

**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: 11 July 2007
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: 11 July 2007

PROSECUTOR

v.

**Vidoje BLAGOJEVIĆ
and
Dragan JOKIĆ**

**DECISION ON PROSECUTION MOTION TO LIFT
CONFIDENTIAL AND EX PARTE STATUS OF APPEALS CHAMBER'S
DECISION OF 2 DECEMBER 2005**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Vladimir Domazet for Vidoje Blagojević
Mr. Peter Murphy and Ms. Chrissa Loukas for Dragan Jokić

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 “International Tribunal”, respectively);

NOTING the “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”, issued by the Appeals Chamber on 2 December 2005 (“Decision of 2 December 2005”);

NOTING that the Decision of 2 December 2005 was issued confidentially and was *ex parte* in relation to Dragan Jokić (“Mr. Jokić”);

NOTING that the Appeals Chamber rendered its Judgement in this case on 9 May 2007;

BEING SEIZED OF the “Prosecution Motion to Lift Confidential and Ex Parte Status of Appeals Chamber’s Decision of 2 December 2005”, filed confidentially and *ex parte* in relation to Mr. Jokić on 21 June 2007 (“Prosecution Motion”), in which the Prosecution requests that the confidential and *ex parte* status be lifted from the Decision of 2 December 2005;¹

NOTING that the Prosecution submits that “it wishes to rely on the Decision in support of an intended motion in the appeal of Momcilo Krajisnik” (IT-00-39-A), but that “while the confidential and *ex parte* status remain, neither Mr. Krajisnik nor the *amicus curiae* would have access to the Decision and it would be unfair for the Prosecution to rely on it”;²

NOTING that the Prosecution further argues that there is no reason for the Decision of 2 December 2005 to remain confidential and that although it refers to the existence of *ex parte* and confidential material, “it is the content of the material, not the fact of its existence, which attracts confidentiality” and “[t]he Decision does not set out the content of any such material”;³

¹ On 25 June 2007, the Prosecution filed confidentially and *ex parte* regarding Mr. Jokić its “Prosecution’s Corrigendum to Filing of 21 June 2007”, in which it corrected certain typographical errors that had occurred in the process of filing electronically. On 26 June 2007, the President of the Tribunal assigned a Bench of the Appeals Chamber to decide on the Prosecution Motion. (Order Assigning Judges to a Case Before the Appeals Chamber (confidential and *ex parte* in relation to Dragan Jokić), 26 June 2007 (“Order Assigning Judges”)).

² Prosecution Motion, para. 5.

³ Prosecution Motion, paras 6-7.

NOTING that Vidoje Blagojević (“Mr. Blagojević”) has filed a confidential and partly *ex parte* response to the Prosecution Motion, in which he indicates that he supports the lifting of the confidential and *ex parte* status of the Decision of 2 December 2005 (“Blagojević Response”);⁴

CONSIDERING that pursuant to Rules 78 and 107 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), all proceedings before the Appeals Chamber shall be public unless there are exceptional reasons for keeping them confidential;⁵

CONSIDERING that the Decision of 2 December 2005 deals with a matter of procedure and does not set out the content of the confidential and *ex parte* material to which it refers;

CONSIDERING that to the extent the Decision of 2 December 2005 refers to the general subject matter of the *ex parte* and confidential material, that subject-matter formed the basis of Mr. Blagojević’s first ground of appeal and was discussed by the Appeals Chamber in its public Judgement in this case;

CONSIDERING, therefore, that no exceptional reasons exist for retaining the confidential and *ex parte* status of the Decision of 2 December 2005;

CONSIDERING further that there is no need for the Prosecution Motion, the Blagojević Response, and the Order Assigning Judges to remain confidential and *ex parte* with regard to Mr. Jokić if the confidentiality and *ex parte* status of the Decision of 2 December 2005 is lifted;

HEREBY GRANTS the Prosecution Motion; **INSTRUCTS** the Registry of the International Tribunal to lift the confidential and *ex parte* status of the Decision of 2 December 2005, the Prosecution Motion, the Blagojević Response, and the Order Assigning Judges; and **ORDERS** that these documents shall henceforth be considered public filings.⁶

⁴ Vidoje Blagojević’s Defence Response Motion to Prosecution’s Motions filed on 21 June 2007 and on 25 June 2007 (confidential and *ex parte* in relation to Dragan Jokić), 3 July 2007, p. 1. Mr. Blagojević initially attempted to file his response on 2 July 2007 but his filing was rejected by the Registry as it was not designated *ex parte* in relation to Mr. Jokić. The Appeals Chamber considers it to be in the interest of justice to consider Mr. Blagojević’s submissions on this matter and recognizes his re-filed response, although filed after the expiration of the relevant time-limit, as validly filed. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (IT/155/Rev. 3), 16 September 2005, para. 19.

⁵ See *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Order Withdrawing Confidential Statute of Pre-Review Order and Decisions, 5 December 2005, p. 2, citing *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Vinko Martinović’s Withdrawal of Confidential Status of Appeal Brief, 4 May 2005, p. 3.

⁶ The Appeals Chamber notes that because this decision lifts the confidential and *ex parte* status of the Decision of 2 December 2005, the Prosecution Motion, the Blagojević Response, and the Order Assigning Judges, it is unnecessary to issue the present decision confidentially or *ex parte* with regard to Mr. Jokić.

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

11 July 2007

The Hague

The Netherlands.



Judge Fausto Pocar

Presiding

[Seal of the International Tribunal]