



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-R77.4

Date: 26 April 2005

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 26 April 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

CONTEMPT PROCEEDINGS AGAINST KOSTA BULATOVIĆ

**ORDER ON DEFENCE MOTION FOR ACCESS TO
ALL CONFIDENTIAL AND *EX PARTE* MATERIAL RELATED TO
CONTEMPT PROCEEDINGS AGAINST WITNESS K12**

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Counsel for Mr. Kosta Bulatović:

Mr. Stéphane Bourgon, Duty Counsel

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

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 a “Defence Motion for Access to All Confidential and *Ex Parte* Material Related to Contempt Proceedings Against Witness K12”, filed on 25 April 2005 (“Motion for Access to K12 Material”), in which Duty Counsel for Kosta Bulatović (“Applicant”) argues that the requirements for access to confidential material from other proceedings have been met, and asserts that “all of the materials in the proceedings against witness K12 would be of considerable assistance to prepare the request for certification, the appeal if authorized and the case for the Defence”,

NOTING the “Order on Contempt Concerning Witness Kosta Bulatović” of 20 April 2005, in which this Chamber (1) charged the Applicant, pursuant to Rule 77(A)(i) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), with knowingly and willingly interfering in the administration of justice, and (2) held that it would prosecute the matter itself;

CONSIDERING that a party is always entitled to seek material from any source to assist in the preparation of its case if the document sought has been identified or described by its general nature, and if a legitimate forensic purpose for such access has been shown; and that access to confidential material from another case is granted if the party seeking it can establish that it may be of material assistance to its case,¹

CONSIDERING 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 the case from which such material is sought,² and therefore that access to material may be granted if the party seeking it demonstrates a “geographical, temporal or otherwise material overlap” between the two proceedings,³

CONSIDERING that the substantial similarity in the facts giving rise to the institution of contempt proceedings against the Applicant and against witness K12 constitutes a material overlap between the two proceedings,

¹ See *Prosecutor v. 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. Blaškić* [Case]”, 16 May 2002, at para. 14.

² See *id.*, para. 15.

³ See *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, “Decision on Motion by Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić and Čerkez Case”, 23 January 2003, at p. 4.

CONSIDERING however, that some of the confidential material to which access is sought contains information that may identify K12, a protected witness, and that no legitimate forensic purpose for access to such material has been demonstrated,

NOTING that pursuant to Rule 73(C)'s requirement that requests for certification be filed within seven days of the filing of the impugned decision, a request for certification of any issue in the Chamber's decision of 20 April 2005 must be filed by 27 April 2005,

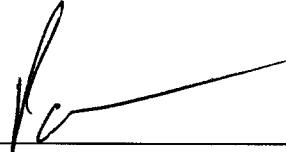
PURSUANT TO Rules 54 and 75 of the Rules,

HEREBY GRANTS the Motion for Access to K12 Material in part, and **ORDERS AS FOLLOWS:**

- (1) The Applicant and his defence counsel shall have access to the non-public portions of the transcripts pertaining to the contempt charges against witness K12 from the following cases and dates, after the Registry has redacted those parts of the transcripts that may reveal the identity of the witness:
 - (a) Case No. IT-02-54-T, 3 June 2002;
 - (b) Case No. IT-02-54-T, 4 June 2002;
 - (c) Case No. IT-02-54-T-R77, 24 June 2002; and
 - (d) Case No. IT-02-54-T-R77, 18 November 2002;
- (2) The Applicant and his defence counsel shall not disclose to the public any confidential or non-public material disclosed to it from the *Milošević* case; and
- (3) The Motion for Access to K12 Material is otherwise denied.

For the purposes of this decision, "the public" means and includes, all persons, governments, organizations, entities, clients, associations and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor and her representatives, and the Applicant and his defence team. "The public" also includes, without limitation, families, friends, and associates of the Applicant; accused and defence counsels in other cases or proceedings before the International Tribunal; the media; and journalists.

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



Judge Robinson
Presiding

Dated this twenty-sixth day of April 2005
At The Hague
The Netherlands

[Seal of the Tribunal]