



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-09-92-T
Date: 15 August 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 15 August 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE
MEASURES FOR WITNESS RM-115**

Office of the Prosecutor

Mr. Dermot Groome
Mr. Peter McCloskey

Counsel for Ratko Mladić

Mr. Branko Lukić
Mr. Miodrag Stojanović

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 11 May 2012, the Prosecution filed a motion for protective measures for Witness RM-115 (“Motion”).¹ It requested that the trial-related protective measures of pseudonym and voice- and image distortion be awarded to the witness, together with redaction of her name and any other material in her statement which may serve to identify her.² The Prosecution argues that the measures are necessary to protect the witness against genuine risks to her personal security.³ It submits that the witness and her family reside part-time in a predominantly Serb-populated rural area in Republika Srpska, where ethnic tensions remain as a consequence of difficult battles during the war.⁴ According to the Prosecution, the witness fears retaliations against herself and her family in case she testifies without protective measures.⁵ It further submits that the witness was severely injured during one of the first shellings of civilians in Sarajevo and that her injuries are sufficiently distinct to reveal her identity when discussed.⁶ Finally, the Prosecution argues that the protective measures sought do not interfere with the rights of the Accused Mladić (“Accused”) to a fair trial, including the right to cross-examine the witness, while addressing legitimate safety concerns of the latter.⁷

2. The Defence did not make any submission in respect of the Motion.

II. APPLICABLE LAW

3. Article 20(1) of the Tribunal’s Statute (“Statute”) provides that proceedings shall be conducted “with full respect for the rights of the accused and due regard for the protection of victims and witnesses.” Article 21(2) guarantees the accused a fair and public hearing, subject to Article 22, which requires the Tribunal to “provide (...) for the protection of victims and witnesses” including protection of the victim’s identity.

4. Rule 75 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that

a Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

¹ Prosecution Motion for Protective Measures for Witness RM 115, 11 May 2012 (Confidential with Confidential Annex A).

² Motion, paras 3, 12.

³ Motion, para. 3.

⁴ Motion, para. 9.

⁵ Ibid.

⁶ Motion, para. 10. The Prosecution attached a declaration from an OTP investigator to support its submissions, detailing the witness’s concerns. See Confidential Annex A

⁷ Motion, para. 11.

5. According to the case-law,⁸

[t]he party seeking protective measures for a witness must demonstrate an objectively-grounded risk to the security or welfare of the witness, or the witness's family, should it become known that the witness has given evidence before the Tribunal. This standard may be satisfied by showing that a threat was made against the witness or the witness's family. It may also be met by demonstrating a combination of the following three factors:

1. The witness's testimony may antagonise persons who reside in a specific territory;
2. The witness, or his or her family, live or work in that territory, have property in that territory, or have concrete plans to return to live in that territory;
3. There exists an unstable security situation in that territory which is particularly unfavourable to witnesses who appear before the Tribunal.

6. The case-law⁹ further provides that

[e]ven though granting protective measures is and should be the exception to the rule of a public trial, the threshold for when protective measures should be granted cannot be set too high. For example, to exclude persons who have not experienced actual threats or harassment would defy the purpose of the measures; namely, the protection from risks that might occur as a result of the testimony. The Chamber must, therefore, make a risk assessment, and inherent in such an assessment is applying a certain level of caution and erring on the safe side.

III. DISCUSSION

7. The Chamber recalls that for protective measures to be warranted, actual threats or harassment of witnesses, their families, or property are not required. Witness RM-115 is expected to testify about an alleged shelling of civilians in Sarajevo by the Bosnian Serb army, which may antagonise persons within the Serb population of Bosnia and Herzegovina. The witness and her family have a part-time residence in Republika Srpska, in a predominantly Serb-populated area where ethnic tensions remain due to heavy fighting and numerous casualties of the conflict. For the foregoing reasons, and noting that the Defence does not object to the Motion, the Chamber considers that the Prosecution has demonstrated an objectively-grounded risk to the security or welfare of the witness, or the witness's family.

8. With regard to the precise protective measures, the Chamber has considered the Prosecution's argument that the nature of Witness RM-115's injuries is specific enough to make her easily identifiable. For that reason, the Chamber finds that in addition to the requested

⁸ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69, T. 3691. See also, *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90, T. 2609-2611; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84, T. 694-695; *Prosecutor v. Momčilo Krajišnik*, Case IT-00-39, T 12052-12054.

⁹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69, Reasons for Granting Protective Measures to Witness DST-043, 17 August 2011, para. 5; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69, T. 3691-3692.

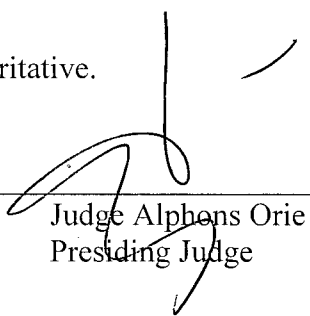
protective measures, any testimony potentially revealing Witness RM-115's identity should be heard in private session.

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Articles 20 and 22, and Rule 75(A) the Chamber **GRANTS** the Motion and **ORDERS** that

- a. Witness RM-115 be, throughout the remainder of the proceedings, identified by her pseudonym; and that
- b. Witness RM-115's testimony be received with image- and voice distortion, and that those parts of the testimony susceptible to reveal her identity be heard in private session.

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



Judge Alphons Orie
Presiding Judge

Dated this Fifteenth of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]