

UNITED
NATIONS

IT-98-33-A
A 5849- A 5846
18 OCTOBER 2005

~~IT-05-88-PT~~
~~D 210 - D 207~~
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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-05-88-PT

Date: 18 October 2005

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean-Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 18 October 2005

THE PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVCANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ
MILORAD TRBIĆ**

**DECISION ON MILETIĆ'S REQUEST TO HAVE ACCESS TO
CONFIDENTIAL INFORMATION IN THE *KRSTIĆ* CASE**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Zoran Živanović for Vujadin Popović
John Ostojic for Ljubiša Beara
Jelena Nikolić for Drago Nikolić
Alan Newman and Miodrag Stojanović for Ljubomir Borovčanin
Natacha Fauveau Ivanović for Radivoje Miletić
Dragan Krgović for Milan Gvero
Đorđe Sarapa for Vinko Pandurević
Colleen Rohan for Milorad Trbić

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TRIAL CHAMBER II 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”);

NOTING the “Requête du Général Miletić aux fins d’accès à des informations confidentielles dans l’affaire Krstić” filed on 7 October 2005 by Counsel for the Accused Radivoje Miletić (“Defence”) (“Request”), in which the Defence seeks to have access to i) all transcripts of hearings held in closed session; ii) all relevant exhibits kept under seal; and iii) all confidential decisions rendered, in the case of *Prosecutor v. Radislav Krstić*, Case No. IT-98-33 (“Krstić case”) (“Requested Material”);

NOTING that the Defence submits that the Requested Material is material to the preparation of the defence of the Accused and that it undertakes to preserve the confidentiality of the Requested Material and the relevant protective measures issued in the course of the proceedings in the *Krstić* case;

NOTING the “Response to Radivoje Miletić’s Request for Confidential Material in the *Krstić* Case” filed by the Office of the Prosecutor (“Prosecution”) on 14 October 2005 (“Response”), in which the Prosecution does not object to the Request but submits that adequate protective measures should be ordered so as to maintain the confidentiality of the Requested Material;

NOTING Rule 75(G)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) which provides that “[a] party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply [...] (ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings;

NOTING that the Appeals Chamber of the Tribunal rendered its Judgement on 19 April 2004 and thus that the proceedings before the Tribunal against Radislav Krstić are completed;

NOTING the Order issued by the President of the Tribunal on 26 September 2005 which assigned the case against Vujadin Popović, Ljubisa Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić to Trial Chamber II;

RECALLING that access to confidential material may be granted whenever the Chamber is satisfied that the party seeking access has established that such material may be of material assistance to his case;¹

¹ *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Motion by Mario Čerkez for access to confidential supporting material, 10 October 2001, para. 10; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A,

RECALLING further that the relevance of the material sought by a party may be determined by showing the existence of a nexus between the applicant's case and cases from which such material is sought, for instance, if the cases stem from events alleged to have occurred in the same geographical area and at the same time;²

CONSIDERING that the Requested Material is material to the preparation of the defence of Radivoje Miletić in so far that both cases cover similar temporal and geographical scopes, namely July 1995 in and around Srebrenica;

CONSIDERING further that the material sought by Counsel for Radivoje Miletić is also material to the preparation of the case for the other accused in the case No. IT-05-88-PT, namely Vujadin Popović, Ljubisa Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir³, Milan Gvero, Vinko Pandurević and Milorad Trbić;

PURSUANT TO Rules 54 and 75(G)(ii) of the Rules;

HEREBY GRANTS the Defence Request and **ORDERS** that

- i) the Registry shall provide access for the accused and defence counsel in the case No. IT-05-88-PT to all transcripts of hearings held in closed session, all relevant exhibits kept under seal and all confidential decisions rendered, in the case of *Prosecutor v. Radislav Krstić*, Case No. IT-98-33;
- ii) the accused and defence counsel in the case No. IT-05-88-PT shall not disclose to the public any non-public evidence; and
- iii) the accused and defence counsel in the case No. IT-05-88-PT shall not disclose to the public, the names of witnesses, their whereabouts, the contents of the witness statements, transcripts of witness testimonies, their contents thereof, or any information which would enable them to be identified and which would breach the confidentiality of the protective measures issued in the course of the proceedings against Radislav Krstić.

Decision on appellants Dario Kordić and Mario Čerkez's request for assistance of the Appeals Chamber in gaining access to appellate briefs and non-public post-appeal pleadings and hearing transcripts filed in the *Prosecutor v. Tihomir Blaškić*, 16 May 2002, para. 14.

² *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Motion by Momir Talić for access to confidential documents, 3 July 2000, para. 8; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on appellants Dario Kordić and Mario Čerkez's request for assistance of the Appeals Chamber in gaining access to appellate briefs and non-public post-appeal pleadings and hearing transcripts filed in the *Prosecutor v. Tihomir Blaškić*, 16 May 2002, para. 15.

³ Zdravko Tolimir is not yet within the custody of the Tribunal.

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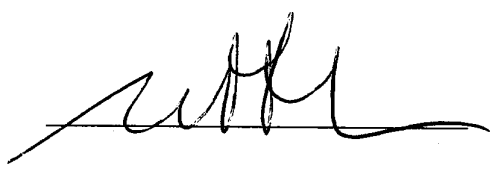
For the purpose of this decision, "the public" shall mean and include all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the Tribunal, the staff of the Registry, the Prosecutor and her representatives, the accused in this case, the defence counsel, legal assistants and other members of the Defence team, their agents or representatives. "The public" shall also include, without limitation, family, friends and associates of the accused; accused in other cases or proceedings before the Tribunal; defence counsel in other cases or proceedings before the Tribunal and the media and journalists.

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

Dated this eighteenth day of October 2005

At The Hague

The Netherlands



Judge Carmel Agius

Presiding

[Seal of the Tribunal]

