

IT-95-5/18-T  
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03 FEBRUARY 2012

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UNITED  
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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:**

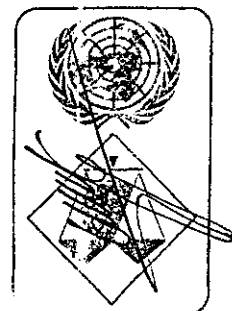
Mr. Peter Kremer QC  
Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**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;<sup>1</sup>

**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;<sup>2</sup>

**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;<sup>3</sup>

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

**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;

<sup>1</sup> Motion, paras 1-2, 6, Appendix A.

<sup>2</sup> Response, para. 1.

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

<sup>4</sup> Motion, paras 2, 6.

**RECALLING** that when the Appeals Chamber becomes seized 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;<sup>5</sup>

**CONSIDERING** that the Appeals Chamber is currently seized 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.

  
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 Judge Patrick Robinson  
 Pre-Appeal Judge

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

[Seal of the Tribunal]

<sup>5</sup> *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.

