



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-02-54-T
IT-99-37-PT
Date: 14 June 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 14 June 2002

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

PROSECUTOR

v.

**DRAGOLJUB OJDANIĆ
NIKOLA ŠAINOVIĆ**

**DECISION ON DEFENCE MOTIONS FOR ACCESS TO TRANSCRIPTS AND
DOCUMENTS AND FOR DISCLOSURE OF *EX PARTE* FILING**

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice
Mr. Dirk Ryneveld

The Accused

Slobodan Milošević

Amicus Curiae

Mr. Steven Kay
Mr. Branislav Tapušević
Mr. Michail Wladimiroff

Counsel for the Accused

Mr. Tomislav Višnjić, Mr. Vinko
Selžan and Mr. Peter Robinson
Dragoljub Ojdanić
Mr. Toma Fila and Mr. Zoran
Jovanović, for Nikola Šainović



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 ("International Tribunal"),

BEING SEISED of (1) "General Dragojlob Ojdanić's Motion for Access to Transcripts and Documents" filed on behalf of the accused Dragojlob Ojdanić on 1 May 2002, together with the "Prosecution's Response" filed by the Office of the Prosecutor ("Prosecution") on 15 May 2002 and the Reply filed on 22 May 2002 on behalf of the accused Dragojlob Ojdanić ("the Ojdanić Motion"), in which the accused seeks access to transcripts of all proceedings, exhibits and all documents bearing upon the admissibility of evidence or the credibility of a witness ("evidentiary filings") in the part of the case of *Prosecutor v. Slobodan Milošević* pertaining to Kosovo; (2) a "Defence Motion for Access to Transcripts and Documents" filed on behalf of the accused Nikola Šainović on 7 June 2002 ("the Šainović Motion"), seeking access to transcripts of all proceedings, exhibits and documentary evidence in the same proceedings, together with a specific request for access to materials disclosed to the accused, Slobodan Milošević, pursuant to Rule 70 (B) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"); and (3) a "Motion for Disclosure of *Ex Parte* Filing and for Order Regulating Future Filings" filed on behalf of the accused Dragojlob Ojdanić on 10 June 2002 ("the Motion for Disclosure"), objecting to the filing by the Prosecution of an *ex parte* Motion for Order of Non-disclosure on 2 May 2002,

NOTING that the time permitted to the Prosecution to respond to the Šainović Motion and the Motion for Disclosure has not yet elapsed,

NOTING, however, that the relief sought in the Šainović Motion is essentially the same as is sought in the Ojdanić Motion, with the exception of the request for access to material provided pursuant to Rule 70 (B) of the Rules, and that the issues raised in the Motion for Disclosure are suitable for determination by the Trial Chamber without awaiting the response of the Prosecution,

NOTING that, of the material sought in the Ojdanić Motion and the Šainović Motion, nearly all witness testimony has been heard and exhibits presented in open session,

NOTING further that only four witnesses have been heard in closed session in the proceedings, with Orders in place for the evidence of a further three witnesses to be heard in closed session, and

that the edited transcripts of the testimony of these witnesses are to be released to the public by Order of the Trial Chamber dated 19 February 2002,

NOTING that counsel for Dragoljub Ojdanić has invoked the arrangements of Rules 66 (B) and 67 (C) of the Rules for reciprocal disclosure and that the process of disclosure has only recently commenced in this case,

NOTING that the Prosecution is required to disclose to the accused in these proceedings, within 30 days of the initial appearance, all material that accompanied the indictment on confirmation, together with the statements of all witnesses the Prosecution intends to call at trial at a date to be fixed by the pre-trial Judge plus, pursuant to Rule 68 of the Rules, all material which tends to suggest the innocence or mitigate the guilt of the accused of which may affect the credibility of Prosecution evidence and, in the case of the accused Dragoljub Ojdanić, all items that are material to the preparation of the defence or are intended for use by the Prosecution as evidence or trial or were obtained from or belonged to, the accused,

NOTING and agreeing with the arguments raised by the Ojdanić defence in the Motion for Disclosure addressing the propriety of *ex parte* filings,

CONSIDERING the provisions of Article 21, paragraph 2, of the Statute of the International Tribunal which guarantees the right to a public hearing,

CONSIDERING that the transcripts of the evidence of witnesses given in public session and any exhibits introduced through those witnesses are available to the defence on application to the Registry of the International Tribunal,

CONSIDERING that requests for access to material disclosed to the accused, Slobodan Milošević, but not yet forming part of the public record are premature, as much of this material may be subject to mandatory disclosure under Rules 66, 67 and 68 of the Rules,

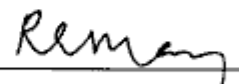
PURSUANT to Rules 36, 54, 66 and 67 of the Rules

FOR THE FOREGOING REASONS

HEREBY ORDERS as follows:

- (1) counsel for the accused are directed to liaise with the Registrar of the International Tribunal to establish mutually convenient methods of provision of the transcripts of all open session proceedings and all public exhibits in the part of the case of *Prosecutor v. Slobodan Milošević* pertaining to Kosovo;
- (2) the Prosecution is reminded of its obligation to ensure that closed session transcripts in those proceedings are reviewed and submitted for release on an ongoing basis and in timely fashion;
- (3) counsel for the accused are at liberty to apply to the Trial Chamber for specific orders in respect of any closed session material which they believe is likely materially to assist their case and which the Prosecution is not otherwise required to disclose to them; and
- (4) the Registrar of the International Tribunal is instructed, on 21 June 2002, to serve upon both the Ojdanić Defence and the Šainović Defence the confidential *ex parte* filings made by the Prosecution on 2 and 7 May 2002, unless the Prosecution has by that date filed a reasoned request with the Trial Chamber seeking permission to withhold information in those filings from the defence.

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



Richard May
Presiding

Dated this fourteenth day of June 2002
At The Hague
The Netherlands

[Seal of the Tribunal]

