



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-PT
Date: 4 June 2009
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 4 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION TO LIFT CONFIDENTIAL STATUS OF PROSECUTION
MOTION**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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 “Motion to Lift Confidential Status of Prosecution Motion”, filed on 25 May 2009 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused refers to a motion filed confidentially by the Office of the Prosecutor (“Prosecution”) on 19 May 2009 (“Lord Owen Motion”) and asks that it be reclassified as a public document. The Accused argues that the Prosecution Motion presents no justification for its confidential status since Lord Owen, the witness at the centre of the Lord Owen Motion, has requested no protective measures and expressed no safety concerns.¹ The Accused further refers to his right to a public trial and a full transparency of the proceedings and notes that the correspondence attached to the Lord Owen Motion could be redacted or filed confidentially if the Trial Chamber believes that public disclosure of those materials would invade the privacy of the witness. He refers to the Appeals Chamber jurisprudence to the effect that the proceedings, including the parties’ filings, shall be public unless there are exceptional reasons for keeping them confidential.²

2. In the “Prosecution’s Response to Karadžić’s Motion to Lift the Confidential Status of Prosecution Motion”, filed on 27 May 2009 (“Response”), the Prosecution argues that the Lord Owen Motion should remain confidential as it appends private and confidential correspondence between it and Lord Owen. In addition, the Prosecution notes that the protection envisaged by the jurisprudence extends beyond situations where physical harm to witnesses is alleged, and can thus include situations where disclosure of private correspondence would “unnecessarily” expose the witnesses to “personal discomfiture”.³ The Prosecution further rejects the Accused’s suggestion that only the correspondence in question, attached to the Lord Owen Motion in Appendices A and B, be filed confidentially, on the basis that the main body of the Prosecution’s Motion makes specific references to “this correspondence and its contents.”⁴

3. The issue was further discussed at the status conference on 3 June. The Prosecution was made aware that the matters discussed in the body of the Lord Owen Motion were already in the public domain as part of the public witness statement provided by Lord Owen in the *Milošević*

¹ Motion, paras. 1–3.

² Motion, paras. 4–6.

³ Response, paras. 1–2.

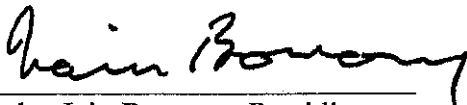
⁴ Response, para. 3.

case. As a result, the Prosecution expressed the view that, so long as the correspondence attached to the Lord Owen Motion remained confidential, it would not oppose the Motion.

4. Accordingly, pursuant to Rule 54 of the Rules of Procedure and Evidence, the Trial Chamber hereby **GRANTS** the Motion, in part, and **ORDERS** as follows:

- (a) The Motion shall be made public; and
- (b) The Appendices A and B attached to the Motion shall remain confidential.

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



Judge Iain Bonomy, Presiding

Dated this fourth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]