

**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-05-88-A
IT-95-5/18-T
Date: 3 February 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. John Hocking

Order of: 3 February 2012

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**ORDER RELATING TO PROSECUTION'S URGENT MOTION
TO RESCIND PROTECTIVE MEASURES FOR WITNESS**

The Office of the Prosecutor:

Mr. Peter Kremer QC
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić *pro se*

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović
Mr. John Ostojić and Mr. Theodor Scudder for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

I, Patrick Robinson, Judge of the Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in the *Popović et al.* case;

BEING SEISED OF the “Prosecution’s Urgent Motion to Rescind Protective Measures for Witness”, filed publicly with confidential appendix by the Office of the Prosecutor (“Prosecution”) on 2 February 2012 (“Motion”);

NOTING that in the Motion, the Prosecution requests that the Appeals Chamber rescind the protective measures granted by the Trial Chamber in the *Popović et al.* case (“Trial Chamber”) to a witness known in the *Karadžić* case by the pseudonym KDZ329 (“Witness”), arguing that the Witness consents to the rescission of the protective measures;¹

NOTING the “Response to Motion to Vary Protective Measures: KDZ329”, filed publicly by Radovan Karadžić (“Karadžić”) on 2 February 2012, in which Karadžić supports the Motion;²

NOTING that the Trial Chamber orally granted the protective measures of face distortion and assignment of a pseudonym (PW-162) to the Witness on 21 March 2007 in the *Popović et al.* case;³

NOTING the Prosecution’s submission that the Witness wishes to testify publicly in the *Karadžić* case;⁴

CONSIDERING that pursuant to Rule 75(F)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), protective measures that have been ordered in respect of a witness in any proceedings before the Tribunal (the “first proceedings”) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented;

CONSIDERING that pursuant to Rule 75(G)(i) of the Rules, a party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply to any chamber remaining seised of the first proceedings;

¹ Motion, paras 1-2, 6, Appendix A.

² Response, para. 1.

³ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, T. 9172-9175 (private session), 9177-9179 (21 Mar 2007).

⁴ Motion, paras 2, 6.

RECALLING that when the Appeals Chamber becomes seised of an appeal against a trial judgement, it becomes the chamber “seised of the first proceedings” within the meaning of Rule 75(G)(i) of the Rules;⁵

CONSIDERING that the Appeals Chamber is currently seised of the *Popović et al.* case;

CONSIDERING that pursuant to Rule 75(J) of the Rules, the Appeals Chamber shall ensure through the Victims and Witnesses Section of the Tribunal (“VWS”) that the protected witness has given consent to the rescission, variation or augmentation of his/her protective measures;

FINDING it therefore necessary to consult with the Witness through the VWS in order to confirm whether and to what extent the Witness consents to the lifting of his/her protected status, namely, image distortion and use of pseudonym;

FINDING further that it is appropriate for VWS to inform the Witness of the implications of lifting his/her protective measures;

PURSUANT to Rules 54, 75 and 107 of the Rules, and for the foregoing reasons,

INSTRUCT VWS to:

- (1) consult with the Witness for the purpose of confirming his/her consent to the lifting of his/her protected status, namely, image distortion and use of pseudonym, and to inform the Witness of the implications of lifting his/her protective measures; and
- (2) report as soon as practicable to the Appeals Chamber on the outcome of its consultation.

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



Judge Patrick Robinson
Pre-Appeal Judge

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

[Seal of the Tribunal]

⁵ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A & IT-98-32/1-R77.2, Decision on the Prosecution’s Motion for Variation of Protective Measures, 5 September 2011 (confidential), para. 6 and references cited therein.