

**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-PT
Date: 13 September 2012
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 13 September 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON HADŽIĆ MOTION FOR
DISCLOSURE OF NON-IDENTIFYING INFORMATION RELATED TO
PROTECTED WITNESSES**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

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 Hadžić’s “Motion for Disclosure of Non-Identifying Information Related to Protected Witnesses” (“Motion”), filed by Hadžić with a confidential annex on 28 August 2012. On 7 September 2012, the Prosecution filed the “Prosecution Response to Motion for Disclosure of Non-Identifying Information Related to Protected Witnesses” (“Response”).

2. In the Motion, Hadžić requests the Trial Chamber to order the Prosecution to disclose redacted versions of previous statements of GH-003, GH-016, and GH-021,¹ in the least restrictive manner necessary to conceal their identity.² Hadžić submits that the Trial Chamber should adopt what he considers a common practice at the United Nations International Criminal Tribunal for Rwanda (“ICTR”), where witness protection orders only permit delayed disclosure of “identifying information” and therefore require the substance of witness statements to be disclosed in redacted form according to the usual schedule.³ Hadžić also submits that the Prosecution should review the exhibits and determine whether they could be disclosed without revealing the witnesses’ identities.⁴ Hadžić submits that any burden on the Prosecution related to performing such redactions is justified given the burden and prejudice that would befall him should he not be provided with such information.⁵ Hadžić also requests that the Prosecution be ordered to disclose to him the pseudonyms of all protected witnesses in this case as used in any previous case.⁶ Hadžić submits that such disclosure would allow him to review the substance of these witnesses’ public testimony without ascertaining their identity.⁷ Hadžić acknowledges that this testimony is publicly available, but submits that he has no way of determining which testimony relates to which protected witness.⁸

3. The Prosecution requests that the Motion be dismissed, submitting that Hadžić’s requests have already been considered and rejected by the Chamber in its confidential “Decision on Prosecution Motion for Protective Measures for Witnesses” (“Protective Measures Decision”) of 24 August 2012.⁹ The Prosecution submits that the Motion is a request for reconsideration of the Protective Measures Decision and that Hadžić has failed to demonstrate that the Chamber erred in

¹ The protective measure of delayed disclosure of identity until 30 days before testimony is in effect for these three witnesses.

² Motion, paras 1, 3.

³ Motion, para. 3.

⁴ Motion, para. 3.

⁵ Motion, para. 3.

⁶ Motion, paras 1, 4.

⁷ Motion, para. 4.

⁸ Motion, para. 4.

⁹ Response, paras 1, 9.

its reasoning or that reconsideration is needed to avoid injustice.¹⁰ The Prosecution submits that the request for redacted versions of the statements of GH-003, GH-016, and GH-021 is a repetition of a request made by him in his response to the Prosecution's motion for protective measures for witnesses in this case¹¹ and that the Chamber has already pronounced on this matter.¹² The Prosecution submits that the ICTR establishes protective measures on a case-by-case basis depending on the particular circumstances of each individual case and that the existence of ICTR orders requiring the disclosure of redacted statements for some protected witnesses is not a reason for the Chamber to reconsider its Protective Measures Decision.¹³ The Prosecution further submits that providing the previous pseudonyms of all delayed disclosure witnesses would put at risk the non-disclosure of these witnesses' identities, which would undermine the purpose of the protective measure of delayed disclosure in effect for these witnesses.¹⁴ In addition, the Prosecution submits that the Motion is effectively moot insofar as it relates to all delayed disclosure witnesses other than GH-003, GH-016, and GH-021.¹⁵ The Prosecution submits that according to the current trial schedule Hadžić will receive the identities and full, unredacted statements of these delayed disclosure witnesses, including their pseudonyms from past cases, in mid-September 2012, which is before the briefing period for this matter will elapse and thus before a decision on the Motion would be issued.¹⁶

4. The Chamber set out in the Protective Measures Decision the disclosure obligations for the Prosecution with respect to those witnesses for whom the protective measure of delayed disclosure of identity until 30 days before testimony is in effect.¹⁷ Pursuant to that Decision, the Prosecution is required to disclose the full and unredacted statements, prior transcripts, and related exhibits for these three witnesses no later than 30 days prior to the expected date of their respective testimonies in this case.¹⁸ The Prosecution is therefore not required to disclose to Hadžić any pseudonyms assigned to these witnesses in previous cases before the Tribunal or to disclose any prior statements—in redacted form—before the date that full disclosure is required.

5. Regarding the disclosure to Hadžić of any pseudonyms assigned in other cases to the witnesses for whom the protective measure of delayed disclosure of identity until 30 days before trial is in effect, the Trial Chamber addressed the disclosure obligations of the Prosecution related

¹⁰ Response, para. 5.

¹¹ Response to Prosecution Motion for Protective Measures for Witnesses, with confidential annex, 2 July 2012, paras 3, 9, 10, 12, and confidential annex, p. 1.

¹² Response, paras 2, 3, and 4.

¹³ Response, para. 5.

¹⁴ Response, paras 6-7.

¹⁵ Response, para. 8.

¹⁶ Response, para. 8.

¹⁷ GH-003, GH-016, and GH-021.

¹⁸ Protective Measures Decision, para. 42(a)(lii).

thereto in the Protective Measures Decision, requiring the Prosecution to disclose the full and unredacted statements, prior transcripts, and related exhibits no later than 30 days prior to the anticipated start of trial for those witnesses.¹⁹

6. For the foregoing reasons, the Trial Chamber considers that the above issues were fully litigated in relation to the Protective Measures Decision and that it is not necessary for the Trial Chamber to revise its rulings.

7. Accordingly, the Trial Chamber hereby DENIES the Motion.

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

Done this thirteenth day of September 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]

¹⁹ Protective Measures Decision, para. 42(a)(li).