

UNITED
NATIONS



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

IT-02-60-PT
D 8456 - D 8453
10 February 2003

8456
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Case No. IT-02-60-PT
Date: 10 February 2003
Original: English

IN TRIAL CHAMBER II

Before: Judge Wolfgang Schomburg, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Carmel Agius

Registrar: Mr. Hans Holthuis

Decision of: 10 February 2003

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN OBRENOVIĆ
DRAGAN JOKIĆ
MOMIR NIKOLIĆ**

**DECISION ON ACCUSED NIKOLIĆ'S MOTION TO ORDER THE
PROSECUTION TO FILE COPIES OF ALL WITNESS STATEMENTS
WHOM THE PROSECUTION INTENDS TO CALL FOR TRIAL AND
COPIES OF ALL EXHIBITS THE PROSECUTION INTENDS TO
TENDER AT TRIAL**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. David Wilson and Mr. Dušan Slijepčević for Dragan Obrenović
Mr. Miodrag Stojanović and Ms. Cynthia Sinatra for Dragan Jokić
Mr. Veselin Londrović and Mr. Stefan Kirsch for Momir Nikolić

TRIAL CHAMBER II ("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 ("Tribunal"),

BEING SEISED of "Accused Nikolić's Motion to Order the Prosecution to File Copies of All Witness Statements Whom the Prosecution Intends to Call for Trial and Copies of all Exhibits the Prosecution Intends to Tender at Trial," filed on behalf of Accused Momir Nikolić on 28 January 2003 ("Motion") in which the Accused Nikolić requests that the materials ordered to be delivered to the Trial Chamber in the Decision be first filed through the Registry before being delivered to the Trial Chamber,

NOTING the Trial Chamber's "Decision on Joint Defence Motions for Reconsideration of Trial Chamber's Decision to Review All Discovery Materials Provided to the Accused by the Prosecution," filed on 21 January 2003 ("Decision"), in which the Trial Chamber ordered the Prosecution to deliver to the Trial Chamber by 3 February 2003: (1) copies of all witness statements of the witnesses whom the Prosecution intends to call for trial; and (2) copies of all exhibits the Prosecution intends to tender at trial ("Requested Materials"),

NOTING that, following the filing of two requests for certification for appeal of the Decision,¹ the Trial Chamber granted leave to appeal the Decision,²

NOTING that this Motion does not aim at the non-delivery of the Requested Materials, as opposed to the Blagojević Request and the Jokić Request,

NOTING that the Prosecution did not file a response to the Motion,

NOTING that the Motion submits that "according to the Rules of the Tribunal this Trial Chamber shall not receive any material by the parties which has not been filed", and that the modification in delivery procedure it proposes is necessary: (1) to give every Defendant the right to inspect and review "all the possible evidence materials" the Trial Chamber has access to and upon which it

¹ Vidoje Blagojević's Request for Certification to Appeal the Trial Chamber's Decision on Joint Defence Motions for Reconsideration of the Trial Chamber's Decision to Review all Discovery Materials Provided to the Accused by the Prosecution & Request for a Stay of Execution of the Decision, filed on 28 January 2003 ("Blagojević Request"), and Request of Dragan Jokić for Certification for Appeal of Decision on Joint Defence Motions for Reconsideration of Trial Chamber's Decision to Review All Discovery Materials Provided to the Accused by the Prosecution, and Motion for Immediate Stay of Order for Delivery of Documents to Trial Chamber Pending Judgement of Appeals Chamber, filed on 27 January 2003 ("Jokić Request").

² Decision on Joint Defence Motions Related to Decision on Joint Defence Motions for Certification of Decision on Joint Defence Motions for Reconsideration of Trial Chamber's Decision to Review All Discovery Materials Provided to the Accused by the Prosecution, and Request for Stay of Execution of Decision, 10 February 2003.

might base its decision or Judgement;³ and (2) to facilitate trial proceedings by ensuring that all parties are using the same pagination and filing system,⁴

CONSIDERING that the Trial Chamber has specified the precise materials it is requesting from the Prosecution, namely, the Requested Materials, and will accept no additional materials from the Prosecution other than the Requested Materials,

CONSIDERING FURTHER that the Defence has previously received the Requested Materials from the Prosecution pursuant to Rules 65 *ter* (E) and 66(A)(ii),

NOTING that a mandatory filing procedure – as requested by the Nikolić Defence – could assist it in finding out which parts of the disclosed materials are undoubtedly relevant,

NOTING however that the Rules are silent on the issue of disclosing or filing the Requested Materials with the Trial Chamber,

NOTING that the difference between “filing” of documents and “disclosure” of documents is highlighted by the recent change of Rule 94*bis* of the Rules of Evidence and Procedure of the Tribunal (“Rules”), which changed the time limit for a party to file notice with regards to an opposing party’s proposed expert witness from “thirty days of filing of the statement” to “thirty days of the disclosure” of the statement,

CONSIDERING that in the Decision, the Trial Chamber ordered the Prosecution to “deliver” to the Requested Materials to the Trial Chamber,

CONSIDERING that it is only fair for the purposes of clarity and transparency that the Defence is seeking a solution that might be reasonable but not foreseen in the Rules,

NOTING that Rule 73 (B) provides:

Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

CONSIDERING that, in the absence of a clear Rule providing for a procedure for the delivery of the Requested Material, and to not run any risk in this complex case by starting with an unsettled question, a decision by the Appeals Chamber on this issue would be of assistance,

³ Nikolić Request, para. 3.

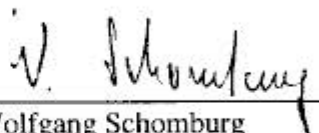
⁴ Nikolić Request, para. 4.

CONSIDERING the close link of the Motion to the aforementioned Blagojević Request and Jokić Request and considering that it, therefore, might be useful for the Appeals Chamber to be seised with all aspects of one and the same issue,

FINDING THEREFORE that the issue is one that would significantly affect the expeditious conduct of the proceedings and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings,

PURSUANT TO RULE 73 bis, HEREBY GRANTS the Request.

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



Judge Wolfgang Schomburg
Presiding

— Dated this tenth day of February 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]