



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

IT-03-69-T
D23896-D23893
23 August 2010

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Case No. IT-03-69-T
Date: 23 August 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 23 August 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF REDACTED COPIES OF CONFIDENTIAL EXHIBITS AS
PUBLIC EXHIBITS**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

1. On 25 January 2010, the Prosecution filed the “Prosecution Motion for Admission of Redacted Copies of Confidential Exhibits as Public Exhibits” (“Motion”). In the Motion, the Prosecution requests the Chamber to admit into evidence as public exhibits, redacted versions of all under seal exhibits, where possible, in light of the public’s interest in knowing the content of the evidence in this case.¹ Neither the Stanišić Defence nor the Simatović Defence responded to the Motion. On 25 May 2010, the Chamber stated that it would consider for admission into evidence only the unredacted originals, but at the same time instructed the parties to prepare public redacted versions and provide them to the other parties for use in court during the trial.² The Chamber further instructed the parties to submit public redacted versions of the documents admitted under seal in a public filing at the end of the case.³

2. Having reviewed the technical options available and following an informal consultation with the Registry, the Chamber considered that the above approach strikes a fair balance between the right to a public trial on the one hand and the interest in an orderly evidentiary record on the other. In the Motion, the Prosecution submits that it has received complaints from the press concerning the lack of public redacted versions of documents admitted under seal.⁴ The Chamber notes firstly that exhibits with a public status are used in Court in open session, for instance by reading out portions of the exhibit, broadcasting it on the public channel, or putting related questions to a witness. Such exhibits in this case will further be made available to the public in two stages. Firstly, during trial, exhibits with a public status are not immediately accessible to the public, but can be provided to a member of the public upon a request to the Registrar and with the approval of the Chamber. The Chamber will continue to consider such requests on an *ad hoc* basis. Secondly, following the end of the presentation of evidence in the case, the Registrar will make the exhibits with a public status available to the public.

3. With regard to under seal exhibits, the Chamber notes that public redacted versions, where possible, can be used in Court in open session. Under seal exhibits will further be made available to the public in two stages. Firstly, during trial, public redacted versions of under seal exhibits can be provided to a member of the public upon a request to the Registrar and with the approval of the Chamber. The Chamber will consider such requests on an *ad hoc* basis and may instruct the tendering party to submit, where possible, a public redacted version in a public filing, thus making it available to the public. Secondly, following the end of the presentation of evidence in the case

¹ Motion, paras 1-6, 10.

² T. 5305-5306.

³ Ibid.

⁴ Motion, para. 3.

and prior to the filing of final briefs, if any, the parties will submit in a public filing the public redacted versions, where possible, of under seal exhibits which were not previously filed during trial, upon a request to the Registrar. In this manner, public redacted versions of under seal exhibits will be made available to the public under similar conditions and at a similar time as exhibits with a public status.

4. The Prosecution further submits that if a significant amount of evidence remains under seal, substantial parts of the final briefs will have to be filed confidentially.⁵ The Chamber considers that those parts of final briefs, if any, which contain confidential information from under seal exhibits should be filed confidentially. The parties can identify which parts of final briefs should be public and which parts should be confidential on the basis of the reasons for admitting a document under seal. The parties may also consult the public redacted versions of under seal exhibits which will be filed following the end of the presentation of evidence and prior to the final briefs, if any, in this case. The Chamber notes that the approach set out above replaces any previous decisions or guidance on this matter,⁶ and consequently the Chamber vacates exhibit numbers previously assigned to public redacted versions.

5. For the foregoing reasons, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence, the Chamber

DENIES the Motion;

INSTRUCTS the parties to prepare, where possible, public redacted versions of documents they seek to tender under seal and provide them in a timely fashion to the other parties for use during trial, e.g. for showing a document to a witness in public session;

INVITES the parties to use the redacted versions during trial, where possible, so as to enable the public to follow the proceedings;

INSTRUCTS the parties to submit, where possible, public redacted versions for the under seal exhibits they tendered, in a public filing containing references to the exhibit numbers after the end of the presentation of evidence in the case and at least two weeks before the deadline for filing final briefs, if any, with the exception of those under seal exhibits for which a public redacted version was already filed during the trial;

⁵ Motion, para. 4.

⁶ Including the instruction to the Prosecution from the "Second Decision on the Republic of Serbia's Motion for Protective Measures" of 3 November 2009 to "offer, if applicable, a public redacted version as well as a confidential unredacted version of the document" when tendering the documents related to that Decision.

INSTRUCTS the Registrar to make documents admitted into evidence with a public status available to the public after the end of the presentation of evidence in the case;

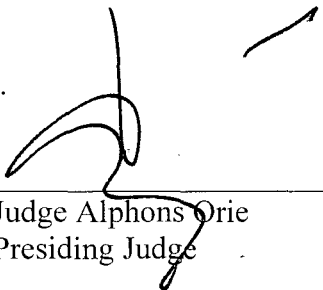
DENIES admission of the following documents currently marked for identification: P5, P6, P7, P33, P34, P35, P36, P112, P156, P158, and P160;

VACATES P69, P76, and D5;

REQUESTS the Registrar to make the necessary changes on eCourt and inform the Chamber and the parties of the changes so made within two weeks of this decision; and

INVITES the parties and the Registrar to inform the Chamber of any other instances in which a public redacted version of an under seal exhibit was admitted into evidence in this case.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-third day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]