



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: 23 November 2012
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: 23 November 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR
PROTECTIVE MEASURES FOR WITNESS KW492**

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 Protective Measures for Witness KW492”, filed publicly with a confidential annex on 7 November 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the Chamber grant the protective measures of pseudonym, image distortion, and face distortion for witness KW492 (“Witness”) on the ground that the security and welfare of the Witness’s family would be at risk if he testified publicly.¹ In support, the Accused attaches in a confidential annex to the Motion a declaration from his case manager (“Declaration”), who spoke to the Witness on the telephone.² In the Declaration, the Witness states that there would be retaliation against his parents who would be in great danger if he were to testify publicly as a defence witness.³ According to the Witness, his parents are the only Serbs living in a particular settlement in the Federation of Bosnia and Herzegovina (“Settlement”), and he has not returned to the Settlement due to fear of retaliation against his parents because of his service as a soldier in the Army of Republika Srpska (“VRS”).⁴ At the heart of the fear of retaliation expressed by the Witness’s parents, the Declaration details two incidents from 1996 and 2001.⁵ In the Declaration, the Witness is also “firm” in his conviction that he will not testify should protective measures not be granted.⁶

2. In the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW492”, filed publicly with confidential appendices on 16 November 2012 (“Response”), the Office of the Prosecutor (“Prosecution”) opposes the Motion in part.⁷ The Prosecution contends that, according to a local population register, the Settlement actually has a number of Serb residents and thus the Motion is incorrect in its contention that the Witness’s parents are the only Serbs living there.⁸ The Prosecution also notes that the Witness’s voice and image are not widely known because the Witness has not returned to the Settlement since the war and was not a prominent

¹ Motion, paras. 1, 3.

² Motion, Confidential Annex A, paras. 1–2.

³ Motion, Confidential Annex A, paras. 4, 10.

⁴ Motion, Confidential Annex A, paras. 5–7.

⁵ Motion, Confidential Annex A, paras. 8, 9.

⁶ Motion, Confidential Annex A, para. 10.

⁷ Response, para. 1.

⁸ Response, Confidential Appendix A, para. 2; Confidential Annex B.

member of the VRS.⁹ However, the Prosecution notes that the events described in 1996 and 2001 have affected the security and well-being of the Witness's parents.¹⁰ The Prosecution thus contends that the protective measure of pseudonym only is sufficient for purposes of addressing the concerns that the Witness has about his family's security.¹¹

II. Applicable Law

3. Article 20(1) of the Tribunal's Statute ("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 of Procedure and Evidence ("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 Trial Chambers 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.¹²

4. 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, as well as the presentation of testimony in private or closed session pursuant to Rule 79 of the Rules.

III. Discussion

5. As the Chamber has noted on previous occasions, 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's family, should it become publicly known that the witness testified before the Tribunal.¹³

⁹ Response, Confidential Appendix A, para. 4.

¹⁰ Response, Confidential Appendix A, para. 3.

¹¹ Response, para. 1; Confidential Appendix A, paras. 3–4.

¹² 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 the Prosecutor's Motion Requesting Protective Measures for Witness L, 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, para. 5; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para. 7.

¹³ 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-090, 18 August 2006, pp. 2–3; *Prosecutor v. Mrkšić et al.*, Case No. IT-95-

6. The Chamber has reviewed the circumstances of both the Witness and his family, including the statements in the Declaration about his family's place of residence, further information about the ethnic composition of the Settlement provided by the Prosecution, and the incidents described in 1996 and 2001. The Chamber recalls that it recently decided that a direct threat to the life of a witness, which had occurred in the wake of the conflict in Bosnia and Herzegovina did not itself prevent an individual from testifying before the Tribunal without protective measures.¹⁴ Furthermore, the Chamber considers there to be a lack of contextualisation regarding the incident in 2001, including the parties involved or their motivations, and thus considers that this in itself does not prevent the Witness from testifying publicly. Finally, the fact that the Witness's family is one of very few Bosnian Serb families in the Settlement, without more, does not constitute an objectively grounded risk to their security or welfare.

7. The Chamber therefore is not satisfied that there is an objectively grounded risk to the security or welfare of KW492's family, should it become publicly known that he testified before the Tribunal.

IV. Disposition

8. Accordingly, the Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 54 and 75 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-third day of November 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

13/1-T, Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

¹⁴ Decision on Accused's Motion for Video Link Testimony and Consideration of Protective Measures for Witness KW533, 9 November 2012, para. 15.