



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: 17 October 2012

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: 17 October 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR PROTECTIVE MEASURES
FOR WITNESS KW285**

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 KW-285”, filed publicly with confidential annex on 8 October 2012 (“Motion”), and hereby issues its decision thereon.

I. 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 KW285 (“Witness”) the protective measures of pseudonym, image distortion, and voice distortion.¹ The Accused attaches, in confidential Annex A, a “factual declaration” from his case manager who spoke to the Witness on the telephone and which, in the Accused’s submission, “indicates that the welfare of the witness is at risk if his/her identity were made public” (“Declaration”).² As the reason for requesting protective measures, the Witness expresses concern that he will not obtain prospective employment.³ The Accused further requests that the protective measures sought only be granted at the commencement of the Witness’s testimony to allow the Witness to be proofed by the Accused at the United Nations Detention Unit (“UNDU”) since the Registry does not allow protected witnesses to be interviewed there.⁴

2. On 12 October 2012, the Prosecution filed publicly with confidential appendix the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW-285” (“Response”). The Prosecution opposes the Motion on the grounds that the information provided by the Accused “is an insufficient basis for the Chamber to assess whether there exists an objectively grounded risk to the Witness’s welfare or that of his family”.⁵ The Prosecution also objects to postponing the granting of protective measures until the commencement of the Witness’s testimony.⁶ The Prosecution notes in that regard that there are alternative means to proof the witness avoiding the need for the Witness to physically go to the UNDU and jeopardise the protective measures in the event they are granted.⁷

¹ Motion, para. 1. For a more comprehensive background to the filing of the Motion, *see* Order in Relation to Accused’s Notice of Request of Protective Measures for Witnesses, 2 October 2012, p. 3; Addendum to Order in Relation to Accused’s Notice of Request of Protective Measures for Witnesses Issued on 8 October 2012, 9 October 2012, p.3.

² Motion, para. 3, confidential annex A.

³ Motion, confidential annex A.

⁴ Motion, para. 5.

⁵ Response, para. 1.

⁶ Response, para. 2.

⁷ Response, para. 2.

3. The Prosecution in confidential Appendix A provides more detail as to why the Witness's concerns for his welfare referred to by the Accused in the Motion are "not sufficiently specific or substantiated".⁸ The Prosecution points to the lack of information about the prospective employment, the stage of selection for that position, and the reason why the Witness believes he will not obtain the employment if he testifies in open session.⁹ The Prosecution submits that the Accused should provide more details or documentation in support.¹⁰

II. Applicable Law

4. Article 20(1) of the Tribunal's Statute ("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 Tribunal's 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". Under 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, as well as the presentation of testimony in private or closed session pursuant to Rule 79 of the Rules.

III. Discussion

6. As the Chamber has noted on previous occasions, the party requesting protective measures must demonstrate the existence of an objectively grounded risk to the security or

⁸ Response, confidential appendix.

⁹ Response, confidential appendix.

¹⁰ Response, confidential appendix.

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 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, p. 4; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para. 7.

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

7. Having reviewed the Declaration, the Chamber finds that the Accused has failed to provide sufficient information to determine whether the Witness would face an objectively grounded risk to his security or welfare should the Witness testify in open session. Nothing in the Declaration, which remains very general, indicates an objective threat to the Witness's security or welfare. Protective measures may not be granted on the basis of a broad statement not related to any objective risk to the security or welfare of the Witness or his family. The Chamber is therefore 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.

8. The Chamber has already ruled that it "will categorically not entertain" requests to postpone the granting of protective measures.¹³ That discussion will not be repeated here.

IV. Disposition

9. Accordingly, the Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 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 seventeenth day of October 2012
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-90, 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 See Decision on Motion for Protective Measures for Witness KW456, 12 October 2012, para. 12. See also T. 28827 (15 October 2012).