



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: 4 May 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: 4 May 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON 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”) is seised of the Accused’s “Motion to Make Oral Arguments Available to the Public”, filed publicly on 9 March 2011 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused requests the Chamber to lift the confidentiality of portions of the transcript containing oral arguments pertaining to a Rule 70 condition that had been placed on part of the testimony of General Sir Rupert Smith (“Witness”). As consent to the lifting of that Rule 70 condition had been given by the Rule 70 provider and the Chamber ordered that the relevant portions of the Witness’s testimony should become public, the Accused argues that there remains no reason for the portions of the transcript where the existence of the Rule 70 condition was discussed to be confidential.¹

2. 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 to Motion”). The Prosecution submits that the Chamber cannot lift the confidentiality of the discussion about the Rule 70 condition, even after that condition no longer exists, without the provider’s specific consent.² The Prosecution does not, however, specify whether the relevant Rule 70 provider in this instance was ever asked for such consent.³

3. On 13 April 2011, the Chamber issued an “Order to the Prosecution regarding the Accused’s 9 March 2011 Motion to make Oral Arguments Available to the Public” (“Order”), in which the Prosecution was ordered to file a submission confirming that it had consulted with the Rule 70 provider and stating what the position of the Rule 70 provider is concerning the continued confidentiality of the portions of the transcript wherein the previous existence of the Rule 70 condition is discussed.⁴

4. On 27 April 2011, the Prosecution filed publicly its “Response to the Trial Chamber’s Order Regarding the Accused’s 9 March 2011 Motion to Make Oral Arguments Available to the Public” (“Response to Chamber’s Order”), confirming that it has now consulted with the United Nations,

¹ Motion, para. 1.

² Response to Motion, paras. 5 and 7.

³ Response to Motion, para. 4.

⁴ Order, p. 3.

the Rule 70 provider, and that the United Nations has no objections to making the relevant portions of the transcript available to the public.⁵

5. In light of the fact that there remains no reason for the portions of the transcript in which the Rule 70 condition that had been placed on the Witness's testimony was discussed to be confidential, and pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence, the Chamber hereby **GRANTS** the Motion, and:

ORDERS the Registry to lift the confidentiality of the following portions of the transcript:

T. 11377 line 12 – 11379 line 13, 11380 line 15 – 11381 line 17 (8 February 2011);

T. 11383 line 16 – 11395 line 6, 11397 line 6 – 11401 line 3, 11405 line 2 – 11406 line 6 (9 February 2011); and T. 11834 line 17 – 11838 line 18 (15 February 2011).

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



Judge O-Gon Kwon, Presiding

Dated this fourth day of May 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Response to Chamber's Order, p. 1.