

IT-09-92-T
DSTK16 - DSTK13
13 March 2013

ITK16 RB.

**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-09-92-T
Date: 13 March 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 13 March 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR PROTECTIVE
MEASURES FOR WITNESS RM-151**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. In its Decision on the Prosecution's Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses on 11 January 2013, the Chamber admitted the evidence of Witness RM-151 under seal.¹ The Prosecution was instructed to file a request for protective measures within two weeks of the Rule 92 *bis* Decision in the event it would not want the evidence of Witness RM-151 to become public.²

2. On 28 January 2013, the Prosecution filed a motion for protective measures for Witness RM-151, requesting that the witness's evidence be admitted under seal and that she be referred to only by pseudonym ("Motion").³ The Prosecution submits that the measures are necessary as the witness fears for her own security and that of her family should her identity be revealed to the public.⁴ It submits that the witness resides near the border of the Republic of Serbia ("Serbia") and Bosnia and Herzegovina ("BiH") and that these areas are facing ethnic tensions and instability due to the current political climate in BiH as well as due to the impact of the recent ICTY Appeals Chamber Judgement in the *Gotovina and Markač* case.⁵ Finally, the Prosecution argues that the protective measures sought do not interfere with the rights of the Accused to a fair trial.⁶

3. In its response filed on 8 February 2013 ("Response"), the Defence opposes the Motion, arguing that the grounds provided for seeking the protective measures are contradictory and unclear.⁷ First, the Defence contends that contrary to the Prosecution's submissions, and as stated in the Investigator's Declaration attached to the Motion, the witness resides near the border of the Republika Srpska ("RS") and not Serbia.⁸ Second, the Defence submits that the Investigator's Declaration makes no mention of the *Gotovina and Markač* Appeal Judgement, and that, moreover, the alleged tensions resulting from this Judgement concern Croatia and Serbia, and not BiH.⁹ Third,

¹ Decision on Prosecution's Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*: Sarajevo Witnesses, 11 January 2013 ("Rule 92 *bis* Decision").

² Rule 92 *bis* Decision, para. 38. While the instruction purported to relate to Witness RM-112, in an oral corrigendum on 15 January 2013, the Chamber clarified that it related to the evidence of Witness RM-151. See *Mladić*, 15 January 2013, T. 6813:20-6814:4. The Chamber notes that the Prosecution's request for protective measures was filed after the end of the two week set in the Rule 92 *bis* Decision, but nonetheless accepts it.

³ Prosecution Motion for Protective Measures for Witness RM 151, 28 January 2013 (Confidential with Confidential Annex A), paras 2, 7.

⁴ Motion, para 5. The Prosecution attaches a Declaration from an OTP investigator to support its submissions, detailing the witness's concerns ("Investigator's Declaration"). See Confidential Annex A, para. 3.

⁵ Motion paras 5-6.

⁶ Motion, para. 8.

⁷ Defence Response to Prosecution Motion for Protective Measures for Witness RM 151, 8 February 2013 (Confidential), paras 3, 9, 12.

⁸ Response, paras 4-5.

⁹ Response, paras 5-6.

it contends that the witness's statement dated October 2008 demonstrates that at that time she was living in Sarajevo, which in view of the Defence adds more confusion as to the grounds for protective measures set forth in the Motion.¹⁰ Finally, the Defence contends that granting the requested protective measures ultimately amounts to closed session testimony for the witness, which given the unclear basis of the request for protective measures, are unjustified in the current case.¹¹ Should the Motion be granted the Defence submits that at a minimum it should be provided a chance to cross-examine the witness in public session with the use of a pseudonym, to preserve as much as possible of the public element of the trial.¹²

II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law in relation to protective measures, as set out in a prior decision.¹³

III. DISCUSSION

5. The Investigator's Declaration records that the witness refused to testify in the *Mladić* trial "out of fear", and that she is "terrified of retaliation" if her identity becomes known, given that she resides in a small hamlet near the border of the RS.¹⁴ The Prosecution's submissions concerning the tensions created by the *Gotovina and Markač* Appeals Judgement are unsubstantiated. The Chamber further notes that the evidence provided by the witness is generic in nature. It relates to an incident of shelling, the injuries she and members of her family sustained, and the damage that was incurred on the building shelled; the witness provides no evidence on the identity of the perpetrators of the shelling.¹⁵ As a result, it is unclear to the Chamber how this evidence may antagonise persons residing in the area where the witness lives. The Motion presents insufficient information for the Chamber to determine that protective measures are justified in the instant case. Weighing the generic reasons provided in the Motion against the interests for a public trial, the Chamber denies the Motion.

¹⁰ Response, para. 8.

¹¹ Response, paras 10-12.

¹² Response, para. 13.

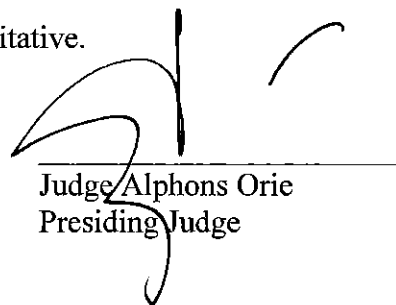
¹³ Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2012 ("RM-115 Decision"), paras 3-6.

¹⁴ Investigator's Declaration, para. 3.

IV. DISPOSITION

6. For the foregoing reasons, pursuant to Articles 20 and 22 of the Statute of the Tribunal, and Rule 75 (A) of the Rules of Procedure and Evidence, the Chamber **DENIES** the Motion, and **INSTRUCTS** the Registry to change the status of the witness's admitted evidence into public.

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



Judge Alphons Orie
Presiding Judge

Dated this thirteenth day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ See Rule 65 *ter* number 28649, under seal. A memorandum by the Registry assigning exhibit numbers to the evidence admitted through RM-151 is still pending to this date.