

IT-95-14-R  
D1698-D1694  
24 JANUARY 2006

1698 AT

**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-95-14-R  
Date: 24 January 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Decision of:** 24 January 2006

**PROSECUTOR**

v.

**TIHOMIR BLAŠKIĆ**

**DECISION ON PROSECUTION'S MOTION FOR  
VARIANCE OF PROTECTIVE MEASURES IN THE  
*PROSECUTOR v. ŠEŠELJ & MARGETIĆ* CASE**

**The Office of the Prosecutor**

Ms. Carla Del Ponte  
Mr. Peter McCloskey  
Mr. David Akerson  
Mr. Salvatore Cannata  
Ms. Rebecca Graham

**The Government of the Republic of Croatia**

Mr. Thomas Osorio, Office of the President

**The Government of Serbia and  
Montenegro**

**Counsel for Tihomir Blaškić**

Mr. Anto Nobile  
Mr. Russell Hayman

**Counsel for Šešelj & Margetić**

Mr. Željko Olujić for Mr. Stjepan Šešelj  
Mr. Domagoj Margetić (self-represented)

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**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 “International Tribunal”, respectively) seized of the review proceedings in this case,

**BEING SEIZED OF** the “Prosecution’s Motion for a Variance of Protective Measures” filed confidentially on 26 September 2005 (“Motion”), in which the Prosecution in the contempt case, *Prosecutor v. Šešelj & Margetić*,<sup>1</sup> requests that the protective measures granted by the Trial Chamber in this case with respect to Witness Stjepan Mesić (“Witness Mesić”) be lifted;

**NOTING** that the Prosecution specifically requests that: (i) all protective measures applicable to Witness Mesić that were granted on 6 June 1997,<sup>2</sup> 16 March 1998,<sup>3</sup> and 1 December 2000<sup>4</sup> be lifted; and (ii) that the parties in *Šešelj & Margetić* be allowed to refer to Witness Mesić by his actual name, to the fact that he testified in this case, and to his statement and transcripts in whole or in part;<sup>5</sup>

**NOTING** that Counsel for Tihomir Blaskić has notified the Appeals Chamber that Tihomir Blaškić does not object to the Prosecution’s Motion;

**CONSIDERING** that pursuant to Rule 75(A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), “[a] Judge or a Chamber may [...] order appropriate measures for the privacy and protection of victims and witnesses [...]”;

**CONSIDERING** that Rule 75(F)(i) stipulates that “[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the first proceedings),” as in this case, “such protective measures: shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the second proceedings),” such as the in *Šešelj & Margetić* case, “unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule [...]”;<sup>6</sup>

<sup>1</sup> Case No. IT-95-14-R77.3.

<sup>2</sup> Decision of Trial Chamber I on the Requests of the Prosecutor of 12 and 14 May 1997 in Respect of the Protection of Witnesses, 6 June 1997 (“Decision of 6 June 1997”).

<sup>3</sup> Oral Order of Trial Chamber to Proceed in Closed Session, Confidential Transcript of 16 March 1998 Hearing (“Hearing of 16 March 1998”), T. 7088.

<sup>4</sup> Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 1 December 2000 (“Order of 1 December 2000”). The Appeals Chamber notes that the Prosecution mistakenly references this Order as being dated 2 December 2000 in its Motion.

<sup>5</sup> Motion, p. 2 and paras 10, 14.

<sup>6</sup> Internal quotation marks omitted.

**CONSIDERING** that under Rule 75(G)(i) the Prosecution, as “[a] party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings” is required to apply “to any Chamber, however constituted, remaining seized of the first proceedings [...]” and has done so through its Motion;

**FINDING** therefore that the Prosecution’s Motion is properly before the Appeals Chamber as the Chamber seized of the first proceedings under Rule 75 of the Rules;

**NOTING** that in its Decision of 6 June 1997, the Trial Chamber ordered generally that “the accused, his counsels and their representatives not disclose to the public or to the media the name of the witnesses residing in the territory of the former Yugoslavia or any information which would permit them to be identified, unless absolutely necessary for the preparation of the defence” and also ordered other additional protective measures to be implemented by both parties in order to guarantee the satisfactory protection of these witnesses;<sup>7</sup>

**FINDING** that because protective measures were ordered in the Decision of 6 June 1997 in response to the disclosure of and publication in the Croatian press of Witness Mesić’s identity and statement<sup>8</sup> and out of the Trial Chamber’s concern for the security of witnesses “residing in the territory of the former Yugoslavia” who may be called to make a statement before it during the trial,<sup>9</sup> those protective measures are clearly applicable to Witness Mesić;

**NOTING** that in the Hearing of 16 March 1998, the Trial Chamber ordered that Witness Mesić’s testimony be held in closed session in response to the request by the Prosecution to do so out of concern for the considerable personal risk posed to Witness Mesić and his family (“Order of 16 March 1998”);<sup>10</sup>

**CONSIDERING** that under Rule 79(A)(ii), “[t]he Trial Chamber may order that the press and the public be excluded from all or part of the proceedings” as a protective measure “for reasons of: [...] safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75 [...]”;

<sup>7</sup> Decision of 6 June 1997, paras 10, 12.

<sup>8</sup> *Id.*, para. 10.

<sup>9</sup> *Id.*, paras 10, 12.

<sup>10</sup> Hearing of 16 March 1998, T. 7079-7083, 7088.

**FINDING** therefore that the Trial Chamber's Order of 16 March 1998 did grant protective measures applicable to Witness Mesić as allowed under Rule 79 of the Rules;

**NOTING** that on 1 December 2000, the Trial Chamber ordered that the publication of statements or testimonies of Witness Mesić, or generally of any protected witness, should cease immediately or otherwise be found in contempt of the International Tribunal, but that the Trial Chamber did not grant any additional protective measures therein;<sup>11</sup>

**FINDING** therefore that there are no protective measures granted under the Order of 1 December 2000 that may be varied pursuant to the Prosecution's request in its Motion;

**NOTING** the Prosecution's submission in its Motion that key evidence in the contempt proceedings in the *Šešelj & Margetić* case are articles in the Croatian press, which mention Witness Mesić by name as a protected witness in this case and publish excerpts of his closed session testimony before the Trial Chamber;<sup>12</sup>

**NOTING** the Prosecution's submission that if the protective measures granted with respect to Witness Mesić in this case are not lifted, "it will be unnecessarily difficult at trial [in *Šešelj & Margetić*] to deal with the content of the articles without repeatedly moving into closed or private session to avoid violating the protection measures still in place";<sup>13</sup>

**NOTING** further that, according to the Prosecution, Witness Mesić has no objection to the relief requested in the Motion<sup>14</sup> and, in fact, wishes that the Appeals Chamber grants said relief;

**CONSIDERING** that pursuant to Rules 78 of the Rules, all proceedings before a Trial Chamber shall be public unless there are reasons for keeping them confidential;

**FINDING** that no reasons exist for keeping the protective measures originally ordered with respect to Witness Mesić in the Decision of 6 June 1997 and the Hearing of 16 March 1998 in light of (1) the time that has elapsed and the stage of the proceedings in this case; (2) the statement by Witness Mesić that such protective measures are no longer necessary; and (3) the fact that the repeated

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<sup>11</sup> Order of 1 December 2000, p.3.

<sup>12</sup> Motion, paras 5, 7-9, 12.

<sup>13</sup> *Id.*, para. 12.

<sup>14</sup> Motion, para. 13.

moving between closed and open session would, in the circumstances, be unnecessarily burdensome to the Trial Chamber and the parties in the *Šešelj & Margetić* case;

**ON THE BASIS OF THE FOREGOING** and pursuant to Rule 75(G)(i) of the Rules, **HEREBY GRANTS** the Prosecution's Motion in part and **ORDERS** that:

- 1) all protective measures granted with respect to Witness Mesić in the Decision of 6 June 1997 be lifted;
- 2) all protective measures granted with respect to Witness Mesić in the Hearing of 16 March 1998 be lifted; and
- 3) Witness Mesić's actual name, the fact that Witness Mesić testified, his statements to the Prosecution, as well as his testimony transcripts in this case, may be referred to publicly and in open session.

**DISMISSES** the Prosecution's Motion in all other respects.<sup>15</sup>

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

Dated this 24th day of January 2006,

At The Hague,

The Netherlands.



Judge Fausto Pocar, Presiding Judge

**[Seal of the International Tribunal]**

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<sup>15</sup> The Appeals Chamber notes that because this decision lifts the confidentiality of the Hearing of 16 March 1998 with respect to Witness Mesić; the Decision of 6 June 1997 and Order of 1 December 2000 were issued publicly; and the confidentiality of the fact of these review proceedings was lifted on 5 December 2005, it is unnecessary to issue the present decision confidentially.