

UNITED  
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26 MAY 2004

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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-99-36-T  
Date: 26 May 2004  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Ivana Janu  
Judge Chikako Taya

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 May 2004

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

**FURTHER DECISION ON MOTION BY THE DEFENCE OF  
MILAN MARTIĆ FOR ACCESS TO CONFIDENTIAL  
TRANSCRIPTS AND DOCUMENTS**

**The Office of the Prosecutor:**

Ms. Joanna Korner

**Counsel for the Accused:**

Mr. John Ackerman  
Mr. David Cunningham

**Counsel for Milan Martić:**

Mr. Predrag Milovančević

Case No.: IT-99-36-T

26 May 2004



**TRIAL CHAMBER II** ("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");

**BEING SEISED OF** the "Registrar's submission on redaction pursuant to Rule 33(B)" ("Registrar's Submission"), filed on 26 April 2004;

**NOTING** the "Decision on motion by the Defence of Milan Martić for access to confidential transcripts and documents" ("Decision"), filed on 1 March 2004, in which this Trial Chamber ordered that

1. The Defence of Milan Martić ("Applicant") is granted
  - (1) access to closed and private session transcripts produced by Trial Chamber II in the case of *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, with regard to evidence relevant to the municipalities of Bosanski Novi, Prnjavor and Šipovo, after the redaction by the Registry of those parts of it which will reveal the identity of any protected person;
  - (2) leave to lodge an application at the appropriate time justifying the revelation of the identity of any particular witness;
  - (3) access to confidential trial exhibits introduced in the case of *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, with regard to evidence relevant to the municipalities of Bosanski Novi, Prnjavor and Šipovo, after the redaction by the Registry of those parts of it which will reveal the identity of any protected person;
  - (4) leave to lodge an application at the appropriate time justifying the revelation of the exhibit in its original form.
2. The Applicant is not granted access to any Rule 70(B) material which may be included in evidence contained under paragraph 1(1) and 1(3) above.

**NOTING** that the Registrar's Submission requests that sub-paragraphs 1(1), 1(3) and 2 of the Decision be amended in a manner consistent with Registry concerns, i.e. "if redaction efforts are truly necessary and warranted in the judgement of the Chamber, then the parties – who are familiar with the evidence and who know what material comes from Rule 70 providers – should be tasked with the responsibility to identify and redact the sensitive material before the disclosure is effected";

**NOTING** the "Scheduling Order setting time for submissions", filed on 6 May 2004, in which this Trial Chamber ordered the Prosecution and Defence counsel for Radoslav Brđanin ("Defence") to file submissions on this issue no later than 20 May 2004;

**NOTING** the "Prosecution's response to 'Registrar's submission on redaction pursuant to Rule 33(B)'" ("Prosecution's Response"), filed on 20 May 2004, in which the Prosecution submits that

- (1) it is essential to redact material which would identify protected persons;
- (2) it does not object to the relief requested by the Registry; and
- (3) it requests that sub-paragraphs 1(1) and 1(3) be amended to read "redaction by the parties" rather than "redaction by the Registry";

**CONSIDERING** that the Defence did not make any submissions on the issue;

**CONSIDERING** that the solution proposed by the Prosecution, following which each party would be responsible for redacting the confidential testimony and exhibits which were introduced as part of its own case, would meet the concerns expressed in the Registrar's Submissions while still providing the required witness protection;

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Articles 20, 21 and 22 of the Statute of the Tribunal and to Rules 54, 73 and 75 of the Rules of Procedure and Evidence;

**HEREBY ORDERS** that the disposition of the Decision such that sub-paragraphs 1(1) and 1(3) be amended to read "redaction by the parties" rather than "redaction by the Registry".

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

Dated this 26<sup>th</sup> day of May 2004,

At The Hague

The Netherlands



**Carmel Agius**

**Presiding Judge**

[Seal of the Tribunal]

