

5-09-92-T
D 63884 - D 63882
19 July 2013

63884 H.S.



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: 19 July 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 19 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE
MEASURES OF WITNESS RM-377**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 30 May 2013, the Prosecution filed a motion for protective measures (“Motion”) for Witness RM-377 (“Witness”).¹ The Prosecution requests that the Witness be assigned a pseudonym.² The Prosecution submits that the Witness requested protective measures when interviewed by members of the Office of the Prosecution, as the Witness fears for the safety of a relative living in the Republika Srpska, if the Witness’ identity were to become known.³ According to the Prosecution, protective measures will ensure that legitimate safety concerns of the Witness are addressed, without interfering with the right of the Accused to a fair trial.⁴ In its response filed on 13 June 2013 (“Response”), the Defence opposes the Motion, arguing that the Witness’s fear for the security of a relative is of a subjective and speculative nature and does not rise to the level of “real” fear.⁵ Further, the Defence argues that the Accused’s right to a public trial outweighs the right of the Witness to protection and privacy.⁶

II. APPLICABLE LAW

2. The Chamber recalls and refers to the applicable law in relation to protective measures, as set out in a prior decision.⁷

III. DISCUSSION

3. The Chamber notes that the Witness provides evidence on her role in researching, collecting, and distributing a list of persons killed or missing relevant to one of the scheduled incidents of the Indictment.⁸ The Chamber considers that the proposed evidence is generic in nature and it is unclear how it may antagonise persons residing in the area where the Witness’ relative lives. In addition, because the Annex to the Motion makes reference to there not having been any arrests of the direct perpetrators of the scheduled incident, the Chamber does not find that this gives

¹ Prosecution Motion for Protective Measures for Witness RM-377, 30 May 2013 (Confidential), Confidential Annex A. In the first paragraph of the Motion, the Prosecution refers to Witness RM-089 instead of Witness RM-377. However, since throughout the Motion and Annex reference is made to Witness RM-377, the Chamber will consider the reference to Witness RM-089 to be in error.

² Motion, paras 3, 8.

³ Motion, paras 2-3, 6.

⁴ Motion, para. 7.

⁵ Response, paras 4, 6, 9-11.

⁶ Response, paras 13-14.

⁷ Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2012, paras 3-6.

⁸ Motion, para. 5; Prosecution Motion to Amend its 65 *ter* Witness List to Substitute RM044 with RM-377, 30 May 2013 (Confidential), para. 6.

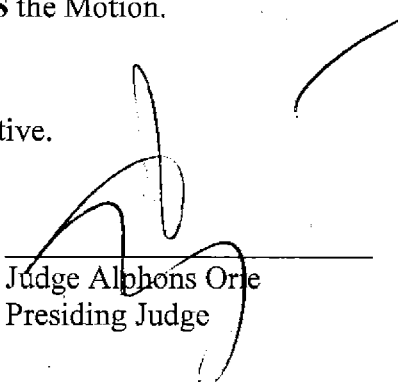
rise to an objectively grounded fear for the security or welfare of the Witness' relative.⁹ In this regard, the Chamber notes that (i) the proposed evidence does not identify any of the alleged direct perpetrators, and (ii) it is unknown whether the alleged direct perpetrators reside in the same area as the Witness' relative.

4. Weighing the generic reasons provided in the Motion against the right of the Accused to a public trial, the Chamber considers that there is an insufficient basis to conclude that protective measures are justified in the instant case.

IV. DISPOSITION

For the foregoing reasons, pursuant to Articles 20 and 22 of the Statute of the Tribunal, and Rule 75 (A) of the Rules of Procedure and Evidence, the Chamber **DENIES** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this Nineteenth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ Motion, Confidential Annex A, para. 6.