



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: 28 October 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: 28 October 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR NINTH SUSPENSION OF PROCEEDINGS:
WITNESS KDZ456**

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 Accused’s “Motion for Ninth Suspension of Proceedings: Witness KDZ456”, filed on 19 October 2011 (“Motion”), and hereby issues its decision thereon.

1. In the Motion, the Accused requests the Chamber to suspend the trial from 31 October to 18 November 2011, to allow him and his defence team to investigate and prepare for the testimony of KDZ456, a witness who enjoys, *inter alia*, the protective measure of delayed disclosure, and whose identity and related material was only disclosed to the Accused on 17 October 2011.¹ Considering that KDZ456’s anticipated date of testimony is the end of November 2011, the Accused argues that a three-week suspension period before the witness’s testimony is necessary for his defence team to interview 12 individuals involved in the same events as the witness and who are referred to by KDZ456 in her witness statement.²

2. The Accused states that his investigators are engaged in full time preparations for the ongoing cross-examination of witnesses called by the Office of the Prosecutor (“Prosecution”), and do not have time to investigate the contents of KDZ456’s statement given the pace of trial.³ The Accused thus asserts that, given the resources of his defence team, the scope of the trial, and the huge volume of material, it is impossible to investigate new material and to prepare for cross-examination from “scratch” while the trial is ongoing.⁴

3. On 26 October 2011, the Prosecution filed the confidential “Response to Karadžić’s Motion for Ninth Suspension of Proceedings: Witness KDZ456” (“Response”), opposing the Motion. The Prosecution argues that the adjournment of proceedings is an exceptional measure which should only be granted when the Chamber is convinced that it is in the interests of justice to do so, and that the Accused has failed to demonstrate in the present case why a three-week adjournment meets this test.⁵

4. Specifically, the Prosecution states that the Accused’s submissions fail to establish why the 12 proposed interviews are necessary to prepare for KDZ456’s cross-examination.⁶ It adds that the Accused failed to inform the Chamber that he already possesses relevant statements of

¹ Motion, paras. 1–2, 6.

² Motion, paras. 2, 3. A list with the names of the 12 people intended to be interviewed by the Accused’s defence team is attached to the Motion as Confidential Annex A.

³ Motion, para. 4.

⁴ Motion, para. 5.

⁵ Response, para. 5.

⁶ Response, para. 6.

five of these 12 individuals, or to specify the additional information which is material to his cross-examination preparations for KDZ456 and which he seeks to elicit from these five individuals.⁷ Furthermore, the Prosecution submits that even if the Chamber finds that the Accused has demonstrated that the 12 interviews are necessary, he has failed to demonstrate why they cannot be conducted within the 30-day period prior to KDZ456's testimony.⁸

5. The Prosecution further states that, given that third-party statements may not be tendered, the creation of formal witness statements at this stage seems both time-consuming and unnecessary. Instead, each of the 12 individuals could be interviewed by one of the Accused's investigators present in the field on discrete topics and the Accused could easily insert any information so received in his preparations for KDZ456's cross-examination.⁹ The Prosecution further claims that the Accused's unwillingness to divert his investigative resources from other tasks does not justify his request for an adjournment.¹⁰ Additionally, hearing KDZ456's testimony as scheduled would not prevent the Accused to seek leave that the witness be recalled upon showing of good cause after the witness has completed her testimony.¹¹

6. The Chamber recalls that Articles 20(1) and 21(4)(c) of the Statute of the Tribunal ("Statute") protect the rights of an accused person to be tried expeditiously, with full respect for his rights, and without undue delay. In addition, Article 21(4)(b) of the Statute provides that an accused person should have "adequate time and facilities for the preparation of his defence". The Chamber further recalls that an adjournment of the proceedings is an exceptional measure, which it will only order if convinced that it is in the interests of justice to do so.¹²

7. The Chamber has stated that delayed disclosure to the Accused, pursuant to Rule 69 of the Tribunal's Rules of Procedure and Evidence ("Rules"), may affect the Accused's ability to prepare his defence and thus raises the challenge of striking the correct balance between his rights and the safety of victims and witnesses.¹³ The Chamber is sympathetic to the Accused's arguments that the existence of delayed disclosure witnesses may, under certain circumstances, disturb his regular trial preparations. However, such disturbances are weighed against the

⁷ Response, para. 6.

⁸ Response, para. 7.

⁹ Response, para. 7.

¹⁰ Response, para. 8.

¹¹ Response, para. 9. In addition, the Prosecution notes that the Chamber should not decide *proprio motu* to postpone KDZ456's testimony as an alternative remedy and provides reasons supporting this argument, Response, para. 10.

¹² Decision on Accused's Motion for Suspension of Proceedings, 18 August 2010 ("Decision on Suspension of Proceedings"), para. 5.

¹³ See Decision on Prosecution's Motion for Delayed Disclosure for KDZ456, KDZ493, KDZ531 and KDZ532 and Variation of Protective Measures for KDZ489, 5 June 2009 ("Decision on Delayed Disclosure"), para. 10.

security interests of the witness in accordance with Rule 69(C), which ensures that the identity of a delayed disclosure witness is provided to the accused in sufficient time to allow adequate preparation for trial. In the present case, however, having taken into account the personal circumstances surrounding KDZ456, the Chamber considered that there were exceptional circumstances warranting delayed disclosure of KDZ456's identity and identifying material to the Accused until 30 days prior to the witness's testimony, and that the granting of such a protective measure would not unduly prejudice the Accused's right to a fair trial.¹⁴

8. The Chamber recalls that it has, in the past, granted suspensions of the proceedings when it has been satisfied that, given the circumstances, such a remedy would be in the interests of justice.¹⁵ Consequently, the question is not whether the existence of delayed disclosure is justified in the present case but whether such measure in relation to KDZ456 affects the Accused's ability to properly prepare for his cross-examination of the witness.

9. In the present case, the Chamber notes that the material disclosed to the Accused on 18 October 2011 in relation to KDZ456's expected testimony amounts to approximately 50 pages divided as follows: a 16-page witness statement, five associated exhibits amounting to eight pages, and four additional exhibits amounting to approximately 30 pages. Given the relatively small size of the material, the Chamber considers that the light burden posed on the Accused to review the material before the testimony of KDZ456 does not warrant a suspension of the proceedings.

10. The Accused claims that his defence team needs to interview 12 individuals referred to by KDZ456 in her statement before the start of her testimony. The Chamber has reviewed KDZ456's statement and notes that the witness does refer to these 12 individuals, albeit to various degrees of detail. Having reviewed the list provided by the Accused, the Chamber notes that at least three of the 12 individuals are persons very proximate to the Accused and should theoretically be available to speak to the Accused, or a member of his defence team, on very short notice. Furthermore, five of the remaining nine individuals have in the past provided witness statements and these statements, as well as other relevant documents, are in the possession of the Accused.¹⁶ Thus, reviewing the existing statements and related documents and

¹⁴ Decision on Delayed Disclosure, para. 15. *See also* Decision on Accused's Motion for Modification of Delayed Disclosure: Witnesses KDZ320, KDZ456, KDZ523 and KDZ532, 23 September 2011, paras. 10, 24, whereby the Chamber denied the Accused's request to reconsider its Decision on Delayed Disclosure with respect to the protective measures granted to KDZ456.

¹⁵ *See inter alia* Decision on Suspension of Proceedings, 18 August 2010; Decision on Suspension of Proceedings, 16 February 2011.

¹⁶ Response, para. 6, footnote 12. *See for instance* documents with ERN numbers 0363-2184-0363-2186 and 04638380.

obtaining additional information from these five individuals, if at all deemed necessary, should not be a cumbersome or time-consuming task warranting a suspension of the proceedings. In this light, the Chamber would question whether interviewing the four remaining individuals before the start of KDZ456's testimony is at all necessary but recalls, in any event, that the Accused has a number of investigators based in the field available to promptly conduct these interviews.

11. The Chamber notes that the Accused maintains the ability to call the 12 individuals listed in Confidential Annex A to the Motion in the course of his case. Furthermore, the Accused retains his right to seek recalling KDZ456 upon demonstrating good cause after the completion of her testimony.¹⁷ Thus, in the absence of demonstrated prejudice by the Accused, the Chamber is not satisfied that a suspension of the trial proceedings for three weeks to allow the Accused to interview 12 individuals in preparation of KDZ456's cross-examination is necessary to ensure his fair trial rights, nor is in the interests of justice.

12. Accordingly, the Chamber, pursuant to Articles 20(1) and 21(4)(c) of the Statute and Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-eight day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ See Decision on Accused's Motion to Recall Harry Konings for Further Cross-Examination, 11 February 2011, para. 8, describing the standard for the recalling of witnesses. See also Decision on Accused's Motion for Modification of Protective Measures: Witnesses KDZ490 and KDZ492, 25 March 2010, para. 18.