



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-95-14-A
Date: 8 March 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 8 March 2002

PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION ON APPELLANT'S MOTION REQUESTING ASSISTANCE OF THE
APPEALS CHAMBER IN GAINING ACCESS TO NON-PUBLIC TRANSCRIPTS AND
EXHIBITS FROM THE ALEKSOVSKI CASE**

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Appellant:

**Mr. Anto Nobile
Mr. Russell Hayman
Mr. Andrew M. Paley**

THE APPEALS 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 (“the International Tribunal”),

BEING SEISED of the “Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits” (“Motion for Access to Non-Public Material”) filed by counsel for Tihomir Blaškić (the “Appellant”) on 28 December 2000, which requested the Appeals Chamber to confer with the Trial Chambers in the Furundžija, Aleksovski, Kupreškić and Kordić and Čerkez cases, in order to grant the Appellant access to non-public transcripts and exhibits;

NOTING the “Prosecution Response to Appellant’s Motion Requesting Assistance of the Appeals Chamber in Granting Access to Non-Public Transcripts and Exhibits” filed on 8 January 2001;

NOTING the “Appellant’s Reply to Prosecution Response to Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits” filed on 15 January 2001;

NOTING the “Decision on the Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits” issued by the Appeals Chamber on 4 July 2001, which invited the Registrar to transfer the Motion for Access to Non-Public Material to the President of the International Tribunal;

NOTING the “Order of the President on the Appellant’s Motion for Access to Non-Public Transcripts and Exhibits in the Cases *The Prosecutor v. Kupreškić et al.*, *The Prosecutor v. Furundžija*, *The Prosecutor v. Kordić and Čerkez* and *The Prosecutor v. Aleksovski*” issued on 5 October 2001, which invited the Registrar to transmit the Motion for Access to Non Public Material to the then Vice-President of the International Tribunal, Judge Florence Ndepele Mwachande Mumba, to dispose of the motion with respect to the material sought in all cases except for the Aleksovski case;

NOTING the “Order of the President on the Appellant’s Motion for Access to Non-Public Transcripts and Exhibits in the Case *The Prosecutor v. Aleksovski*” issued on 5 October 2001, which invited the Registrar to transmit the Motion for Access to Non-Public Material to Trial Chamber I as composed in the trial of Zlatko Aleksovski;

NOTING the “Decision on the Motion of the Accused Tihomir Blaškić Requesting Access to Non-Public Transcripts and Exhibits From the Case *The Prosecutor v. Aleksovski*” issued by Trial Chamber I on 17 October 2001 (the “Trial Chamber’s Decision”), which authorised the “potential disclosure” of confidential material from the *Aleksovski* case to the Appellant, subject to “such measures as the Appeals Chamber shall consider appropriate” and invited the Registry to contact Mr. Aleksovski’s Defence in order to obtain its opinion on the potential disclosure of confidential material to third parties;

NOTING that on 8 November 2001, the Appeals Chamber received an electronic message from Registry stating that Mr. Joka, Defence counsel for Mr. Aleksovski, had been informed of the Decision and had stated that he did not oppose the disclosure of that confidential material;

NOTING that the Trial Chamber’s Decision states *inter alia*, that:

... the material provided pursuant to Rule 70 of the Rules in the *Aleksovski* case must be dealt with differently because of the very specific confidentiality afforded by the implementation of the said Rule...the Chamber holds that the material could be disclosed to third parties only with prior authorisation of the entity which supplied it;

NOTING the “Decision Granting Access to Non-Public Materials” issued by Judge Florence Ndepele Mwachande Mumba on 20 February 2002, which granted the Appellant access to all the non-public materials submitted as evidence in the *Kupreškić*, *Furundžija* and *Kordić and Čerkez* cases, as well as the Rule 68 material from the *Kordić* case;

CONSIDERING that the Appeals Chamber is satisfied that the Appellant is entitled to access the material sought since he has described the documents sought by general nature as clearly as he possibly could, and has shown that such access is likely to assist his appeal materially;

PURSUANT to Rules 54 and 75 of the Rules of Procedure and Evidence (the “Rules”);

HEREBY ORDERS the Prosecution to seek the consent of the providers of the Rule 70(C) related material in the *Aleksovski* case and, the Registry to disclose all non-public transcripts and exhibits submitted as evidence in the trial of Zlatko Aleksovski to the Appellant, subject to any protective measures already adopted by the Trial Chamber and the following additional protective measures:

The Appellant, his counsel and any employee at Latham & Watkins or at the office of Mr. Anto Nobilo, who have been instructed or authorised by counsel to access the disclosed materials shall *prior to having such access*:

- (a) Sign and file with the Registry a written undertaking stating:
- (i) that he/she shall not disclose to any third party either the identities of protected witnesses or the content of protected documents, unless sub-paragraph (c) has been complied with, and
 - (ii) that he/she is fully aware that if the measures provided for in this decision are violated he/she could be found to be in contempt of the International Tribunal pursuant to Rule 77 of the Rules;
- (b) Third parties exclude:
- (i) the Appellant;
 - (ii) persons employed by counsel's law firms who have signed and filed such a written undertaking;
 - (iii) personnel from the International Tribunal; or
 - (iv) members of the Office of the Prosecutor;
- (c) In the event that the Appellant considers it necessary to grant access to any of the disclosed material to third parties, the Appellant shall file with the Registry, *at least four working days prior to granting such access*, a signed written undertaking by that third party in the terms set out in sub-paragraph (a), as well as a written undertaking stating that the disclosed material will not be copied, reproduced or publicised. Such an undertaking shall not be made on an *ex parte* basis.

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



Fausto Pocar
Presiding Judge

Done this eighth day of March 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]