



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,
IT-98-29/1-A

Date: 14 July 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: 14 July 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S MOTION FOR ACCESS TO CONFIDENTIAL
MATERIAL FROM THE DRAGOMIR MILOŠEVIĆ CASE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff
Ms. Christine Dahl

Counsel for Dragomir Milošević

Mr. Branislav Tapušković
Ms. Branislava Isailović

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 for Release of Confidential Material in the Dragomir Milošević Case”, filed on 31 May 2011 (“Motion”), and hereby issues its decision thereon.

1. On 19 May 2009, the Appeals Chamber, being at the time seised of the appeals in the *Dragomir Milošević* case, issued a decision in which it granted the Accused access to all *inter partes* confidential material in that case, subject to certain exceptions in relation to material on which conditions were imposed under Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and material relating to delayed disclosure witnesses (“*Milošević* Decision”).¹

2. On 26 May 2009, and in accordance with the order in the *Milošević* Decision,² the Prosecution identified the material that could be immediately disclosed to the Accused in the “Prosecution’s Notification of Compliance with Decision re Access by Karadžić” filed on 26 May 2009 (“*Milošević* Notification”). The Prosecution noted that this material did not include material originally submitted by sources other than the Prosecution, including by the defence in that case (“*Milošević* Defence”), and explained that, “unless otherwise indicated”, it took no position on whether such material should be withheld from the Accused.³

3. In the Motion, which was filed before this Chamber and cross-filed in the *Dragomir Milošević* case, the Accused confirms that he has received confidential materials from that case but notes that this material did not include *Milošević* Defence exhibits which had not been obtained by the Prosecution.⁴ As an example of exhibits that are missing, the Accused points to pseudonym sheets of *Milošević* Defence witnesses, which he submits he needs in order to assess whether to call them during his defence case.⁵ Therefore, and given that no other Chamber is currently seised of the *Dragomir Milošević* case, the Accused requests this Trial Chamber to order that all confidential *inter partes* *Milošević* Defence exhibits and filings be disclosed to him forthwith.⁶

¹ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić’s Motion for Access to Confidential Material in the Dragomir Milošević Case, 19 May 2009, paras. 18–32.

² *Milošević* Decision, para. 19(b).

³ *Milošević* Notification, para. 3. Attached to this Notification was an annex, filed confidentially and *ex parte* of the Accused, listing the confidential material that could be immediately disclosed to the Accused.

⁴ Motion, paras. 3–4.

⁵ Motion, para. 4.

⁶ Motion, para. 6. While this paragraph is labeled as paragraph 3 in the Motion, it is clear that this is a typographical error and that it should in fact be paragraph 6.

4. The Prosecution responded to the Motion orally in court, on 20 June 2011, stating that it has no objection to the Motion. The Prosecution also noted that it would liaise with the Registry to identify “any documents subject to any Rule 70 protections” which were originally provided to the *Milošević* Defence by the Prosecution. However, the Prosecution further submitted that it is not in a position to address Rule 70 conditions in relation to documents that did not originate with the Prosecution.⁷

5. As noted by the Accused, the Chamber is properly seised of the Motion.⁸ It shall therefore proceed to dispose of it.

6. The law that governs applications for access to *inter partes* confidential materials in other cases has been outlined by this Chamber on many occasions, and will not be repeated here.⁹ In addition, it should be noted that in the *Milošević* Decision, the Appeals Chamber already found that there exists a requisite factual nexus between this case and the *Dragomir Milošević* case, and that the Accused identified the material sought with sufficient particularity.¹⁰ Furthermore, the Appeals Chamber granted the Accused access to all *inter partes* confidential material in the *Dragomir Milošević* case, including all confidential filings and exhibits in that case.¹¹ Thus, it is clear that the Accused is entitled to have access to confidential *inter partes* exhibits and filings that were obtained by or originated with the *Milošević* Defence.

7. While that may be so, it appears that the *Milošević* Defence was never ordered to prepare a list of its own exhibits and filings to be immediately disclosed to the Accused and instead was simply ordered to make submissions on the list of materials prepared by the Prosecution.¹² However, as stated above, that list did not include materials originating from, or obtained by, the *Milošević* Defence.¹³ At the same time, the *Milošević* Notification appears to indicate that the Registry has provided the Prosecution with an index of all the materials on the record in that case, including all confidential *inter partes* *Milošević* Defence filings and exhibits, from all three phases of the case (pre-trial, trial, and appeal). The Prosecution has acknowledged that it could

⁷ Hearing, T. 15031–15032 (20 June 2011).

⁸ As noted above, the Accused filed the Motion in this case but also cross-filed it in the *Dragomir Milošević* case. Since the *Milošević* case was disposed of on appeal, there is no Chamber currently seised of that case, and thus, according to Rule 75(G)(ii), the Chamber properly seised of the Motion is this Chamber.

⁹ See e.g. Decision on Mićo Stanišić’s and Stojan Župljanin’s Requests for Access to Confidential Information in the *Karadžić* Case, 7 March 2011, paras. 7–12; Decision on General Miletić’s Request for Access to Confidential Information in the *Karadžić* Case, 31 March 2010, paras. 6–11; Decision on Motion for Access to Confidential Materials in Completed Cases, 5 June 2009, paras. 7–11.

¹⁰ *Milošević* Decision, paras. 9–10.

¹¹ *Milošević* Decision, para. 18.

¹² Compare para. 19 with paras. 20, 22, 24, and 26 of *Milošević* Decision.

¹³ See *Milošević* Notification, para. 3.

address, if so ordered, the issue of whether material listed in that index but not originating with the Prosecution should be disclosed to the Accused.¹⁴

8. Accordingly, for the reasons noted above, the Chamber considers that the Accused should be granted immediate access to *all* confidential *inter partes Milošević* Defence exhibits and filings on the record in the *Dragomir Milošević* case, with the exception of those that may have Rule 70 conditions in place. The Prosecution and the Registry should liaise in order to determine which confidential *inter partes Milošević* Defence exhibits and filings from all three phases of the *Dragomir Milošević* case have not yet been disclosed to the Accused, but should be provided to him. In addition, if any part of that material is subject to Rule 70 conditions, either the Prosecution or the *Milošević* Defence, depending on how the document was obtained, should state, on the record, its position in relation thereto, and should seek leave from the Rule 70 provider(s) to disclose the said documents, as soon as possible.

9. The Trial Chamber, therefore, pursuant to Rules 54, 70, and 75 of the Rules, hereby **GRANTS** the Motion and **ORDERS** as follows:

- (a) the Prosecution shall indicate to the Registry, by 31 July 2011, which confidential and *inter partes Milošević* Defence exhibits and filings from all three phases of the *Dragomir Milošević* case can be disclosed to the Accused immediately, and the Registry shall disclose them to the Accused as soon as possible thereafter;
- (b) with respect to confidential *inter partes Milošević* Defence exhibits and filings that were obtained by or originated with the *Milošević* Defence and that have Rule 70 conditions in place, the *Milošević* Defence shall file a written notification, by 15 August 2011, informing the Chamber of its position in relation thereto. The same shall apply to the Prosecution in relation to the material that was obtained by or originated with the Prosecution.

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



Judge O-Gon Kwon
Presiding

Dated this fourteenth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ *Milošević* Notification, para. 3.