



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-T
Date: 10 March 2010
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 10 March 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON PROSECUTION'S MOTION FOR RECLASSIFICATION OF FILINGS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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”);

BEING SEISED of the confidential “Prosecution’s Motion for Reclassification of Filings” filed by the Office of the Prosecutor (“Prosecution”) on 2 March 2010 (“Motion”);

NOTING that, in the Motion, the Prosecution seeks the reclassification of two documents filed by it on a confidential basis, namely the “Prosecution Notification of Admission of Written Evidence Pursuant to Rule 92 *ter* with Appendix A [for] Witness KDZ487” of 16 October 2009 (“Harland Notification”), and the “Prosecution’s Second Notification of Admission of Written Evidence Pursuant to Rule 92 *ter* with Appendices A and B [for] Witness Ahmet Zulić (KDZ263)” of 24 February 2010 (“Zulić Notification”);

NOTING that the Prosecution’s request to reclassify these two documents is made in light of decisions issued by the Chamber, in which it denied the Prosecution’s request for protective measures for David Harland, and rescinded the protective measures granted to Ahmet Zulić in another proceeding;¹

NOTING that the Prosecution nonetheless maintains that the amalgamated witness statement contained in Annex B of the Zulić Notification should remain confidential because it contains information provided in private or closed session;²

CONSIDERING that Article 21, paragraph 2 of the Tribunal’s Statute provides that “[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;”

CONSIDERING that a document should be filed on a confidential basis only in exceptional circumstances, 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 have the same result;³

¹ Confidential Decision on Prosecution’s Motion for Protective Measures for Witness KDZ487, 24 November 2009; Decision on Prosecution’s Motion for Rescission of Protective Measures of KDZ263, 26 February 2010.

² Motion, para. 5.

³ See *Prosecutor v. Stakić*, IT-92-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 6; *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Decision on Lahi Brahimaj Application for Provisional Release, 25 May 2009, para. 5; *Prosecutor v. Blagojević et al.*, IT-02-60-A, Decision on Prosecution Motion to Lift Confidential and *Ex Parte* Status of Appeals Chamber’s Decision of 2 December 2005, 11 July 2007.

CONSIDERING that reclassifying the Harland Notification and the Zulić Notification as public documents is appropriate in light of the fact that both witnesses will testify in the present case without protective measures;

CONSIDERING that there may be confidential information contained in Annex B to the Zulić Notification, which consists of a witness statement, but that it is unclear in light of the rescission of all protective measures for this witness what information in that statement needs to remain confidential;

CONSIDERING that, as a cautionary measure, the Chamber will retain the confidentiality of Annex B until such time as the Prosecution clarifies the matter, but that, should it seek to enter this witness statement into evidence, the Prosecution will need to provide a public and, if necessary, redacted version of it;

CONSIDERING that it is in the interests of a public trial for the Harland Notification and the Zulić Notification to be made public;

PURSUANT TO Rule 54 of the Tribunal's Rules of Procedure and Evidence;

HEREBY GRANTS the Motion and **ORDERS** the Registry to accord public status to the Harland Notification and the Zulić Notification, except for Annex B to the Zulić Notification which shall remain confidential at the present time.

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



Judge O-Gon Kwon
Presiding

Dated this tenth day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]