

**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-08-91-R75H.3
Date: 29 June 2016
Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Christoph Flügge
Judge Fausto Pocar
Judge Koffi Kumelio A. Afande

Registrar: Mr. John Hocking

Order of: 29 June 2016

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC WITH PUBLIC ANNEX

**DECISION ON MOTION
FOR REDACTED VERSION OF DECISION**

The Office of the Prosecutor

Ms. Laurel Baig

Counsel for Mićo Stanišić

Mr. Slobodan Zečević and Mr. Stéphane Bourgon

Counsel for Stojan Župljanin

Mr. Dragan Krgović, Ms. Tatjana Čmerić, and Mr. Christopher Gosnell

Counsel for Jean de Dieu Kamuhanda

Mr. Peter Robinson

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);

NOTING the confidential and *ex parte* “Decision on Application Pursuant to Rule 75(H)”, issued by the Appeals Chamber in *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-R75H.3 on 5 December 2014 (“Decision”);

BEING SEISED OF the “Motion for Redacted Version of Decision”, filed by Jean de Dieu Kamuhanda (“Kamuhanda”) on 4 April 2016 (“Motion”) seeking a public redacted version of the Decision;¹

NOTING the response filed by the Office of the Prosecutor of the Tribunal (“Prosecution”), in which it proposes that Kamuhanda be given access to only a redacted version of the paragraph containing the legal reasoning in the Decision;²

RECALLING the “Order for Submissions on Motion for Redacted Version of Decision”, filed on 10 June 2016 (“Order for Submissions”), in which the Appeals Chamber ordered the Victims and Witnesses Section of the Registry of the Tribunal (“VWS”) to make submissions on the redactions in the Decision it considers necessary in order to ensure effective protection of the two witnesses referred therein;³

NOTING the “Deputy Registrar’s Submission in Compliance with the Order of 10 June 2016”, filed on 15 June 2016, to which was annexed a confidential and *ex parte* memorandum from the VWS proposing certain redactions in specific paragraphs of the Decision;⁴

NOTING the “Prosecution Submission Concerning ‘Deputy Registrar’s Submission in Compliance with the Order of 10 June 2016’”, in which the Prosecution observes that the VWS Submission

¹ Motion, paras 1, 4, 11. The Appeals Chamber notes that Kamuhanda became a party before the Residual Mechanism for the International Criminal Tribunals (“MICT”) and therefore ceased to be a party before the International Criminal Tribunal for Rwanda (“ICTR”), as of 1 July 2012 (see Security Council Resolution 1966 (2010), 22 December 2010). The Appeals Chamber recalls that in a previous decision, it has held that, in light of the principle of continuity between the Tribunal and the MICT, as well as the “residual” nature of the MICT, and for concerns of judicial economy and practicality, parties before the MICT shall be considered parties before the Tribunal for the purposes of requesting access to confidential material (see Decision on Karadžić’s Motion for Access to Prosecution’s Sixth Protective Measures Motion, 28 June 2016, p. 2; see also Article 1 of the Statute of the MICT).

² Prosecution Response to Jean de Dieu Kamuhanda’s Motion for Redacted Version of Decision, 12 April 2016 (public with confidential and *ex parte* Annex), para. 2.

³ Order for Submissions, pp 2-3.

⁴ Deputy Registrar’s Submission in Compliance with the Order of 10 June 2016, 15 June 2016 (public with confidential and *ex parte* Annexes A and B) (“VWS Submission”).

risks depriving Kamuhanda of the legal reasoning in the Decision and makes suggestions with respect to redactions;⁵

NOTING the “Deputy Registrar’s Further Submission in Relation to the Order of 10 June 2016”, in which the VWS agrees with the suggestions in the Prosecution Submission;⁶

RECALLING the Appeals Chamber’s considerations that Kamuhanda has: (i) identified the confidential and *ex parte* material sought with sufficient specificity; (ii) demonstrated a nexus between his case and the Decision; (iii) demonstrated that the Decision is likely to assist his case materially, and that, therefore, in the circumstances, he has shown a legitimate forensic purpose for access to a redacted version of the Decision;⁷

RECALLING that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential;⁸

EMPHASISING that the protection of witnesses and victims is of utmost importance to the proper functioning of the Tribunal and, once protective measures have been ordered, they continue to have effect on appeal, or in any other proceedings, unless they are modified by the competent Chamber;⁹

CONSIDERING that in the circumstances of this case, the interests of witness protection can be safeguarded through appropriate redactions in the Decision;

FINDING that issuing a public redacted version of the Decision will satisfy the objectives of safeguarding the protected witnesses and maintaining the public character of proceedings before the Tribunal;

FOR THE FOREGOING REASONS

PURSUANT TO Article 22 of the Statute of the Tribunal and Rules 54, 75, and 107 of the Rules of Procedure and Evidence;

HEREBY GRANTS the Motion;

⁵ Prosecution Submission Concerning “Deputy Registrar’s Submission in Compliance with the Order of 10 June 2016”, 20 June 2016 (confidential and *ex parte*) (“Prosecution Submission”), paras 2-3.

⁶ Deputy Registrar’s Further Submission in Relation to the Order of 10 June 2016, 22 June 2016, (confidential and *ex parte* with confidential and *ex parte* annex).

⁷ Order for Submissions, p. 2.

⁸ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution’s Motion for Order Issuing Public Redacted Version of the Appeals Chamber’s Reconsideration Decision of 17 January 2012, 22 February 2012, p. 1.

⁹ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Prosecution’s Motion Concerning Confidential Information in Vladimir Lazarević’s Public Submissions, 31 March 2010 (confidential), para. 5.

ISSUES, as an annex to the present decision, a public redacted version of the Decision.

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

Dated this twenty-ninth day of June 2016,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding Judge

[Seal of the Tribunal]

ANNEX

IT-08-91-R75H.3
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UNITED
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International Tribunal for the
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Case No. IT-08-91-R75H.3

Date: 5 December 2014

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IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
 Judge Patrick Robinson
 Judge Arlette Ramaroson
 Judge Khalida Rachid Khan
 Judge Koffi Kumelio A. Afande

Registrar: Mr. John Hocking

Decision of: 5 December 2014

PROSECUTOR

v.

**MIĆO STANIŠIĆ
 STOJAN ŽUPLJANIN**

DECISION ON APPLICATION PURSUANT TO RULE 75(H)

The Applicant
 [REDACTED]

**The Office of the Prosecutor
 Transition Team**

1. 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) is seized of the "Application Pursuant to Rule 75(H)", filed confidentially and *ex parte* on 27 June 2013 by [REDACTED] ("Application" and "Applicant", respectively), Defence Counsel for [REDACTED] [REDACTED], accused before [REDACTED] in the case of [REDACTED] [REDACTED], Case No. [REDACTED]. The Applicant requests the disclosure of the name, contact information, testimonies, statements, and other evidence of Witness [REDACTED] and Witness [REDACTED] (collectively, "Witnesses") in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T ("*Stanišić and Župljanin case*").¹

I. PROCEDURAL HISTORY

2. On 3 July 2013, the President of the Tribunal issued a confidential and *ex parte* order assigning the Application to the Appeals Chamber seized of the proceedings in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A.²

3. On 2 October 2014, the Appeals Chamber ordered the Victims and Witnesses Section of the Registry ("VWS") to contact and consult with Witness [REDACTED] for the purposes of determining whether he or she consents to the rescission or the variation of the protective measures as requested by the Applicant, and to inform Witness [REDACTED] of the implications of lifting or varying his or her protective measures.³ It ordered the VWS to file its submission with the Appeals Chamber no later than 16 October 2014.⁴ The Appeals Chamber also ordered the Office of the Prosecutor ("Prosecution") to submit a response, if any, within 14 days of being served a copy of the Application and Order.⁵

¹ Application, p. 5. The Appeals Chamber notes that the Application has no page or paragraph numbers. For ease of reference, the Appeals Chamber will therefore refer to the reverse numbering of the pages assigned by the Registry of the Tribunal ("Registry") as indicated on the top right-hand corner of the pages.

² Order Assigning a Chamber to Consider an Application Pursuant to Rule 75(H), 3 July 2013 (confidential and *ex parte*), p. 1.

³ Order for Submissions on Application Pursuant to Rule 75(H), 2 October 2014 (confidential and *ex parte*) ("Order"), p. 2. The Appeals Chamber did not order the VWS to contact Witness [REDACTED] since he or she [REDACTED] (see Order, p. 2.).

⁴ Order, p. 2.

⁵ Order, p. 3.

4. On 15 October 2014, the Prosecution filed its response.⁶ On 16 October 2014, the Registrar of the Tribunal ("Registrar") filed its submissions attaching a report prepared by the VWS ("VWS Submissions").⁷

II. SUBMISSIONS

5. The Applicant submits that [REDACTED] has been criminally charged before the Court of Bosnia and Herzegovina for taking part in the attack by Serb forces on Serb civilians in the village of [REDACTED] during 1992.⁸ According to the Applicant, the Witnesses have given evidence in the *Stanišić and Župljanin* case on events in [REDACTED] and [REDACTED] during 1992, including the [REDACTED].⁹ He argues that, considering the significant temporal and territorial links between the case against [REDACTED] and the *Stanišić and Župljanin* case, the requested information is of "high importance" for the preparation of the defence for [REDACTED] in the [REDACTED] case.¹⁰

6. The Applicant submits that it is "crucial" that the Defence has access to the Witnesses' identities and the content of their statements, in order to: (i) "clarify events" that occurred in [REDACTED] and [REDACTED] and (ii) confirm the identities of persons involved in [REDACTED] and (iii) to "gain other valuable information".¹¹ The Applicant also submits that the disclosed information will be treated as confidential to ensure the continued security deemed necessary by the Tribunal.¹²

7. The Prosecution submits that the Application should be denied.¹³ It argues that "neither witness provides unique information" such that the Applicant requires the variation of protective measures granted to them in order to ensure a fair trial, and that there is sufficient public information regarding the [REDACTED] in 1992 in a number of the Tribunal's judgements.¹⁴ The Prosecution submits that Witness [REDACTED] has previously denied consent for variation of the protective measures and that, in the absence of such consent, the Applicant has failed to demonstrate exigent circumstances justifying the variation of the protective

⁶ Prosecution's Response to Application of Defence of [REDACTED] for Variation of Protective Measures Pursuant to Rule 75(H), 15 October 2014 (confidential and *ex parte*) ("Prosecution Response"), paras 1, 4.

⁷ Registrar's Submission in Compliance with the Order for Submissions on Application Pursuant to Rule 75(H), 16 October 2014 (confidential and *ex parte*), paras 3-4.

⁸ Application, pp 4-5.

⁹ Application, pp 4-5.

¹⁰ Application, p. 3.

¹¹ Application, pp 3-4.

¹² Application, p. 1.

¹³ Prosecution Response, para. 4. See Prosecution Response, paras 1-3.

¹⁴ Prosecution Response, paras 1-2.

measures.¹⁵ With regard to Witness ██████, the Prosecution submits that ██████ and that, in the absence of his/her consent, the Applicant has similarly failed to demonstrate exigent circumstances justifying the variation of the protective measures in respect of Witness ██████'s Rule 92*quater* statement.¹⁶

8. The Prosecution further argues that a variation of protective measures is not needed to identify the perpetrators involved in the ██████, since they are named publicly in the *Stanišić and Župljanin* trial judgement.¹⁷

9. The Appeals Chamber observes that according to the VWS Submissions, Witness ██████ partially consents to the requested variation of protective measures, in particular that his or her identity details be disclosed to the Applicant, and that the Applicant can in turn disclose the same to the parties in the ██████ case, including the co-defendants and their counsel, if such variation is necessary at the present ██████ stage of the proceedings.¹⁸

III. DISCUSSION

10. The Appeals Chamber notes that the Applicant was authorised to submit the Application by the ██████, which constitutes an appropriate judicial authority within the meaning of Rule 75(H) of the Rules of Evidence and Procedure ("Rules").¹⁹ The Appeals Chamber further notes that it is seised of *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A and is, therefore, the Chamber "seised of the first proceedings" within the meaning of Rule 75(H)(i) of the Rules.

11. The Appeals Chamber observes that Witness ██████ has partially consented to the variation of protective measures, as described above.²⁰ The Appeals Chamber therefore finds it appropriate to grant the Application with respect to the disclosure of the name and contact details of Witness ██████ to the Applicant.

12. The Appeals Chamber notes that while the Application was made for the purpose of preparation of the defence of ██████ during the ██████²¹ the ██████ case is

¹⁵ Prosecution Response, para. 2.

¹⁶ Prosecution Response, para. 3.

¹⁷ Prosecution Response, para. 3, referring to ██████

¹⁸ VWS Submissions, paras 3-4. The VWS noted that ██████

(see VWS Submissions, fn. 2).

¹⁹ See Application, p. 8.

²⁰ See *supra*, para. 9.

²¹ See Application, pp 2-3.

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currently in the [REDACTED]²² The Appeals Chamber further observes that, beyond the scope of the Application, Witness [REDACTED] consents that the Applicant disclose the same details to parties and the co-defendants in the case. Accordingly, the Appeals Chamber finds, *proprio motu*, that it is in the interests of justice and in conformity with the consent of Witness [REDACTED]²³ to authorise the disclosure of Witness [REDACTED]'s name and contact information for the purpose of the [REDACTED]. The Appeals Chamber further finds it appropriate to emphasise that such disclosure is conditional upon the Applicant obtaining assurances that those parties and co-defendants to whom Witness [REDACTED]'s identity details may be disclosed, will strictly ensure the confidentiality of the information, and ensuring the same level of protection granted to Witness [REDACTED] by the Tribunal.

13. The Appeals Chamber notes that Witness [REDACTED] does not consent to the variation of protective measures concerning confidential statements and testimony.²⁴ It finds that, on the basis of the information provided, no exigent circumstances within the meaning of Rule 75(J) of the Rules have been demonstrated that would justify a *proprio motu* variation of the protective measures in the absence of Witness [REDACTED]'s consent. The Appeals Chamber is similarly not persuaded that such variation of protective measures is necessary to prevent a miscarriage of justice within the meaning of Rule 75(J) of the Rules. The Application is therefore denied in this respect.

14. Turning to Witness [REDACTED], the Appeals Chamber notes that this witness is deceased and that therefore no consent to the variation of the protective measures can be obtained from him or her.²⁵ On the basis of the information provided, no exigent circumstances within the meaning of Rule 75(J) of the Rules have been demonstrated that would justify a *proprio motu* variation of the protective measures in the absence of Witness [REDACTED] consent. The Appeals Chamber further considers that such variation of protective measures is not necessary to prevent a miscarriage of justice within the meaning of Rule 75(J) of the Rules. The Application is therefore denied with respect to Witness [REDACTED].

IV. DISPOSITION

15. Pursuant to Article 22 of the Statute of the Tribunal and Rules 54, 75, and 107 of the Rules, the Appeals Chamber:

²² See [REDACTED]

²³ See VWS Submissions, para. 4.

²⁴ VWS Submissions, para. 4.

²⁵ See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting in Part Prosecution's Motions for Admission of Evidence Pursuant to Rule 92quater for Five Witnesses and Protective Measures for [REDACTED] 19 January 2011 (confidential) ("Decision of 19 January 2011"), para. 14, fn. 25. Witness [REDACTED] evidence was admitted pursuant to Rule 92quater of the Rules (see Decision of 19 January 2011, para. 75). See Order, p. 2.

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GRANTS the Application, in part;

VARIES, *proprio motu*, the protective measures of Witness ██████ to the extent that his or her name and contact information may be disclosed to the Applicant for the purpose of the ██████ proceedings in the ██████ case;

ORDERS the Registry to release the identity details of Witness ██████ to the Applicant;

ORDERS that the information released to the Applicant pursuant to this Decision shall be treated as confidential and shall not be used for any other purpose than that for which it is released by this Decision;

ORDERS that the information released pursuant to this Decision shall not be disclosed by the Applicant or provided to any other parties or persons, except in relation to the purpose indicated in this Decision, specifically ██████ in the ██████ case, and provided the Applicant obtains assurances under the threat of criminal sanction that those parties or persons will strictly maintain the confidentiality of the information;

ORDERS the Applicant to take all necessary measures, both legal and practical, in order to ensure the safety and security of Witness ██████ and shall provide Witness ██████ with the same level of protection as granted to him or her individually by the Tribunal;


ORDERS that, should the Applicant desire to rescind, vary, or augment the protective measures which apply to the information released by this decision, it shall apply to the President of the Tribunal for appropriate relief;

DENIES the Application in all other respects with regard to Witness ██████; and

DENIES the Application in its entirety with regard to Witness ██████

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

Dated this fifth day of December 2014,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding

[Seal of the Tribunal]