

**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-04-74-A

Date: 8 July 2015

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. John Hocking

Decision of: 8 July 2015

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON THE PROSECUTION'S URGENT MOTION
TO RECLASSIFY PUBLIC BRIEFS AND MODIFY THE PUBLIC
REDACTED BRIEFING SCHEDULE**

The Office of the Prosecutor:

Mr. Douglas Stringer

Ms. Barbara Goy

Ms. Laurel Baig

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić

Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić

Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak

Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković

Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić

Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

I, Theodor Meron, Judge of the Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in the *Prlić et al.* case;

RECALLING that, in accordance with a decision issued by the Appeals Chamber on 9 October 2014,¹ all the Appeal Briefs, the Response Briefs and the Reply Briefs were filed confidentially save for the Response Briefs of Milivoj Petković and Berislav Pušić, on 12 January 2015, 7 May 2015 and 29 May 2015, respectively;²

BEING SEISED of the “Urgent Motion to Reclassify All Public Redacted Briefs and to Modify Schedule and Procedure for Filing Public Redacted Briefs”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 10 June 2015 (“Motion”), in which the Prosecution requests the Appeals Chamber to: (i) temporarily reclassify all public and public redacted briefs filed, including those that will be filed, in these appellate proceedings (“Public Briefs”) as confidential (“Initial Request”);³ (ii) order the parties to fully redact all confidential information from the Public Briefs in accordance with internal guidelines or pursuant to the proper standard set out by the Appeals Chamber;⁴ and (iii) modify the schedule and procedure for the filing of the Public Briefs;⁵

NOTING the Prosecution’s submissions that it has noted different approaches taken by the parties to redactions and has identified instances of missing or improper redactions, as a result of which it

¹ Decision on Appellants’ Requests for Extension of Time and Word Limits, 9 October 2014.

² Prosecution Appeal Brief, 12 January 2015 (confidential); Jadranko Prlić’s Appeal Brief, 12 January 2015 (confidential); Bruno Stojić’s Appellant’s Brief, 12 January 2015 (confidential); Slobodan Praljak’s Appeal Brief with Annexes, 12 January 2015 (confidential); Milivoj Petković’s Appeal Brief, 12 January 2015 (confidential with confidential annexes); Appellant’s Brief of Valentin Ćorić, 12 January 2015 (confidential); Appeal Brief of Berislav Pušić, 12 January 2015 (confidential); Prosecution Response to Jadranko Prlić’s Appellant’s Brief, 7 May 2015 (confidential with confidential appendix); Prosecution Response to Bruno Stojić’s Appellant’s Brief, 7 May 2015 (confidential); Prosecution Response to Slobodan Praljak’s Appellant’s Brief, 7 May 2015 (confidential); Prosecution Response to Milivoj Petković’s Appellant’s Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix); Prosecution Response to Valentin Ćorić’s Appellant’s Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix); Prosecution Response to Berislav Pušić’s Appellant’s Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix); Jadranko Prlić’s Respondent’s Brief, 7 May 2015 (confidential); Bruno Stojić’s Respondent’s Brief, 7 May 2015 (confidential); Slobodan Praljak’s Response to Prosecution Appeal Brief, 7 May 2015 (confidential); Milivoj Petković’s Respondent’s Brief, 7 May 2015; Respondent’s Brief of Valentin Ćorić, 7 May 2015 (confidential); Berislav Pušić’s Response to the Prosecution’s Appeal Brief, 7 May 2015; Prosecution’s Consolidated Reply to Respondents’ Briefs, 29 May 2015 (confidential with confidential appendix); Jadranko Prlić’s Reply Brief, 29 May 2015 (confidential); Bruno Stojić’s Brief in Reply, 29 May 2015 (confidential); Slobodan Praljak’s Reply Brief with Annexes, 29 May 2015 (confidential); Milivoj Petković’s Brief in Reply, 29 May 2015 (confidential); Reply Brief of Valentin Ćorić in Support of Appellant’s Brief, 29 May 2015 (confidential with confidential and *ex parte* annexes A & B); Berislav Pušić’s Brief in Reply, 29 May 2015 (confidential). *See also* Jadranko Prlić’s Corrigendum to His Appeal Brief, 6 March 2015 (confidential); Corrigendum to Slobodan Praljak’s Appeal Brief, 5 February 2015 (confidential); Corrigendum to Milivoj Petković’s Appeal Brief, 30 January 2015 (confidential); Corrigendum to Appellant’s Brief of Valentin Ćorić, 12 January 2015 (confidential).

³ Motion, paras 1, 4, 9(a)-(b).

⁴ Motion, paras 1, 7, 9(c). The Prosecution refers to a confidential internal memorandum dated 27 September 2012 on redaction guidelines, however it has not provided the Appeals Chamber with a copy of these guidelines for consideration. *See* Motion, para. 7, fn. 11.

is unable to file its public briefs in accordance with the deadline of 11 June 2015 set out by the Appeals Chamber and that it, therefore, suggests that the staggered filing of the Public Briefs be scheduled allowing for review by the parties before release to the public in order to prevent the potential disclosure of confidential and witness identifying information in the Public Briefs;⁶

NOTING “Bruno Stojić’s Response to Prosecution’s Urgent Motion to Reclassify all Public Redacted Briefs and to Modify Schedule and Procedure for Filing Public Redacted Briefs”, filed confidentially on 16 June 2015 (“Stojić’s Response”), in which Bruno Stojić (“Stojić”): (i) does not oppose the Motion; (ii) agrees that guidance by the Appeals Chamber on the proper standard to redact confidential information would assist the parties; and (iii) explains that, out of an abundance of caution, he redacted certain references to public passages in the Trial Judgement and does not object to re-filing his briefs with the relevant redactions lifted should the Appeals Chamber conclude that no references to the Trial Judgement should be redacted;⁷

NOTING that the other Appellants did not file a response;

NOTING that on 12 June 2015, I issued an order, instructing the Registry of the Tribunal (“Registry”) to reclassify all public and public redacted briefs filed in these appellate proceedings as confidential and withdraw them from the public domain until a decision on the Motion is issued by the Appeals Chamber, and ordered the parties to suspend the filing of any public redacted brief until a decision on the Motion is issued;⁸

NOTING therefore that the Initial Request has been disposed of by the Order;

RECALLING that all submissions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential, that parties shall file public redacted versions of all confidential briefs filed on appeal;⁹

EMPHASISING, however, that the protection of witnesses and victims is of utmost importance to the proper functioning of the Tribunal and, once protective measures have been ordered, they

⁵ Motion, paras 1, 4, 9(d).

⁶ Motion, paras 1, 3-4, 6, *citing to* Status Conference, T. 54 (12 May 2015).

⁷ Stojić’s Response, paras 3-4.

⁸ Order Relating to the Prosecution’s Urgent Motion to Reclassify Public Briefs and Modify the Public Related Briefing Schedule, 12 June 2015, p. 2.

⁹ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Prosecution’s Motion Concerning Confidential Information in Vladimir Lazarević’s Public Submissions, 31 March 2010 (confidential) (“Šainović Decision”), para. 5; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Urgent Prosecution Motion Concerning Public Filings of Dragomir Milošević, 22 April 2009 (“Milošević Decision”), p. 3.

continue to have effect on appeal, or in any other proceedings, unless they are modified by the competent Chamber;¹⁰

RECALLING that it is not for the parties to decide what aspects of a confidential testimony or exhibit can be disclosed and that, if a party considers that public disclosure of information under seal becomes necessary, it can move the appropriate Chamber for a variation of the protective measures.¹¹

RECALLING that parties may refer to the existence of confidential exhibits or testimonies to support their assertions as long as they do not disclose confidential information contained therein;¹²

CONSIDERING that, as noted by the Prosecution, there are instances in the Public Briefs where inconsistent approaches to the redaction of confidential information, including insufficient and excessive redactions, have been applied;¹³

INVITING the parties to coordinate with one another as necessary to apply a consistent approach to redacting the Public Briefs;

FOR THE FOREGOING REASONS, and pursuant to Rules 54, 75, and 107 of the Rules of Procedure and Evidence of the Tribunal,

HEREBY GRANT the Motion with regard to the remaining Prosecution requests; and

ORDER:

(i) the Prosecution to disclose to the Defence Appellants the proposed public version of its Appeal Brief, and *vice versa* the Defence Appellants to the Prosecution, within seven days of the date of this decision; and all parties to re-file, after having made all necessary redactions in accordance with the applicable law set out in this decision, a public redacted version of their Appeal Briefs within 21 days of the date of this decision;

(ii) the parties to implement the procedure as specified in (i) for public redacted versions of the Response Briefs (except for those of Milivoj Petković and Berislav Pušić) and the Reply Briefs, starting from the deadline of the filing of the public redacted versions of the Appeal Briefs; and


¹⁰ Šainović Decision, para. 5; Milošević Decision, p. 4.

¹¹ Šainović Decision, para. 6; Milošević Decision, p. 4.

(iii) the Registry to keep the Public Briefs confidential until further notice.

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

Done this eighth day of July 2015,
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

¹² *Šainović* Decision, para. 6; *Milošević* Decision, p. 4. The Appeals Chamber notes in particular that the Trial Judgement refers to exhibits under seal as well as closed session testimonies transcripts, without, however, revealing any confidential contents thereof.

¹³ *See* Motion, paras 3, 5.