

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-95-9-A
Date: 22 February 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andréia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 22 February 2006

PROSECUTOR

v.

BLAGOJE SIMIĆ

PARTLY CONFIDENTIAL

**DECISION ON APPLICATION OF STEVAN TODOROVIĆ
FOR ADDITIONAL PROTECTIVE MEASURES**

Counsel for the Prosecutor:

Mr. Peter Kremer

Counsel for the Appellant:

Mr. Igor Pantelić
Mr. Peter Murphy

Counsel for Stevan Todorović:

Mr. Nikola P. Kostich

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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 the “Order *Proprio Motu* Granting Access to Confidential Material” issued on 3 February 2006 (“Order Granting Access”), whereby the Appeals Chamber granted Blagoje Simić (“Appellant”) and his Defence access, subject to certain conditions, to the medical reports filed confidentially before the Trial Chamber seized of the *Todorović* case¹ relating to the psychiatric examination of Mr. Stevan Todorović (“Medical Reports”)² and ordered the Prosecution and Mr. Todorović to apply for additional protective measures or redactions of the Medical Reports, if required, within seven working days of the Order Granting Access;

NOTING the “Prosecution’s Notice Re the Appeals Chamber’s Order of 3 February 2006 Granting Access to Confidential Material” filed on 8 February 2006, whereby the Prosecution notified the Appeals Chamber that it does not consider additional protective measures or redactions necessary;

NOTING the “Decision on Motion for Extension of Time from Stevan Todorović’s Counsel” issued on 13 February 2006, whereby the Pre-Appeal Judge granted in part Mr. Todorović’s request for an extension of time and ordered Mr. Todorović, if he wished to do so, to apply for additional protective measures or redactions of the Medical Reports no later than 20 February 2006;

BEING SEISED OF the “Application of Stevan Todorović for Additional Protective Measures” filed on 20 February 2006 (“Application”);

NOTING that, in his Application, Mr. Todorović submits that it is not clear which medical reports are subject to the Order Granting Access and that the only medical reports relevant to the Appellant’s case pertain to Mr. Todorović’s stay at the United Nations Detention Unit in The Hague in June 2002 when he appeared as a witness in the said case, and requests that these medical reports “be made available only to the [A]ppellant’s counsel and agents of the defence counsel who are potential expert medical witnesses in the defence case” and that the same medical reports “be returned to the Appeals Chamber once they have been reviewed by defence counsel and their expert witnesses”;³

¹ *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S.

² Report of Dr. Lecić-Tosevski and Report of Dr. Soyka, referred to by the *Todorović* Trial Chamber as the “Soyka Report” and the “Lecić-Tosevski Report”. See *Prosecutor v. Stevan Todorović*, IT-95-9/1-S, Sentencing Judgement, 31 July 2001, para. 94.

³ Application, para. 13.

NOTING further that Mr. Todorović requests that (i) the medical reports relating to the period from on or about 30 September 1998 to the date he was sentenced in July 2001 (including the “Soyka” and “Lecić-Tosevski” Reports), as well as the medical reports covering the period of his incarceration in Spain, “not be released to any third parties”; and (ii) if this request is not met, the Appeals Chamber review *in camera* those medical reports, upon which review “all personal information, medical opinions and other sensitive matters be redacted and the only information released to third parties be information which is consistent with the more concise and limited needs of the defence”;⁴

RECALLING that the Appeals Chamber has already granted the Appellant and his Defence access, subject to certain conditions set out in the Order Granting Access, to the “Soyka” and “Lecić-Tosevski” Reports, unequivocally referred to in the Order Granting Access and the present Decision as the “Medical Reports”;

CONSIDERING that, once the Appeals Chamber has granted access to confidential material from another case, “the Appeals Chamber shall determine which protective measures shall apply to the said material as it is within the Appeals Chamber’s discretionary power to strike a balance between the rights of a party to have access to material to prepare its case and guaranteeing the protection and the integrity of confidential information”;⁵

FINDING that the redactions ordered below strike an appropriate balance between the rights of the Appellant and the protection of Mr. Todorović’s privacy;

PURSUANT TO Article 20(1) of the Statute and Rules 54 and 75 of the Rules of Procedure and Evidence of the International Tribunal;

HEREBY ORDERS the Registry to provide the Appellant and his Counsel and any employees who have been instructed or authorised by his Counsel with access to the Medical Reports as redacted in the attached confidential Annex 1, subject to the provisions set forth in the Order Granting Access; and

REMINDS the Appellant and the Prosecution that:

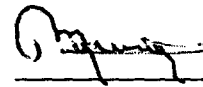
⁴ Application, para. 14.

⁵ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Galić Case, 16 February 2006, para. 10; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005, para. 16; *Prosecutor v. Mladen Naletilić, a.k.a. “Tuta” and Vinko Martinović, a.k.a. “Štela”*, Case No. IT-98-34-A, Decision on “Slobodan Praljak’s Motion for Access to Confidential Testimony and Documents in *Prosecutor v. Naletilić and Martinović*” and “Jadranko Prlić’s Notice of Joinder to Slobodan Praljak’s Motion for Access”, 13 June 2005, p. 7.

- (a) the Appellant's additional submissions, if any, shall be filed within seven days from the date of receiving the Medical Reports;
- (b) the Prosecution's response, if any, shall be filed within five days of the filing of the additional submissions; and
- (c) the Appellant's reply, if any, shall be filed within three days of the filing of the Prosecution's response.

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

Done this 22nd day of February 2006,
At The Hague,
The Netherlands.



Judge Mehmet Güney
Presiding Judge

[Seal of the International Tribunal]