



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: 9 July 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: 9 July 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR PROTECTIVE MEASURES
FOR WITNESS KW428**

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 KW428” filed publicly with one public and one confidential annex on 27 June 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 KW428 (“Witness”) the protective measures of pseudonym and image distortion.¹ In support, the Accused attaches as Confidential Annex B to the Motion a declaration from his case manager (“Declaration”), who spoke to the Witness on 23 June 2013.² According to the Accused’s case manager, the Witness has noted the negative public attention following the recent testimony of Gordan Milinić.³ On this basis, the Witness is “very concerned” that his “personal safety” would be endangered if he were to testify in open session, as the Witness currently works as a public employee in a common institution established by the Federal government, and lives in the Federation of Bosnia and Herzegovina as well.⁴ The Witness “is firm in his decision not to testify” if the requested measures are not granted.⁵

2. The Accused submits that “[i]t is reasonable for [the Witness] not to have to be subject to the same kind of harassment” as Milinić and that the Chamber “has a duty to ensure [the Witness’s] physical and economic security”.⁶

3. In the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW428”, filed publicly on 4 July 2013 (“Response”), the Office of the Prosecutor (“Prosecution”) opposes the Motion.⁷ The Prosecution submits that neither the Motion nor the supporting material

¹ Motion, para. 1. The Chamber observes that the Witness appears to have requested voice distortion in addition to the protective measures requested by the Accused. Declaration, paras. 3, 8.

² Declaration, para. 2.

³ Declaration, para. 6. As Annex A to the Motion (“Annex”), the Accused attaches a letter addressed to the Ambassador of Bosnia and Herzegovina (“BiH”) to the Kingdom of the Netherlands expressing concern over appeals to the Government of BiH calling for Milinić’s dismissal. The Annex also contains two press articles covering Milinić’s testimony, only one of which is provided in a working language of the Tribunal, and a joint letter from the Congress of North American Bosniaks and the Institute for the Research of Genocide Canada, which is also not provided in a working language of the Tribunal.

⁴ Declaration, paras. 4–6. According to the Declaration, the witness “thinks that people would recognize him and it would only be a question of time when he would be insulted or physically attacked”. Declaration, para. 7.

⁵ Declaration, paras. 3, 8.

⁶ Motion, para. 3.

⁷ Response, para. 1.

establish an objective basis for the Witness's alleged fear for his personal safety, as there is no indication that the personal safety of either Milinić or the Witness has ever been threatened.⁸ The Prosecution further observes that there is no evidence that Milinić has been removed from his post, and suggests that the public reaction to his testimony was unique to Milinić's service as a diplomat.⁹ According to the Prosecution, the Witness's proposed testimony and position are distinguishable from those of Milinić, and the information provided fails to establish the existence of an objectively grounded risk that would justify the imposition of the protective measures requested by the Accused.¹⁰

II. Applicable Law

4. 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 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.¹¹

5. 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

6. 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

⁸ Response, para. 3.

⁹ Response, paras. 4–5.

¹⁰ Response, paras. 4, 6. The Prosecution also makes reference to several witnesses who hold public employment in BiH and who testified without protective measures, and asserts that their testimony was reported in the media "without apparent consequence". Response, para. 5 and fn 7.

¹¹ 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.

or the witness' family, should it become publicly known that he or she testified before the Tribunal.¹²

7. Having reviewed the information provided by the Accused in support of the Motion,¹³ the Chamber notes that neither the Accused nor the Witness has provided any information that substantiates any risk to the personal safety or welfare of the Witness himself. The Chamber considers that the public reaction to Milinić's testimony has little bearing on the type of reaction—if any—that might be expected following the Witness's testimony, as Milinić's current position is markedly different from that of the Witness. While the Chamber notes that the Witness has indicated a subjective concern regarding the consequences of testifying in open session, the Chamber is not satisfied, on the basis of the information before it, that there is an *objectively* grounded risk to the security or welfare of the Witness should he testify in open session.

IV. Disposition

8. Accordingly, the Chamber, pursuant to 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 ninth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² 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-95-13/1-T, Decision on Prosecution's Additional Motion for Protective Measures of Sensitive Witnesses, 25 October 2005, para. 5.

¹³ The Chamber has not considered any information not provided in a working language of the Tribunal.