

**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: 23 November 2011
Original: English

IN THE APPEALS CHAMBER

Before:

Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrésia Vaz

Registrar:

Mr. John Hocking

Decision of:

23 November 2011

PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTION BY RADOVAN KARADŽIĆ FOR
MODIFICATION OF DELAYED DISCLOSURE DECISION**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Applicant:

Mr. Radovan Karadžić *pro se*

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 “Motion by Radovan Karadžić [*sic*] for Modification of Delayed Disclosure Decision”, filed by Radovan Karadžić (“Karadžić”) on 27 September 2011 (“Motion”);

NOTING that the Motion pertains to a decision by the *Popović et al.* Trial Chamber granting the protective measure of delayed disclosure to a witness known in the *Karadžić* case¹ by the pseudonym KDZ320 (“Witness”);²

NOTING that in the Motion, Karadžić requests that the Appeals Chamber overturn its jurisprudence which held that delayed disclosure orders apply *mutatis mutandis* in subsequent proceedings;³

NOTING that, in the alternative, Karadžić requests that the Appeals Chamber either exercise its discretion to refer the matter to the Trial Chamber seised of the *Karadžić* case (“*Karadžić* Trial Chamber”),⁴ or order the immediate disclosure of the identity and prior statements of the Witness;⁵

NOTING that the Office of the Prosecutor does not oppose Karadžić’s request to refer the Motion to the *Karadžić* Trial Chamber but submits that the Motion should be dismissed in the event that the Appeals Chamber chooses to determine it;⁶

NOTING that the Appeals Chamber has held, Judge Pocar dissenting, that delayed disclosure orders are protective measures falling under Rule 75(F) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and therefore continue to have effect *mutatis mutandis* in subsequent proceedings before the Tribunal;⁷

FINDING that Karadžić has failed to show cogent reasons why the Appeals Chamber should depart from its jurisprudence in the present case;

¹ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T.

² Motion, paras 1-5; Prosecution’s Response to Motion by Radovan Karadžić for Modification of Delayed Disclosure Decision, 30 September 2011 (public with confidential and *ex parte* appendices A and B) (“Response”), Appendix A, p. 6.

³ Motion, paras 9, 12.

⁴ Motion, para. 13.

⁵ Motion, para. 17.

⁶ Response, paras 1-2.

⁷ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on “Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case”, 21 February 2007, p. 6, and Partially Dissenting Opinion of Judge Pocar, para. 2; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brdanin* Case, 24 January 2007, para. 17.

CONSIDERING that while pursuant to Rule 75(G) of the Rules, Karadžić correctly applied to the Appeals Chamber as the Chamber seised of the *Popović et al.* case, Rule 75(G) does not prohibit the Appeals Chamber from referring the matter to the *Karadžić* Trial Chamber;⁸

CONSIDERING that delayed disclosure directly impacts on Karadžić's ability to adequately prepare his defence,⁹ and that practical interests of judicial consistency and economy favour referral of the Motion to the *Karadžić* Trial Chamber;¹⁰

CONSIDERING that the *Karadžić* Trial Chamber, due to its organic familiarity with the case, is best placed to properly address whether and to what extent protective measures of delayed disclosure should be varied in the *Karadžić* case;¹¹

HEREBY GRANTS the Motion in part and **REFERS** the matter to the *Karadžić* Trial Chamber.

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



Judge Patrick Robinson
Presiding

Dated this twenty-third day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Order Regarding Rule 75 Motion by Stojan Župljanin, 25 February 2009 ("Second Krajišnik Order"), p. 2; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Order Regarding Rule 75 Motion by Mićo Stanišić, 22 August 2007 ("First Krajišnik Order"), p. 1.

⁹ Cf. *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Radovan Karadžić's Motion for Variance of Protective Measures, 25 September 2009, para. 9.

¹⁰ Cf. Second Krajišnik Order, p. 2; First Krajišnik Order, p. 1.

¹¹ See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case, 19 May 2009, para. 14.