



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-95-5/18-PT

Date: 1 October 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 1 October 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR RECLASSIFICATION OF ANNEX "A"
TO THE ACCUSED'S PARTIAL RESPONSE TO FIFTH MOTION FOR ADMISSION OF
STATEMENTS AND TRANSCRIPTS: SREBRENICA EVENTS**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

THIS TRIAL 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 (“Tribunal”) is seised of the “Motion for Reclassification of Annex ‘A’ to the Accused’s Partial Response to Fifth Motion for Admission of Statements and Transcripts: Srebrenica Events”, filed by the Office of the Prosecutor (“Prosecution”) on 29 September 2009 (“Motion”) and hereby issues this decision thereon.

1. On 25 September 2009, the Accused publicly filed his “Partial Response to Fifth Motion for Admission of Statements and Transcripts: Srebrenica Events” (“Partial Response”) and attached an Annex that contained a statement from one of the Prosecution’s proposed 92 *bis* witnesses.¹ The statement at issue was given to the Accused by the witness after the Accused interviewed the witness on 4 September.² On 29 September 2009, the Prosecution filed the present Motion seeking to reclassify this Annex as a confidential document, on the basis that proposed witness statements should not be filed publicly prior to the start of the trial.³ On 30 September 2009, the Accused filed his “Response to Motion to Reclassify Egbers Annex” (“Response”) opposing the Prosecution’s Motion on the grounds that there is no harm in releasing the material in question.⁴

2. Article 20 of the Tribunal’s Statute provides that:

(1) The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.”

...

(4) The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Additionally, Article 21, paragraph 2 provides “[i]n the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.”

3. The Appeals Chamber has held that “[a] document should be filed on a confidential basis only when it contains information which, if disclosed, might cause prejudice, concerns about safety, or serious embarrassment to a party or a witness, or where the very fact of filing might

¹ Partial Response, Annex A

² Partial Response, paras. 5-6.

³ Motion, para. 2-3.

⁴ Response, paras. 2-3.

have the same result.”⁵ Further, “[t]he only exception to this principle of transparency is when the information is sensitive and its disclosure will lead to the consequences which . . . risk damaging the proceedings themselves. By labelling routine filings as confidential without justifiable reason, a party contravenes this important policy of the Tribunal.”⁶

4. In its Motion, the Prosecution states that “it is the Prosecution’s position that the witness statements should not be filed publicly prior to the start of the trial.”⁷ It cites in support of its position comments by the former Pre-trial Judge made during a Rule 65 *ter* meeting to the effect that,

... [I]t’s a different thing to ask for the statements of the witnesses, who may give evidence, to be presented publicly before the trial, and indeed it may be a recipe for confusion, because a witness who has given a statement may not, in fact, say the same thing in the trial. And what’s important is that the public hear the actual evidence under solemn declaration in court, rather than, as happens in many areas of our life today, political, sporting, and cultural, rather than hearing speculation about what might or might not actually take place in the trial.⁸

5. The Prosecution does not appear to be arguing that the identity of the particular witness in question (Vincentius Egbers, a Dutch military officer) needs to remain confidential, but rather that the supplemental witness statement provided by him and proposed for admission into evidence by the Accused should be confidential until such time as it forms part of the evidence in the case. The Chamber notes that this witness has testified openly in two cases before this Tribunal, and has never sought the application of protective measures, and considers that there is no reason for his identity to be confidential. Moreover, there does not appear to be anything contained in his proposed supplemental witness statement that requires confidentiality or is not already in the public domain by way of his prior testimony. Given that the Accused’s Partial Response, including Annex A thereto, has already been filed and disseminated publicly, the Chamber does not consider it necessary to order that Annex A be refiled on a confidential basis. However, the Chamber agrees with the words of the former pre-trial Judge quoted above, and advises the Accused that he should not reveal the identities of proposed Prosecution witnesses whose names are not yet publicly known, or file the content of proposed witness statements as public documents, without leave from the Chamber.

⁵ *Prosecutor v. Stakić*, IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26, April 2004 (*Stakić Decision*), para. 6.

⁶ *Stakić Decision*, para. 7.

⁷ Motion, para. 2.

⁸ *Prosecutor v. Karadžić*, IT-95-5/18-PT, 65 *ter* Conference, 15 June 2009, T.52.

9. Accordingly, the Trial Chamber, pursuant to Rules 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this first day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]