

UNITED
NATIONS

IT-98-3011-A
A 3084 - A 3082
31 OCTOBER 2002

~~IT-98-14/2-A~~
~~A 5151 - A 5149~~
~~31 OCTOBER 2002~~

3084
Rk

5151-23



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-95-14/2-A

Date: 31 October 2002

Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr Hans Holthuis

Decision of: 31 October 2002

PROSECUTOR

v

**DARIO KORDIĆ
MARIO ČERKEZ**

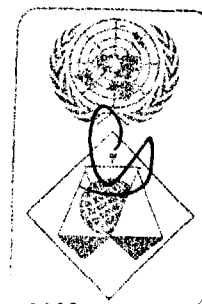
DECISION ON PROSECUTION'S REQUEST FOR RECONSIDERATION

Counsel for the Prosecutor
Mr Norman Farrell

Counsel for Paško Ljubičić
Mr Tomislav Jonjić

Counsel for Dario Kordić
Mr Božidar Kovačić

Counsel for Mario Čerkez
Mr Mitko Naumovski



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,

NOTING the Appeals Chamber's "Order on Paško Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez Case*", rendered on 19 July 2002 ("Order"), whereby the Appeals Chamber ordered the prosecution, *inter alia*, to file a document identifying the confidential supporting material, transcripts and exhibits from the *Kordić and Čerkez* trial which it considered to be relevant to the Ljubičić's case as well as the material which it considered not to be relevant to Ljubičić, and state in some detail the reasons and criteria which led to its conclusion in that regard;

NOTING that the Order also requested the prosecution to review the *Kordić and Čerkez* record and identify any confidential material which is relevant to Ljubičić's case but which is subject to provider's consent in accordance with Rule 70(C) and seek consent of the provider of that material and to contact witnesses who testified confidentially as well as any government or other entity which may have consented to their confidential testimony to hear their views upon the matter;

NOTING finally that, subject to a number of limitations, the Order requested the prosecution to redact the material which it considered to be relevant to Ljubičić's case and to provide it to him in that form;

BEING SEISED of the "Prosecutor's Request for Reconsideration of the Appeals Chamber's 19 July 2002 'Order on Paško Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez Case*' and Request for an Extension of Time", filed on 12 August 2002, whereby the prosecution seeks a reconsideration of the Appeals Chamber's Order;

NOTING the Ljubičić's "Response to Prosecutor's Request for Reconsideration of the Appeals Chamber's 19 July 2002 'Order on Paško Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez Case*' and Request for an Extension of Time", filed on 26 August 2002;

NOTING the letters of the Appeals Chamber's Senior Legal Officer filed confidentially on 6 and 10 September 2002 requesting parties in the *Kordić and Čerkez* case and *Kvočka et al* case to state their views upon the prosecution's request for reconsideration;

NOTING the letter of counsel for Čerkez filed on 13 September 2002;

NOTING the prosecution's "Further Information Relevant to Prosecutor's Request for Reconsideration of the Appeals Chamber's 19 July 2002 'Order on Paško Ljubičić's Motion for Access to Confidential Material'", filed on 13 September 2002;

NOTING the three successive notices of compliance with Annexes A, B and C filed by the Prosecution, respectively on 19 September, 20 September and 11 October 2002, whereby the prosecution notified the Appeals Chamber that it had fully complied with its Order;

CONSIDERING that the prosecution's full compliance with the Order renders the present Motion moot;

CONSIDERING, however, that a similar issue has been raised in other cases, in particular in the *Kvočka et al* case in relation to a request for access to material in that case filed by Momčilo Gruban ("Gruban") on 7 June 2002;

HEREBY DENIES the prosecution's Motion but makes it clear that the prosecution, Gruban as well as any of the accused in the *Kvočka et al* case who would want to do so may make any submission in the *Kvočka et al* case in relation to the mechanism which they consider to be most appropriate to give access to Gruban to the material from the *Kvočka et al* case for which he seeks access.

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

Dated this 31st day of October 2002,
At The Hague,
The Netherlands.

David Hunt

David Hunt
Presiding Judge

[Seal of the Tribunal]

