

**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-02-60-A
Date: 2 December 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision: 2 December 2005

PROSECUTOR

v.

Vidoje BLAGOJEVIĆ

CONFIDENTIAL AND *EX PARTE* IN RELATION TO DRAGAN JOKIĆ

**DECISION ON PROSECUTION'S URGENT MOTION FOR DISCLOSURE OF
ALL EX PARTE FILINGS AND SUBMISSIONS RELATING TO THE
RELATIONSHIP BETWEEN MR. BLAGOJEVIĆ AND HIS COUNSEL DURING
TRIAL**

The Office of the Prosecutor:

Mr. Norman Farrell

Counsel for the Accused:

Mr. Vladimir Domazet for Mr. Vidoje Blagojević

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 Trial Chamber I rendered its Judgement in the case of *Prosecutor v. Blagojević et al.*, Case No. IT-02-60, orally on 17 January 2005 and in writing on 24 January 2005 (“Judgement”), and that Appeals have been filed by both Vidoje Blagojević and Dragan Jokić as well as by the Prosecution;

NOTING the “Brief on Appeal” filed by Vidoje Blagojević (“the Appellant”) on 20 October 2005, in which the Appellant’s first ground of appeal is based on an alleged denial of his right to a fair trial, the argument being that the Trial Chamber erred in denying his request for assigned counsel to be withdrawn and that there was a complete loss of trust between the Appellant and his trial counsel;¹

NOTING that at the trial stage both the Trial Chamber and the Appeals Chamber rendered decisions on the Appellant’s request to replace his defence team², and that the public version of the Appeals Chamber’s decision, which considered “in the interests of finality” some matters not previously raised before the Trial Chamber, was partially redacted in sections relevant to the Appellant’s first ground of appeal;

BEING SEISED OF the Prosecution’s “Urgent Motion for Disclosure to the Prosecution of all *ex parte* Filings and Submissions relating to the Relationship between Mr. Vidoje Blagojević and his Counsel During Trial” (“Prosecution Motion”), filed on 11 November 2005, in which the Prosecution requests the Appeals Chamber to identify and disclose to the Prosecution all the *ex parte* materials -- including written pleadings, records of court proceedings or appearances, and other relevant material placed before the Registry or the Office of Legal Aid and Detention Matters (“OLAD”) -- that relate to the relationship between the Appellant and his defence team at trial, and to which the Prosecution annexed a list of all the *ex parte* filings and proceedings currently known to the Prosecution;³

¹ *Blagojević*, Appeal Brief, 20 October 2005, paras 2.1-2.40.

² Decision on Independent Counsel for Vidoje Blagojević’s Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003; Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003 (“Appeals Decision”).

³ Annex A is a list of filings pertaining to Mr. Blagojević’s relationship with trial counsel, as ascertained by the Prosecution. Annex B is a list of documents and submissions known to the Prosecution and for which disclosure is sought.

NOTING that the Prosecution alternatively seeks the lifting of the *ex parte* status of all the relevant documents and their re-classification as “confidential” if the Appeals Chamber finds that protecting the information is no longer necessary, and requests that, in case the *ex parte* status is not lifted, the Appeals Chamber order the Defence to indicate which of these filings or submissions should remain *ex parte* if the Prosecution needs to refer to them in its Response to the Accused’s “Brief on Appeal”;

NOTING the “Defence of Accused Mr. Vidoje Blagojević Response Motion to Prosecutor’s urgent Motion for Disclosure of all *ex parte* Filings and Submissions relating to the Relationship between Mr. Blagojević and Mr. Karnavas filed on 11 November 2005”, filed on 16 November 2005 (“Response”), in which the Appellant does not oppose the Prosecutor’s request for disclosure, explains that his newly appointed appellate counsel has also never seen copies of the requested filings, and asks that a copy of all the requested filings be given to his appellate counsel;

CONSIDERING that the matters on which the Appellant bases his first ground of appeal of an alleged denial of his right to a fair trial relate to a complex procedural history, and that, owing to the *ex parte* confidential proceedings at trial stage, the Prosecution is currently not fully apprised of the relevant facts pertaining to the relationship between the Appellant and his Trial Counsel;

CONSIDERING that access to this information is necessary to permit the Prosecution to respond adequately to the Appellant’s first ground of appeal;

CONSIDERING that the Appellant does not oppose the Prosecution’s request for access to *ex parte* material;

FINDING that the Appellant should have access on appeal to all of the *ex parte* material to which he had access at trial, and that because some of this material was apparently not transferred from his trial counsel to his appellate counsel, copies of this material should now be delivered to him;

FINDING that, however, there is no reason that the other party to this case — co-appellant Dragan Jokić — needs access to this information, as it does not implicate his own appeal or that of the Prosecution against him, and that the material should thus retain its *ex parte* status with respect to Mr. Jokić;

HEREBY GRANTS the Prosecution Motion and allows the Prosecution, subject to the conditions set forth below, access to those *ex parte* and confidential materials listed in Annexes A and B of the Prosecution Motion that relate to the relationship between the Appellant and his Trial Counsel, as well as to other *ex parte* and confidential documents from the trial stage relating to that relationship;

REQUESTS the Registry to:

a) within two business days of the filing of this decision, provide to both the Prosecution and the Appellant's defence team copies of those materials listed in Annexes A and B that are *ex parte* and confidential, and

b) as soon as is reasonably possible thereafter, identify any other *ex parte* and confidential materials formally filed and numbered in the case file from the trial phase of the case, as well as transcripts of *ex parte* proceedings, that relate to problems in the relationship between Mr. Blagojević and his trial counsel, and provide copies of them to both the Prosecution and the Appellant's defence team;

ORDERS the Prosecution to file a redacted version of its Consolidated Response Brief in which references to these *ex parte* and confidential materials are struck out;

ORDERS the Prosecution to maintain the confidentiality of these materials; and

DENIES the Prosecution's alternative request to lift the *ex parte* status of all relevant documents and to reconsider the classification of these documents as "confidential".

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



Judge Fausto Pocar,
Presiding

Dated 2 December 2005

At The Hague

The Netherlands

[Seal of the International Tribunal]