



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-05-87-T
Date: 13 February 2008
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 13 February 2008

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

DECISION ON LUKIĆ MOTION FOR ORDER PURSUANT TO RULE 70

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 a “Defence Application: Requesting an Order Applying to [sic] Rule 70 to Specific Information to Be Provided to the Defence by the Government of the United States of America,” filed on 12 February 2008 by the Lukić Defence (“Motion”), and hereby renders its decision thereon.

1. In its Motion, the Lukić Defence requests that the Trial Chamber issue an order providing that the provisions of Rule 70 shall apply *mutatis mutandis* to certain information provided by the Government of the United States of America (“Rule 70 provider”) to the Lukić Defence in response to a request for that information.¹ The Lukić Defence submits that the material in question is comprised of information from the Rule 70 provider that is relevant to the case.² The Lukić Defence further submits that the Rule 70 provider has informed it that it is prepared to produce the information responsive to the request, provided that it is produced on a confidential basis for background and lead purposes only (*i.e.*, it cannot be tendered as evidence in the case) and provided that the Chamber issue an order expressly stating that the provisions of Rule 70 apply to the information.³

2. The Trial Chamber notes that Rule 70 provides, in relevant part, as follows:

(F) The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused.

The Trial Chamber, based upon the submissions of the Lukić Defence, is satisfied that the material falls within the provisions of Rule 70(F).

3. The Chamber notes that the Rule 70 provider has only granted its conditioned permission for disclosure to the Lukić Defence, and not for the material to be adduced as evidence in the trial. Such use of the material would require further permission from the Rule 70 provider.

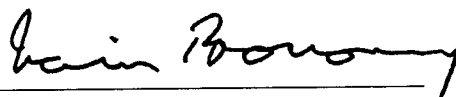
4. For the foregoing reasons and pursuant to Rules 54 and 70 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby GRANTS the Motion and ORDERS (a) that the provisions of Rule 70 apply *mutatis mutandis* to any information provided by the Rule 70 provider to the Lukić Defence in response to its request; and (b) that the Lukić Defence team, which includes Sreten Lukić, counsel, and any employees who have been instructed or authorised

¹ Motion, paras. 1, 5, 9.

² Motion, paras. 2–3, 8.

to have access to confidential material, shall not disclose the material to any persons (including the other Accused and Defence teams who may not already have been granted access to the same material), governments, organisations, entities, clients, associations, or groups, without the prior approval of the Rule 70 provider.

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



Judge Iain Bony
Presiding

Dated this thirteenth day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

³ Motion, paras. 4, 8.