



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: 25 January 2013

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: 25 January 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR PROTECTIVE MEASURES
FOR WITNESS KW466**

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 KW466” filed publicly with a confidential annex on 18 January 2013 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that an order be issued pursuant to Rule 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) granting witness KW466 (“Witness”) the protective measures of pseudonym and image distortion.¹ In support, the Accused attaches as Confidential Annex A to the Motion a declaration from his case manager (“Declaration”), who spoke to the Witness on the telephone on 14 January 2013.²

2. The Declaration states that as a result of a decision of the Office of the High Representative (“OHR”) in 2004, the Witness was banned from holding any official, elective, or appointive public office in Bosnia and Herzegovina (“BiH”) because he was suspected of “aiding and abetting Dr. Karadžić and General Mladić”.³ The Declaration further states that, as a result of the OHR decision, the Witness was removed from the public office positions he held at the time.⁴ Since then he has been employed at private institutions and the OHR has not given authorisation for the Witness to return to public office, nor has there “been any formal decision on his responsibility for aiding and abetting Radovan Karadzic or Ratko Mladic”.⁵

3. In the Declaration it is explained that the Witness is concerned that, because of the diverse ethnic composition of his current place of employment, his testimony, if public, “may seriously affect not only his reputation but also the reputation of his employer”.⁶ The Witness also believes that his welfare and that of his family will be adversely affected by his testimony in this case and he may be subject to threats or harassment as a result of his association with the Accused and the

¹ Motion, para. 1.

² Declaration, paras. 1–2.

³ Declaration, paras. 4, 6.

⁴ Declaration, para. 5.

⁵ Declaration, paras. 5–6 (quotation at para. 6).

⁶ Declaration, para. 7.

SDS.⁷ Specifically, the Witness is concerned that he may lose his job and, as a result, would be unable to provide for his family.⁸

4. The Declaration further states that there is no existing legal mechanism for the Witness to receive moral or professional satisfaction for the damage he suffered and because of that he is further concerned that testifying may bring additional damage to him and to his current place of employment.⁹

5. In the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW466”, filed publicly with a confidential appendix on 21 January 2013 (“Response”), the Office of the Prosecutor (“Prosecution”) opposes the Motion.¹⁰ The Prosecution argues that there is not a sufficient basis for the Chamber to assess whether an objectively grounded risk to the security or welfare of the Witness or that of his family exists.¹¹ It further suggests that the information provided in the Motion, regarding the correlation between the OHR decision and the possible security or welfare risk for the Witness, is ambiguous and misleading,¹² and that, contrary to the assertion in the Declaration, the OHR has lifted the ban and the Witness had assumed some of the positions he had previously held.¹³

6. The Prosecution further states that there is no information in the Motion about the Witness’s current employment and how his testimony could have an adverse effect on it¹⁴ and that no information is provided indicating that he or his family have ever been subject to any threats or harassment.¹⁵ Additionally, it argues that the Witness has testified in open session before a court of BiH as a defence witness in regard to crimes committed during the conflict.¹⁶

II. Applicable Law

7. Article 20(1) of the Statute of the Tribunal (“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

⁷ Declaration, para. 8.

⁸ Declaration, para. 8.

⁹ Declaration, para. 9.

¹⁰ Response, para. 1.

¹¹ Response, para. 1, Confidential Appendix, paras. 1, 8

¹² Response, Confidential Appendix, para. 4.

¹³ Response, Confidential Appendix, para. 5.

¹⁴ Response, Confidential Appendix, para. 6.

¹⁵ Response, Confidential Appendix, para. 7.

¹⁶ Response, Confidential Appendix, para. 7.

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.¹⁷

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”. Pursuant to 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. As the Chamber has noted previously, 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.¹⁸

10. Having reviewed the Declaration, the Chamber is not satisfied that there is an objective threat to the security or welfare of the Witness or his family which would arise from testifying publicly in this case. The fears and concerns of the Witness, which are related to his employment and possible threats or harassment, are expressed in broad and speculative terms.¹⁹ No specific examples or incidents are given in support. The Chamber recalls that, “[p]rotective measures may not be granted on the basis of a broad statement not related to any objective risk to the security or welfare of the Witness or his family”.²⁰ The Chamber therefore finds that the information provided by the Accused does not warrant according the requested protective measures to the Witness.

¹⁷ 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.

¹⁸ 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.

¹⁹ See Declaration, paras. 7–9.

²⁰ Decision on Accused’s Motion for Protective Measures for Witness KW285, 17 October 2012, para. 7. See also Decision on Accused’s Motions for Protective Measures for Witnesses KW289, KW299, KW378, and KW543, 1 November 2012, para. 13.

IV. Disposition

11. Accordingly, the Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 54 and 75 of the Rules, **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-fifth day of January 2013
At The Hague
The Netherlands

[Seal of the Tribunal]