessary and appropriate

IV. Disposition

9. Accordingly, the Trial Chamber, pursuant to Rules 54 and 75 of the Rules, hereby **GRANTS** the Motion and **ORDERS** that Bogdan Vidović testifies using image distortion.

10. The Chamber hereby **INSTRUCTS** the Registry to take all necessary measures to implement this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-first day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Second Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Witness List to Add Wesley Clark, 16 February 2007, para. 30.