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-95-5/18-T

Date: 14 September 2011

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: **14 September 2011**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION FOR REVIEW AND DISCLOSURE OF *EX PARTE* FILINGS

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") is seised of the Accused's "Amended Motion for Review and Disclosure of *Ex Parte* Filings and Notice to Reclassify Original Motion", filed publicly on 16 August 2011 ("Motion"),[1] and hereby issues its decision thereon.

1. The filing of this Motion was prompted by the fact that a motion, originally filed *ex parte* by the Office of the Prosecutor ("Prosecution") on 11 August 2011, was disclosed to the Accused following the lifting of its *ex parte* status by the Chamber. Having examined this *ex parte* motion, the Accused now submits that the information contained therein could have been disclosed to him at the time of its filing.[2] He states that the Prosecution's justification for filing it *ex parte*, namely that the matter did not concern the defence, was wrong.[3] The Accused further submits that "a pleading should only be filed *ex parte* as a last resort and only where the disclosure of the pleading would prejudice the prosecution or some other person".[4] Thus, he requests that the Trial Chamber review all *ex parte* filings made in this case and disclose to him any filings which no longer need to be classified as *ex parte*.[5] He further requests the Chamber to "be vigilant in the future to ensure that the *ex parte* procedure is not abused".[6]

2. On 18 August 2011, the Prosecution filed confidentially[7] the "Prosecution's Response to Amended Motion for Review and Disclosure of *Ex Parte* Filings and Notice to Reclassify Original Motion" ("Response"), opposing the Motion. The Prosecution submits that the Chamber already carefully reviews the status of every filing and orders amendments when it deems them necessary.[8] Further, the Prosecution submits that the Accused's claim that there was nothing in the *ex parte* motion that could not have been disclosed to him is wrong given,

[1] On 15 August 2011, the Accused filed publicly his "Motion for Review and Disclosure of *Ex Parte* Filings" requesting that the Trial Chamber review all *ex parte* filings made in this case and to disclose to him any filings which no longer need to be classified as *ex parte* ("15 August Motion"). On 16 August 2011, the Accused filed the present Motion modifying the 15 August Motion because it referred to a confidential decision of the Chamber but reiterating the same arguments as contained in the Motion. The Accused also requested that the 15 August Motion be reclassified as confidential.

[2] Motion, para. 5.

[3] Motion, para. 9.

[4] Motion, para. 9.

[5] Motion, paras. 3, 10.

[6] Motion, para. 10.

[7] The Response was filed confidentially as it makes reference to several confidential filings.

[8] Response, para. 1.

inter alia, that the Chamber ordered the Prosecution to redact the motion in question before it could be disclosed to the Accused.[9]

3. The Chamber notes the well-established principle of the Tribunal that proceedings should be conducted in a public manner to the extent possible.[10] In exceptional circumstances, a Chamber may restrict the access of the public, as well as the access of a party, to certain material under the provisions of the Rules of Procedure and Evidence ("Rules").[11] Such confidential material can be categorised into three types: *inter partes*, *ex parte*, and subject to Rule 70.

4. Material may be filed *ex parte* because the opposing party is not supposed to be informed of a certain submission, or afforded access to it. This is done for a specific purpose, such as where a submission pertains to the ill-health of an accused for example.[12] The Chamber notes that when submissions are made *ex parte* in this case, it carefully considers whether the other party should be made aware of the information contained therein. Thus, it follows that all *ex parte* filings in this case have already been carefully reviewed by the Chamber.

5. The Accused's request encompasses all *ex parte* filings made in this case, while he bases his argument on the lifting of the *ex parte* status of one such Prosecution motion. As stated above, there are certain circumstances which justify the need to classify a filing as confidential and *ex parte*. In this particular instance, the motion at issue had to be filed *ex parte* because it mentioned a confidential and *ex parte* decision of another Trial Chamber, hence the need for a redacted version to be disclosed to the Accused.

6. While the Chamber recognises the importance of the higher degree of confidentiality placed on *ex parte* filings, it also recognises the importance of the Accused's right to access to information in this case. Therefore, the Chamber has reclassified and will continue to reclassify certain filings as confidential and *inter partes* where necessary and appropriate.[13] The Chamber therefore finds that it is not necessary or warranted to conduct a review of all the confidential *ex parte* filings in this case.

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[9] Response, para. 3.

[10] Rule 78 provides, "All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided".

[11] *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, Decision on Vlastimir Đorđević's Motion for Access to All Material in *Prosecutor v. Limaj et al.*, Case No. IT-03-66, 6 February 2008 ("*Đorđević* Decision"), para. 6.

[12] Decision on Jovica Stanišić's Motion for Access to Confidential Materials in the *Karadžić* Case, 20 May 2009, para. 8.

[13] *See e.g.*, Order on *Ex Parte* Status of Subpoena and Order to Germany, confidential, 6 October 2010.

7. For the reasons outlined above, and pursuant to Rule 54 of the Rules, the Trial Chamber hereby **DENIES** the Motion.

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

Judge O-Gon Kwon
Presiding

Dated this fourteenth day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]