

**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-04-75-I
Date: 23 August 2011
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 23 August 2011

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE
MEASURES FOR VICTIMS AND WITNESSES AND
DOCUMENTARY EVIDENCE**

The Office of the Prosecutor:

Mr. Norman Farrell

Duty Counsel for the Accused:

Mr. Zoran Živanović

1. **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 Protective Measures for Victims and Witnesses and Documentary Evidence”, filed on 3 August 2011 (“Motion”).¹

A. Submissions of the Parties

2. The Motion requests, pursuant to Articles 20 and 22 of the Statute of the Tribunal (“Statute”) and Rules 53, 54, 70, 73, and 75 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), various measures related to the restriction of disclosure to and by Goran Hadžić and his defence counsel (“Hadžić Defence”) in the above-captioned proceeding. The requested measures fall into two categories: those prohibiting the Hadžić Defence from disclosing to the public any of the material provided to it by the Prosecution² and those allowing redactions from the material provided by the Prosecution any information contained within such documents that disclose the current whereabouts of protected witnesses.³

3. The Hadžić Defence did not respond to the Motion within the time limit prescribed under Rule 126 *bis* of the Rules.

B. Applicable Law

4. The Chamber notes that Article 20(4) of the Statute requires that hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence. Article 20(1) of the Statute requires the Chamber to ensure that proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

5. Article 21(2) of the Statute provides that the accused is entitled to a fair and public hearing of the charges against him, subject to Article 22 of the Statute, which requires the Tribunal to provide in its rules of procedure and evidence for the protection of victims and witnesses, including, but not limited to, the conduct of *in camera* proceedings and the protection of the victim’s identity.

6. Article 21(4)(b) of the Statute requires that the accused have adequate time and facilities for the preparation of his defence; and, Rule 66(A)(i) of the Rules requires the Prosecution to disclose

¹ *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-I, Prosecution’s Motion for Protective Measures for Victims and Witnesses and Documentary Evidence, 3 August 2011 (“Motion”).

² Motion, paras 2-3.

³ Motion, para. 4.

to the accused, within thirty days of the initial appearance, copies of the supporting material that accompanied the indictment when confirmation was sought. However, this disclosure requirement is expressly subject to Rule 53 of the Rules—which provides that, “in exceptional circumstances” and where the interests of justice require, non-disclosure to the public may be ordered with respect to any document or information.

7. Rule 75(F) of the Rules provides that any protective measures ordered for victims or witnesses in prior proceedings before the Tribunal continue to have effect in these proceedings unless and until such measures are eventually rescinded, varied, or augmented.

8. According to Rule 70(B) of the Rules, if the Prosecutor is in possession of information that has been provided to the Prosecutor on a confidential basis and that has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

C. Discussion

9. The Chamber finds that it is necessary for the Prosecution to withhold from the public any confidential material disclosed pursuant to Rule 66(A)(i) of the Rules that may identify a witness for whom protective measures have previously been granted or for whom the Prosecution intends to apply for protective measures in the future.⁴

10. The Chamber also finds it appropriate to allow the Prosecution to withhold the whereabouts of witnesses and other such information from the Hadžić Defence. The Hadžić Defence may seek to contact witnesses through the Prosecution, whether or not they have been granted protective measures.⁵

11. The Chamber will order the Prosecution to disclose both a public/redacted version of the Rule 66(A)(i) material and a confidential/unredacted version to the Hadžić Defence, so that it is known exactly what information is public and what information is confidential.

12. The Chamber, in due course, will set deadlines for the disclosure of material pursuant to Rule 66(A)(ii) of the Rules and any applications for protective measures in relation thereto.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution Motion for Non-disclosure, 2 September 2008 (“*Karadžić Decision*”), para. 9; *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2-PT, partly confidential and *ex parte* Decision on Prosecution’s Motion for Protective Measures for Victims and Witnesses, 30 July 2008, para. 9; *Prosecutor v. Ivan Čermak and Mladen Markač*, Case No. IT-03-73-PT, Decision and Order on Prosecution’s Motion for Protective Measures for Victims and Witnesses, 1 April 2004, pp. 2-3.

13. Material subject to Rule 70 restrictions need not be disclosed until the Prosecution has received permission from the Rule 70 providers for such disclosure; and, the Chamber will order the Prosecution to inform the Chamber if any of the Rule 66(A)(i) material is covered by Rule 70 restrictions.

D. Disposition

14. Accordingly, the Trial Chamber, pursuant to Articles 20, 21, and 22 of the Statute and Rules 53, 54, 66, 69, and 70 of the Rules, hereby GRANTS the Motion, in part, and ORDERS as follows:

- a. The Prosecution shall, no later than Friday, 23 September 2011, disclose to the Hadžić Defence both a confidential/unredacted and public/redacted version of the supporting material that accompanied the indictment when confirmation was sought (including the names of victims, witnesses, or potential witnesses) and all prior statements obtained by the Prosecution from Goran Hadžić.

- b. As a general protective measure for the purpose of disclosure to the Hadžić Defence, the Prosecution may redact from the statements, affidavits, and formal statements of victims, witnesses, or potential witnesses:
 - i. any information that discloses, or might lead to the disclosure of, the current whereabouts of the maker of any such document and/or his or her family;
 - ii. any information contained within such documents that discloses, or might lead to disclosure of, the current whereabouts of individuals named within them who have made statements that the Prosecution has already disclosed or that it intends to disclose; and
 - iii. the personal identification number or passport number of victims, witnesses, or potential witnesses.

- c. If the Hadžić Defence is aware or becomes aware of the current whereabouts of a victim, witness, or potential witness identified by the Prosecution, this information shall not be disclosed to the public, except to the limited extent that such disclosure is directly and

⁵ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-I, Decision on Prosecution Motion for Protective Measures for Victims and Witnesses and Documentary Evidence, 24 June 2011, paras 13-14; *Karadžić* Decision, para. 11.

specifically necessary for the preparation and presentation of the case (as discussed below).

- d. The Hadžić Defence shall not approach a victim, witness, or potential witness identified by the Prosecution without prior written notice to the Prosecution, in such time and circumstances as will allow the Prosecution to take steps as may be necessary and appropriate to protect the security and privacy of the victim, witness, or potential witness. When contacting a victim, witness, or potential witness identified by the Prosecution, the Hadžić Defence must identify itself. To the extent reasonably necessary to allow the Hadžić Defence to prepare for and participate in these proceedings and present a defence, the Hadžić Defence may seek to obtain from the Prosecution the current whereabouts of a victim, witness, or potential witness.
- e. The Hadžić Defence shall not disclose to the public any confidential portions of the supporting material described in the foregoing paragraphs (including, but not limited to, the names, identifying information, and whereabouts of any victim, witness, or potential witness), except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the case. If the Hadžić Defence finds it directly and specifically necessary to make disclosures pursuant to this limited purpose, they shall inform each person among the public to whom non-public material or information is shown or disclosed, that such person is not to copy, reproduce, or publicise such material or information, and is not to show, disclose, or convey it to any other person. If provided with the original or any copy or duplicate of such material or information, such person shall return it to the Hadžić Defence when continued possession of the material or information is no longer necessary for the preparation and presentation of the case. The Hadžić Defence shall maintain a list of persons to whom the material is disclosed, recording the name of the persons, a description of the material disclosed, and the dates of both disclosure and return of the material.
- f. Should a member of the Hadžić Defence withdraw or otherwise leave the defence team, all the materials disclosed by the Prosecution, together with copies of such material, held or possessed by this member shall be handed over to the person serving as Lead Counsel for the defence at the time.
- g. Except as provided for by subsection (e) above, any person, including members of the Hadžić Defence, who knowingly and wilfully discloses the identifying information of any protected victim, witness, or potential witness, or any other information sufficient to

identify these individuals, shall be in violation of this Decision and Order, and may be subject to prosecution for contempt of the Tribunal pursuant to Rule 77 of the Rules.

15. The Prosecution shall, no later than Friday, 23 September 2011, inform the Chamber and the Hadžić Defence if any of the Rule 66(A)(i) material is covered by Rule 70 restrictions.

16. For the purposes of this decision, the “public” means all persons, including corporations; governments and organs/departments thereof; organisations; entities; associations; groups; family members, friends, and associates of Goran Hadžić; accused and defence counsel in other proceedings before the Tribunal (and/or national courts); and the media. However, for purposes of this decision, the “public” does not mean Judges of the Tribunal; staff of the Registry and the Office of the Prosecutor; Goran Hadžić himself; or members of the Hadžić Defence.

17. Beyond that specified in the orders in the disposition above, all other requests for relief made by the Prosecution in the Motion are hereby DENIED.

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

Done this twenty-third day of August 2011,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]