



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

Case No. IT-02-60/1-T
Date: 28 May 2003
Original: English

IN TRIAL CHAMBER I, SECTION A

Before: Judge Liu Daqun, Presiding
Judge Volodymyr Vassilenko
Judge Carmen Maria Argibay

Registrar: Mr. Hans Holthuis

Decision of: 28 May 2003

PROSECUTOR

v.

MOMIR NIKOLIĆ

**DECISION REGARDING THE PREPARATION OF
SENTENCING HEARING**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Veselin Londrović and Mr. Stefan Kirsch for Momir Nikolić

TRIAL CHAMBER I, SECTION A, (“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 the “Request Regarding the Preparation of Sentencing Hearing” filed on 20 May 2003 (“Motion”) by the accused Momir Nikolić (“Defence”), in which it is requested that the filings, excluding those which are filed on an *ex parte* basis, and transcripts in Case No. IT-02-60, including those in closed session (“Requested Materials”), be made available to the Defence, on the grounds that such Requested Materials may be of relevance in the determination of the sentence of Momir Nikolić,

NOTING that, according to the Defence, the Office of the Prosecutor (“Prosecution”) has “confirmed to continue sending all new discovery material going out to other Defence Counsel and anything that may be particularly relevant to Mr. Nikolić,” to the Defence,¹

NOTING that the Registry is providing the Defence with all public filings and transcripts in Case No. IT-02-60 as a courtesy,

NOTING that, pursuant to Rule 68 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Prosecution is under a continuing obligation to disclose to the defence the existence of material known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused, or material that may affect the credibility of prosecution evidence,²

CONSIDERING that the Defence is under an obligation of confidentiality in relation to all non-public materials made available,

CONSIDERING that the Prosecution has continuing obligations under Rule 68 of the Rules, and that such obligations may include the disclosure of non-public material from Case No. IT-02-60,

CONSIDERING that for the purposes of sentencing, the Trial Chamber shall take into consideration the factual submissions upon which the plea agreement was based,³ and other relevant information, as filed by the Prosecution and Defence in the sentencing briefs and as provided in the

¹ Motion, para. 4.

² Joint Decision on Motions Related to Production of Evidence, 12 December 2002; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Appellant’s Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000, para. 31; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Motion by Momir Talić for Disclosure of Evidence, 27 June 2000, para.8.

³ See Joint Motion for Consideration of Amended Plea Agreement Between Momir Nikolić and the Office of the Prosecutor, Tab A (“Statement of Facts and Acceptance of Responsibility”) to Annex A (“Amended Plea Agreement”), 7 May 2003.

the submissions made by the parties at the sentencing hearing, pursuant to Article 24(2) of the Statute and Rule 100 and Rule 101 of the Rules,

CONSIDERING that it would be in the interests of justice to make available the Requested Materials to the Defence, with the exception of transcripts of *ex parte* hearings,

CONSIDERING that in instances where the Defence considers that the subject matter of an *ex parte* hearing may impact Mr. Nikolić, it may apply to the Trial Chamber for access to the transcripts from such a hearing, or in instances where the Trial Chamber considers that the subject matter of an *ex parte* hearing may impact Mr. Nikolić, the Trial Chamber may order that the transcripts from such a hearing be provided to the Defence *proprio motu*,

PURSUANT TO Rules 54, 68 and 100 of the Rules,

HEREBY ORDERS that:

1. The Prosecution shall continue to fulfil its obligation under Rule 68 of the Rules; and
2. The Registrar shall provide the Requested Materials, which includes those public documents already being provided to the Defence and excludes transcripts of *ex parte* hearings except when specifically authorised by the Trial Chamber, until such time as the proceedings against Momir Nikolić are concluded.

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


Judge Liu Daqun
Presiding

Dated this twenty-eighth day of May 2003,
At The Hague
The Netherlands

[Seal of the Tribunal]