

IT-95-5/18-T
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30 June 2011

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwón, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 30 June 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR RECONSIDERATION OF
PROTECTIVE MEASURES FOR WITNESS KDZ531

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber for reconsideration of that part of the Pre-Trial Chamber's *Decision on Prosecution's Motion for Delayed Disclosure for KDZ456 KDZ493, KDZ531, and KDZ532 and Variation of Protective Measures for KDZ489* (5 June 2009) which ordered that the testimony of Witness KDZ531 be heard entirely in closed session.

2. On 29 June 2011, pursuant to an order of the Trial Chamber, the *ex parte* submission of the prosecution justifying the protective measures for prosecution witness KDZ531 was disclosed to Dr. Karadzic for the first time. The Trial Chamber's decision was based upon these representations, which the defence never had the opportunity to see or contest.

3. Dr. Karadzic contends that the standard of reconsideration of a decision which is made based on *ex parte* representation is *de novo* and he would object to the Trial Chamber utilizing the restrictive standard of reconsideration which applies to decisions made after hearing the fully informed submissions of both parties.

4. Having now seen the representations made by the prosecution, Dr. Karadzic is disappointed that the Pre-Trial Chamber simply rubber stamped the prosecution's request for extreme protective measures such as delayed disclosure of the identity and statements of the witness until 30 days before his testimony and that the entire testimony be heard in closed session. When considering *ex parte* representations, a Chamber must exercise a heightened scrutiny since the other party has no opportunity to challenge those representations. There is no evidence that the Pre-Trial Chamber gave any consideration to whether conditions which were less burdensome should be imposed.

5. Dr. Karadzic can understand why the prosecution would not want him to have the disclosure of the witnesses' identity and statements until the very last minute, but it is up to the Chamber to prevent such trial tactics and ensure that an accused has adequate time and facilities for the preparation of his defence. The Pre-Trial Chamber should have considered other less-intrusive measures, such as delaying disclosure until 30 days before the beginning of the trial. For all other witnesses whose disclosure was delayed until 30 days before trial, Dr. Karadzic has had their identities for over 1 ½ years now and there is not a single problem that any of them have had.

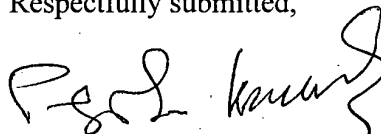
6. Dr. Karadzic has been prejudiced by this condition, as he has had inadequate time to investigate Witness KDZ531 while he and his defence team have been working full steam in court since the disclosure of the witness' identity and statements. He may seek to recall Witness KDZ531 for further cross examination if his investigation uncovers information that is relevant to this witness.

7. While it is too late for the Trial Chamber to remedy this unfair condition, there is still time to consider whether there are measures which can protect the witness short of giving all of his testimony in closed session. The Trial Chamber should hold a hearing in the presence of the witness, determine the reasons for the fears expressed by the witness, whether they continue at the present time, and whether the witness can testify in open session with image distortion, and move into private session when details are elicited that are so singular that public disclosure might reveal his identity.

8. This is the kind of proportionality analysis which is required to balance the need for protective measures for witnesses with the right of the accused to a public trial.

Word count: 650

Respectfully submitted,



Radovan Karadzic