

**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: 2 March 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. John Hocking

Order of: 2 March 2012

PROSECUTOR

v.

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

PUBLIC

**ORDER RELATING TO RADOVAN KARADŽIĆ'S MOTION
TO RESCIND PROTECTIVE MEASURES: WITNESS KDZ122**

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 Tapušević 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 “Motion to Rescind Protective Measures: Witness KDZ122”, filed publicly with confidential annex by Radovan Karadžić (“Karadžić”) on 27 February 2012 (“Karadžić Motion”);

NOTING that in the Motion, Karadžić requests that the Appeals Chamber rescind the protective measure of giving testimony in closed session granted by the Trial Chamber in the *Popović et al.* case (“Trial Chamber”) to a witness known in the *Karadžić* case by the pseudonym KDZ122 (“Witness”), arguing that this protective measure is contrary to the public interest;¹

NOTING the “Response to Rescind Protective Measures: Witness KDZ122”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 29 February 2012 (“Response”), in which the Prosecution objects to the Motion;²

NOTING the “Reply Brief: Motion to Rescind Protective Measures: Witness KDZ122”, filed confidentially by Karadžić on 1 March 2012 (“Reply”), in which he maintains his submissions;³

NOTING that the Trial Chamber orally granted the protective measure of testifying in closed session to the Witness on 24 September 2007 in the *Popović et al.* 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, para. 1; Confidential Annex.

² Response, para. 7.

³ Reply, para. 5.

⁴ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, T. 15701:3 - T. 15701:22 (open session), (24 September 2007); T-15724:23 to T-15726:7 (25 September 2007).

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 determine whether the Witness consents to the lifting of his/her protective measure, namely, testifying in closed session;

FINDING further that it is appropriate for VWS to inform the Witness of the implications of lifting his/her protective measure of testifying in closed session;

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 determining whether he/she consents to the lifting of his/her protective measure, namely, testifying in closed session, and to inform the Witness of the implications of lifting his/her protective measure; 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 second day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Decision on the Prosecution’s Urgent Motion to Rescind Protective Measures for Witness, 7 February 2012, p. 2 and references cited therein.