



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: 8 February 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:** 8 February 2012

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

---

**DECISION ON ACCUSED'S SIXTY-SIXTH DISCLOSURE VIOLATION MOTION**

---

**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 “66<sup>th</sup> Motion for Finding of Disclosure Violation and for Remedial Measures”, filed on 27 December 2011 (“Motion”), and hereby issues its decision thereon.

### I. Submissions

1. In the Motion, the Accused argues that the Office of the Prosecutor (“Prosecution”) has violated Rules 66(A)(ii) and 69(C) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) by failing to disclose the identity of 12 witnesses (“Witnesses”) prior to the commencement of trial.<sup>1</sup> The Witnesses referred to are KDZ320, KDZ456, KDZ468, KDZ490, KDZ492, KDZ493, KDZ515, KDZ523, KDZ531, KDZ532, KDZ549, and KDZ555.<sup>2</sup> The Accused observes that the Pre-Trial Judge set 7 May 2009 as the deadline by which all statements and transcripts of witnesses should have been disclosed to him pursuant to Rule 66(A)(ii) of the Rules.<sup>3</sup> In the Accused’s submission, the Prosecution’s justification for its failure to comply with this deadline with respect to the Witnesses “were various delayed disclosure orders issued by this Chamber or by Trial Chambers in other cases” where they testified.<sup>4</sup>

2. The Accused argues that such orders do not accord with the terms of Rule 69(C) of the Rules which provides that “subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time *prior to the trial* to allow adequate time for preparation of the defence”.<sup>5</sup> In support of his submission that such delayed disclosure orders were invalid he refers to the recent Judgement of the Appeals Chamber for the International Criminal Tribunal for Rwanda (“ICTR”) in the *Bagosora* case issued on 14 December 2011 (“*Bagosora* Appeal Judgement”).<sup>6</sup> According to the Accused’s interpretation, the *Bagosora* Appeal Judgement “held that the Trial Chamber lacked authority to delay disclosure of a witness’ identity and statements until 35 days prior to the testimony of the witness” and that such an order would be *ultra vires*.<sup>7</sup> The Accused argues that this means the orders delaying the disclosure of the identities and statements of the Witnesses to a date after the commencement of the trial were

---

<sup>1</sup> Motion, para. 1.

<sup>2</sup> Motion, para. 1.

<sup>3</sup> Motion, paras. 2–3.

<sup>4</sup> Motion, para. 4.

<sup>5</sup> Motion, para. 6.

<sup>6</sup> Motion, paras. 4–5 citing *Bagosora & Nsengiyumva v. Prosecutor*, Case No. ICTR-98-41-A, Judgement, 14 December 2011 (“*Bagosora* Appeal Judgement”), paras. 80–85.

<sup>7</sup> Motion, paras. 4–5 citing *Bagosora* Appeal Judgement, paras. 80–85.

invalid.<sup>8</sup> On this basis the Chamber is requested to make a finding that the Prosecution's failure to disclose the Witnesses' identities and statements violated the Rules.<sup>9</sup>

3. The Accused claims he has been prejudiced by the Prosecution's failure to disclose the identity and statements of the Witnesses prior to trial.<sup>10</sup> In support of this submission, the Accused observes that the "mid-trial disclosure, coupled with the late disclosure of massive amounts of Rule 66(A)(ii) and Rule 68 material and the lack of resources of the defence to investigate new material during the trial, has resulted in a complete lack of investigation into the information provided by the delayed disclosure witnesses".<sup>11</sup> According to the Accused, this meant that he had to conduct his cross-examination of the Witnesses without being able to confront them with contrary evidence from third parties or other documents which he did not have.<sup>12</sup> As a remedy for this alleged violation, the Accused requests that the evidence of the Witnesses be excluded.<sup>13</sup>

4. On 9 January 2012, the Prosecution filed confidentially the "Prosecution's Response to Sixty-Sixth Motion for Finding of Disclosure Violation" ("Response") in which it submits that the Motion should be dismissed.<sup>14</sup> The Prosecution argues that the Accused ignores the case law of the Tribunal which "has determined that the explicit incorporation of Rule 75 into Rule 69(C), which governs delayed disclosure, permits trial chambers to delay disclosure after the pre-trial period" and also relies on an "over-simplistic reading" of the recent *Bagosora* Appeal Judgement.<sup>15</sup>

5. The Prosecution observes that delayed disclosure orders for four of the Witnesses were granted by this Chamber and remain in force.<sup>16</sup> For six of the Witnesses, the delayed disclosure orders were granted in other trials and apply *mutatis mutandis* in this case.<sup>17</sup> The Prosecution notes that with respect to KDZ320 and KDZ523 there were no delayed disclosure orders in

<sup>8</sup> Motion, para. 7.

<sup>9</sup> Motion, para. 8.

<sup>10</sup> Motion, paras. 10–12.

<sup>11</sup> Motion, para. 10.

<sup>12</sup> Motion, para. 11.

<sup>13</sup> Motion, para. 13.

<sup>14</sup> Response, para. 1. The Prosecution filed the Response confidentially because of the need to refer to confidential decisions.

<sup>15</sup> Response, paras. 1, 7, citing, *Prosecutor v. Šešelj*, Case No. IT-03-67-AR73.6, Decision on Vojislav Šešelj's Appeal against the Trial Chamber's Oral Decision of 7 November 2007, 24 January 2008 ("*Šešelj* Appeal Decision"), para. 15; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Milan Lukić's Motion to Compel Disclosure of Contact Information and on the Prosecution's Urgent Motion to Compel Production of Contact Information, 30 March 2009 ("*Lukić* Decision"), paras. 20–21; *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39 & 40-PT, First Decision on Prosecution's Motion for Protective Measures for Sensitive Source Witnesses, 24 May 2002 ("*Krajišnik and Plavšić* Decision"), paras. 5–8.

<sup>16</sup> Response, para. 2, referring to KDZ456, KDZ493, KDZ531 and KDZ532.

<sup>17</sup> Response, para. 2, referring to KDZ468, KDZ490, KDZ492, KDZ515, KDZ549 and KDZ555.

place at the date of the Motion, given that the Chamber had already rescinded the delayed disclosure order for KDZ320 and determined that there had never been delayed disclosure in place for KDZ523.<sup>18</sup> It therefore contends that the Accused failed to provide any basis to revisit the issue with respect to these two witnesses, particularly given that the Chamber had already given the Accused additional time to prepare for their testimony to address any prejudice.<sup>19</sup>

6. In the Prosecution's submission it is within the Chamber's "discretionary power to extend the protection of delayed disclosure beyond the pre-trial period if doing so is necessary to safeguard the security of witnesses, provided that the measures are consistent with the rights of the accused." and with respect to the Witnesses an appropriate balance had been struck in finding that there were exceptional circumstances necessitating such delayed disclosure.<sup>20</sup> In that regard it observes that the Chamber had already determined that the protective measures of delayed disclosure did not "unduly prejudice the Accused's right to a fair trial" and determined, in granting or reviewing the delayed disclosure orders, that the Accused would have sufficient time to prepare his defence and cross-examination of the Witnesses.<sup>21</sup>

7. The Prosecution observes that the Appeals Chamber has confirmed that delayed disclosure orders are protective measures for the purposes of Rule 75 of the Rules.<sup>22</sup> It also contends that the Appeals Chamber in determining that delayed disclosure orders, which included orders extending beyond the pre-trial period, were protective measures for the purposes of Rule 75 of the Rules and continue *mutatis mutandis* to other proceedings "implicitly acknowledged the legality of such orders".<sup>23</sup>

<sup>18</sup> Response, para. 3, citing Decision on Accused's Motion for Modification of Delayed Disclosure: Witness KDZ320, 7 December 2011 ("KDZ320 Decision"), para. 13 and Decision on Accused's Motion for Modification of Delayed Disclosure: Witnesses KDZ320, KDZ456, KDZ523 and KDZ532, confidential, 23 September 2011, ("Consolidated Modification Decision"), para. 22.

<sup>19</sup> Response, paras. 3, 11, 13, citing Decision on Accused's Motion for Modification of Protected Measures: Witness KDZ490 and KDZ492, 25 March 2010 ("KDZ490 and KDZ492 Decision"), para. 18; Decision on Accused's Motion for Ninth Suspension of Proceedings: Witness KDZ456, 28 October 2011 ("Ninth Suspension Decision"), para. 11; Oral Decision on Accused's Motion of 27 September 2011 to Postpone testimony of Witness KDZ492, 28 September 2011, T. 19525; Response, para. 15, citing KDZ320 Decision and Consolidated Modification Decision, paras. 12–24.

<sup>20</sup> Response, paras. 4, 6, citing Consolidated Modification Decision, para. 8; *Šešelj* Appeal Decision, para. 15; *Lukić* Decision, paras. 20–21; *Krajišnik* and *Plavšić* Decision, paras. 5–8; Response, paras. 9–10, 11–12, 14–15, citing Decision on Prosecution's Motion for Delayed Disclosure for KDZ456, KDZ493, KDZ531 and KDZ532, 5 June 2009 ("June 2009 Decision"), paras. 14–15; KDZ490 and KDZ492 Decision, paras. 9–10, 15–16, 19; Ninth Suspension Decision, para. 7.

<sup>21</sup> Response, paras. 10, 13, citing Ninth Suspension Decision, paras. 7, 9–10.

<sup>22</sup> Response, fn. 11, citing, *Prosecutor v. Krajišnik*, Case No. IT-00-39A, Decision on Motion by Mićo Stanišić for Access to all Confidential Materials in the Krajišnik Case, 21 February 2007 ("*Krajišnik* Appeal Decision"), para. 6; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić's Motion for Access to all Confidential Material in the Brđanin Case, 24 January 2007, ("*Brđanin* Appeal Decision"), para. 17.

<sup>23</sup> Response, fn. 11 and 17, citing, *Krajišnik* Appeal Decision, para. 6; *Brđanin* Appeal Decision, para. 17.

8. It also contends that the Accused erroneously claims that the *Bagosora* Appeal Judgement concluded that “delayed disclosure orders extending beyond the pre-trial period are *ultra vires*”.<sup>24</sup> In support of that submission, the Prosecution observes that the Appeals Chamber had after its initial comments “considered whether the extension beyond the pre-trial period was ‘necessary for the protection of witnesses’” and found that in the circumstances of the case the requirements for extended delayed disclosure had not been met.<sup>25</sup>

9. The Prosecution concludes that even if the delayed disclosure orders are held not to be valid, no remedy is required given that the Accused has suffered no prejudice.<sup>26</sup> In the alternative, even if the Accused is found to have been prejudiced by the delayed disclosure orders, the Prosecution argues that exclusion of the evidence of the Witnesses is neither necessary nor appropriate.<sup>27</sup> In support of this submission it observes that allowing for further preparation time and recalling of witnesses upon showing good cause are options which remain available.<sup>28</sup>

## **II. Applicable Law**

10. The Chamber has outlined before the law applicable to delayed disclosure to the Accused, and will not repeat it in this Decision, but refers to the relevant paragraphs of the “Decision on Accused’s Motion for Modification of Delayed Disclosure: Witnesses KDZ320, KDZ456, KDZ523 and KDZ532”, filed on 23 September 2011 (“Consolidated Modification Decision”).<sup>29</sup>

11. However, for the purposes of this Decision, the Chamber emphasises that while ordinarily Rule 66(A)(ii) obligates the Prosecution to produce copies of the statements and transcripts of all witnesses whom the Prosecution intends to call to testify at trial, this disclosure obligation is not absolute.<sup>30</sup> Specifically, Rule 69(A) provides that “in exceptional circumstances”, a Trial Chamber may issue an order preventing disclosure to the accused of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal. The discretion of a Trial Chamber to order non-disclosure in this manner is limited by Rule 69(C), which provides that, “[s]ubject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate

---

<sup>24</sup> Response, para. 8.

<sup>25</sup> Response, para. 7, citing *Bagosora* Appeal Judgement, para. 84.

<sup>26</sup> Response, para. 16.

<sup>27</sup> Response, para. 17.

<sup>28</sup> Response, para. 17.

<sup>29</sup> See Consolidated Modification Decision, paras. 7–9 referring to June 2009 Decision, paras. 9–12 and KDZ490 and KDZ492 Decision, paras. 7–10.

time for the preparation of the defence.” In that regard, the Appeals Chamber has ruled that the express incorporation of Rule 75 provides a Trial Chamber with discretion to extend the period of non-disclosure after the pre-trial period.<sup>31</sup> The non-disclosure of the identity of a witness until a time well into the trial has been characterised as an extraordinary measure which will only be entertained “where well-defined justification is established” and as an exception for witnesses of a particularly sensitive nature.<sup>32</sup>

12. The recent *Bagosora* Appeal Judgement observed that the discretion of trial chambers in exceptional circumstances to order the non-disclosure of the identity of a victim or witness who may be in danger was constrained by Rule 69(C) which required that the “identity of the victim or witness shall be disclosed in sufficient time *prior to the trial*”.<sup>33</sup> The Appeals Chamber found that the trial chamber in that case had erred in ordering the disclosure of the identity of protected victims and witnesses and their un-redacted statements no later than 35 days before the expected date of their testimony.<sup>34</sup> It concluded that it did not consider that “such disregard for the explicit provision of the Rules was necessary for the protection of witnesses”, particularly given that the trial chamber had not identified any problems with a less restrictive disclosure schedule which had been applied in a previous decision.<sup>35</sup>

13. It is also important to reiterate that by virtue of Rule 75(F)(i) of the Rules, “[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal [...] [they] shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal”. In that regard, the Appeals Chamber has held that “delayed disclosure” orders are protective measures to which Rule 75(F) applies.<sup>36</sup> Thus, the protective

---

<sup>30</sup> Consolidated Modification Decision, para. 8.

<sup>31</sup> *Šešelj* Appeal Decision, paras. 12, 15, cited in Consolidated Modification Decision, para. 8.

<sup>32</sup> *Krajišnik and Plavšić* Decision, paras. 7–8, 13, 15, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, First Decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses, 3 May 2002; *Lukić* Decision, paras. 20–21.

<sup>33</sup> *Bagosora* Appeal Judgement, paras. 82, 83, 85 (emphasis in original).

<sup>34</sup> *Bagosora* Appeal Judgement, paras. 83, 85.

<sup>35</sup> *Bagosora* Appeal Judgement, paras. 83-84, 86, 89. Contrary to the Accused’s characterisation of the *Bagosora* Appeal Judgement, the Appeals Chamber does not state that delayed disclosure orders which post-date the start of trial are *ultra vires* or that such orders are invalid.

<sup>36</sup> Consolidated Modification Decision, para. 9, citing, *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on “Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case”, 21 February 2007 (“Decision on Access in *Krajišnik*”), p. 6; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić’s Motion for Access to all Confidential Materials in the Brđanin Case, 24 January 2007, para. 17. The Chamber noted that despite the Appeals Chamber jurisprudence governing the matter, the issue of whether delayed disclosure orders should be continued pursuant to Rule 75(F) has been the subject of debate; see *Prosecutor v. Lazarević and Lukić*, Case No. IT-03-70-PT, Dissenting Opinion of Judge O-Gon Kwon in the Decision on Prosecution’s Motion for Protective Measures and Request for Joint Decision on Protective Measures, 19 May 2005; *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Partially Dissenting Opinion of Judge Pocar in the *Krajišnik* Decision on Access; *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Partially Dissenting Opinion of Judge Schomburg in the Decision on Access in *Krajišnik*.

measures subsist unless and until they are rescinded, varied, or augmented on the application of a party to the appropriate Judge or Trial Chamber, according to the procedure set out in Rule 75(G).<sup>37</sup>

14. Rule 68 *bis* provides that a Trial Chamber may, *proprio motu* or at the request of either party, decide on sanctions to be imposed on a party which fails to comply with its disclosure obligations under the Rules. In determining the appropriate remedy (if any), the Chamber has to examine whether or not the accused has been prejudiced by the relevant breach.<sup>38</sup>

### III. Discussion

15. The Chamber notes that the protective measures currently enjoyed by KDZ456, KDZ493, KDZ531 and KDZ532, including the delayed disclosure of their identities and statements to the Accused, were granted by this Chamber.<sup>39</sup> The Accused does not seek reconsideration of this decision but rather alleges that this delayed disclosure amounted to a violation of the Rules.

16. The protective measures currently enjoyed by KDZ468, KDZ490, KDZ492, KDZ515, KDZ549 and KDZ555, including the delayed disclosure of their identities and statements to the Accused, have been carried over to this case from previous proceedings.<sup>40</sup> Pursuant to Rule 75(F) these protective measures, continue to have effect *mutatis mutandis* in this case.<sup>41</sup> In that regard, the Appeals Chamber has held that “delayed disclosure” orders are protective measures to which Rule 75(F) applies.<sup>42</sup> The Accused does not apply pursuant to Rule 75(G) of the Rules to vary or rescind these existing protective measures but rather alleges that the Prosecution violated its obligations under Rules 66(A)(ii) and 69(C) by the delayed disclosure.

17. This Chamber, in granting delayed disclosure orders and continuing the delayed disclosure granted in other cases for the Witnesses, carefully considered the well established jurisprudence and practice of the Tribunal which allows for the delayed disclosure of a witness’s identity even after the commencement of trial.<sup>43</sup> The Appeals Chamber clearly stated that it

<sup>37</sup> Consolidated Modification Decision, para. 9.

<sup>38</sup> *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 179; *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeal Judgement, 29 July 2004, para. 268.

<sup>39</sup> June 2009 Decision.

<sup>40</sup> Decision on Protective Measures for Witnesses and Annex A Chart, 24 July 2009, para. 30 and confidential Annex A; Prosecution’s Fourth Notification of Protective Measures for Witnesses Currently in Force, 17 June 2009, confidential and *ex parte* appendix B.

<sup>41</sup> See footnote 36 above.

<sup>42</sup> See footnote 36 above.

<sup>43</sup> *Šešelj* Appeal Decision, para. 15; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Prosecution’s Twelfth Motion for Protective Measures for Victims and Witnesses, 12 December 2002 (“*Brđanin*

does not accept the argument that “Rule 69(C) must be interpreted as authorising delayed disclosure prior to the commencement of the trial only. The purpose of Rule 69(C) is to allow a Trial Chamber to grant those protective measures that are necessary to protect the integrity of its victims and witnesses, subject to the caveat that such measures are consistent with the rights of the accused to have adequate time for the preparation of his defence”.<sup>44</sup> In that regard it is significant that Rule 69(C) is subject to Rule 75 which gives wide discretion to a 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”.

18. The Chamber does not accept the Accused’s characterisation of the *Bagosora* Appeal Judgement as standing for the position that delayed disclosure orders which post-date the start of trial are invalid. The *Bagosora* Appeal Judgement merely concluded that in the specific circumstances of that case it did not consider that “such disregard for the explicit provision of the Rules was necessary for the protection of witnesses”.<sup>45</sup> In that regard the Appeals Chamber observed that original protective measures which had been ordered before the joinder of the *Nsengiyumva* and *Bagosora* cases required the disclosure of the identity of the witnesses prior to trial and that the Trial Chamber “did not indicate that any problems had arisen from this previous arrangement justifying a more restrictive disclosure schedule”.<sup>46</sup> The Trial Chamber in ordering the disclosure of the identity of witnesses only 35 days prior to their testimony was effectively augmenting the existing protective measures but did not identify any exceptional circumstances relating to the protection of the specific witnesses which would warrant such a change.<sup>47</sup> The Appeals Chamber found that the Trial Chamber in taking this approach had fallen into error in imposing a more restrictive disclosure schedule without identifying why such an augmentation was necessary for the protection of the witnesses.<sup>48</sup>

19. The period of time before which the witness’s identity must be disclosed to the accused depends on the circumstances of each case and involves striking “a balance between the safety of the witnesses and the need for the Defence to be given sufficient opportunity to properly

---

Decision”), paras. 8, 13; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Order of Protection, 1 August 2006 (“*Popović* Decision”), pp. 4–6.

<sup>44</sup> *Šešelj* Appeal Decision, para. 15.

<sup>45</sup> *Bagosora* Appeal Judgement, para. 84. The Chamber observes that Rule 69(C) of the Rules of Procedure and Evidence of the ICTR was amended in July 2002 to remove the “prior to trial” reference and now reads, “[s]ubject to Rule 75, the identity of the victim or witness shall be disclosed within such time as determined by [the] Trial Chamber to allow adequate time for preparation of the prosecution and defence”. This amendment expressly vests ICTR trial chambers with the discretion to determine when the identity of the witness should be disclosed to ensure adequate time for preparation and effectively codifies the practice and interpretation of Rule 69(C) which had developed surrounding this issue.

<sup>46</sup> *Bagosora* Appeal Judgement, para. 84.

<sup>47</sup> *Bagosora* Appeal Judgement, paras. 83–84.

<sup>48</sup> *Bagosora* Appeal Judgement, para. 84.



investigate them”.<sup>49</sup> In making that assessment, Chambers have recognised that “the greater the length of time between the disclosure of identity and the time when the witness is to give evidence, the greater the potential for interference with that witness”.<sup>50</sup> In applying this standard, there have been many instances where, when exceptional circumstances have been shown, notwithstanding the wording of Rule 69(C) which includes the terms “prior to trial”, the disclosure of a particularly sensitive witness’s identity has been delayed to a specific number of days before their testimony, which can post-date the commencement of trial.<sup>51</sup>

20. In the absence of a clearer statement by the Appeals Chamber, the Chamber is not of the view that the settled practice and interpretation of Rule 69(C) of the Rules has been overruled by the *Bagasora* Appeal Judgement such that delayed disclosure orders which post-date the commencement of trial are invalid. It follows that the specific delayed disclosure orders granted or continued for the Witnesses in this case were consistent with the well established interpretation of Rule 69(C) which allows for delayed disclosure after the commencement of trial. The Prosecution in following those decisions cannot therefore be found to have been in breach of its disclosure obligations under the Rules. In the absence of any breach, there is no basis to exclude the evidence of the Witnesses as requested by the Accused.

21. In relation to the two remaining witnesses, the Chamber has already ruled that there was no delayed disclosure order in place for KDZ523 and has rescinded the delayed disclosure order in place for KDZ320.<sup>52</sup> For both witnesses the Chamber extended the period following disclosure of their identity and the date of testimony to ensure that the Accused had sufficient time to prepare for these witnesses.<sup>53</sup> These measures ordered by the Chamber have already addressed any prejudice the Accused may have suffered with respect to the late disclosure of the identity of KDZ523 and KDZ320.

---

<sup>49</sup> *Brđanin* Decision, para. 13.

<sup>50</sup> June 2009 Decision, para. 11 and decisions cited therein.

<sup>51</sup> *Brđanin* Decision, paras. 8–13; *Popović* Decision, pp. 4–6.

<sup>52</sup> Consolidated Modification Decision, paras. 12–24; KDZ320 Decision, paras. 12, 14.

<sup>53</sup> Consolidated Modification Decision, para. 22; KDZ320 Decision, para. 13.

**IV. Disposition**

22. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 66(A)(ii), 69(C), and 68 *bis* of the Rules, hereby **DENIES** the Motion.

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



---

Judge O-Gon Kwon  
Presiding

Dated this eighth day of February 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**