



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-PT
Date: 9 June 2009
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 9 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR EXTENSION OF TIME
AND RECLASSIFICATION: OTP MOTION CONCERNING
MEMBER OF HUMANITARIAN ORGANIZATION**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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 Extension of Time and Reclassification: OTP Motion Concerning Member of Humanitarian Organization”, filed on 5 June 2009 (“Motion”), and hereby renders its decision thereon.

1. On 8 May 2009, the Prosecution filed confidentially its “Prosecution’s Notification of Protective Measures Currently in Force for KDZ240”, notifying the Trial Chamber, pursuant to Rule 75(F) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), of the continuation of various protective measures for witness KDZ240 which were originally granted in the *Brđanin* case, and were subsequently confirmed by the *Krajišnik* Trial Chamber, and more recently by the *Stanišić and Župljanin* Trial Chamber.¹ On 26 May 2009, the Chamber issued a “Decision on Motion for and Notifications of Protective Measures” (“Decision on Protective Measures”), rejecting, *inter alia*, the Prosecution’s notification on protective measures for witness KDZ240 without prejudice, and inviting the Prosecution making it clear whether the measures being notified with respect to KDZ240 fell under Rule 70 or Rule 75 of the Rules and, if it is the former, re-applying for the Rule 70 conditions which relate to the presentation of the witness’s evidence in court to be granted in the present proceedings, and explaining why that should be so.²

2. On 3 June 2009, the Prosecution filed its “Prosecution’s Clarification and Request for Reconsideration of Decision on Motion for and Notifications of Protective Measures” (“Request”), providing further information about the protective measures granted to KDZ240 pursuant to Rule 75(B) in other Tribunal proceedings, and requesting the Chamber to reconsider its Decision on Protective Measures, and to confirm to the parties in the present case that KDZ240’s protective measures remain in force for the current proceedings.³ During the status conference held on that same date, the pre-trial Judge instructed the Accused to respond to the Request by Friday, 5 June 2009.⁴ On 5 June 2009, the Chamber issued an order extending this time and requesting the Accused to file any submission he wishes to make in response to the Request no later than Tuesday, 9 June 2009.⁵

¹ Prosecution’s Notification of Protective Measures Currently in Force for KDZ240, 8 May 2009, paras. 1–6, 8.

² Decision on Motion for and Notifications of Protective Measures, 26 May 2009, para. 30.

³ Prosecution’s Clarification and Request for Reconsideration of Decision on Motion for and Notifications of Protective Measures, 3 June 2009, para. 14.

⁴ Status Conference, T. 290 (3 June 2009).

⁵ Order for Expedited Response To Prosecution’s Clarification and Request for Reconsideration of Decision on Motion for and Notifications of Protective Measures, 5 June 2009.

3. In the Motion, the Accused seeks an extension of time for the submission of his response to the Request until 14 days after his receipt of the three confidential decisions in the *Brđanin* case relied upon by the Prosecution in its Request.⁶ He argues that he has been unable to locate these three *Brđanin* decisions as they are confidential, and the Chamber had not ruled on his motion for access to confidential material in that case.⁷ Furthermore, the Accused argues that he is in the process of reviewing the testimony and statements of KDZ240 already in the public domain, in order to determine whether any protective measures are justified for this witness, and, if appropriate, to file a motion requesting the rescission of the protective measures for this witness.⁸ The Accused further requests the Chamber to order the Prosecution re-file its Request as a public document, either by redacting or by rephrasing the references to the humanitarian organisation contained therein.⁹

4. In light of the time sensitivity of the Motion, the Chamber does not consider that a response from the Prosecution is necessary.

5. The Chamber notes that the Accused's first argument concerning access to confidential material is now moot, following the issuance of its "Decision on Motion for Access to Confidential Materials in Completed Cases Motion" on 5 June 2009, by which the Accused is granted access to all *inter partes* confidential material, including all confidential closed and private session testimony transcripts, all closed session hearing transcripts, all confidential exhibits, all confidential *inter partes* filings and submissions, and all confidential Trial Chamber and Appeals Chamber decisions, in the *Brđanin* case, amongst other cases.¹⁰ With respect to the Accused's second argument, the Chamber considers that the possible filing by the Accused of a motion requesting the Chamber to rescind the protective measures currently in place for witness KDZ240 is independent of the Prosecution's Request, and does not affect the Accused's ability to respond to the Request in a short period of time. Nevertheless, the Chamber considers it to be in the interests of justice to grant the Accused an extension of time for the filing of his response to the Request, in order for him to have enough time to analyse the three *Brđanin* decisions referred to above. However, an extension of 14 days as of the day of his receipt of said confidential decisions is not justified and only a shorter period of time will be granted. The Chamber will in any case ensure that the Accused is granted immediate access to the three decisions issued in the *Brđanin* case, and referred to by the Prosecution in its Request.

⁶ Motion, paras. 2, 5.

⁷ Motion, para. 2.

⁸ Motion, para. 4.

⁹ Motion, para. 6.

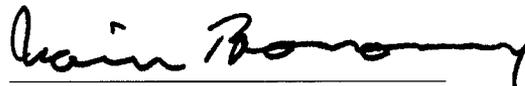
¹⁰ Decision on Motion for Access to Confidential Materials in Completed Cases, 5 June 2009, para. 32.

6. The Chamber further considers that the Accused's request concerning the re-filing of the Prosecution's Request as public is consistent with the Chamber's Decision on Protective Measures, which was also filed as a public document. The Chamber will therefore order the Prosecution to redact the Request or rephrase any confidential information contained therein, and to re-file the Request as public.

7. Accordingly, the Trial Chamber, pursuant to Rules 54 and 127 of the Rules, hereby **GRANTS** the Motion in part, and

- (a) **ORDERS** the Accused to file any submission he wishes to make in response to the Request no later than Friday, 12 June 2009;
- (b) **ORDERS** the Prosecution to make the necessary redactions to its Request and to re-file it as a public document; and
- (c) **REQUESTS** the Registry to disclose to the Accused, as soon as possible, and in accordance with the terms of the Decision on Access to Confidential Materials in Completed Cases of 5 June 2009, the three confidential decisions issued by the *Brđanin* Trial Chamber, and referred to by the Prosecution in its Request.

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



Judge Iain Bonomy
Presiding

Dated this ninth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]