

IT-03-68-A  
A2458-A2456  
10 MAY 2007

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**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-03-68-A  
Date: 10 May 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Liu Daqun  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Decision of:** 10 May 2007

**PROSECUTOR**

v.

**NASER ORIĆ**

*Confidential*

**DECISION ON PROSECUTION'S MOTION  
TO SEAL DEFENCE APPEAL BRIEF**

**Office of the Prosecutor:**

Ms. Christine Dahl

**Counsel for Naser Orić:**

Ms. Vasvija Vidović  
Mr. John Jones

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**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 (“International Tribunal”),

**RECALLING** that it is seized with the “Defence Notice of Appeal” filed by Naser Orić (“Orić”) on 5 October 2006 from the Judgement of Trial Chamber II rendered on 30 June 2006 in *Prosecutor v. Naser Orić*;<sup>1</sup>

**NOTING** the “Defence Appellant’s Brief” filed publicly by Orić on 16 October 2006 (“Orić’s Appeal Brief”);

**BEING SEIZED OF** the “Motion to Seal Defence Appeal Brief” filed confidentially by the Prosecution on 13 December 2006 (“Motion”), in which the Prosecution requests the Appeals Chamber *inter alia*: (i) to direct the Registrar to withdraw Orić’s Appeal Brief from the public record, and (ii) to direct Orić to re-file the brief as confidential and to file a redacted version;<sup>2</sup>

**NOTING** that, in support of the Motion, the Prosecution argues that Orić’s Appeal Brief quotes the “Decision on Prosecution’s Confidential and *Ex Parte* Motion pursuant to Rules 66(C) and 68(iv) for Exempting Specific Material from Disclosure” issued by the Trial Chamber on 15 December 2004 (“Confidential Decision of 15 December 2004”) and discusses its contents, which “constitutes a breach of confidentiality and places a protected public safety interest in jeopardy”;<sup>3</sup>

**NOTING** the “Response to ‘Prosecution Motion to Seal Defence Appeal Brief’” filed confidentially by Orić on 22 December 2006 (“Response”), in which Orić opposes the Motion on the grounds, *inter alia*, (i) that “there is no remaining ‘*protected public interest*’ which relates to the mere mention of the unknown [individual designated as ‘X’] and the unknown X material”;<sup>4</sup> and (ii) that “the existence of the X material and the Defence’s ground of appeal in relation thereto is a matter of public interest and should not be buried in the way that the X material itself was buried”;<sup>5</sup>

**NOTING** the “Prosecution’s Reply to Defence Response to the Motion to Seal Defence Appeals Brief” filed confidentially on 2 January 2007;

**NOTING** that, in Orić’s Appeal Brief, Orić discloses and discusses the contents of the Confidential Decision of 15 December 2004;<sup>6</sup>

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<sup>1</sup> Case No. IT-03-68-T.

<sup>2</sup> Motion, para. 2.

<sup>3</sup> Motion, para. 1.

<sup>4</sup> Response, para. 17.

<sup>5</sup> Response, para. 18. *See also* paras. 13-21.

<sup>6</sup> Orić Appeal Brief, para. 586(d), paras. 605, 606.

**CONSIDERING** that, in issuing its decision confidentially, the Trial Chamber ordered the non-disclosure of the information contained therein;

**CONSIDERING** that, in issuing its decision confidentially, the Trial Chamber took into consideration Orić's rights, and that the public's interest had not been shown to outweigh the need for confidentiality to be maintained;

**REMINDING** Orić that once protective measures have been ordered in any proceedings before the International Tribunal, they continue to have effect on appeal or in any other proceedings unless they are modified by the competent Chamber;<sup>7</sup>

**CONSIDERING** that it is not for the parties to decide what aspects of a confidential decision can be disclosed and that, if a party considers that the public disclosure of information placed under seal becomes necessary, it can move the appropriate Chamber for a variation of the protective measures;<sup>8</sup>

**FINDING** that the disclosure of the contents of the Confidential Decision of 15 December 2004 in paragraphs 586(d), 605 and 606 of Orić's Appeal Brief without being granted leave to do so constitutes a breach of confidentiality;

**FOR THE FOREGOING REASONS,**

**GRANTS** the Prosecution's Motion;


**INSTRUCTS** the Registry to withdraw Orić's Appeal Brief from the public record and place it under seal;

**ORDERS** Orić to file a public and redacted version of his Appeal Brief within five (5) days from the date of the present decision;

**ORDERS** Orić, within five (5) days from the date of the present decision, to retrieve any version of his Appeal Brief that may have been distributed to a third party, and to inform any such recipient that he or she must not disclose the confidential information contained therein.

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

Dated this 10th May 2007  
At The Hague,  
The Netherlands.

  
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Judge Fausto Pocar  
Presiding

**[Seal of the International Tribunal]**

<sup>7</sup> See Rule 75 of the Rules of Procedure and Evidence.

<sup>8</sup> See Rule 75 of the Rules of Procedure and Evidence.