



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-09-92-T
Date: 29 June 2017
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 29 June 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO STRIKE
PUBLIC REDACTED VERSION OF PROSECUTION
FINAL BRIEF**

Office of the Prosecutor
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Dragan Ivetić

I. PROCEDURAL HISTORY

1. On 25 October 2016, the parties filed confidential versions of their final briefs.¹ On 2 November 2016, the Defence filed a corrigendum to its final brief.² On 6 December 2016, in compliance with an order from the Chamber, the Prosecution filed a revised version of Annex G of its final brief.³ On 20 February 2017, the Prosecution filed a request (“Request”) for an order to temporarily classify the parties’ upcoming public redacted final briefs as confidential in order to allow the parties an opportunity to review these filings for any breaches of confidentiality.⁴ On 28 February 2017, the Chamber denied the Request and encouraged the parties to resolve any confidentiality issues related to their public redacted final briefs prior to filing (“Decision”).⁵ On 25 May 2017, the Prosecution filed a public redacted version of its final brief (“Public Prosecution Brief”).⁶ On 1 June 2017, the Defence filed a motion (“Motion”) requesting the Chamber to (i) “strike” and reclassify as confidential the Public Prosecution Brief; and (ii) order the Prosecution to redact all quotations from confidential exhibits prior to filing any public version of its final brief.⁷ On 2 June 2017, the Chamber emailed the parties and the Registry, instructing the Registry to temporarily place the Public Prosecution Brief under seal. On 7 June 2017, the Prosecution responded to the Motion, opposing it (“Response”).⁸ On 14 June 2017, the Defence requested leave to reply to the Response (“Reply Request”), attaching its reply (“Reply”).⁹

¹ Prosecution’s Submission of Final Trial Brief, 25 October 2016 (Confidential with confidential annexes); Notice of Filing under Objection and with Reservation of Rights, 25 October 2016 (Public with confidential annex A).

² Corrigendum to Annex A to Notice of Filing under Objection and with Reservation of Rights, Filed 25 October 2016, 2 November 2016 (Public with confidential annex A and public annex B).

³ Prosecution Submission of Revised Annex G to the Prosecution Final Trial Brief, 6 December 2016 (Public with confidential annex). See Decision on Defence Motion to Strike the Prosecution Final Trial Brief, 30 November 2016, para. 15.

⁴ Prosecution Request Regarding Filing Public Redacted Briefs, 20 February 2017, paras 1, 3-4.

⁵ Decision on Prosecution Request Regarding Filing Public Redacted Briefs, 28 February 2017.

⁶ Notice of Filing Public Redacted Version of Prosecution Final Trial Brief, 25 May 2017.

⁷ Urgent Notice of Objection and Motion to Strike Prosecution Filing of the Final Brief as in Contravention of Trial Chamber Order, 1 June 2017 (Public with confidential annexes), section IV.

⁸ Prosecution Response to Defence Motion to Strike, 7 June 2017, para. 1.

⁹ Motion for Leave to File a Reply and Proposed Reply in Support of – Urgent Notice of Objection and Motion to Strike Prosecution Filing of the Final Brief as in Contravention of Trial Chamber Order and to Reclassify Final Brief, 14 June 2017.

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that, despite communication between the parties, the Prosecution contravened the Decision by filing the Public Prosecution Brief while confidentiality issues raised between the parties had not been resolved.¹⁰ Further, it submits that the Public Prosecution Brief contains citations to confidential exhibits and witness testimonies which undermine the confidential status of such evidence.¹¹ In its Reply, the Defence asserted that the Chamber had ordered the parties not to make any filings until the parties had reached an agreement.¹² It further requested that the Chamber (i) direct the Prosecution to provide the Defence with a track-changed or highlighted version of the Public Prosecution Brief for review by the Defence, or, in the alternative, recognise that review of the Public Prosecution Brief in its current form requires additional time, and (ii) declare that reviewing the Public Prosecution Brief is necessary so that the Defence may seek funding from the Registry (“Additional Requests”).¹³

3. The Prosecution submits that it filed the Public Prosecution Brief in accordance with case practice of citing confidential evidence.¹⁴ As the Defence did not identify specific confidentiality concerns, there is no reason to keep the Public Prosecution Brief under seal.¹⁵

III. DISCUSSION

4. The Chamber will grant the Reply Request on the basis of the Defence’s view that the Response contains misstatements of the relevant factual background and circumstances which need to be corrected so that the Chamber can properly consider the matter at hand.

5. The Chamber is satisfied, based on the communication between the parties as annexed to the Motion, that the parties endeavoured to resolve confidentiality issues before filing their public final briefs. Contrary to the Defence’s submission though, the Decision did not contain an *order* that the parties resolve any confidentiality issues or reach any agreements before filing. The Chamber

¹⁰ Motion, paras 9-10, 14, section IV, Annexes A-B, D-E.

¹¹ Motion, paras 5-6, 16.

¹² Reply, para. 4.

¹³ Reply, paras 14-15.

¹⁴ Response, paras 2-4, 6-7.

¹⁵ Response, paras 1, 4, 8.

merely encouraged the parties to resolve any confidentiality issues before filing public versions of their final briefs. Under these circumstances, there is no merit to the Defence's argument that the filing of the Public Prosecution Brief contravened the Decision.

6. With regard to the Defence's request to reclassify the Public Prosecution Brief and order the Prosecution to redact all quotations from confidential evidence prior to filing any public version of its final brief, the Chamber recalls that it is well-established practice in this case that not every part of a confidential document needs to be kept away from the public. For technical reasons, some documents were placed under seal even though only a small part of the document contains confidential information. Accordingly, the parties can refer publicly to confidential documents in a way that does not reveal the protected information contained therein. This practice commenced with the Chamber's guidance on public redacted versions of exhibits, which has been repeated frequently throughout the proceedings.¹⁶ It can also be seen by the Chamber citing to confidential filings in public decisions or its public reference to the testimony of closed session witnesses.¹⁷ Therefore, the Defence's claim that public citations to confidential evidence necessarily undermines confidentiality or that the Prosecution is required to make additional redactions, are without merit.

7. The Defence further failed to identify any specific instances that would require redacting the Public Prosecution Brief. The Chamber also emphasizes that it is primarily the Prosecution's responsibility to ensure that its filings do not breach confidentiality orders. As such, there is no requirement or necessity for the Defence to review the proposed redactions. Nonetheless, considering the complexity and size of the final briefs, the Chamber would appreciate the Defence's assistance in ensuring that the public final briefs do not breach confidentiality orders. Under these circumstances, the Chamber will grant the Defence additional time to review the Public Prosecution Brief and suggest any additional redactions. To this end, the Chamber encourages the Prosecution to meaningfully facilitate the Defence's review effort.

IV. DISPOSITION

8. For the foregoing reasons, the Chamber

¹⁶ See T. 1285, 6460, 8593, 17192, 17235-17236, 17776, 39012, 40613, 40897, 43985, 44016.

¹⁷ See e.g. Decision on Defence Motion to Admit the Evidence of Jasmin Odošević Pursuant to Rule 92 bis, 15 December 2015; First Omnibus Decision, 14 February 2014; T. 20930-20951.

GRANTS the Reply Request;

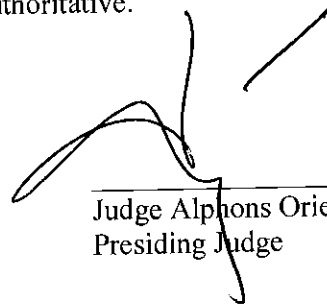
DENIES the Motion;

GRANTS the Additional Requests **IN PART**;

INSTRUCTS the Registry to reclassify the Public Prosecution Brief as public four weeks after the date of this decision, unless the Defence files a motion seeking additional redactions within that period; and

DENIES the Additional Requests in all other respects.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-ninth day of June 2017
At The Hague
The Netherlands

[Seal of the Tribunal]