



International Tribunal for the Prosecution
of Persons Responsible for Serious
Violations of International Humanitarian
Law Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-14/2-PT

Date: 12 November 1998

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Almiro Simões Rodrigues

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Order of: 12 November 1998

THE PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON THE MOTION OF THE ACCUSED FOR ACCESS TO NON-PUBLIC
MATERIALS IN THE LAŠVA VALLEY AND RELATED CASES**

The Office of the Prosecutor:

Mr. Geoffrey Nice
Ms. Susan Somers
Mr. Patrick Lopez-Terres
Mr. Kenneth Scott

Defence Counsel:

Mr. Mitko Naumovski
Mr. Turner T. Smith, Jr.
Mr. David F. Geneson
Mr. Bozidar Kovacic

TRIAL CHAMBER I (hereinafter “the 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 (hereinafter “the Tribunal”);

NOTING the Motion of the accused Dario Kordić for access to non-public materials in the Lašva Valley and related cases dated 2 June 1998 (hereinafter “the Motion”),

NOTING the Response of the Prosecutor filed on 8 July 1998 (hereinafter “the Response”),

NOTING the Reply of the Defence dated 16 July 1998 (hereinafter “the Reply”),

NOTING the further submissions of the Prosecution in respect of the Motion of the Defence recorded on 4 September 1998 (hereinafter “the Submissions”),

NOTING the Response of the Defence to the Submissions dated 11 September 1998,

NOTING the notice dated 14 September 1998 in which the Defence of the accused Mario Čerkez states that he joins in the Motion and subsequent submissions of the Defence of the accused Kordić,

NOTING the Reply of the Prosecution to the Response of the Defence to the Submissions recorded on 8 October 1998,

PURSUANT to Articles 20, 21(4), and 22 of the Statute of the Tribunal and Rules 54, 66, 68, 70, and 75 of the Rules of Procedure and Evidence of the Tribunal (hereinafter “the Rules”),

CONSIDERING that the Defence requests that the Trial Chamber order that “the Registrar grant the accused, their counsel and representatives full, timely and meaningful ongoing access to all of the non-public transcripts, exhibits, Tribunal orders and decisions, and any other materials necessary for the defence of the accused (e.g. names of and identifying designators for witnesses that have testified under a pseudonym or other form of anonymity) that were submitted in all of the Lašva Valley cases that involve the events, facts, and witnesses at issue in the instant case, including, without limitation, the following cases”:

The Prosecutor v. Blaškić (IT-95-14-T) which is pending before another Trial Chamber (“Trial Chamber B”);

The Prosecutor v. Aleksovski (IT-95-14/1-T) which is pending before a Trial Chamber with a different panel of Judges (“Trial Chamber C”);

The Prosecutor v. Frurundžija (IT-95-17/1-T) which is pending before Trial Chamber II of the Tribunal (hereinafter “Trial Chamber II”);

The Prosecutor v. Kupreskić et al. (IT-95-16-T) which is pending before Trial Chamber II;

and lastly, *The Prosecutor v. Rajić* (IT-95-12-I) and *The Prosecutor v. Marinić* neither of which is pending before any Trial Chamber,

CONSIDERING that the Defence proposes that the Trial Chamber therefore order that the order for the protection of witnesses issued by the Trial Chamber on 27 January 1998 be amended as necessary,

CONSIDERING that the Defence submits that the Prosecutor is in possession of materials which are “relevant and necessary” for the defence of the accused, whereas the Defence itself does not have access to those materials because of the measures adopted by the Trial Chambers concerned to guarantee the confidentiality of certain information so as to ensure the protection of the victims and witnesses,

CONSIDERING that the Defence bases its Motion on Article 21 of the Statute of the Tribunal and on Sub-rule 66(A) and Rule 68 of the Rules, that is, on the right of the accused to a fair and expeditious trial and on their right to be able to prepare their defence effectively,

CONSIDERING that the Prosecution argues that the confidential nature of the materials to which the Defence is requesting access is the result of measures adopted by the Trial Chambers concerned in order to guarantee the safety of the victims and witnesses; that the measures were adopted for a given witness in a given situation and cannot be lifted, in any event not before the witness in question has so consented; that without such consent, lifting the protective measures afforded might constitute a threat to the safety of that witness.

CONSIDERING that the Prosecution underscores that many witnesses have agreed to testify before the Tribunal under the condition that they be afforded protective measures; that any

modification to such protection might discourage future witnesses from appearing before the Tribunal,

CONSIDERING that the Prosecution argues moreover that the right of an accused to a fair trial does not include the right to have access to the materials originating in a case concerning another accused,

CONSIDERING that, when adopting the Rules, the Judges developed a set of procedures which both specify the rights of each party and impose a certain number of obligations, *inter alia* upon the Prosecutor, who, unlike the Defence and the accused, is a party in each of the cases pending before the Tribunal,

CONSIDERING that the Trial Chamber is convinced that the Prosecutor will examine the materials in her possession pursuant to Rule 68,

CONSIDERING that it is the duty of the Trial Chamber to ensure that the Defence is not put at a disadvantage in relation to the Prosecution; that the mere fact that the Prosecutor is in possession of materials which, if not for the reasons mentioned above would normally have been public, creates a situation which might prejudice the rights of the accused,

CONSIDERING that the Defence has undertaken to implement the provisions which the Trial Chamber, which adopted protective measures precluding the Defence from having access to certain materials, would deem necessary to order,

CONSIDERING that it is appropriate to take especially into account the specific situation arising from the implementation of Rule 70, which prohibits the disclosure of confidential information utilised solely for generating new evidence, without the consent of the person or entity providing it,

CONSIDERING that the right of the accused to a fair trial is in no way affected in respect of access to the confidential materials of a case when no Trial Chamber has yet been seized of that case,

CONSIDERING that this Trial Chamber has no jurisdiction to rule on measures adopted by another Trial Chamber so long as that Trial Chamber is still seized of a case,

CONSIDERING that the Defence of the accused Dario Kordić and Mario Čerkez is not a party in the cases before Trial Chamber A, Trial Chamber B, and Trial Chamber II, respectively, and in which those Trial Chambers have adopted confidentiality ensuring measures; that procedural relief must therefore be found for the Defence which will permit the merits of the Motion to be considered,

FOR THE FOREGOING REASONS

RULING *inter partes* and unanimously,

DECIDES to request the reasoned opinion of Trial Chamber B for the case *The Prosecutor v. Blaškić* (IT-95-14-T), of Trial Chamber C for the case *The Prosecutor v. Aleksovski* (IT-95-14/1-T), and of Trial Chamber II for the cases *The Prosecutor v. Frurundžija* (IT-95-17/1-T) and *The Prosecutor v. Kupreskić et al.* (IT-95-16-T),

CONSEQUENTLY REQUESTS that Trial Chambers II, B, and C review, subject to the following, the relevant issues raised in the Motion in the manner they deem most appropriate; **REQUESTS** further that they indicate to this Trial Chamber whether the Motion may be granted, and if so, under what conditions in terms of confidentiality and protective measures, if necessary,

REJECTS the Motion insofar as it is seeking the disclosure of materials covered, directly or indirectly, by Rule 70,

REJECTS the Motion in respect of the materials in the cases *The Prosecutor v. Rajić* (IT-95-12-I) and *The Prosecutor v. Marinić* (IT-95-15-I),

DECIDES however to remain seized of the Motion.

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

Done this twelfth day of November 1998
At The Hague
The Netherlands

(Signed)

Claude Jorda
Presiding Judge Trial Chamber I

(Seal of the Tribunal)