**UNITED NATIONS**

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: 10 October 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:** **10 October 2013**

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

# DECISION ON ACCUSED'S MOTION FOR SAFE CONDUCT ORDER: DRAGAN KIJAC

**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 Safe Conduct Order: Witness Dragan Kijac", filed on 8 October 2013 ("Motion"), and hereby issues its decision thereon.

## I. Background and Submissions

1. In the Motion, the Accused moves for an order, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence ("Rules"), for the safe conduct of witness Dragan Kijac ("Witness"), who is a resident of the Republic of Serbia and is currently scheduled to testify in the Accused's defence case on 29 October 2013.[1] The Accused notes that the Witness served as the Chief of the State Security Department of the Ministry of Interior of Republika Srpska during the events in Srebrenica as charged in the Third Amended Indictment.[2] The Witness indicates that he requires a safe conduct certificate because of concerns that he may be prosecuted by the Court of Bosnia and Herzegovina ("BiH") for his conduct during the war.[3] Accordingly, the Accused contends that an order for safe conduct is reasonable and necessary to secure the attendance of the Witness, and that the Witness's testimony is relevant and of probative value to the case.[4]

2. On 8 October 2013, the Office of the Prosecutor informed the Chamber *via* email that it would not respond to the Motion.

## II. Applicable Law

3. Rule 54 of the Rules grants the Chamber the broad authority to issue such orders as may be necessary for the conduct of the trial and this authority includes granting safe conduct to witnesses appearing before the Chamber.[5] Orders for safe conduct are a common device in the practice of the Tribunal for granting witnesses limited immunity under specific circumstances to "secure the

[1] Motion, paras. 1–2.
[2] Motion, para. 2.
[3] Motion, para. 3.
[4] Motion, para. 5.
[5] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video Link, 25 June 1996, para. 8. *See also*, Decision on the Prosecution's Motion for Safe Conduct for Witness Momčilo Mandić, 16 June 2010, para. 4.

attendance of witnesses from areas beyond" the Tribunal's jurisdiction.[6] Such orders are issued by Trial Chambers when deemed in the interests of justice.[7]

## III. Discussion

4. The Chamber notes that, though orders for safe conduct are a common measure falling under the broad authority of Rule 54, such orders may be issued only when *necessary* for the conduct of the trial. In the present case, the Accused requests an order for safe conduct because of "concerns that [the Witness] *may* be prosecuted by the Court of Bosnia and Herzegovina".[8] The Accused states that he "*believes* these concerns are well founded given the witness' position during and after the war".[9] Apart from this information, the Accused fails to provide any specific information as to why the Witness could be subject to criminal proceedings in BiH. The Chamber therefore considers that the Accused has not provided specific information as to whether any indictments or other proceedings are in fact pending against the Witness, nor provided information as to inquiries he made in relation thereto.[10]

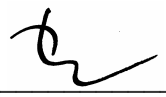
5. For the foregoing reasons, the Chamber considers that the Accused has not provided the Chamber with sufficient information to rule on the Motion and thus did not demonstrate that it is in the interests of justice to issue an order for safe conduct in the present case. Should the Accused have more information regarding outstanding indictments against the Witness in BiH, or additional information as to why such an order is necessary for the conduct of the trial, he may always file another motion again requesting an order for safe conduct.

[6] Order for Safe Conduct, 10 July 2013, fn. 6, and decisions cited therein.
[7] Order for Safe Conduct, 10 July 2013, fn. 7, and decisions cited therein.
[8] Motion, para. 3 (emphasis added).
[9] Motion, para. 3 (emphasis added).
[10] *See also* Decision on Accused's Motion for Safe Conduct Order: [redacted], confidential, 6 February 2013, para. 4.

## IV. Disposition

6. Accordingly, the Chamber, pursuant to Articles 29 and 30(4) of the Tribunal's Statute and Rule 54 of the Rules, hereby **DENIES** the Motion without prejudice.

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



Judge O-Gon Kwon
Presiding

Dated this tenth day of October 2013
At The Hague
The Netherlands

**[Seal of the Tribunal]**