

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: 7 February 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. John Hocking

Decision of: 7 February 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION'S URGENT MOTION TO
RESCIND PROTECTIVE MEASURES FOR WITNESS**

The Office of the Prosecutor:

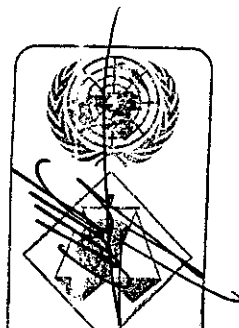
Mr. Peter Kremer QC
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić *pro se*

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira 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



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

NOTING that 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”);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;

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;²

NOTING the Prosecution’s submission that the Witness wishes to testify publicly in the *Karadžić* case;³

NOTING that, on 3 February 2012, the Pre-Appeal Judge instructed the Victims and Witnesses Section of the Tribunal (“VWS”) to consult with the Witness to confirm his/her consent to the rescission of his/her protective measures, to inform the Witness of the implications of the rescission, and to report as soon as practicable to the Appeals Chamber on the outcome of the consultation;⁴

NOTING that, on 6 February 2012, the Registrar submitted a report of the VWS;⁵

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*

¹ Motion, paras 1, 6. See also *ibid.*, para. 2.

² *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, T. 9178-9179 (21 March 2007). See also T. 9173-9175 (private session), 9177 (21 March 2007).

³ Motion, paras 2, 6.

⁴ Order Relating to Prosecution’s Urgent Motion to Rescind Protective Measures for Witness, 3 February 2012, p. 2.

⁵ Confidential and *Ex Parte* Report of VWS dated 6 February 2012 on the “Order Relating to Prosecution’s Urgent Motion to Rescind Protective Measures for Witness” dated 3 February 2012, appended to Registrar’s Submission Pursuant to Rule 33(B) in Compliance with the “Order Relating to Prosecution’s Urgent Motion to Rescind Protective Measures for Witness” Dated 3 February 2012, 6 February 2012 (confidential and *ex parte*) (“VWS Submission”).

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;⁶

CONSIDERING that the Appeals Chamber is currently seised of the *Popović et al.* case,⁷ and therefore has jurisdiction to rule on the Motion;

FINDING that the Prosecution, as a party to the second proceedings in the *Karadžić* case, properly filed the Motion before the Appeals Chamber;

CONSIDERING that pursuant to Rule 75(J) of the Rules, the Appeals Chamber shall ensure through the VWS that the protected 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 rescission of the protective measures of face distortion and assignment of a pseudonym;⁸

FINDING that it is therefore appropriate to grant the Motion and to rescind the relevant protective measures ordered in the *Popović et al.* case accordingly;

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

HEREBY GRANTS the Motion, and

⁶ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case Nos. 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 reference cited therein.

⁷ Prosecution’s Notice of Appeal, 8 September 2010; Vujadin Popovic’s [*sic*] Notice of Appeal, 8 September 2010 (confidential); Appellant, Ljubisa [*sic*] Beara’s Notice of Appeal, 8 September 2010; Notice of Appeal on Behalf of Drago Nikolić, 8 September 2010 (confidential); Notice of Appeal by the Radivoje Miletić Defence, 8 September 2010 (French original) (English translation filed on 24 September 2010); Notice of Appeal on Behalf of Vinko Pandurević Against the Judgment of the Trial Chamber Dated 10th June 2010, 8 September 2010 (confidential).

⁸ VWS Submission, para. 2.

RESCINDS the protective measures of face distortion and assignment of a pseudonym granted to the Witness by the Trial Chamber on 21 March 2007.

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



Judge Patrick Robinson
Presiding

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

[Seal of the Tribunal]

