

**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: 15 March 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:

15 March 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION'S MOTION TO LIFT
CONFIDENTIAL STATUS OF TESTIMONY AND EXHIBIT
RELATED TO SRBISLAV DAVIDOVIĆ**

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 Tapušковиć for Mr. Vujadin Popović
Mr. John Ostojčić 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 “Motion to Lift Confidential Status of Testimony and Exhibit Related to Srbslav Davidović”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 23 February 2012 (“Motion”);

NOTING that the Prosecution requests that the Appeals Chamber lift the confidential status of all but lines T.9268:16-T.9269:25 (“the 35 lines”) of the testimony of Srbslav Davidović (“Davidović”) in the *Popović et al.* case and his pseudonym sheet from the *Popović et al.* case;¹

NOTING that the Defendants in the *Popović et al.* case herein, namely, Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, Milan Gvero and Vinko Pandurević have not filed responses to the Motion;

NOTING that Trial Chamber II of the Tribunal in the *Popović et al.* case orally granted the protective measures of face distortion and assignment of a pseudonym (PW-162) to Davidović on 21 March 2007 in the *Popović et al.* case;²

NOTING that the Appeals Chamber rescinded the protective measures of face distortion and assignment of a pseudonym granted to Davidović as specifically requested by the Prosecution and after being satisfied that Davidović consented to the rescission;³

NOTING that Trial Chamber III of the Tribunal in the *Karadžić* trial⁴ has admitted into evidence, as a public exhibit, Davidović’s testimony in the *Popović et al.* case with the exception of the 35 lines and the pseudonym sheet for Davidović;⁵

CONSIDERING that portions of Davidović’s testimony were given in private session/closed proceedings in order to maintain the protection of his identity;

CONSIDERING that there is no longer a need to protect the identity of Davidović and that lifting the confidentiality of the transcript of his testimony in private session, excepting the 35 lines, would not impact upon any measures of witness protection applicable to any other witness;

¹ Motion, para. 1, fn. 3.

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

³ Decision on Prosecution’s Urgent Motion to Rescind Protective Measures for Witness, 7 February 2012, (“Rescission Decision”), pp. 2-3.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T.

⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, T-24360-24361 (9 February 2012). See also Motion, para. 2.

CONSIDERING that, pursuant to Article 20(4) of the Statute of the Tribunal, hearings are to be public unless the trial chamber decides to close the proceedings in accordance with the Tribunal's Rules of Procedure and Evidence ("Rules");

CONSIDERING that, pursuant to Rule 78 of the Rules, all proceedings before a trial chamber, other than its deliberations, shall be held in public unless otherwise provided, and that pursuant to Rule 81(B) of the Rules the trial chamber, after giving due consideration to any matters relating to witness protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist;⁶

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

CONSIDERING that the grounds which led to portions of Davidović's testimony being given in private session/closed proceedings and the confidentiality status of his pseudonym sheet no longer exist;

FINDING that it is appropriate for the classification of the transcript relating to Davidović's testimony given in private session in the *Popović et al.* case, with the exception of the 35 lines, and Davidović's pseudonym sheet be changed from confidential to public;

HEREBY GRANTS the Motion; and

ORDERS that the confidentiality of the testimony of Davidović in the *Popović et al.* case, with the exception of the 35 lines, and his pseudonym sheet be lifted.

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



Judge Patrick Robinson
Presiding

Dated this 15th day of March 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ Rescission Decision, p. 2.

⁷ Rescission Decision, p. 2.