



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-95-16-R.2

Date: 7 April 2003

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana

Registrar: Mr. Hans Holthuis

Order of: 7 April 2003

PROSECUTOR

v.

DRAGO JOSIPOVIĆ

**ORDER ON PROSECUTION'S MOTION
TO EXPUNGE DOCUMENTS FROM THE RECORD**

Counsel for the Prosecutor:

**Mr. Norman Farrell
Mr. Christopher Staker**

Counsel for Drago Josipović:

**Mr. Ranko Radović
Mr. Tomislav Pasarić**

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 (“International Tribunal”),

NOTING that the Appeals Chamber’s decision on Josipović’s motion for review was issued on 7 March 2003;¹

BEING SEISED OF the “Prosecution Motion to Expunge Documents from the Record” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 7 March 2003 (“Request”);

NOTING that the Defence has not responded to the Request;

NOTING that counsel for Josipović (“Defence”) filed confidentially his motion for review² (“Confidential Motion”) and the reply³ (“Confidential Reply”), respectively on 30 July and 19 September 2002;

NOTING that the Defence sent to the Registry what it considered the public versions of the Confidential Motion and Confidential Reply on 4 March 2003 (respectively “Submitted Public Motion” and “Submitted Public Reply” or, together “Submitted Documents”) but that the Registry filed them confidentially;

CONSIDERING that in the Request the Prosecution argues that: (i) the Submitted Public Motion still contains confidential information and that some of the wording used in it is materially different from that used in the Confidential Motion and that (ii) certain portions of the Submitted Public Reply are not identical to the corresponding portions of the Confidential Reply;

FINDING, upon examination, that these submissions are correct;

CONSIDERING that it is in the public interest to have public versions of the documents of a case and that these versions must be identical to the original documents, except for the redaction of all portions that cannot be made public;

¹ *Prosecutor v. Drago Josipović*, Case No.: IT-95-16-R.2, “Decision on Motion for Review”, 7 March 2003.

² *Prosecutor v. Drago Josipović*, Case No.: IT-95-16-R.2, “Request for Review of the Counsel of the Convicted Drago Josipović”, 30 July 2002.

³ *Prosecutor v. Drago Josipović*, Case No.: IT-95-16-R.2, “Motion of the Counsel with which he answers to the Prosecution’s response to the Counsel’s request for the revision of the case”, 19 September 2002.

CONSIDERING however, that while the Prosecution in the Request points out certain portions of the Submitted Public Motion that contain confidential information, it also acknowledges that it “has not examined each element of the text of the First Public Document [Submitted Public Motion] in order to determine whether it contains information that cannot be made public” and that “this is the responsibility of the party filing a public redacted version of its own document, and not the responsibility of the other party”;

CONSIDERING that, since the Defence has already submitted what it believed was the public version of the sought documents, it is for the Prosecution to indicate precisely to the Appeals Chamber and the Defence which portions of the Submitted Public Motion should still be redacted in order to ensure confidentiality;

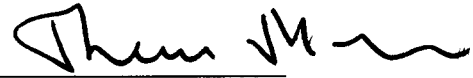
CONSIDERING that in the Request the Prosecution also asks the Appeals Chamber to order that the Submitted Documents be expunged from the record;

CONSIDERING that since the Submitted Documents were filed confidentially, there is no reason to expunge them;

HEREBY ORDERS:

- 1) The Prosecution to file a notice before the Appeals Chamber indicating precisely all portions of the Submitted Public Motion which are confidential within five days from the filing of the present order;
- 2) The Defence to file a public version of the Confidential Motion which must (i) contain all the redactions already made in the Submitted Public Motion and all the redactions suggested by the Prosecution in the above notice, and (ii) be identical to the Confidential Motion except for the redacted parts, within five days from the filing of the above notice;
- 3) The Defence to file a public version of the Confidential Reply which must be identical to the Confidential Reply except that it must contain all the redactions which had been (correctly) made in the Submitted Public Reply, within five days from the date of the present order;

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



Judge Theodor Meron
Presiding Judge

Done this 7th of April 2003,
At The Hague,
The Netherlands.

[Seal of the Tribunal]