



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-81-T
Date: 30 October 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 30 October 2009

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE REQUEST TO LIFT
CONFIDENTIALITY OF FILINGS**

The Office of the Prosecutor

Mr. Mark Harmon
Mr. Daniel Saxon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

TRIAL CHAMBER I (“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 “Notice Pursuant to Rule 94 *bis* with Regard to Prosecution Witness Mungo Melvin and Request to Lift Confidentiality of Filings”, filed publicly by the Defence on 19 October 2009 (“Request”), and hereby renders its Decision.

I. PROCEDURAL HISTORY

1. On 21 October 2009, the Trial Chamber decided in its “Decision on Mungo Melvin’s Status as an Expert” (“Expert Qualification Decision”) to defer a ruling on lifting the confidential status of filings related to Major General Melvin (collectively, “Confidential Filings”)¹ until the Prosecution had been given a chance to respond to the Request.² The Prosecution confidentially filed its “Prosecution Response to Defence Request to Lift Confidentiality of Filings” (“Response”) on 22 October 2009.

II. SUBMISSIONS

A. Defence

2. The Defence requests that the confidentiality of the motions and decisions on this matter be lifted, save for the annexes to the Initial Motion dealing with internal Prosecution witness records.³

B. Prosecution

3. In its Response, the Prosecution objects to changing the confidential status of the Initial Motion and Addendum in its entirety, as well as a single phrase in the Substitution Decision

¹ The confidential documents are: Prosecution Motion to Substitute Expert Witness with Annexes A and B, 19 August 2009 (“Initial Motion”); Prosecution’s Addendum to Motion to Substitute Expert Witness with Annexes A and B, 7 September 2009 (“Addendum”) (collectively, the “Original Motion”); Response to Prosecution’s Addendum to Motion to Substitute Expert Witness, 11 September 2009 (“Original Motion Response”); Decision on Prosecution’s Motion to Substitute Expert Witness, 17 September 2009 (“Substitution Decision”); Motion for Reconsideration of Trial Chamber Decision Regarding Substitution of Prosecution Expert Witness, 25 September 2009 (“Reconsideration Motion”); Prosecution’s Response to Defence Motion for Reconsideration of Trial Chamber Decision Regarding Substitution of Prosecution Expert Witness, 29 September 2009 (“Reconsideration Response”); Decision on Motion for Reconsideration of Trial Chamber Decision Regarding Substitution of Prosecution Expert Witness, 1 October 2009 (“Reconsideration Decision”); Prosecution’s Submission of Expert Report of Major General Mungo Melvin OBE with Annexes A and B, 12 October 2009 (“Submission”). The Request and Expert Qualification Decision were filed publicly. On 26 October 2009, the Defence confidentially filed its “Response to Prosecution Motion for Leave to File A Tenth Supplemental Rule 65 *Ter* Exhibit List and Request to Tender Certain Exhibits from the Bar Table, With Annex A, Regarding Exhibits for Mungo Melvin” (“Melvin Exhibit Response”). As the Melvin Exhibit Response was confidentially filed by the Defence after the Request, the Trial Chamber presumes that this filing is not covered by the Request.

² Expert Qualification Decision, para. 9.

³ Request, para. 6.

("Protected Phrase").⁴ The Prosecution justifies keeping these pleadings confidential on grounds they include internal OTP communications, relate to personal information of some witnesses and would undermine states' cooperation with the Tribunal.⁵ The Prosecution does not oppose the Defence request with regard to the remaining Confidential Filings.⁶

III. DISCUSSION

4. The Trial Chamber recalls the general importance of maintaining the public character of proceedings in accordance with Articles 20(4) and 21(2) of the Tribunal's Statute. The Trial Chamber is persuaded that the confidential status of the litigation concerning the admission of the Report is generally unwarranted. The Prosecution has however shown good cause in protecting release of their internal deliberations and requests for state cooperation on sensitive matters; therefore, the Trial Chamber retains confidential status on the Initial Motion and Addendum in their entirety. The Trial Chamber also deems it appropriate to lift the confidentiality of the Substitution Decision once it has been redacted.⁷

⁴ Response, para. 10. The Protected Phrase in the Substitution Decision is the one following the comma in the first sentence of paragraph 10.

⁵ Response, paras 8-9.

⁶ Response, para. 1.

⁷ The Trial Chamber will file a redacted Substitution Decision in due course.

IV. DISPOSITION

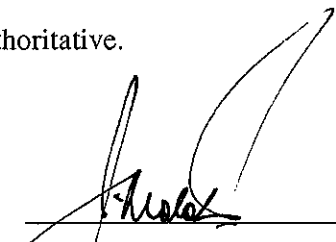
5. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Articles 20(4) and 21(2) of the Statute, the Trial Chamber hereby

GRANTS the Request in part;

DIRECTS the Registry to lift the confidentiality of the Original Motion Response (D23726-D23718), Reconsideration Motion (D23825-D23821), Reconsideration Response (D23837-23833), Reconsideration Decision (D23868-D23864) and Submission (D24012-D24008); and

DENIES the remainder of the Request.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this thirtieth day of October 2009

At The Hague

The Netherlands

[Seal of the Tribunal]