



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: IT-00-41-PT

Date: 4 June 2002

Original: English

IN THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Order of: 4 June 2002

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

**ORDER CONCERNING MOTION FILED BY ENVER HADŽIHASANOVIĆ,
MEHMED ALAGIĆ AND AMIR KUBURA FOR ACCESS TO CONFIDENTIAL
SUPPORTING MATERIAL TRANSCRIPTS AND EXHIBITS**

The Office of the Prosecutor:
Mr. Mark Harmon

Defence Counsel:
Mr. Tomislav Jonjić

TRIAL CHAMBER I (the “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 “Tribunal”);

BEING SEISED OF “Enver Hadžihasanović, Mehmed Alagić and Amir Kubura’s Joint Motion for Access to Confidential Supporting Material Transcripts and Exhibits,” filed in this case by counsel for the three accused named in the motion (the “Defence”) on 4 March 2002 (the “Motion”);

NOTING the “Prosecution’s Response to Motion from Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material Transcripts and Exhibits,” filed by the Prosecution on 11 March 2002 (the “Response”);

NOTING further the “Response to Enver Hadžihasanović, Mehmed Alagić and Amir Kubura’s Joint Motion for Acces [sic] to Confidential Supporting Material, Transcripts and Exhibits,” filed by the accused, Paško Ljubičić (the “Accused”), on 11 March 2002 (the “Accused’s Response”);

NOTING that the Defence requests access to all confidential supporting material, transcripts and exhibits presently in the custody of the Registry in the instant case on the grounds, *inter alia*, that the indictment in the Accused’s case “deals with events and facts closely related to the charges laid against Enver Hadžihasanović, Mehmed Alagić and Amir Kubura and that disclosure of the related supporting material will be of significant assistance in the preparation of the case for the Defence”; further, that the Trial Chamber determine appropriate necessary and reasonable protective measures to be imposed;

NOTING that the Accused submits that the Motion is partly premature and unsubstantiated, that therefore he opposes the Motion and suggests that it should be denied;

NOTING that the Prosecution requests that the Motion be dismissed on the grounds that at the time of filing of the Response, the Appeals Chamber was seized of an appeal concerning “a substantively similar request” made by the Defence in the case of *The Prosecutor v. Kupreškić et al.*, which had been denied by the President; that the Defence had made similar requests to the President in the cases of *The Prosecutor v. Dario Kordić and Mario Čerkez* and *The Prosecutor*

v. Tihomir Blaškić and that the President had decided to defer taking a decision on these motion pending the outcome of the matter before the Appeals Chamber;

NOTING further that the Prosecution submits that although it believes there is no merit in the Motion, it is appropriate to defer detailed argument on it, until such time that the Appeals Chamber has clarified the relevant test to be applied in relation to applications for access to such material; that it believes that the Motion should be dismissed with leave to resubmit it after the Appeals Chamber has rendered a decision; that at that point, it will address the merits of a resubmitted motion if any;

NOTING the “Decision on Appeal from Refusal to Grant Access to Confidential Material in Another Case,” issued by the Appeals Chamber on 23 April 2002 (the “Appeals Chamber Decision”), in which the Appeals Chamber granted an appeal filed by the Defence against the “Ordonnance du Président relative à la Requête conjointe de la Défense dans l’Affaire *Le Procureur c/ Hadžihasanović et consorts* aux fins d’autoriser l’accès à des pièces confidentielles de l’affaire *le Procureur c/Kupreskić et consorts*,” rendered on 25 September 2001;

NOTING that in the Appeals Chamber Decision, the Appeals Chamber *inter alia* responded to the Defence’s request to set out the proper test for granting an accused access to confidential material in other cases; found that in the circumstances of that case, the President had erred in law in refusing to grant access to the material sought; granted the motion and remitted the case to the President for him to provide the requested access and to indicate any appropriate protective measures;

NOTING that despite the Prosecution’s submissions in the Response, the Chamber saw no need to dismiss the Motion on the basis put forward simply to potentially await re-filing of the same, but did see it as appropriate to await the Appeals Chamber Decision before considering the Motion further;

NOTING “Paško Ljubičić’s Motion for Access to Confidential Supporting Material,” filed by the Accused in the case of the Defence (*Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*) on 1 May 2002, in which the Accused seeks access to confidential supporting material in the Defence’s case;

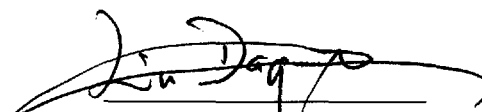
NOTING the “Order on Paško Ljubičić’s Motion for Access to Confidential Supporting Material,” issued on 30 May 2002, in which the Accused’s Motion was granted in the terms set out in the order;

CONSIDERING that it is unclear what confidential transcripts and exhibits the Defence is seeking access to;

CONSIDERING therefore that, in the circumstances of the instant case and in light of the Appeals Chamber Decision, it is appropriate to provide both the Prosecution and the Accused with an opportunity to now indicate their views on the substance of the Motion prior to rendering a decision thereon;

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the Tribunal;

HEREBY ORDERS that the Prosecution and the Accused may file a further response to the Motion, if any, within seven days of the filing of this decision; that the Defence may file a reply within seven days of filing of the last of these responses, if any; that the Chamber will thereafter decide on the Motion.



Judge Liu Dajun,
Presiding Judge

Dated this fourth day of June 2002
At The Hague,
The Netherlands

[Seal of the Tribunal]