



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: 19 August 2011

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: 19 August 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTIONS FOR PROTECTIVE MEASURES
FOR WITNESSES KDZ601 AND KDZ605**

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 [KDZ601]”, filed confidentially on 29 July 2011 (“KDZ601 Motion”), and the “Prosecution Motion for Protective Measures for Witness [KDZ605]”, filed confidentially on 1 August 2011 (“KDZ605 Motion”), and hereby issues its decision thereon.¹

I. Background and Submissions

1. In the KDZ601 Motion and the KDZ605 Motion, the Office of the Prosecutor (“Prosecution”) requests that the Chamber grant the protective measures of image distortion, voice distortion, and pseudonym to witnesses KDZ601 and KDZ605 (“Witnesses”).² The Prosecution requests that the Chamber grant these measures pursuant to Rule 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), on the basis that they are necessary to ensure the safety of the Witnesses and that of their families.³

2. The Prosecution argues, with respect to KDZ601, that the witness worked at a police station of the Republika Srpska Ministry of Interior (“RS MUP”), and that he will testify about, *inter alia*, the work of the police station, the conduct of prisoner exchanges, and the relationship between the RS MUP and paramilitary groups.⁴ The Prosecution states that it previously contacted KDZ601 about his potential testimony in another case before the Tribunal, although the witness was not ultimately called.⁵ Around the time that KDZ601 was contacted by the Prosecution, a family member of the witness received anonymous threats directed against KDZ601 and, over the last two months, another family member of KDZ601 received threats from anonymous persons. KDZ601 believes that these threats relate to his upcoming testimony in this case.⁶ Furthermore, according to the Prosecution, KDZ601 is concerned for his safety because he lives in a municipality of Bosnia and Herzegovina where the Accused has “considerable support”.⁷ The Prosecution therefore requests that the Chamber grant protective measures for KDZ601, as these events and circumstances objectively demonstrate a real

¹ In light of the Chamber’s continuing commitment to ensuring a fair and public trial, it issues this decision as a public document and has redacted the witnesses’ names in the titles of the KDZ601 Motion and the KDZ605 Motion.

² KDZ601 Motion, para. 1; KDZ605 Motion, para. 1.

³ KDZ601 Motion, para. 1; KDZ605 Motion, para. 1.

⁴ KDZ601 Motion, para. 3.

⁵ KDZ601 Motion, para. 4.

⁶ KDZ601 Motion, para. 5.

⁷ KDZ601 Motion, para. 5.

likelihood that KDZ601 and his family may be in danger or at risk as a result of his testimony before the Tribunal.⁸

3. Regarding KDZ605, the Prosecution states that the witness will testify about, *inter alia*, events in Bratunac, including killings and transfers of individuals to a detention site in Pale.⁹ The Prosecution explains that KDZ605 testified previously in another case and, shortly after, received an anonymous threat.¹⁰ According to the Prosecution, one of KDZ605's family members was also threatened anonymously.¹¹ The Prosecution thus requests that the Chamber grant the protective measures sought because there is an objective basis demonstrating a real likelihood that KDZ605 and his family may be in danger or at risk as a result of his testimony before the Tribunal.¹²

4. Finally, the Prosecution argues that the Accused will not be unfairly prejudiced by the granting of protective measures to KDZ601 and KDZ605 because he knows the Witnesses' identities and has access to their prior statements, thus enabling him to fully prepare for and conduct cross-examination.¹³

5. On 4 August 2011, the Accused filed his "Response to Motion for Protective Measures: Witness KDZ601 and Witness KDZ605" ("Response") in which he contends that KDZ601's "subjective fears are not objectively reasonable" and that such fears may have been expressed in order to avoid testifying in court.¹⁴ With respect to KDZ605, the Accused contends that his claims were never documented by any contemporaneous report, such as that of the Tribunal's Victims and Witnesses Section, and that the Prosecution has failed to produce a record from the police department to verify the claim that KDZ605 reported the threat to the police.¹⁵ The Accused thus requests that the Chamber order that the Witnesses only temporarily be referred to as KDZ601 and KDZ605, and that the Chamber "defer its decision on protective measures until after hearing [them] in closed session at the commencement of their testimony."¹⁶

⁸ KDZ601 Motion, para. 6.

⁹ KDZ605 Motion, para. 3.

¹⁰ KDZ605 Motion, para. 4.

¹¹ KDZ605 Motion, para. 4.

¹² KDZ605 Motion, para. 5.

¹³ KDZ601 Motion, para. 7; KDZ605 Motion, para. 6.

¹⁴ Response, para. 4.

¹⁵ Response, para. 5.

¹⁶ Response, para. 6.

6. Upon obtaining leave from the Chamber,¹⁷ the Prosecution filed confidentially, on 11 August 2011, its “Prosecution’s Reply to the Accused’s Response to Motion for Protective Measures: Witness KDZ601 and Witness KDZ605” (“Reply”), arguing that the Accused had not provided any valid reason why the Chamber should not rely on the Prosecution’s information or why the Witnesses should be heard in court in this regard.¹⁸ Specifically, the Prosecution argues that the Chamber has previously found it unnecessary to hear personally from a witness when considering a request to modify or rescind existing protective measures if: (a) the Prosecution has consulted the witness and informed the Chamber and the Accused of such consultation, (b) the information that the Prosecution provided constituted an appropriate basis for the Chamber’s determination, and (c) the Accused did not provide a basis for suggesting that the witness would provide additional or different information if given the opportunity to do so in court.¹⁹ The Prosecution contends that this test applies equally to the determination of a new application for protective measures, and that in the present case the Prosecution has consulted the Witnesses and provided the relevant information to the Chamber and the Accused.²⁰ Alternatively, the Prosecution argues that, if the Chamber decides that *in camera* hearings should be held in order to determine whether protective measures are warranted for the Witnesses, the Chamber—and not the Accused—should be the one questioning the Witnesses.²¹

II. Applicable Law

7. 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.²²

¹⁷ Confidential Decision on Prosecution’s Request for Leave to Reply to the Response to Motion for Protective Measures: Witness KDZ601 and Witness KDZ605, 10 August 2011. *See also* Prosecution’s Request for Leave to Reply to the Response to Motion for Protective Measures: Witness KDZ601 and Witness KDZ605, 8 August 2011.

¹⁸ Reply, p. 1.

¹⁹ Reply, para. 2, citing Reasons for Trial Chamber’s Decision on Defence Request for Certification to Appeal: Modification of Protective Measures for KDZ088, 14 September 2010 (“14 September 2010 Reasons”).

²⁰ Reply, para. 3.

²¹ Reply, para. 5.

²² *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

8. 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”. Under Rule 75(B) of the Rules, these may include measures to prevent disclosure to the public and the media of identifying information about witnesses or victims, including voice and image distortion and the assignment of a pseudonym.

III. Discussion

9. It has been well observed in previous cases before this Tribunal 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.²³

10. Regarding the Accused’s argument, discussed above, that the Chamber defer its decision until it hears from the Witnesses in closed session, the Chamber considers it unnecessary as it is satisfied that the Prosecution has consulted the Witnesses recently and that it has provided sufficient relevant information to the Chamber to enable it to dispose of the KDZ601 Motion and the KDZ605 Motion. Furthermore, the Accused has not provided any basis for its allegation that the Witnesses would provide information other than that which the Prosecution has already provided.²⁴

11. With respect to the Accused’s contentions that KDZ601’s subjective fears are not objectively reasonable and that KDZ605’s claims are not documented,²⁵ the Chamber recalls its previous rulings that an objectively grounded risk to the security or welfare of a witness or his family exists when, *inter alia*, the Prosecution informs the Chamber that a witness has expressed fears based on his place of residence²⁶ or of the prospect that individuals sympathetic to the Accused will recognise him.²⁷

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.

²³ See Decision on Prosecution’s Motion for Protective Measures for Witness KDZ487, 24 November 2009, 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.

²⁴ 14 September 2010 Reasons, para. 7.

²⁵ Response, paras. 4–5.

²⁶ Decision on Video-Conference Link and Request for Protective Measures for KDZ595, 18 August 2010, paras. 2, 13.

²⁷ Decision on Prosecution Motion for Protective Measures for Witness Bogdan Vidović, 21 September 2010, paras. 2, 7.

12. Thus, having considered the circumstances of KDZ601, including threats that the witness and his family have received and his place of residence, the Chamber is satisfied that there is an objectively grounded risk to the security or welfare of KDZ601 and his family, should it become publicly known that he testified before the Tribunal. Similarly, having considered the circumstances of KDZ605, including threats that he and his family received in the wake of his testimony in a previous case, the Chamber is satisfied that there is an objectively grounded risk to the security or welfare of KDZ605 and his family, should it become publicly known that he testified before the Tribunal. The Chamber is therefore satisfied that the granting of protective measures for KDZ601 and KDZ605 under Rule 75 is necessary and appropriate.

IV. Disposition

13. Accordingly, the Trial Chamber, pursuant to Rules 54 and 75 of the Rules, hereby **GRANTS** both the KDZ601 Motion and the KDZ605 Motion, **ORDERS** that both KDZ601 and KDZ605 testify using image distortion, voice distortion, and pseudonym, and **ORDERS** that the Witnesses be referred to by their respective pseudonyms in all public filings.

14. 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 nineteenth day of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]