

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 30 January 2012

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

OPPOSITION TO RETROACTIVE
APPLICATION OF PROTECTIVE MEASURES

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully notifies the Trial Chamber that he is opposed to the retroactive application of protective measures for witnesses in his case.

2. In a confidential filing on 27 January 2012, the prosecution notified the Trial Chamber that an individual whose statement had been admitted in this trial in 2009 pursuant to Rule 92 *bis* had subsequently been granted protective measures when testifying in other trials.¹

3. The prosecution now requests that the statements be reclassified as confidential and placed under seal and the witness be assigned a pseudonym. It bases this request on its interpretation of Rule 75(F)(i).

4. Dr. Karadzic has a different interpretation of that Rule.

5. Rule 75(F)(i) provides that:

Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (“second proceedings”) or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule

6. Dr. Karadzic contends that this Rule does not require that protective measures be applied retroactively to proceedings in which the witness has already given public testimony.

7. He finds support for his position in the plain language of the Rule, which refers to “first” and “second” proceedings. This evidences an intent by the drafters of the Rule for protective measures to apply in subsequent proceedings.

8. The prosecution’s interpretation of the Rule would lead to absurd results. Reclassifying previously public testimony as secret will not only serve no purpose, but will itself reveal that the witness has subsequently testified with protective measures. This defeats the object and purpose of the protective measures in the first place.

9. For example, Witness KDZ045 received augmented protective measures in this trial of image distortion. Must the Tribunal now go back to the *Krstic* case and edit the video recordings of his testimony so as to retroactively apply the protective measures? In

¹ *Prosecution Notification of Protective Measures in Force for Witnesses...* at paras. 7-9. Dr. Karadzic files his pleading publicly because it does not identify the witnesses involved and the principle is an important one for the general jurisprudence of the Tribunal and is of public interest. He requests the Trial Chamber to issue a public decision on the issue.

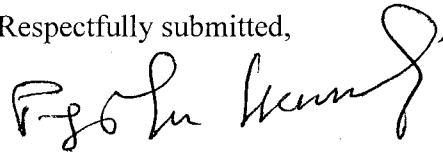
the case of a witness who testified in a completed trial and subsequently receives the protective measures of a pseudonym, must the Tribunal revise its judgement in the trial and redact the name of the witness in all copies of the judgement?

10. The automatic application of protective measures to subsequent cases already infringes on the right of the accused to a public trial by placing a heavy burden on him to remove protective measures granted sometimes more than a decade ago. The prosecution's interpretation of Rule 75(F) as requiring automatic retroactive application of protective measures from future cases diminishes the public nature of the trials even further and frustrates the transparency in which a public body such as this Tribunal should operate. Therefore, such an interpretation is against the public interest.

11. For all of the above reasons, it is respectfully requested that the Trial Chamber decline to apply protective measures from other cases retroactively to this case.

Word count: 631

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic