

**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 Nos. IT-05-88-A &
IT-95-5/18-T
Date: 10 May 2012
Original: English

IN THE APPEALS CHAMBER**Before:**

Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andrésia Vaz
Judge Khalida Rachid Khan

Registrar:

Mr. John Hocking

Decision of:

10 May 2012

PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

**DECISION ON URGENT PROSECUTION MOTION FOR
ADDITIONAL PROTECTIVE MEASURES
FOR WITNESS KDZ084**

The Office of the Prosecutor:

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

The Accused:

Mr. Radovan Karadžić *pro se*

Standby Counsel:

Mr. Richard J. Harvey

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušević for Mr. Vujadin Popović
Mr. John Ostojčić and Mr. Theodor Seudder 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

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);

BEING SEISED OF the “Urgent Prosecution Motion for Additional Protective Measures for Witness KDZ084”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 2 April 2012 (“Motion”);

NOTING that the Prosecution requests that the Appeals Chamber grant the additional protective measure of testimony in closed session to a witness known in the *Karadžić* case by the pseudonym KDZ084 (“Witness”);¹

NOTING the “Response to Motion to Augment Protective Measures: Witness KDZ084”, filed confidentially by Radovan Karadžić (“Karadžić”) on 5 April 2012 (“Response”), in which Karadžić opposes the Motion,² on the basis that the Prosecution did not show that the protective measures currently in place for the Witness are inadequate³ and that testimony in closed session prevents members of the public from coming forward to contradict or refute testimony given by prosecution witnesses;⁴

NOTING that Trial Chamber II of the Tribunal in the *Popović et al.* case orally granted the protective measures of face and voice distortion and the assignment of a pseudonym (PW-100) to the Witness on 4 September 2007;⁵

NOTING that, on 3 April 2012, the Pre-Appeal Judge instructed the Victims and Witnesses Section of the Tribunal (“VWS”) to consult with the Witness for the purpose of determining whether he/she consents to the augmentation of his/her protective measures by the further protective measure of testimony in closed session, to inform the Witness of the implications of augmentation, and to report as soon as practicable to the Appeals Chamber on the outcome of its consultation;⁶

¹ Motion, paras 1-2, 16.

² Response, paras 1, 7.

³ Response, para. 2. See also Response, paras 4, 6.

⁴ Response, para. 5.

⁵ T. 14701-14702 (4 September 2007). See also Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* and List of Exhibits Pursuant to Rule 65 *ter* (E) (v), 28 April 2006 (under seal), Confidential Annex A, p. 3.

⁶ Order Relating to Urgent Prosecution Motion for Additional Protective Measures for Witness KDZ084, 3 April 2012 (confidential), p. 2.

NOTING that, on 4 April 2012, the Registrar filed a confidential and *ex parte* report of the VWS;⁷

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;

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;⁸

CONSIDERING that the Appeals Chamber is currently seised of the *Popović et al.* case and therefore has jurisdiction to rule on the Motion;

CONSIDERING that pursuant to Rule 75(J) of the Rules, the Appeals Chamber shall ensure through the VWS that the Witness has given consent to the rescission, variation or augmentation of his/her protective measures;

CONSIDERING that the VWS has informed the Appeals Chamber that, after consultation, the Witness consents to the augmentation of his/her protective measures by the further protective measure of testimony in closed session;⁹

CONSIDERING that a “determination on the augmentation of protective measures requires the Appeals Chamber to balance the right of the accused to a fair and public hearing under Article

⁷ Confidential and *Ex Parte* Report of the VWS dated 4 April 2012 on the “Order Relating to Urgent Prosecution Motion for Additional Protective Measures for Witness KDZ084” dated 3 April 2012, appended to Registrar’s Rule 33(B) Submission in Compliance with the Order Relating to Urgent Prosecution Motion for Additional Protective Measures for Witness KDZ084, 4 April 2012 (confidential and *ex parte*) (“VWS Submission”).

⁸ Decision on Prosecution’s Urgent Motion to Rescind Protective Measures for Witness, 7 February 2012, p. 2 and reference cited therein.

⁹ VWS Submission, para. 2.

21(2) of the Statute of the Tribunal (“Statute”), with the rights of witnesses to protection pursuant to Article 22 of the Statute”;¹⁰

CONSIDERING that a real likelihood of danger or risk to a witness must be established for the imposition of protective measures and that such a likelihood may be found where the witness or a person other than the witness expresses a subjective feeling of fear and there is some objective basis for that fear;¹¹

CONSIDERING the Prosecution’s submission that the Witness lives with his/her close family in [REDACTED] where there are violent Serbian nationalist elements who support individuals such as Karadžić,¹² that the Witness will give testimony through video-conference link,¹³ and that the subject matter of his/her testimony is such that it is impossible to separate testimony that could expose his/her identity from other parts of his/her testimony;¹⁴

CONSIDERING further the Prosecution’s submission that the Witness’s [REDACTED] lives in an area [REDACTED] in which there are violent supporters of Karadžić,¹⁵ and that residents of the town in which [REDACTED] lives are aware that the Witness lives in [REDACTED] and might identify the Witness from the subject matter and the video-link transmission of his/her testimony despite the protective measures currently in place;¹⁶

CONSIDERING finally the Prosecution’s submission that the increased publicity surrounding the *Karadžić* trial compared to the *Popović et al.* trial creates an increased risk that the Witness’s testimony would come to the attention of violent supporters of Karadžić;¹⁷

FINDING that the Prosecution has established that there is a real likelihood of danger or risk to the security of the Witness and the Witness’s family necessitating the augmentation of the protective measures previously granted to the Witness;

PURSUANT to Rules 54, 75 and 107 of the Rules;

¹⁰ Decision on Urgent Prosecution Motion for Augmentation of Protective Measures for a Witness Due to Testify in the *Tolimir* Case, 6 July 2010 (confidential) (“*Popović* Decision of 6 July 2010”), p. 3 and reference cited therein.

¹¹ *Popović* Decision of 6 July 2010, p. 3 and references cited therein.

¹² Motion, paras 4, 14; Appendix, para. 6.

¹³ Motion, paras 7, 13.

¹⁴ Motion, paras 3, 13.

¹⁵ Motion, paras 5, 12; Appendix, para. 4.

¹⁶ Motion, paras 5, 12, 14; Appendix, para. 5.

¹⁷ Motion, paras 7, 12; Appendix, para. 4.

HEREBY GRANTS the Motion, and

ORDERS that the Witness shall give evidence in closed session in the *Karadžić* case.

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



Judge Patrick Robinson
Presiding

Dated this tenth day of May 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]