



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: 13 April 2011

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

Order of: 13 April 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER TO THE PROSECUTION REGARDING THE ACCUSED'S 9 MARCH 2011
MOTION TO MAKE ORAL ARGUMENTS AVAILABLE TO THE PUBLIC**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby 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 Accused’s “Motion to Make Oral Arguments Available to the Public”, filed publicly on 9 March 2011 (“Motion”), whereby the Accused requests the Trial Chamber to lift the confidentiality of portions of the transcript containing oral arguments, pertaining to a Rule 70 condition that was placed on part of the testimony of General Sir Rupert Smith, but which has since been lifted by the Rule 70 provider;¹

NOTING that, in his Motion the Accused contends that, pursuant to Rules 78 and 79 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), all Trial Chamber proceedings must be public unless there are exceptional reasons for keeping them confidential,² and that while the relevant oral arguments were properly heard in private session at the time, the subsequent removal of the Rule 70 condition on General Smith’s testimony obviates the requirement for those portions of the transcript to remain under seal;³

NOTING that, on 16 March 2011, the Office of the Prosecutor (“Prosecution”) filed publicly the “Prosecution’s Response to Karadžić’s Motion to Make Oral Arguments Available to the Public” (“Response”), arguing that the Chamber may not lift the confidentiality of the discussion about the Rule 70 condition, even after that condition has been lifted, without the provider’s specific consent thereto because Rule 70 is designed to encourage state co-operation with the Tribunal and lifting confidentiality imposed by a Rule 70 provider would hinder the ability of the Tribunal to fulfil its functions;⁴

CONSIDERING that the Prosecution argues in the Response that while the Rule 70 provider has consented to removal of the original Rule 70 condition, it has not consented to public disclosure of the fact that it had originally imposed a Rule 70 condition, without specifying whether the Rule 70 provider was ever asked for such consent;⁵

¹ Motion, para. 1.

² Motion, paras. 4 – 6.

³ Motion, para. 8.

⁴ Response, paras. 5 and 7.

⁵ Response, para. 4.

NOTING that the Accused's Motion, the Prosecution's Response, and the Chamber's Oral Decision of 8 March 2011⁶ are all part of the public trial record and that, while they do not disclose the identity of the Rule 70 provider, they do reveal the fact that a Rule 70 condition was originally in place on certain portions of General Smith's testimony, the subject matter of which is identified by specific transcript references;

CONSIDERING that the Chamber has the power to police the application of Rule 70 in order to ensure that neither the Rule 70 providers nor the Prosecution abuse the Rule and in exercising that power it may seek clarification as to the extent of the confidentiality imposed by a provider;⁷

HEREBY ORDERS the Prosecution to file, by 27 April 2011, a submission before the Chamber, confirming that the Rule 70 provider in question has been consulted and asked whether it is willing to permit the oral arguments that are the subject of the Motion to be made public, in light of all the circumstances set out above in respect of what is already in the public domain, and providing the Rule 70 provider's response thereto.

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



Judge O-Gon Kwon, Presiding

Dated this thirteenth day of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ The Chamber's 8 March 2011 Oral Decision made public specific portions of the transcript of General Smith's testimony that were previously confidential, following confirmation from the Prosecution that the Rule 70 provider had lifted the condition that those parts of his testimony be heard in private session.

⁷ *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis & AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, paras. 26 and 29.