



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: 26 February 2010

Original: English

IN THE TRIAL CHAMBER III

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 26 February 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR RESCISSION
OF PROTECTIVE MEASURES OF KDZ263**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed 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 “Prosecution’s Motion for Rescission of Protective Measures of KDZ263”, filed on 24 February 2010 (“Motion”), and hereby renders its decision thereon.

1. KDZ263 was granted a number of protective measures by the Trial Chamber in *Prosecutor v. Krajišnik*.¹ In the Motion, the Prosecution states that the witness has recently informed it that he no longer requires these protective measures. For this reason, and because there is no longer a Chamber seised of the *Krajišnik* case, the Prosecution submitted the present Motion seeking to rescind KDZ263’s protective measures.² The Accused has not yet filed a response to the Motion but has repeatedly requested that all protective measures should be rescinded, except where necessary to protect victims.³

2. Rule 75(G) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requires that a party to proceedings seeking to rescind protective measures granted to a witness in earlier proceedings must apply to any Chamber remaining seised of the proceedings wherein the measures were originally granted.⁴ However, because there is no Chamber currently seised of the *Krajišnik* case, the Prosecution properly applied to this Chamber for the rescission of KDZ263’s protective measures under Rule 75(G)(ii).⁵

3. Before determining an application under Rule 75(G)(ii), Rule 75(I) requires the Chamber to obtain all relevant information from the first proceedings and consult with any judge who ordered the protective measures in those proceedings. On 25 February 2010, the Chamber consulted with Judge Alphons Orie, who was the Presiding Judge in the *Krajišnik* case, which granted the protective measures to KDZ263.

4. In addition, Rule 75(J) requires that the Chamber ensure, through the Registry’s Victims and Witnesses Section (“VWS”), that the witness has given consent to the rescission of the relevant

¹ Oral Decision, *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, T. 3432 (3 June 2004). The witness had previously testified in the cases of *Prosecutor v. Brđanin* and *Prosecutor v. S. Milošević* without protective measures.

² Motion, paras. 1 and 2. Appended to the Motion is a signed declaration from a Prosecution investigator, stating that he recently spoke to KDZ263 who told him that “he had had discussions with members of his family . . . and that he was prepared to testify without protective measures in any case before the Tribunal”.

³ See, e.g. Status Conference, T. 413 (20 August 2009) (“I appeal that all measures, protective measures, be rescinded except in cases of witnesses that have precisely asked to be protected”).

⁴ Rule 75(G)(i)

⁵ Rule 75(G)(ii) provides that “[a] party to the second proceeding seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply: . . . (ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.”

protective measures. Upon the request of the Chamber, the VWS has contacted KDZ263, who confirmed that he consents to the rescission of his protective measures.

5. Taking into account Judge Orié's comments, and in light of the position taken by the witness himself, the Chamber is satisfied that rescission of all protective measures granted to KDZ263 in the *Krajišnik* case is appropriate.

6. Accordingly, the Trial Chamber, pursuant to Rules 54 and 75 of the Rules, hereby **GRANTS** the Motion, and **RESCINDS** the protective measures granted to KDZ263 in the *Krajišnik* case.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-sixth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]