

**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
Date: 22 February 2012
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 22 February 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR ORDER
ISSUING PUBLIC REDACTED VERSION OF THE APPEALS
CHAMBER'S RECONSIDERATION DECISION OF
17 JANUARY 2012**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušković 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);

NOTING the “Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds” filed publicly on 11 January 2012 (“Provisional Release Decision”), granting Vinko Pandurević (“Pandurević”) provisional release between 13 January and 23 January 2012;¹

NOTING the “Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber’s Decision on Vinko Pandurević’s Provisional Release of 11 January 2012” filed confidentially on 17 January 2012 (“Reconsideration Decision”), denying reconsideration of the public status of the Provisional Release Decision;²

BEING SEISED OF the “Prosecution Motion for Order Issuing Public Redacted Version of ‘Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber’s Decision on Vinko Pandurević’s Provisional Release of 11 January 2012’” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 26 January 2012 (“Motion”);

NOTING that Pandurević did not file a response to the Motion;

NOTING that the Prosecution submits that since the Provisional Release Decision is public and Pandurević has returned from provisional release, “no exceptional reasons remain that would warrant full confidentiality of the Reconsideration Decision”;³

NOTING that the Prosecution further submits that since the Reconsideration Decision refers to confidential decisions, a public redacted version would address any concerns in this regard;⁴

CONSIDERING that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential;⁵

¹ Provisional Release Decision, paras 17, 19.

² Reconsideration Decision, p. 3.

³ Motion, para. 2.

⁴ Motion, para. 3.

⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.3, Order Lifting Confidentiality, 10 June 2011, p. 1. See also *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009, para. 5; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Order Withdrawing Confidential Status of Pre-Review Order and Decisions, 5 December 2005, p. 2; *Prosecutor v. Mladen Naletilić, aka “TUTA” and Vinko Martinović, aka “ŠTELA”*, Case No. IT-98-34-A, Decision on Vinko Martinović’s Withdrawal of Confidential Status of Appeal Brief, 4 May 2005, p. 3.

CONSIDERING that the mere citation of confidential decisions does not *per se* ordinarily necessitate redaction;⁶

CONSIDERING the discretion of the Appeals Chamber to decide whether the confidential status of a decision may be lifted in whole or in part;⁷

FINDING *proprio motu* that no exceptional reasons exist for the contents of the Reconsideration Decision to remain confidential;

HEREBY INSTRUCTS the Registry of the Tribunal to lift the confidential status of the Reconsideration Decision; and

CONSIDERING the foregoing, **DISMISSES** the Motion as moot.

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



Judge Patrick Robinson
Presiding

Dated this 22nd day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ *In The Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Judgement, 19 July 2011 (“*Hartmann* Appeal Judgement”), para. 67. The Appeals Chamber here cites with approval the Trial Chamber’s reasoning that “[t]he law is public while the facts often are not” in reference to the citation by the President of the Tribunal of a confidential decision. See also *In The Case Against Florence Hartmann*, Case No. IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009, para. 35; Decision on Vujadin Popović’s Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 20 October 2011, p. 8, fn. 65 (“[...] the Appeals Chamber has the discretion to render this decision publicly despite the references to this confidential decision”).

⁷ *Hartmann* Appeal Judgement, para. 52.