



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: 19 December 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: 19 December 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR
PROTECTIVE MEASURES FOR WITNESS KW007**

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 KW7”, filed publicly with a confidential annex on 13 December 2012 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused requests that the Chamber grant the protective measures of pseudonym, image distortion, and voice distortion for witness KW007 (“Witness”) on the ground that “the safety of the witness is at risk if his identity were made public”.¹ In support, the Accused attaches in a confidential annex to the Motion a letter sent by the Witness to the Accused’s legal adviser (“Letter”).² In the Letter, the Witness recounts an incident in which his life was threatened while he was undertaking volunteer work in Bosnia and Herzegovina (“BiH”) during the conflict.³ As a result of this incident, as well as his and his family members’ current professional work and activities, the Witness states he is afraid that if he appears publicly as a witness for the Accused, he will be targeted again.⁴

2. In the “Prosecution Response to Karadžić’s Motion for Protective Measures for Witness KW007”, filed publicly with a confidential appendix on 14 December 2012 (“Response”), the Office of the Prosecutor (“Prosecution”) opposes the Motion.⁵ The Prosecution contends that the information provided by the Accused in support of the Motion is insufficiently specific and substantiated for the Chamber to assess whether there exists an objectively grounded risk to the security or welfare of the Witness or that of his family.⁶ The Prosecution argues that there is no information provided in the Motion about how, in light of the Witness’s current professional and humanitarian activities or his previous experiences in BiH, his testimony in these proceedings without protective measures could jeopardise his safety or that of his family, and that, therefore, without additional information in this regard, there is no basis for the Chamber to determine whether an objectively grounded risk exists to justify protective measures.⁷

¹ Motion, paras. 1, 3.

² Motion, para. 3; Confidential Annex A.

³ Motion, Confidential Annex A.

⁴ Motion, Confidential Annex A.

⁵ Response, para. 1.

⁶ Response, para. 1; Confidential Appendix, para. 1.

⁷ Response, Confidential Appendix, para. 3.

II. Applicable Law

3. 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 of Procedure and Evidence ("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.⁸

4. Rule 75(A) of the 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

5. 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 welfare of the witness or the witness's family, should it become publicly known that the witness testified before the Tribunal.⁹

6. The Chamber has reviewed the circumstances of the Witness, including the statement in the Letter about his experiences in BiH during the conflict and the threat to his life, as well as his current professional work and humanitarian activity. The Chamber recalls that it recently decided that a direct threat to the life of a witness, which had occurred in the wake of the conflict in BiH did

⁸ 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 the 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, para. 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.

⁹ 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-090, 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.

not itself prevent an individual from testifying before the Tribunal without protective measures.¹⁰ Furthermore, the Chamber considers that the connection between the threat on the Witness's life in BiH during the conflict and a current risk to his security or welfare today is tenuous; thus, the Chamber considers that this alone does not prevent the Witness from testifying publicly. Moreover, the Chamber considers that the information provided by the Witness in the Letter regarding his or his family members' current professional and humanitarian activities is also too broad to constitute an objectively grounded risk to their security or welfare.

7. The Chamber therefore is 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 or that of his family, should it become publicly known that he testified before the Tribunal.

IV. Disposition

8. Accordingly, the Chamber, pursuant to Articles 20, 21, and 22 of the Statute, and Rules 54 and 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 nineteenth day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ See Decision on Accused's Motion for Video Link Testimony and Consideration of Protective Measures for Witness KW533, 9 November 2012, para. 15; Decision on Accused's Motion for Protective Measures for Witness KW492, 23 November 2012, para. 6.