

UNITED  
NATIONS

IT-00-41-PT  
D1999-DP97  
31 OCTOBER 2002

~~IT-95-14/2-A~~  
~~AS151-AS149~~  
~~31 OCTOBER 2002~~

~~5151/18~~  
1999 AT



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

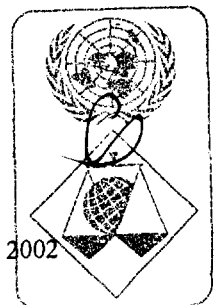
**DECISION ON PROSECUTION'S REQUEST FOR RECONSIDERATION**

**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 31<sup>st</sup> day of October 2002,  
At The Hague,  
The Netherlands.

*David Hunt*

David Hunt  
Presiding Judge

[Seal of the Tribunal]

