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<b>Case Name/ Affaire :</b>	<b>Prosecutor v. Radovan Karadžić</b> <span style="float: right;"><b>Case Number/ Affaire n° :</b> MICT-13-55-A</span>
<b>Date Created/ Daté du :</b>	<b>18 July 2016</b> <span style="margin-left: 50px;"><b>Date transmitted/ Transmis le :</b> 18 July 2016</span> <span style="float: right;"><b>No. of Pages/ Nombre de pages :</b> 62</span>
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Rev: April 2014/Rév. : Avril 2014

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 18 July 2016

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Vagn Prüsse Joensen  
Judge José Ricardo de Prada Solaesa  
Judge Graciela Susana Gatti Santana

**Registrar:** Mr. John Hocking

**Decision of:** 18 July 2016

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON A MOTION FOR REDACTED VERSIONS  
OF DECISIONS ISSUED UNDER RULE 75(H) OF THE ICTY RULES**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katrina Gustafson

**Counsel for Mr. Radovan Karadžić:**

Mr. Peter Robinson

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);<sup>1</sup>

**NOTING** the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) on 24 March 2016;<sup>2</sup>

**BEING SEISED OF** the motion filed on 14 May 2016, in which Radovan Karadžić (“Karadžić”) requests the issuance of redacted versions of 11 confidential and *ex parte* decisions of the Trial Chamber (“Decisions”), which varied protective measures granted to witnesses in his case pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence (“ICTY Rules”), with the view to identify prosecution witnesses who provided evidence in national proceedings and seek access to any subsequent statements or testimonies in order to explore potential grounds of appeal;<sup>3</sup>

**NOTING** Karadžić’s further request that any future motions filed in this case under Rule 86(F) of the Rules of Procedure and Evidence of the Mechanism (“Rules”) be heard *inter partes*, with appropriate redactions;<sup>4</sup>

**NOTING** the decision issued by the Trial Chamber on 18 February 2016,<sup>5</sup> in which the Trial Chamber denied Karadžić’s request for an order directing the ICTY Registrar to disclose a list of protected witnesses in his case for whom applications for variation of protective measures were filed under Rule 75(H) of the ICTY Rules, as Karadžić’s request was “overly broad and speculative” and failed to demonstrate any legitimate interest in obtaining this information that would outweigh the interest in maintaining its confidential and *ex parte* status;<sup>6</sup>

**RECALLING** the decision issued by the Appeals Chamber on 10 May 2016, in which the Appeals Chamber denied Karadžić’s request for an order directing the Office of the Prosecutor (“Prosecution”) to obtain and disclose statements and testimony provided in subsequent national proceedings by protected witnesses who testified for the prosecution in his case, as Karadžić failed

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<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

<sup>2</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016 (“Trial Judgement”).

<sup>3</sup> Motion for Redacted Versions of Rule 75(H) Decisions, 14 May 2016 (“Motion”), paras. 1, 3, 17-20. *See also* Annex, RP. 161.

<sup>4</sup> Motion, para. 21.

<sup>5</sup> *See Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused’s Motion for Disclosure of Information on Variation of Protective Measures, 18 February 2016 (“Trial Chamber Decision of 18 February 2016”).

<sup>6</sup> Trial Chamber Decision of 18 February 2016, p. 3.

to demonstrate the existence of exceptional circumstances that would justify the intervention of the Appeals Chamber to assist investigations at the appeal stage;<sup>7</sup>

**NOTING** the Prosecution response to Karadžić's Motion filed on 24 May 2016, in which the Prosecution opposes the Motion<sup>8</sup> because: (i) Karadžić is, in essence, seeking reconsideration of the Trial Chamber Decision of 18 February 2016, which he failed to appeal or seek to have reconsidered in the appropriate forum and which, therefore, is *res judicata*;<sup>9</sup> (ii) Karadžić has not demonstrated a legitimate interest in obtaining access to the Decisions, as he fails to identify any related potential ground of appeal;<sup>10</sup> (iii) any public redacted versions of the Decisions should not reveal witness pseudonyms to avoid the risk of identifying the witnesses and disclosing sensitive information regarding national proceedings;<sup>11</sup> and (iv) Karadžić fails to demonstrate a legitimate interest in having all future motions under Rule 86 of the Rules in his case be heard *inter partes* because such filings may include sensitive information about domestic proceedings that justify their *ex parte* status;<sup>12</sup>

**NOTING** Karadžić's reply filed on 26 May 2016, in which he submits that: (i) the Trial Chamber Decision of 18 February 2016 was not final, could not be challenged in an interlocutory appeal but only in an appeal from the final judgment, and concerned a different issue as, at the time, he was not aware of the existence of the Decisions;<sup>13</sup> (ii) the issuance of redacted versions will enable him to explore potential grounds of appeal related to the Trial Chamber's credibility assessments and the possible impact of *ex parte* proceedings on the fairness of the trial;<sup>14</sup> (iii) should there be a genuine possibility that public redacted versions could lead to the identification of protected witnesses, confidential redacted versions could be issued instead;<sup>15</sup> (iv) his request that future Rule 86(H) motions be heard *inter partes* was an expression of his position and not a request for "any action or decision by the Appeals Chamber";<sup>16</sup>

**RECALLING** the Order of 31 May 2016, in which Judge Theodor Meron, in his capacity as Pre-Appeal Judge,<sup>17</sup> directed the Registry's Witness Support and Protection Unit ("WISP") to indicate any redactions to the Decisions that are necessary to ensure the effective protection of the protected

<sup>7</sup> Decision on a Motion to Order the Prosecution to Obtain and Disclose Subsequent Statements, 10 May 2016, pp. 2, 3.  
<sup>8</sup> Prosecution Response to Karadžić's Motion for Redacted Versions of Rule 75(H) Decisions, 24 May 2016 ("Prosecution Response"), paras. 1, 8.  
<sup>9</sup> Prosecution Response, paras. 1, 2 referring to Trial Chamber Decision of 18 February 2016.  
<sup>10</sup> Prosecution Response, paras. 1, 3, 4.  
<sup>11</sup> Prosecution Response, paras. 5, 6.  
<sup>12</sup> Prosecution Response, para. 7.  
<sup>13</sup> Reply Brief: Motion for Redacted Versions of Rule 75(H) Decisions, 26 May 2016 ("Reply"), paras. 5-7.  
<sup>14</sup> Reply, paras. 12-15.  
<sup>15</sup> Reply, para. 16.  
<sup>16</sup> Reply, para. 17.  
<sup>17</sup> Order Assigning a Pre-Appeal Judge, 21 April 2016.

witnesses concerned and provide any comments on the request that future Rule 86 proceedings in this case be heard *inter partes*;<sup>18</sup>

**NOTING** the Registrar's submission filed confidentially on 14 June 2016, which: (i) proposes redactions to the Decisions to prevent the identification of protected witnesses and disclosure of information that could compromise on-going national proceedings, and (ii) recommends that the confidentiality of filings under Rule 86 be considered on a case-by-case basis;<sup>19</sup>

**NOTING** the Prosecution's submission on the Registrar's Submission filed confidentially on 17 June 2016, in which the Prosecution observes that the Registry's proposed redactions "risk[] the inadvertent exposure of potentially sensitive and/or confidential information" and submits that any public redacted versions of the Decisions should not disclose or identify the domestic proceedings and protected witnesses concerned;<sup>20</sup>

**NOTING** Karadžić's further submission filed on 20 June 2016, in which he submits that he is not seeking public redacted versions of the Decisions, but redacted versions, which may be issued both confidentially, in which case no redactions would be required that could lead to the identification of the witnesses given that the identity of the witnesses is already known to the defence, and publicly with appropriate redactions which would set out the reasoning of the Decisions for transparency and jurisprudential purposes;<sup>21</sup>

**RECALLING** that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;<sup>22</sup>

**RECALLING** that, with regard to confidential material, the Mechanism must find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses and the confidentiality of sensitive information;<sup>23</sup>

<sup>18</sup> Order on a Motion Related to Measures for Protection of Victims and Witnesses, 31 May 2016, p. 2.

<sup>19</sup> Registrar's Submission in Compliance with the Order on a Motion Related to Measures for Protection of Victims and Witnesses, 14 June 2016 (confidential with one confidential and one confidential and *ex parte* annex), para. 2, RP. 403, 401-348.

<sup>20</sup> Prosecution Submission on Registrar's Submission in Compliance with the Order on a Motion Related to Measures for Protection of Victims and Witnesses, 17 June 2016 (confidential with confidential and *ex parte* annex), paras. 1, 2, RP. 460-458.

<sup>21</sup> Further Submission on Motion for Redacted Versions of Rule 75(H) Decisions, 20 June 2016, paras. 7, 8.

<sup>22</sup> *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015, 17 February 2016, para. 8 referring to Article 18 of the Statute of the Mechanism and Rules 92 and 131 of the Rules.

<sup>23</sup> See Decision on Motion for Access to *Ex Parte* Filings in Completed Cases, 10 May 2016 ("Appeals Chamber Decision of 10 May 2016"), p. 2 and references cited therein.

**RECALLING** that a request for access to confidential material from another case can only be granted if the material sought has been identified or described by its general nature and a legitimate forensic purpose for gaining such access is shown;<sup>24</sup>

**EMPHASIZING** that access to confidential *ex parte* material can only be granted when the requesting party demonstrates a heightened showing of a legitimate forensic purpose in order to protect the interests of the party on whose behalf the *ex parte* status has been granted and who enjoys a protected degree of trust that the *ex parte* material will not be disclosed;<sup>25</sup>

**CONSIDERING** that legal certainty presupposes respect for the principle of *res judicata*, which holds that no party is entitled to seek a review of a final and binding decision or judgment merely for the purpose of obtaining a rehearing and a fresh determination of the same issue;<sup>26</sup>

**CONSIDERING**, however, that the relief requested in the Motion, namely the issuance of redacted versions of the Decisions, is different in terms of scope and legal basis from the request rejected in the Trial Chamber Decision of 18 February 2016, which concerned the disclosure to Karadžić of the list of witnesses in his case for whom an application for variation of protective measures had been filed;<sup>27</sup>

**FINDING**, therefore, that the principle of *res judicata* does not apply in these circumstances;

**CONSIDERING** that Karadžić has not demonstrated the heightened showing required to justify access to all confidential *ex parte* information in the Decisions that was conveyed to the Mechanism by the relevant national authorities on a confidential *ex parte* basis and, in particular, to information identifying investigations and proceedings before national authorities, including certain witnesses' pseudonyms the disclosure of which could identify such investigations and proceedings;

<sup>24</sup> Appeals Chamber Decision of 10 May 2016, p. 2 and references cited therein.

<sup>25</sup> Appeals Chamber Decision of 10 May 2016, p. 3 and references cited therein.

<sup>26</sup> See *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 202 (“The doctrine [of *res judicata*] refers to a situation when ‘a final judgement on the merits’ issued by a competent court on a claim, demand or cause of action between parties constitutes an absolute bar to a ‘second lawsuit on the same claim’ between the same parties”). See also, e.g., *Brumărescu v. Romania* [1999] ECHR 105 at para. 61, (“[o]ne of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question”); *Ryabykh v. Russia* [2003] ECHR 396 at para. 52 (“Legal certainty presupposes respect for the principle of *res judicata*, that is the principle of finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case”).

<sup>27</sup> See Trial Chamber Decision of 18 February 2016, p. 2. The Trial Chamber denied the request, *inter alia*, because “the Motion is overly broad and speculative and that the alleged legitimate interests put forth by the Accused encompass being heard on motions for variation of protective measures which have already been ruled upon, obtaining hypothetical additional material, as well as providing assistance to domestic authorities”. See Trial Chamber Decision, p. 3. In his Motion, Karadžić requests access to the 11 decisions he specifically identifies, the existence of which was not known to him at the time of filing the motion dismissed by the Trial Chamber. See Reply, para. 6.

**CONSIDERING**, however, that issuing public redacted versions of the Decisions will ensure the public nature of these proceedings to the extent possible while the interests of the parties on whose behalf the *ex parte* status was granted can be adequately protected by appropriate redactions;

**CONSIDERING FURTHER** that issuing confidential redacted versions of the Decisions, as requested by Karadžić, is not necessary given that the redactions in the public versions sufficiently prevent the identification of protected witnesses and ensure to the extent possible that the proceedings are public;


**PURSUANT** to Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules,

**GRANTS** the Motion, in part, and **ISSUES**, as an annex to the present decision, public redacted versions of the Decisions; and

**DENIES** the Motion in all other respects.

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

Done this 18th day of July 2016,  
At The Hague,  
The Netherlands



Judge Theodor Meron  
Presiding

**[Seal of the Mechanism]**

# **ANNEX**



**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-95-5/18-R75H.1

Date: 28 May 2010

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:** 28 May 2010

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION IN RESPECT OF APPLICATION BY THE [REDACTED]**

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**Office of the Prosecutor**

Mr. Gavin Ruxton  
Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**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 an application from the [REDACTED] on 3 February 2010 (“Application”), and hereby issues this decision thereon.

1. The Application relates to an earlier “Application pursuant to Rule 75(H)” filed on behalf of a defendant before the Court of [REDACTED] by defence counsel [REDACTED]. This earlier application sought what was termed a variation of protective measures for a witness thought to have testified before this Tribunal in the [REDACTED] case, witness FWS130. The reason for the application appears to have been that the pseudonym FWS130 had been used in the initial indictment against [REDACTED] to refer to a particular [REDACTED] described therein. In a subsequent amendment to the indictment that [REDACTED] was named as [REDACTED]. It would seem from the application that the [REDACTED] Defence wished to confirm that [REDACTED] had testified as FWS130 in [REDACTED] and to have access to his testimony, which it believed required a variation of his protective measures in the [REDACTED] case.

2. Following the denial of that application because there was no record of a protected witness with the pseudonym FWS130 having testified in [REDACTED], the [REDACTED] filed the present Application containing the information that the correct pseudonym for [REDACTED] in [REDACTED] was [REDACTED], and that he testified as FWS130 in another case, being the [REDACTED] case, which had been referred by the Tribunal to the Court of Bosnia and Herzegovina pursuant to Rule 11 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”).

3. The Office of the Prosecutor (“Prosecution”) of this Tribunal then filed a submission noting that FWS109 testified in open session in [REDACTED] and that his evidence is therefore publicly available and could easily have been found by the [REDACTED] Defence had it been searching for testimony containing the same facts as were at issue in his case in relation to [REDACTED].<sup>1</sup> The Prosecution also stated that the witness is currently anticipated to testify in

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<sup>1</sup> *Prosecutor v. [REDACTED]*, Case No[REDACTED], Prosecution Response to Confidential and *Ex Parte* Request of the [REDACTED] in relation to the Variation of Protective Measures pursuant to Rule 75(H), 25 February 2010, para. 10.

the *Karadžić* case, again with a pseudonym but in open session.<sup>2</sup> It was for this latter reason that the Application was subsequently referred to the present Chamber by the President.<sup>3</sup>

4. On 29 April 2010, this Chamber issued a confidential Order, observing that the most effective way to resolve the issues raised by the Application was by direct communication between the Prosecution and the [REDACTED].<sup>4</sup> At the same time, the Chamber was cognisant of the need to ensure that the fact of [REDACTED] anticipated testimony as a witness in the *Karadžić* case, with protective measures, was not revealed, including by way of this Chamber's involvement in the matter becoming known. The Prosecution was instructed to inform the Chamber, in writing, of its discussions with the [REDACTED] and to make further submissions on how the issues raised by the Application could be resolved.<sup>5</sup>

5. On 17 May 2010, the Prosecution filed its "Prosecution Response to Confidential and *Ex Parte* Order in respect of Application by the [REDACTED] ("Response"), reporting on the outcome of its discussions and again requesting that the Application be denied. It stated that it had determined that the original application brought by the [REDACTED] Defence would be maintained, despite [REDACTED] conviction by the Court of Bosnia and Herzegovina, because witness FWS130/[REDACTED] was considered to be "a 'crucial' witness to the [REDACTED] Defence case." Moreover, the Prosecution reported that the [REDACTED] had said that it was the contact details of the witness which were sought, so that he could be contacted and potentially called to testify in the appellate proceedings.<sup>6</sup> The suggestion, thereby, was that it was not the content of his prior testimony at this Tribunal that was being requested by the [REDACTED] Defence, but rather access to [REDACTED] himself. The Prosecution further reported that it had contacted [REDACTED] and asked whether [REDACTED] would agree to provide [REDACTED] contact details to the [REDACTED] Defence, which [REDACTED] declined.<sup>7</sup>

6. In support of its position that the Application should be denied, the Prosecution repeats its previous arguments concerning the lack of standing of the [REDACTED] to make

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<sup>2</sup> *Ibid*, para. 11.

<sup>3</sup> *Prosecutor v. [REDACTED]*, Case No. [REDACTED], Order Referring to a Trial Chamber an Application by the [REDACTED], 26 March 2010.

<sup>4</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-R75H.1, Order in Respect of [REDACTED] 29 April 2010, para. 5.

<sup>5</sup> *Ibid*, para. 7.

<sup>6</sup> Response, para. 2.

<sup>7</sup> Response, para. 5.

submissions on behalf of the [REDACTED] Defence.<sup>8</sup> It then argues that, in accordance with Rule 75(J) of the Rules, the Chamber could only grant a variation of protective measures in the absence of the relevant witness's consent in exceptional circumstances, which do not pertain here.<sup>9</sup> It suggests that the best way in which the Application can be disposed of is by way of reference back to the Specially Appointed Chamber, in order not to reveal that [REDACTED] is due to testify in the *Karadžić* case.<sup>10</sup>

7. The Trial Chamber is concerned by the lack of clarity in relation to what, precisely, was being requested by the [REDACTED] Defence when it first made its application, and whether indeed that amounts to a request for variation of protective measures or rather a request for the contact details of a person who may have testified as a protected witness before this Tribunal. The Chamber notes, once again, that [REDACTED] for which they are alleged, and have been found, to be responsible. It is therefore surprising that the [REDACTED] Defence would not have had the opportunity to contact [REDACTED] in the course of its investigations, preparation for and presentation of its case. Moreover, even if [REDACTED] had not been granted protective measures by this Tribunal, the Chamber would be unlikely to order that [REDACTED] contact details be provided to the [REDACTED] Defence in the absence of more information, and without [REDACTED] consent.

8. In light of the vague, confusing, and possibly contradictory nature of the material that has been put before the Chamber in relation to the Application, it would be inclined to deny it. However, given that it cannot do so without revealing that [REDACTED] is connected to the *Karadžić* case as a protected witness, the Chamber considers that it is appropriate to request the President of the Tribunal to refer the matter back to the Specially Appointed Chamber for resolution.

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<sup>8</sup> Response, paras. 11–12.

<sup>9</sup> Response, para. 13.

<sup>10</sup> Response, para. 14.

9. For these reasons, the Trial Chamber, pursuant to Rule 54 of the Rules, hereby **REFERS** the Application to the President of the Tribunal.

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

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Judge O-Gon Kwon  
Presiding

Dated this twenty-eighth day of May 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**



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-R75H.2

Date: 28 June 2012

Original: English

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**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:** 28 June 2012

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION BY THE [REDACTED] FOR VARIATION OF  
PROTECTIVE MEASURES**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application of the [REDACTED] for Variation of Protective Measure Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence” filed confidentially and *ex parte* on 31 May 2012 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures granted in this case to witness KDZ605 (“Witness”) for the purposes of proceedings against [REDACTED].<sup>1</sup> The Applicant is currently engaged in an investigation in the [REDACTED] case, during which the Witness informed the Applicant that he testified in this case with protective measures, without specifying when [REDACTED] testified or which protective measures were granted to [REDACTED].<sup>2</sup> The Applicant submits that the evidence of the Witness is relevant to the investigation in the [REDACTED] case.<sup>3</sup>

2. The Applicant seeks the variation of the protective measures granted to the Witness so that it can receive the Witness’s materials in this case,<sup>4</sup> release to the accused and their defence counsel in the [REDACTED] case the Witness’s personal details and material thus received,<sup>5</sup> and enable the Witness’s testimony in the [REDACTED] case during the course of which the Applicant will seek to tender the Witness’s prior evidence.<sup>6</sup>

3. On 5 June 2012, the President of the Tribunal assigned the Application to this Chamber.<sup>7</sup>

4. On 11 June 2012, the Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of the protective measures granted by the Chamber, as requested in the Application, and to file its submission by 25 June 2012. In the same order, the Chamber also ordered the Office of the

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<sup>1</sup> Application, paras. 7, 12.

<sup>2</sup> Application, para. 7.

<sup>3</sup> Application, para. 6.

<sup>4</sup> The Applicant makes reference to “ICTY statements, transcripts, and possible exhibits”, *see* Application, para. 12(c).

<sup>5</sup> Application, para. 12.

<sup>6</sup> Application, paras. 8, 12.

<sup>7</sup> Order Assigning a Chamber to Consider an Application by the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H), confidential and *ex parte*, 5 June 2012.

Prosecutor of the Tribunal (“Prosecution”) to file its submission no later than 25 June 2012, if it so wishes.<sup>8</sup>

5. On 20 June 2012, the VWS filed its submission stating that the Witness consents to the variation of the protective measures as requested in the Application.<sup>9</sup>

6. On 21 June 2012, the Prosecution filed its submission stating that in the event the Witness were to consent to the variation, it would not oppose the Application.<sup>10</sup>

## II. Applicable Law

7. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

(i) to any Chamber, however constituted, remaining seised of the first proceedings;

(ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,

(iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

<sup>8</sup> Order for Submissions Regarding Application by the [REDACTED], confidential and *ex parte the Accused*, 11 June 2012 (“Order for Submissions”).

<sup>9</sup> Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Trial Chamber’s Order Dated 11 June 2012, confidential and *ex parte*, 20 June 2012 (“VWS Submission”), p. 3.

<sup>10</sup> Prosecution’s Response to Confidential and *Ex Parte* Application of the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence, confidential and *ex parte*, 21 June 2012 (“Prosecution’s Response”), para. 8.



### III. Discussion

8. On 19 August 2011, the Chamber granted the Witness the protective measures of image distortion, voice distortion, and pseudonym.<sup>11</sup> In determining that these protective measures for the Witness were necessary and appropriate, the Chamber considered the [REDACTED] and the Chamber was satisfied that there existed an objectively grounded risk to the security or welfare of the Witness and [REDACTED] family, were it to become publicly known that [REDACTED] testified before the Tribunal.<sup>12</sup>

9. On 25 August 2011, the Witness testified in this case with the protective measures of image distortion, voice distortion, and pseudonym. Some of the exhibits tendered through the Witness were admitted under seal.<sup>13</sup>

10. The Application relates to a Category 2 case, transferred by the Prosecution to the Applicant in November 2009, which involves allegations that crimes were committed in the [REDACTED] Municipality.<sup>14</sup> Upon transfer of the case, the Applicant received materials relating to the Witness, who testified publicly in the case of *Prosecutor v. [REDACTED]*, Case No. [REDACTED], about the events in [REDACTED].<sup>15</sup> Subsequent to the transfer of the Category 2 case, the Applicant issued an order to open an investigation against [REDACTED], alleging that [REDACTED] was involved “in the implementation of a plan of the Serb political leadership to remove the non-Serb population from the area of [REDACTED] in the beginning of the war in [REDACTED]”.<sup>16</sup> The Applicant also initiated an investigation in the [REDACTED] case in December 2006 and submits that the Witness’s testimony is relevant to that case in which the [REDACTED] suspects, in their capacities as members of the [REDACTED], are alleged to have participated in the implementation of a plan of the Serb political leadership to remove the non-Serb population from the area of [REDACTED] in [REDACTED], specifically through their alleged involvement in the alleged crimes committed at the [REDACTED].<sup>17</sup> Accordingly the Applicant submits that the evidence of the Witness is relevant to the ongoing investigations in both the [REDACTED] case and the [REDACTED] case.

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<sup>11</sup> Decision on Prosecution Motions for Protective Measures for Witnesses KDZ601 and KDZ605, 19 August 2011 (“Decision on Protective Measures”), para. 13.

<sup>12</sup> Decision on Protective Measures, para. 12.

<sup>13</sup> Order for Submissions.

<sup>14</sup> Application, para. 4.

<sup>15</sup> Application, para. 4; *see* P3205 (under seal).

<sup>16</sup> Application, para. 5.

<sup>17</sup> Application, para. 6.

11. In its Application, the Applicant submits that the Witness “can provide valuable information regarding the details of the alleged crimes and speaks to the background to the events in [REDACTED] Municipality in [REDACTED] and to the attacks on villages within the municipality, including the attack on [REDACTED], in which the suspect [REDACTED] was involved”.<sup>18</sup> The Applicant submits that it has “selected [the Witness] as a witness in the upcoming trial in the case against [REDACTED]”.<sup>19</sup>

12. Given that the Witness consents to the variation of the protective measures granted to [REDACTED] in this case with respect to the Application,<sup>20</sup> the Chamber finds that the requested variation of the protective measures with respect to this Witness for this particular Application is appropriate. The Chamber therefore finds that the Applicant should receive the Witness’s statement and other associated exhibits admitted in this case which are currently under seal.<sup>21</sup> In addition, the Witness’s personal details may be released to the accused and their defence counsel in the [REDACTED] case. The Chamber notes that the Witness testified in public in this case; however due to the use of his pseudonym, the Applicant was unable to identify the portions of the transcript that pertain to the Witness’s testimony. Therefore, the specific portions of the transcript containing the Witness’s testimony in this case may also be identified for the Applicant.

**IV. Disposition**

13. Accordingly, the Trial Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS** the Application and

- (a) **VARIES**, in relation to the Applicant and for the sole purposes of the proceedings in the case of [REDACTED], the protective measures granted to the Witness in this case;
- (b) **ORDERS** that the Witness shall testify before the [REDACTED] with the protective measures of image distortion, voice distortion, and pseudonym;
- (c) **ORDERS** that the Witness’s personal details may be released to the accused and their counsel in the [REDACTED] case for the sole purposes of the proceedings in that case;

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<sup>18</sup> Application, para. 8.

<sup>19</sup> Application, para. 8.

<sup>20</sup> VWS Submission, p. 3.

<sup>21</sup> P3205, P3207, P3209, P3210, and P3211 are all exhibits under seal in this case. In addition, P3206 and P3208 were admitted through this Witness but were admitted publicly.

- (d) **ORDERS** the Registry to release to the Applicant exhibit [REDACTED], namely the statement of the Witness dated [REDACTED] admitted under seal;
- (e) **ORDERS** the Registry to release to the Applicant the transcript containing the Witness's testimony on [REDACTED] in this case;
- (f) **ORDERS** the Registry to release to the Applicant exhibits [REDACTED] admitted under seal; and
- (g) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the materials released herein.

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

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Judge O-Gon Kwon  
Presiding

Dated this twenty-eighth day of June 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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-95-5/18-R75H.3

Date: 4 July 2012

Original: English

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**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:** 4 July 2012

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION BY THE [REDACTED] FOR VARIATION OF  
PROTECTIVE MEASURES**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application of the [REDACTED] for Variation of Protective Measure Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence”, filed confidentially and *ex parte* on 31 May 2012 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures granted in this case to witness KDZ605 (“Witness”) for the purposes of proceedings against [REDACTED] a Category 2 case in the Court of [REDACTED].<sup>1</sup> The Applicant, in the course of conducting an investigation in the [REDACTED] case, was informed by the Witness that he testified in this case with protective measures.<sup>2</sup> The Witness did not specify when he testified or which protective measures were granted to him.<sup>3</sup> The Applicant submits that the evidence of the Witness is relevant to the investigation in the [REDACTED] case.<sup>4</sup>

2. The Applicant seeks the variation of the protective measures granted to the Witness so that the Applicant can receive the Witness’s materials in this case,<sup>5</sup> release his personal details to the accused and his defence counsel in the [REDACTED] case,<sup>6</sup> and enable the Witness’s testimony in the [REDACTED] case,<sup>7</sup> during the course of which the Applicant will seek to tender into evidence the Witness’s prior evidence.<sup>8</sup>

3. On 5 June 2012, the President of the Tribunal assigned the Application to this Chamber.<sup>9</sup>

4. On 11 June 2012, the Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of protective measures granted by the Chamber, as requested in the Application, and to file its

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<sup>1</sup> Application, paras. 1, 11.

<sup>2</sup> Application, para. 6.

<sup>3</sup> Application, para. 6.

<sup>4</sup> Application, para. 7.

<sup>5</sup> Application, paras. 6, 10, 11(c).

<sup>6</sup> Application, paras. 8–10, 11(b).

<sup>7</sup> Application, paras. 6–8, 11(a).

<sup>8</sup> Application, paras. 6, 8, 11(d).

<sup>9</sup> Order Assigning a Chamber to Consider an Application by the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H), confidential and *ex parte*, 5 June 2012, p. 1.

submission by 25 June 2012.<sup>10</sup> In the same order, the Chamber also ordered the Office of the Prosecutor of the Tribunal (“Prosecution”) to file its submission no later than 25 June 2012, if it so wishes.<sup>11</sup>

5. On 20 June 2012, the VWS filed its submission, stating that the Witness consents to the variation of the protective measures as requested in the Application.<sup>12</sup>

6. On 21 June 2012, the Prosecution filed its submission stating that it supports the variation of protective measures as requested in the Application, on the condition that the Witness consents.<sup>13</sup>

## II. Applicable Law

7. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the

<sup>10</sup> Order for Submissions Regarding Application by the [REDACTED] confidential and *ex parte*, 11 June 2012 (“Order for Submission”), p. 3.

<sup>11</sup> Order for Submissions, p. 3.

<sup>12</sup> Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Trial Chamber’s Order Dated 11 June 2012, confidential and *ex parte*, 20 June 2012 (“VWS Submission”), p. 3.

<sup>13</sup> Prosecution’s Response to Confidential and *Ex Parte* Application of the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence, confidential and *ex parte*, 21 June 2012, para. 1.

Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

### **III. Discussion**

8. On 19 August 2011, the Chamber granted the Witness the protective measures of image distortion, voice distortion, and pseudonym.<sup>14</sup> The Witness had previously testified publicly in the case of the *Prosecutor v. [REDACTED]* Case No. [REDACTED] (“[REDACTED] case”).<sup>15</sup> Shortly thereafter, the Witness received an anonymous threat, as did a member of [REDACTED] family.<sup>16</sup> The Chamber was satisfied that there was an objectively grounded risk to the security or welfare of the Witness and [REDACTED] family, should it become publicly known that [REDACTED] testified before the Tribunal, and was therefore satisfied that it was necessary and appropriate to grant the requested protective measures to the Witness.<sup>17</sup>

9. The Witness then testified in this case on 25 August 2011, with the protective measures of image distortion, voice distortion, and pseudonym. Some exhibits tendered through the Witness were admitted under seal.<sup>18</sup>

10. The Application relates to a Category 2 case that the Prosecution transferred to the Applicant in November 2009, a case covering crimes alleged to have been committed in the [REDACTED] Municipality.<sup>19</sup> The Applicant submits that when the Prosecution transferred the case to the Applicant, it included some materials relating to the Witness.<sup>20</sup> The Applicant then issued an order to open an investigation against [REDACTED].<sup>21</sup>

11. According to the Applicant’s submission, the [REDACTED] case involves allegations that [REDACTED] as [REDACTED] and member of the Crisis Staff in the [REDACTED] Municipality, took part in implementing a plan to remove non-Serbs from the [REDACTED] Municipality, including through his involvement in the illegal detention of non-Serb civilian males at the [REDACTED], and through the forcible transfer of non-Serb civilian males.<sup>22</sup> The Applicant

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<sup>14</sup> Decision on Prosecution Motions for Protective Measures for Witnesses KDZ601 and KDZ605, 19 August 2011 (“Decision on Protective Measures”), para. 13.

<sup>15</sup> Application, para. 4.

<sup>16</sup> Decision on Protective Measures, para. 3.

<sup>17</sup> Decision on Protective Measures, para. 12.

<sup>18</sup> Order for Submissions, p. 2.

<sup>19</sup> Application, paras. 4–5.

<sup>20</sup> Application, paras. 4, 11(d); *see* [REDACTED] (under seal).

<sup>21</sup> Application, para. 5.

<sup>22</sup> Application, para. 5.

submits that the Witness's evidence is relevant to these events and allegations, and therefore wishes to call the Witness to testify in the [REDACTED] case.<sup>23</sup>

12. Given that the Witness consents to the variation of the protective measures granted to him in this case,<sup>24</sup> as requested in the Application, the Chamber finds that this variation is appropriate. The Chamber therefore finds that the Applicant should receive the Witness's statement and other associated exhibits admitted in this case which are currently under seal.<sup>25</sup> In addition, the Witness's personal details may be released to the accused and their defence counsel in the [REDACTED] case. The Chamber notes that the Witness testified in public in this case; however due to the use of [REDACTED] pseudonym, the Applicant was unable to identify the portions of the transcript that pertain to the Witness's testimony. Therefore, the specific portions of the transcript containing the Witness's testimony in this case may also be identified for the Applicant.

#### **IV. Disposition**

13. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS** the Application and

- (a) **VARIES**, in relation to the Applicant and for the sole purposes of the proceedings in the [REDACTED] case, the protective measures granted to the Witness in this case;
- (b) **ORDERS** that the Witness shall testify before the Court of [REDACTED] with the protective measures of image distortion, voice distortion, and pseudonym;
- (c) **ORDERS** that the Witness's personal details may be released to the accused and his counsel in the [REDACTED] case for the sole purposes of the proceedings in that case;
- (d) **ORDERS** the Registry to release to the Applicant exhibit [REDACTED], namely the statement of the Witness, dated [REDACTED] admitted under seal;

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<sup>23</sup> Application, paras. 7, 11(a).

<sup>24</sup> VWS Submission, p. 3.

<sup>25</sup> [REDACTED] were admitted under seal. In addition, P3206 and P3208 were admitted through this Witness but were admitted publicly.



- (e) **ORDERS** the Registry to release to the Applicant the transcript containing the Witness's testimony on [REDACTED];
- (f) **ORDERS** the Registry to release to the Applicant exhibits [REDACTED] admitted under seal; and
- (g) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the materials and information released herein.

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

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Judge O-Gon Kwon  
Presiding

Dated this fourth day of July 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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-95-5/18-R75H.4

Date: 27 July 2012

Original: English

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**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:** 27 July 2012

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL and EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION BY THE [REDACTED] FOR VARIATION OF  
PROTECTIVE MEASURES**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application of the [REDACTED] Pursuant to Rule 75(H)” filed confidentially and *ex parte* on 3 July 2012 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures continued and granted in this case to witness [REDACTED] (“Witness”)<sup>1</sup> for the purposes of proceedings in the case against [REDACTED] case”).<sup>2</sup> The Applicant submits that it is currently engaged in an investigation in the [REDACTED] case and adds that the Witness’s testimony is crucial to the investigation and trial in that case.<sup>3</sup>

2. The Applicant seeks the variation of the protective measures in place for the Witness so that it can receive the Witness’s materials in this case, release the Witness’s personal details to the accused and their defence counsel in the [REDACTED] case, and contact and examine at trial the Witness in the [REDACTED] case.<sup>4</sup>

3. On 5 July 2012, the President of the Tribunal assigned the Application to this Chamber.<sup>5</sup>

4. On 12 July 2012, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application by the [REDACTED] (“Order for Submissions”), ordering the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of the protective measures continued and granted by the Chamber, as requested in the Application, and to file its submission by 26 July 2012.<sup>6</sup> In the same order, the Chamber ordered the Tribunal’s Registry to serve a copy of the Application upon the

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<sup>1</sup> Decision on Protective Measures for Witnesses, 30 October 2008, para. 34; T. 22630 (10 January 2012) (closed session).

<sup>2</sup> Application, paras. 10–11.

<sup>3</sup> Application, paras. 6–7.

<sup>4</sup> Application, paras. 8, 10–12.

<sup>5</sup> Order Assigning a Chamber to Consider an Application by the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H), confidential and *ex parte*, 5 July 2012.

<sup>6</sup> Order for Submissions, p. 3.

Office of the Prosecutor (“Prosecution”), and ordered the Prosecution to file a submission, if it so wished, no later than 26 July 2012.<sup>7</sup>

5. On 17 July 2012, the Prosecution filed its submission referring to excerpts of the Witness’s testimony in the case of *Prosecutor v. [REDACTED]* Case No. [REDACTED] (“[REDACTED] case”),<sup>8</sup> and stating that the Witness’s evidence is of sufficient relevance to the [REDACTED] case to justify providing it to the Applicant.<sup>9</sup> However, according to the Prosecution, given that the Applicant has not established exigent circumstances that would justify the variation of the protective measures in place for the Witness in this case, the requested variation should only be granted if the Witness consents to it.<sup>10</sup>

6. On 24 July 2012, the VWS filed its submission stating that it contacted the Witness and informing the Chamber that the Witness does not consent to the variation of the protective measures as requested in the Application and as specified in the Order for Submissions.<sup>11</sup>

## II. Applicable Law

7. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

<sup>7</sup> Order for Submissions, p. 3.

<sup>8</sup> Prosecution’s Response to Application of the [REDACTED] Pursuant to Rule 75(H), confidential and *ex parte*, 17 July 2012 (“Prosecution Response”), para. 5. The Witness’s testimony in the [REDACTED] case has been admitted under seal in this case as exhibit [REDACTED]. See Decision in Relation to Outstanding Exhibit Issues, confidential, 26 July 2012.

<sup>9</sup> Prosecution Response, para. 5.

<sup>10</sup> Prosecution Response, para. 7.

<sup>11</sup> Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Trial Chamber’s Order Dated 12 July 2012, confidential and *ex parte*, 24 July 2012 (“VWS Submission”), p. 3.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

### **III. Discussion**

8. On 30 October 2008 and 10 January 2012, respectively, the Chamber noted the continuation in these proceedings of the protective measures of pseudonym and image distortion, which had previously been granted to the Witness in the [REDACTED] case.<sup>12</sup> On 10 January 2012, the Chamber also granted the protective measure of voice distortion to the Witness, given the concerns expressed by the Witness that [REDACTED] voice might be recognised, and in order to protect the safety of the Witness and the Witness's family.<sup>13</sup> Accordingly, the Witness testified in this case on that day with the protective measures of pseudonym, image distortion, and voice distortion.<sup>14</sup>

9. According to the Application, the suspects in the [REDACTED] case have been charged with the crime of genocide in violation of the Criminal Code of [REDACTED], as "there is grounded suspicion that [they] committed, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group".<sup>15</sup> The Applicant submits that the Witness described, in his previous testimony, the "detention and torture in the [REDACTED] in the village of [REDACTED] and how he survived mass execution at the [REDACTED]"<sup>16</sup> and that he will therefore "be able to provide all necessary details on the criminal offence which the suspects are charged with".<sup>17</sup>

10. Despite this, given that the Witness has not consented to the variation of the protective measures in place for [REDACTED] in this case<sup>18</sup> and considering that the Applicant has not made a compelling showing of exigent circumstances nor demonstrated that a miscarriage of justice would result in the absence of the variation, pursuant to Rule 75(J) of the Rules, the Chamber finds that the requested variation with respect to this Witness for this particular Application is not warranted.

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<sup>12</sup> Decision on Protective Measures for Witnesses, 30 October 2008, para. 34; T. 22625–22627 (10 January 2012) (private session); T. 22628 (10 January 2012) (closed session).

<sup>13</sup> T. 22625–22627 (10 January 2012) (private session); T. 22627–22630 (10 January 2012) (closed session).

<sup>14</sup> T. 22630–22691 (10 January 2012).

<sup>15</sup> Application, paras. 3, 4.

<sup>16</sup> Application, para. 6.

<sup>17</sup> Application, para. 7.

<sup>18</sup> VWS Submission, p. 3.

**IV. Disposition**

11. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **DENIES** the Application.

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

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Judge O-Gon Kwon  
Presiding

Dated this twenty-seventh day of July 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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-95-5/18-R75H.5

Date: 11 November 2013

Original: English

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**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:** 11 November 2013

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION PURSUANT TO RULE 75(H)  
FROM THE DEFENCE FOR [REDACTED]**

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**The Applicant**

Mr. [REDACTED]  
Defence counsel for [REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application Pursuant to Rule 75(H)” filed confidentially and *ex parte* on 24 April 2013 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, [REDACTED] defence counsel for [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witness [REDACTED] (“Witness”) for the purposes of the proceedings in the case against [REDACTED] before the Court of [REDACTED].<sup>1</sup>

2. The Applicant seeks the variation of the protective measures in place for the Witness so that [REDACTED] can obtain the Witness’s name, contact information, “testimony and other evidence and statements” given by the Witness in this case.<sup>2</sup> The Applicant submits that the Witness testified in this case in closed session on 18 and 19 January 2012 about the [REDACTED] and, based on “public documents”, the Applicant concludes that the Witness has “valuable information” that may be “of vital significance” for the case against [REDACTED] who is charged with having committed crimes in [REDACTED].<sup>3</sup> The Applicant argues that the requested evidence is of high importance for the preparation of [REDACTED] defence and that being denied access to it would be a violation of his fair trial rights.<sup>4</sup>

3. On 25 April 2013, the President of the Tribunal assigned the Application to this Chamber.<sup>5</sup>

4. On 6 May 2013, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application Pursuant to Rule 75(H) from the Defence for [REDACTED]” (“Order for Submissions”), ordering the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of the protective measures continued in this case by the Chamber, as requested in the Application, and to file its

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<sup>1</sup> Application, p. 9. The Chamber notes that the Application does not contain page numbers and thus refers herein to the reverse numerical order pagination inserted by the Registry.

<sup>2</sup> Application, p. 9.

<sup>3</sup> Application, pp. 7–9.

<sup>4</sup> Application, pp. 6–7.

<sup>5</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 25 April 2013.



submission by 16 May 2013.<sup>6</sup> In the same order, the Chamber ordered the Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 16 May 2013.<sup>7</sup>

5. On 16 May 2013, the Prosecution filed its submission arguing that the Application should not be granted unless the Witness consents to the variation of protective measures.<sup>8</sup> The Prosecution submits that the Witness has consistently maintained [REDACTED] “concerns about the safety and security of [REDACTED] family in light of the nature of [REDACTED] testimony and consequent risk of reprisals”.<sup>9</sup> As such, the Witness has been accorded the highest level of protective measures, including delayed disclosure of identity, testifying in closed session, and the use of a pseudonym.<sup>10</sup> The Prosecution argues that the Applicant has failed to show the existence of exigent circumstances or that a miscarriage of justice would result to warrant granting the Application in the absence of the Witness’s consent.<sup>11</sup>

6. [REDACTED].<sup>12</sup> The VWS submitted that it would make further submissions as its efforts with consulting the Witness were ongoing.<sup>13</sup> On 7 August 2013, the VWS filed a further submission stating that it had contacted the Witness who wished to speak with [REDACTED] counsel before responding to the request for the variation of protective measures.<sup>14</sup> The VWS stated that it would file a further submission after the Witness and [REDACTED] counsel had communicated.<sup>15</sup> On 9 October 2013, the VWS filed a final submission stating that it had consulted with the Witness and that [REDACTED] does not consent to the variation of protective measures as requested in the Application.<sup>16</sup>

<sup>6</sup> Order for Submissions, p. 3.

<sup>7</sup> Order for Submissions, p. 3.

<sup>8</sup> Prosecution Response to Application by the Defence Counsel for [REDACTED] Pursuant to Rule 75(H), confidential and *ex parte*, 16 May 2013 (“Prosecution Submission”), paras. 1, 6.

<sup>9</sup> Prosecution Submission, para. 4.

<sup>10</sup> Prosecution Submission, para. 4. The Chamber notes, however, that the protective measure of delayed disclosure of the Witness’s identity to the Accused in this case was never ordered by the trial chamber in the *Prosecutor v. [REDACTED]* case and was erroneously continued in subsequent cases. Decision on Accused’s Motion for Modifications of Delayed Disclosure: Witnesses [REDACTED], confidential, 23 September 2011 (“Decision on Delayed Disclosure”), paras. 15–21

<sup>11</sup> Prosecution Submission, para. 5.

<sup>12</sup> Deputy Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Trial Chamber’s Order Dated 6 May 2013, confidential and *ex parte*, 16 May 2013 (“VWS First Submission”), p. 3.

<sup>13</sup> VWS First Submission, p. 3.

<sup>14</sup> Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Trial Chamber’s Order Dated 6 May 2013, confidential and *ex parte*, 7 August 2013 (“VWS Second Submission”), p. 3.

<sup>15</sup> VWS Second Submission, p. 3.

<sup>16</sup> Deputy Registrar’s Submission Pursuant to Rule 33(B) of the Rules in Compliance with the Order Dated 6 May 2013, confidential and *ex parte*, 9 October 2013 (“VWS Third Submission”), p. 3.

7. On 10 October 2013, the Chamber consulted Judge Agius who remains the only Judge of the Trial Chamber in the case of the *Prosecutor v. [REDACTED]* that originally granted the protected measures to the Witness.<sup>17</sup> On 4 November 2013, Judge [REDACTED] provided the Chamber with his views that the variation should not be granted given the Witness's lack of consent and the Prosecution's position.<sup>18</sup>

## **II. Applicable Law**

8. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seized of the first proceedings;
- (ii) if no Chamber remains seized of the first proceedings, to a Chamber seized of second proceedings; or,
- (iii) if no Chamber remains seized, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

## **III. Discussion**

9. On 24 July 2009, the Chamber noted the continuation in the present proceedings of the protective measures granted to the Witness which included the use of a pseudonym, testimony in closed session, and delayed disclosure of [REDACTED] identity to the Accused.<sup>19</sup> On 23 September 2011, the Chamber modified the protective measure of delayed disclosure to the

<sup>17</sup> Consultation Memorandum Pursuant to Rule 75(I), confidential, 10 October 2013.

<sup>18</sup> Judge [REDACTED]' views were communicated to the Chamber *via* email on 4 November 2013.

<sup>19</sup> Decision on Protective Measures for Witnesses, confidential, 24 July 2009, para. 30, Annex B- confidential and *ex parte* to the Accused.

Accused noting that it had been erroneously continued in this case and in prior cases.<sup>20</sup> Accordingly, the protective measures in effect for the Witness in this case are the use of a pseudonym and testimony in closed session. The Witness subsequently testified in closed session in this case on 18 and 19 January 2012.

10. Given that the Witness has not consented to the variation of the protective measures in place for [REDACTED] in this case<sup>21</sup> and considering that the Applicant has not made a compelling showing of exigent circumstances nor demonstrated that a miscarriage of justice would result in the absence of the variation, pursuant to Rule 75(J) of the Rules, the Chamber finds that the requested variation with respect to this Witness for this particular Application is not warranted.

#### **IV. Disposition**

11. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **DENIES** the Application.

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

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Judge O-Gon Kwon  
Presiding

Dated this eleventh day of November 2013  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>20</sup> Decision on Delayed Disclosure, paras. 12–24.

<sup>21</sup> VWS Third Submission, p. 3.

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-95-5/18-R75H.8

Date: 17 December 2014

Original: English

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**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:** 17 December 2014

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION PURSUANT TO RULE 75(H)  
FROM THE [REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application of the [REDACTED] Pursuant to Rule 75(H)” filed confidentially and *ex parte* on 18 November 2014 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witness KDZ045 (“Witness”) for the purposes of an investigation against [REDACTED] by the Applicant.<sup>1</sup>

2. The Applicant argues that the testimony of the Witness is crucial to the investigation currently conducted against [REDACTED] and, accordingly, seeks the variation of the Witness’s protective measures in order to be “advised of the actual pseudonym, personal details and any other protective measures imposed by the Trial Chamber” and also requests that “all statements” of the Witness be provided to it.<sup>2</sup> The Applicant submits that the Witness testified as a protective witness in this case on 10 January 2012.<sup>3</sup>

3. On 25 November 2015, the President of the Tribunal assigned the Application to this Chamber.<sup>4</sup>

4. On 26 November 2014, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED]” (“Order for Submissions”), ordering the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of the protective measures as requested in the Application and to file its submission by 10 December 2014.<sup>5</sup> In the same Order for Submissions, the Chamber ordered the Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 10 December 2014.<sup>6</sup>

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<sup>1</sup> Application, paras. 1, 3, 5, 10, 12.

<sup>2</sup> Application, paras. 6, 10. The Applicant also notes that the testimony of the Witness will be of great importance for the trial against [REDACTED]. Application, para. 7.

<sup>3</sup> Application, para. 5.

<sup>4</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 25 November 2014.

<sup>5</sup> Order for Submissions, p. 3.

<sup>6</sup> Order for Submissions, p. 3.

5. On 10 December 2014, the VWS filed its submission stating that the Witness consents to the variation of the protective measures as requested in the Application for use in its criminal investigation.<sup>7</sup> The Witness consents to the disclosure of (i) [REDACTED] identity and personal information, (ii) the transcript of [REDACTED] testimony in this case, and (iii) the transcript of [REDACTED] testimony in the *Prosecutor v. [REDACTED]* case.<sup>8</sup>

6. On 11 December 2014, the Prosecution filed its submission in relation to the Application.<sup>9</sup> The Prosecution submits that the requested variation of protective measures should only be granted if the Witness consents.<sup>10</sup>

## II. Applicable Law

7. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

<sup>7</sup> Deputy Registrar's Submission in Compliance with the Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] confidential and *ex parte*, 10 December 2014 ("VWS Submission"), p. 3.

<sup>8</sup> VWS Submission, p. 3.

<sup>9</sup> Prosecution's Response to Confidential and *Ex Parte* Application Pursuant to Rule 75(H) from the [REDACTED] confidential and *ex parte*, 11 December 2014 ("Prosecution Response"), para. 2.

<sup>10</sup> Prosecution Response, para. 3.

**III. Discussion**

8. On 30 October 2008, the Pre-Trial Chamber continued the protective measures of the use of a pseudonym and image distortion, which had previously been granted to the Witness in the case of the *Prosecutor v. [REDACTED]*, Case No. [REDACTED] (“[REDACTED] case”).<sup>11</sup> On 10 January 2012, the Chamber augmented the protective measures to include voice distortion given the concerns expressed by the Witness for [REDACTED] safety and that of [REDACTED] family.<sup>12</sup> Accordingly, the Witness testified in this case, on that day, with the protective measures of the use of a pseudonym, image distortion, and voice distortion.<sup>13</sup>

9. According to the Application, [REDACTED] is being investigated in relation to the alleged killings of civilians at the [REDACTED] plateau in [REDACTED].<sup>14</sup> The Applicant submits that the [REDACTED] and that the Witness will therefore be able to “provide all necessary details on the criminal offence which the suspect is charged with”.<sup>15</sup>

10. Given that the Witness consents to the variation of the protective measures granted to [REDACTED] in this case, as requested in the Application, the Chamber finds that the variation of protective measures is appropriate. The Chamber therefore finds that the Applicant should receive: (i) the Witness’s personal information; (ii) the transcript of [REDACTED] testimony in this case; and (iii) the transcript of [REDACTED] testimony [REDACTED] case.

**IV. Disposition**

11. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS** the Application and

- (a) **VARIES**, in relation to the Applicant and for the sole purposes of the criminal investigation of [REDACTED], the protective measures granted to the Witness in this case;
- (b) **ORDERS** that the Registry to provide the Applicant with the Witness’s personal details;

<sup>11</sup> Decision on Protective Measures for Witnesses, 30 October 2008, para. 34.

<sup>12</sup> T. 22625–22627 (10 January 2012) (private session); T. 22627–22630 (10 January 2012) (closed session).

<sup>13</sup> T. 22630–22691 (10 January 2012).

<sup>14</sup> Application, paras. 3–4.

<sup>15</sup> Application, paras. 6–7.

- (c) **ORDERS** the Registry to release to the Applicant the transcript containing the Witness's testimony on 10 January 2012;
- (d) **ORDERS** the Registry to release to the Applicant all of the exhibits admitted through the Witness; and
- (e) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the materials and information released herein.

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

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Judge O-Gon Kwon  
Presiding

Dated this seventeenth day of December 2014  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**



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-95-5/18-R75H.8

Date: 29 December 2014

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:** 29 December 2014

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**CORRIGENDUM TO DECISION ON APPLICATION PURSUANT TO RULE 75 (H)  
FROM THE [REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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”),

**NOTING** its “Decision on Application Pursuant to Rule 75(H) From the [REDACTED] issued on 17 December 2014 (“Decision”), in which the Chamber ordered, solely for the purpose of the criminal investigation against [REDACTED], the variation of the protective measures granted to Witness KDZ045 (“Witness”) in this case;<sup>1</sup>

**CONSIDERING** that, due to an oversight by the Chamber, the date on which the President of the Tribunal assigned the “Application of the [REDACTED] Pursuant to Rule 75(H)” of 18 November 2014 (“Application”) to this Chamber was recorded as 25 November 2015, instead of 25 November 2014;<sup>2</sup>

**FURTHER CONSIDERING** that, due to an oversight by the Chamber, paragraph 11 of the Decision instructed that “all of the exhibits admitted through the Witness” be released to the [REDACTED] (“Applicant”), whereas it should have referred to the release of [REDACTED] alone, namely the transcript of the Witness’s testimony in the [REDACTED] case;

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence of the Tribunal,

**ORDERS** that paragraph 3 shall read as follows:

On 25 November 2014, the President of the Tribunal assigned the Application to this Chamber.

**ORDERS** that paragraph 11 shall read as follows:

Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS** the Application and

- (a) **VARIES**, in relation to the Applicant, and for the sole purpose of the criminal investigation of [REDACTED], the protective measures granted to the Witness in this case;

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<sup>1</sup> Decision, para. 11.

<sup>2</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 25 November 2014.

- (b) **ORDERS** the Registry to provide the Applicant with the Witness's personal details;
- (c) **ORDERS** the Registry to release to the Applicant the transcript containing the Witness's testimony on 10 January 2012 in this case;
- (d) **ORDERS** the Registry to release to the Applicant exhibit [REDACTED] (transcript from *Prosecutor v. [REDACTED]*) admitted through the Witness in this case; and
- (e) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the materials and information released herein.

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

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Judge O-Gon Kwon  
Presiding

Dated this twenty-ninth day of December 2014  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**



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-R75H.6  
IT-95-5/18-R75H.7

Date: 14 January 2015

Original: English

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**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:** 14 January 2015

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATIONS PURSUANT TO RULE 75(H) FROM THE  
[REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 “Application of the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence”, Case No. IT-95-5/18-R75H.6 (“75(H).6 Application”) and the “Application of the [REDACTED] for Variation of Protective Measures pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence”, Case No. IT-95-5/18-R75H.7 (“75(H).7 Application”) (together, “Applications”), both filed confidentially and *ex parte* on 12 November 2014, and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Applications, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witnesses KDZ005, KDZ007, KDZ010, KDZ035, KDZ042, KDZ043, KDZ057, and KDZ433 for the purposes of an investigation against [REDACTED] by the Applicant.<sup>1</sup>

2. The Applicant submits that the statements and testimony given by these witnesses will greatly assist it in the investigation of crimes committed in [REDACTED] Municipality, and accordingly, requests the personal details of the witnesses, as well as any evidence given by these witnesses.<sup>2</sup>

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<sup>1</sup> 75(H).6 Application, paras. 4-5, 9-10; 75(H).7 Application, paras. 4-5, 9-10. With respect to the 75(H).6 Application, the Chamber notes that witness [REDACTED] was given the pseudonym KDZ005, witness [REDACTED] was given the pseudonym KDZ007, witness [REDACTED] was given the pseudonym KDZ010, witness [REDACTED] was given the pseudonym KDZ042, witness [REDACTED] was given the pseudonym KDZ043, witness [REDACTED] was given the pseudonym KDZ035, and witness [REDACTED] was given the pseudonym KDZ057 in the present case. Decision on Protective Measures for Witnesses, 30 October 2008; *Prosecutor v. [REDACTED]* Case No. [REDACTED], Prosecution’s Notification of Protective Measures for Brčko Witnesses, confidential, 22 January 2004; *Prosecutor v. [REDACTED]*, Case No. [REDACTED], Prosecution’s Motion for Protective Measures and Notification of Protective Measures in Force for Rule 92 *bis* Witnesses, confidential, 31 January 2005, Confidential Annex. The Chamber further notes that [REDACTED] is not a protected witness in this case and there is no record of a witness with the pseudonym [REDACTED] in these proceedings. With respect to the 75(H).7 Application, the Chamber notes that witness [REDACTED] was given the pseudonym KDZ10, witness [REDACTED] was given the pseudonym KDZ043, witness [REDACTED] was given the pseudonym KDZ433, and witness [REDACTED] was given the pseudonym KDZ057 in the present case. Decision on Protective Measures for Witnesses, 30 October 2008; *Prosecutor v. [REDACTED]*, Case No. [REDACTED], Order for Protective Measures, 21 December 1998; *Prosecutor v. [REDACTED]* Case No [REDACTED], Order to Amend the Witness Protective Measures Pursuant to Rule 75(D) of the Rules, confidential and *ex parte*, 12 September 2001; *Prosecutor v. [REDACTED]* Case No. [REDACTED] (8 September 1999) (private session) citing *Prosecutor v. [REDACTED]* Case No. [REDACTED], Decision on Prosecution’s Motions for Protective Measures for Victims and Witnesses, confidential, 6 June 2005, Annex 1.

<sup>2</sup> 75(H).6 Application, paras. 7-10; 75(H).7 Application, paras. 7-10 (referring in turn to statements, testimony, and documentary exhibits).

3. On 17 November 2014, the President of the Tribunal assigned the 75(H).6 Application and the 75(H).7 Application to this Chamber.<sup>3</sup>

4. On 27 November 2014, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Applications Pursuant to Rule 75(H) from the Prosecutor’s Office of [REDACTED]” (“Order for Submissions”). In it, the Chamber noted that witnesses KDZ005, KDZ007, KDZ035, KDZ042, KDZ043, and KDZ433 did not testify in this case and that the evidence of witnesses KDZ010 and KDZ057 was admitted in this case pursuant to Rule 92 *bis* of the Rules.<sup>4</sup> The Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact witnesses KDZ010 and KDZ057 in order to ascertain whether they consent to the variation of the protective measures currently in place, as requested by the Applicant, and to file its submission by 11 December 2014.<sup>5</sup> In the same order, the Chamber ordered the Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 11 December 2014.<sup>6</sup>

5. On 11 December 2014, the Prosecution filed confidentially and *ex parte* the “Prosecution’s Response to Confidential and *Ex Parte* Application Pursuant to Rule 75(H) from the [REDACTED]” (“Prosecution Submission”), stating that it conditionally supports the Application provided that the witnesses consent.<sup>7</sup> The Prosecution noted that [REDACTED].<sup>8</sup> It submitted that should KDZ057 consent to the variation of protective measures, [REDACTED] from the witness to provide these portions.<sup>9</sup>

6. On 11 December 2014, the VWS filed confidentially and *ex parte* the “Deputy Registrar’s Submission in Compliance with the Order for Submissions Regarding Applications Pursuant to Rule 75(H) from the [REDACTED]” (“VWS Submission”). The VWS submitted that KDZ010 consents to the variation of protective measures as requested by the Applicant and therefore consents to the disclosure of (i) [REDACTED] personal contact information,

<sup>3</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), Case No. IT-95-5/18-R75H.6, confidential and *ex parte*, 17 November 2014; Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), Case No. IT-95-5/18-R75H.7, confidential and *ex parte*, 17 November 2014.

<sup>4</sup> Order for Submissions, pp. 2–3.

<sup>5</sup> Order for Submissions, pp. 3–4.

<sup>6</sup> Order for Submissions, p. 4.

<sup>7</sup> Prosecution Submission, paras. 1, 4.

<sup>8</sup> Prosecution Submission, para. 3.

<sup>9</sup> Prosecution Submission, para. 3.

(ii) the evidence admitted in this case,<sup>10</sup> and (iii) the accompanying exhibits admitted in this case.<sup>11</sup> With respect to KDZ057, the VWS was unable to contact the witness because it did not possess the witness's current contact details.<sup>12</sup>

7. On 12 December 2014, the Chamber consulted Judge Orié who remains the only Judge of the Trial Chamber in the [REDACTED] case that originally granted the protective measures to the witnesses. On 17 December 2014, Judge Orié provided the Chamber with his views that the protective measures granted to both witnesses were merely continued in the [REDACTED] case, and that therefore the [REDACTED] Trial Chamber did not analyse the reasons for granting the protective measures. He further added that after reviewing the witness's testimony in the [REDACTED] case, he had no specific remarks to make.

## II. Applicable Law

8. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

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<sup>10</sup> The Chamber notes that the transcript of the witness's testimony in *Prosecutor v. [REDACTED]* case, Case No. [REDACTED], was admitted pursuant to Rule 92 *bis* in this case as Exhibit P416.

<sup>11</sup> VWS Submission, para. 2.

<sup>12</sup> VWS Submission, para. 3.

**III. Discussion**

9. On 30 October 2008, the Pre-Trial Chamber continued the protective measures of the use of a pseudonym and image distortion, which had previously been granted to witnesses KDZ005, KDZ007, KDZ010, KDZ035, KDZ042, KDZ043, KDZ057, and KDZ433 in a prior proceeding.<sup>13</sup> As stated above, witnesses KDZ005, KDZ007, KDZ035, KDZ042, KDZ043, and KDZ433 did not testify in this case. However, the evidence of witnesses KDZ010 and KDZ057 was admitted in this case pursuant to Rule 92 *bis* of the Rules.<sup>14</sup>

10. According to both of the Applications, [REDACTED] are being investigated for crimes allegedly committed in the [REDACTED] Municipality.<sup>15</sup> The Applicant submits that the evidence of all of the witnesses will greatly assist it in its investigation of these crimes.<sup>16</sup>

11. Given that KDZ010 consents to the variation of the protective measures granted to [REDACTED] in this case as requested in the Applications, the Chamber finds that such variation of protective measures is appropriate. The Chamber therefore finds that the Applicant should receive: (i) KDZ010's personal information; (ii) the transcript of [REDACTED] testimony in *Prosecutor v. [REDACTED]* case, Case No. [REDACTED], admitted pursuant to Rule 92 *bis* in this case as Exhibit P416; and (iii) the accompanying exhibits admitted through KDZ010.<sup>17</sup>

12. Given that KDZ057 cannot be located, that therefore consent cannot be obtained, in the absence of exigent circumstances that justify the variation of protective measures granted to KDZ057 absent the witness's consent, the Chamber considers that the Applications may not be granted with respect to KDZ057.

<sup>13</sup> Decision on Protective Measures for Witnesses, 30 October 2008; Prosecution's Response to Radovan Karadžić's Motion for Clarification of Notification of Protective Measures Currently in Force, confidential, 20 October 2008, Appendix.

<sup>14</sup> Further Decision on Prosecution's First Rule 92 *bis* Motion (Witnesses for Eleven Municipalities), public with Confidential Annex A, 9 February 2010; Decision on Prosecution's First Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* (Witnesses for Eleven Municipalities), public with Confidential Annex A, 10 November 2009.

<sup>15</sup> 75(H).6 Application, para. 4; 75(H).7 Application, para. 4.

<sup>16</sup> 75(H).6 Application, para. 7; 75(H).7 Application, para. 7.

<sup>17</sup> Exhibits P417, P419, P420, and P423.



**IV. Disposition**

13. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS**, in part, the 75(H).6 Application and the 75(H).7 Application and

- (a) **VARIES**, in relation to the Applicant and for the sole purposes of the criminal investigation of [REDACTED] the protective measures granted to KDZ010 in this case;
- (b) **ORDERS** that the Registry provide the Applicant with KDZ010's personal details;
- (c) **ORDERS** the Registry to release to the Applicant exhibits P416, P417, P419, P420, and P423;
- (d) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the materials and information released herein; and
- (e) **DENIES** the remainder of the 75(H).6 Application and 75(H).7 Application.

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

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Judge O-Gon Kwon  
Presiding

Dated this fourteenth day of January 2015  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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-95-5/18-R75H.9

Date: 16 February 2015

Original: English

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**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:** 16 February 2015

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION PURSUANT TO RULE 75(H)  
FROM THE FROM THE [REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**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 “Application of the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence” filed confidentially and *ex parte* on 15 January 2015 (“Application”), and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witness KDZ052 and witness [REDACTED] for the purposes of the investigations against [REDACTED] by the Applicant.<sup>1</sup>

2. The Applicant argues that the “statements and testimonies” of the witnesses “can be very helpful” in the criminal case of [REDACTED] and, accordingly, seeks the variation of the protective measures granted to the witnesses so as to obtain the disclosure of their names, contact details, testimony, statements, and relevant exhibits.<sup>2</sup>

3. On 19 January 2015, the President of the Tribunal assigned the Application to this Chamber.<sup>3</sup>

4. On 26 January 2015, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] (“Order for Submissions”), noting that the witness with pseudonym [REDACTED] was not a witness in this case.<sup>4</sup> The Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact KDZ052 in order to ascertain whether KDZ052 consents to the variation of the protective measures as requested in the Application and to file its submission by 9 February 2015.<sup>5</sup> In the same Order for Submissions, the Chamber ordered the Tribunal’s Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 9 February 2015.<sup>6</sup>

<sup>1</sup> Application, paras. 4–5.

<sup>2</sup> Application, paras. 6–9.

<sup>3</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 19 January 2015.

<sup>4</sup> Order for Submissions, p. 2.

<sup>5</sup> Order for Submissions, p. 3.

<sup>6</sup> Order for Submissions, p. 3.

5. On 5 February 2015, the Prosecution filed its submission in relation to the Application.<sup>7</sup> The Prosecution submits that the requested variation of protective measures should only be granted if KDZ052 consents.<sup>8</sup>

6. On 9 February 2015, the VWS filed its submission stating that the KDZ052 does not consent to the release of his personal details and confidential exhibits that reveal [REDACTED] identity and providing the reasons for such refusal.<sup>9</sup> Although KDZ052 does consent to certain portions of [REDACTED] evidence being disclosed to the [REDACTED], the VWS expressed its concerns about the possibility that some testimony given in private session may disclose KDZ052's identity.<sup>10</sup>

## II. Applicable Law

7. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

<sup>7</sup> Prosecution's Response to Confidential and *Ex Parte* Application Pursuant to Rule 75(H) from the [REDACTED] confidential and *ex parte*, 5 February 2015 ("Prosecution Response").

<sup>8</sup> Prosecution Response, para. 2.

<sup>9</sup> Deputy Registrar's Submission in Compliance with the Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] confidential and *ex parte*, 9 February 2015 ("VWS Submission"), p. 3.

<sup>10</sup> VWS Submission, p. 3.

**III. Discussion**

8. On 30 October 2008, the Pre-Trial Chamber continued the protective measures of pseudonym and image distortion, which had previously been granted to KDZ052 in the case of the *Prosecutor v. [REDACTED]* Case No. [REDACTED].<sup>11</sup> On 19 September 2011, KDZ052 testified in this case with the protective measures of pseudonym and image distortion.

9. According to the Application, [REDACTED] are being investigated in relation to the alleged crimes committed in the [REDACTED] municipality from the beginning of [REDACTED].<sup>12</sup> The Applicant submits that KDZ052 may have valuable information about these crimes.<sup>13</sup>

10. Given that the KDZ052 has not consented to the variation of the protective measures in place for [REDACTED] in this case as requested in the Application and considering that the Applicant has not made a compelling showing of exigent circumstances nor demonstrated that a miscarriage of justice would result in the absence of the variation, pursuant to Rule 75(J) of the Rules, the Chamber finds that the requested variation with respect to KDZ052 for this Application is not warranted.

**IV. Disposition**

11. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **DENIES** the Application.

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

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 Judge O-Gon Kwon  
 Presiding

Dated this sixteenth day of February 2015  
 At The Hague  
 The Netherlands

**[Seal of the Tribunal]**

<sup>11</sup> Decision on Protective Measures for Witnesses, 30 October 2008, para. 34; *Prosecutor v. [REDACTED]* Case No. [REDACTED] Decision on Prosecution’s Eighth Motion for Protective Measures for Victims and Witnesses, 1 March 2002.

<sup>12</sup> Application, para. 4.

<sup>13</sup> Application, para. 6.

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-95-5/18-R75H.10

Date: 14 October 2015

Original: English

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**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:** 14 October 2015

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION PURSUANT TO RULE 75(H)  
FROM THE [REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 seized of the “Application of the [REDACTED] for Variation of Protective Measures for the Witness ‘KDZ045’ Pursuant to Rule 75(H)” filed confidentially and *ex parte* on 22 September 2015 (“Application”) and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witness KDZ045 (“Witness”) for the purposes of the criminal proceedings against [REDACTED] (“[REDACTED]case”) by the Applicant.<sup>1</sup>

2. The Applicant submits that the Witness’s evidence is of extreme importance in the criminal proceedings against [REDACTED] and, accordingly, seeks the variation of the Witness’s protective measures to enable [REDACTED] testimony in the [REDACTED] case, namely the disclosure of the Witness’s personal details to the defendants and their defence attorneys in that case (“Defence”);<sup>2</sup>

3. On 25 September 2015, the President of the Tribunal assigned the Application to this Chamber.<sup>3</sup> On the same day, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] (“Order for Submissions”), noting that the Chamber continued the protective measures granted to the Witness in a prior proceeding, namely the use of pseudonym and image distortion, and augmented the protective measures in the present proceeding to include the use of voice distortion.<sup>4</sup> The Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain whether the Witness consents to the variation of the protective measures as requested in the Application and to file its submission by 9 October 2015.<sup>5</sup> In the same Order for Submissions, the Chamber ordered the Tribunal’s Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 9 October 2015.<sup>6</sup>

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<sup>1</sup> Application, para. 3.

<sup>2</sup> Application, paras. 5–6, 9, 12.

<sup>3</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 25 September 2015.

<sup>4</sup> Order for Submissions, p. 2.

<sup>5</sup> Order for Submissions, p. 3.

<sup>6</sup> Order for Submissions, p. 3.

4. On 7 October 2015, the Prosecution filed its submission in relation to the Application.<sup>7</sup> The Prosecution submits that the requested variation of protective measures should only be granted if the Witness consents.<sup>8</sup>

5. On 7 October 2015, the VWS filed its submission stating that the Witness consents to the requested variation of protective measures provided that [REDACTED] is granted the same protective measures in the [REDACTED] case that were granted to [REDACTED] in this proceeding and that the release of [REDACTED] personal details does not include information about [REDACTED] current place of residence.<sup>9</sup> The Witness states that [REDACTED] is worried about [REDACTED] safety and that of [REDACTED] family due to an incident [REDACTED].<sup>10</sup>

## II. Applicable Law

6. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

<sup>7</sup> Prosecution's Response to Application Pursuant of the [REDACTED] for Variation of Protective Measures for the Witness KDZ045, confidential and *ex parte*, 7 October 2015 ("Prosecution Response").

<sup>8</sup> Prosecution Response, paras. 1, 4.

<sup>9</sup> Deputy Registrar's Submission in Compliance with the Order of 25 September 2015, confidential and *ex parte*, 7 October 2015 ("VWS Submission"), p. 3.

<sup>10</sup> VWS Submission, p. 3.



(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

### **III. Discussion**

7. On 30 October 2008, the Pre-Trial Chamber in this case continued the protective measures of pseudonym and image distortion, which had previously been granted to the Witness in the case of the *Prosecutor v. [REDACTED]*, Case No. [REDACTED].<sup>11</sup> On 10 January 2012, the Chamber augmented the protective measures to include the use of voice distortion.<sup>12</sup> The Witness testified on that day, in this case, with the protective measures of pseudonym, image distortion, and voice distortion.

8. According to the Application, the criminal proceedings against [REDACTED] pertain to alleged crimes committed in eastern BiH.<sup>13</sup> The Applicant submits that the evidence of the Witness is of extreme importance to alleged killings at [REDACTED] and may be one of the key pieces of evidence in the [REDACTED] case.<sup>14</sup> The Applicant notes in order for the Witness to testify in the [REDACTED] case, [REDACTED] personal details must be disclosed to the defendants and their attorneys in that case.<sup>15</sup>

9. Given that the Witness has consented to the variation of the protective measures in place for [REDACTED] in this case as requested in the Application, the Chamber finds that such variation of protective measures is appropriate. The Chamber therefore finds that the Applicant should receive the personal details of the Witness, except for [REDACTED] residential address, and varies the protective measures such that the Applicant may disclose the Witness's personal details to the defendants and defence attorneys in the [REDACTED] case.

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<sup>11</sup> Decision on Protective Measures for Witnesses, 30 October 2008; Hearing, T. 22625 (10 January 2012) (private session). The Chamber notes that there are no Judges remaining at the Tribunal who were on the original bench that granted the protective measures in the [REDACTED] case.

<sup>12</sup> Hearing, T. 22625–22627 (10 January 2012) (private session), T. 22627–22630 (10 January 2012) (closed session).

<sup>13</sup> Application, para. 3.

<sup>14</sup> Application, para. 5.

<sup>15</sup> Application, paras. 9, 11.

**IV. Disposition**

10. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **GRANTS** the Application and

- (A) **VARIES** in relation to the Applicant and for the sole purpose of the criminal proceedings in the [REDACTED] case, the protective measures granted to the Witness in this case;
- (B) **ORDERS** the Registry to provide the Applicant with the Witness’s personal details, except for [REDACTED] residential address, such that the Applicant may disclose the Witness’s personal details to the defendants and defence attorneys in the [REDACTED] case; and
- (C) **ORDERS** the Applicant to take all necessary measures to maintain the strict confidentiality of the information released herein.

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

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Judge O-Gon Kwon  
Presiding

Dated this fourteenth day of October 2015  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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-95-5/18-R75H.11

Date: 17 November 2015

Original: English

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**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:** 17 November 2015

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***CONFIDENTIAL AND EX PARTE THE ACCUSED***

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**DECISION ON APPLICATION PURSUANT TO RULE 75(H)  
FROM THE [REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Ms. Michelle Jarvis  
The Transition Team

**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 seized of the “Application of the [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H) of the ICTY Rules of Procedure and Evidence” filed confidentially and *ex parte* on 26 October 2015 (“Application”) and hereby issues its decision thereon.

### **I. Background and Submissions**

1. In the Application, the [REDACTED] (“Applicant”) seeks the variation, pursuant to Rule 75(H) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), of the protective measures currently in place for witness KW558 (“Witness”) for the purposes of the criminal proceedings against [REDACTED] case”).<sup>1</sup>

2. The Applicant submits that the Witness gave a statement during the investigation of the [REDACTED] case and the Witness revealed that [REDACTED] had testified in this case as a protected witness, however, the Witness could not remember [REDACTED] pseudonym or if [REDACTED] had been granted additional protective measures.<sup>2</sup> The Applicant submits that it did not know that the Witness was granted protective measures in this case.<sup>3</sup> The Applicant further submits that after the completion of its investigation, it intends to file an indictment against [REDACTED] and proposes to hear the evidence of the Witness.<sup>4</sup> The Applicant submits that the Witness stated that he would be willing to testify before the court in BiH.<sup>5</sup>

3. On 27 October 2015, the President of the Tribunal assigned the Application to this Chamber.<sup>6</sup> The following day, the Chamber issued the confidential and *ex parte* “Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] (“Order for Submissions”), noting that the Chamber continued the protective measures granted to the Witness in a prior proceeding, namely the use of pseudonym and image distortion.<sup>7</sup> The Chamber ordered the Tribunal’s Victims and Witnesses Section (“VWS”) to contact the Witness in order to ascertain

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<sup>1</sup> Application, paras. 4, 9. The Applicant requests the variation of protective measures to include disclosure of (i) the decision which granted protective measures to the Witness, and (ii) an un-redacted transcript of the Witness’s testimony in this case. Application, para. 9.

<sup>2</sup> Application, para. 6.

<sup>3</sup> Application, para. 7.

<sup>4</sup> Application, para. 5.

<sup>5</sup> Application, para. 8.

<sup>6</sup> Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), confidential and *ex parte*, 27 October 2015.

<sup>7</sup> Order for Submissions, p. 2.

whether the Witness consents to the variation of the protective measures as requested in the Application and to file its submission by 11 November 2015.<sup>8</sup> In the same Order for Submissions, the Chamber ordered the Tribunal’s Office of the Prosecutor (“Prosecution”) to file a submission, if it so wished, no later than 11 November 2015.<sup>9</sup>

4. On 30 October 2015, the Prosecution filed its submission in relation to the Application.<sup>10</sup> The Prosecution submits that given the fact that the Witness testified as a defence witness in this case, it does not wish to take a position on the Application.<sup>11</sup>

5. On 10 November 2015, the VWS filed its submission stating that the Witness does not consent to the requested variation of protective measures as [REDACTED] is reluctant to get involved in criminal proceedings in [REDACTED].<sup>12</sup> On 11 November 2015, the Chamber, pursuant to Rule 75(I), consulted Judge Daqun Liu who was a Judge of the Trial Chamber that granted the protective measures in the first proceedings.

## II. Applicable Law

6. Rule 75 of the Rules provides, in relevant parts, as follows:

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings;
- (ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,
- (iii) if no Chamber remains seised, to a newly constituted Chamber.

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness

<sup>8</sup> Order for Submissions, p. 3.

<sup>9</sup> Order for Submissions, p. 3.

<sup>10</sup> Prosecution’s Submission on Order for Submissions Regarding Application Pursuant to Rule 75(H) from the [REDACTED] confidential and *ex parte*, 30 October 2015 (“Prosecution Submission”).

<sup>11</sup> Prosecution Submission, p. 2.

<sup>12</sup> Deputy Registrar’s Submission in Compliance with the Order of 25 September 2015, confidential and *ex parte*, 7 October 2015 (“VWS Submission”), p. 3.

has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent.

### **III. Discussion**

7. On 19 January 2013, the Chamber in this case continued the protective measures of pseudonym and image distortion, which had previously been granted to the Witness in the case of the *Prosecutor v. [REDACTED]* Case No. [REDACTED].<sup>13</sup> The Witness subsequently testified in this case with the protective measures of pseudonym and image distortion.

8. According to the Applicant, the criminal proceedings against [REDACTED] pertain to alleged crimes committed in Srebrenica.<sup>14</sup> The Applicant submits that the Witness gave a statement during the investigation and informed the Applicant that [REDACTED] had the protective measure of the use of pseudonym in this case, [REDACTED] could not remember if [REDACTED] had additional protective measures.<sup>15</sup> The Applicant submits that in order for the Witness testify in the court of BiH, a variation of protective measures is needed. However, the Applicant does not submit any further reasons as to why the evidence of the Witness would be useful or necessary to its investigation.

9. Despite the fact that according to the Application, the Witness stated [REDACTED] would be willing to testify before the court in BiH, when [REDACTED] was contacted by the VWS and asked about the variation of [REDACTED] protective measures, the Witness did not consent to such variation. Given that the Witness has not consented to the variation of the protective measures in place for [REDACTED] in this case and considering that the Applicant has not made a compelling showing of exigent circumstances nor demonstrated that a miscarriage of justice would result in the absence of the variation, pursuant to Rule 75(J) of the Rules, the Chamber finds that the requested variation with respect to this Witness for this particular Application is not warranted.

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<sup>13</sup> Order on Chart of Protective Measures for Defence Witnesses, 18 January 2013, confidential Annex A.

<sup>14</sup> Application, para. 4.

<sup>15</sup> Application, para. 6.

**IV. Disposition**

10. Accordingly, the Chamber, pursuant to Rule 75 of the Rules, hereby **DENIES** the Application.

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

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Judge O-Gon Kwon  
Presiding

Dated this seventeenth day of November 2015  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**