



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-05-88/2-T

Date: 1 July 2010

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 1 July 2010

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON URGENT PROSECUTION MOTION FOR PROTECTIVE
MEASURES**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

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”);

BEING SEISED OF the “Urgent Prosecution Motion for Augmentation of Protective Measures for Witness #136”, filed confidentially by the Prosecution on 28 June 2010 (“Motion”), in which the Prosecution seeks the augmentation of protective measures ordered for Witness 136 in Case No. IT-05-88-T, *Prosecutor v. Vujadin Popović et al.*;

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effect *mutatis mutandis* in any other proceedings before the Tribunal (“second proceedings”) unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in Rule 75;

NOTING that with regard to the protective measures ordered for Witness 136, the first proceedings are the proceedings in *Prosecutor v. Vujadin Popović et al.* and the second proceedings are those in *Prosecutor v. Tolimir*;

NOTING that Rule 75(G) provides:

A party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply:

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

NOTING the “Joint Motion for an Extension of Time to File Notice of Appeal” filed by the Prosecution and Counsel for Vujadin Popović, Ljubiša Beara, Drago Nikolić and Radivoje Miletić on 18 June 2010;

NOTING the “Order Assigning Judges to a Case before the Appeals Chamber” issued by the President on 24 June 2010 in *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, in which the President assigned himself as Pre-Appeal Judge and ordered that the Bench shall be composed of himself as Presiding Judge, Judge Mehmet Güney, Judge Fausto Pocar, Judge Liu Daqun and Judge Andréia Vaz;

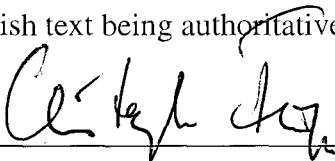
CONSIDERING that the Appeals Chamber is, therefore, seised of the first proceedings;

CONSIDERING that pursuant to Rule 75(G) in seeking to augment the protective measures ordered for Witness 136 the Prosecution should have applied to the Appeals Chamber, and not the Trial Chamber;

PURSUANT TO Rule 75 of the Rules,

HEREBY DENIES the Motion.

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



Judge Christoph Flügge

Presiding Judge

Dated this first day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]