

UNITED
NATIONS



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 No.: IT-95-14-A
Date: 28 January 2004
Original: English

~~IT-95-14-A~~
~~A 22607 - A 22602~~
~~28 JANUARY 2004~~

IT-95-14-A
A 9307 - A 9302
28 JANUARY 2004

~~22607~~
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IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Florence Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Hans Holthuis

Decision of: 28 January 2004

PROSECUTOR
v.
TIHOMIR BLAŠKIĆ

DECISION ON DARIO KORDIĆ AND MARIO ČERKEZ'S REQUEST
FOR ACCESS TO TIHOMIR BLAŠKIĆ'S FOURTH RULE 115 MOTION
AND ASSOCIATED DOCUMENTS

Counsel for the Prosecutor:
Mr. Norman Farrell

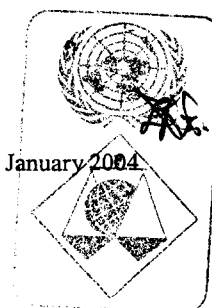
Counsel for Dario Kordić
Mr. Mitko Naumovski

Counsel for Mario Čerkez
Mr. Bodžidar Kovačić
Mr. Goran Mikuličić

Counsel for Tihomir Blaškić
Mr. Anto Nobile
Mr. Russell Hayman

Case No. IT-95-14-A

28 January 2004



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 ("International Tribunal"),

BEING SEISED of "Dario Kordić's Request for Assistance of Appeals Chamber in Gaining Access to General Blaškić Fourth Rule 115 Motion and Associated Documents" filed by Dario Kordić ("Kordić") on 26 May 2003 ("Request"), in which he seeks access to the fourth motion to present additional evidence pursuant to Rule 115, filed confidentially by Tihomir Blaškić ("Appellant") in the present appeal on 12 May 2003 ("Fourth Rule 115 Motion"), and all documents related to that motion;

BEING SEISED of the "Notice of Joinder in Dario Kordić's Request for Assistance of Appeals Chamber in Gaining Access to General Blaškić Fourth Rule 115 Motion and Associated Documents" filed by Mario Čerkez ("Čerkez") on 28 May 2003;

NOTING that Kordić asserts that he is entitled to access to the Fourth Rule 115 Motion, all documents the Appellant sought to admit as additional evidence pursuant to that Motion, and all Responses, Replies, and Rebuttal material related thereto "to the extent that those materials refer to Kordić or bear in any way upon the arguments advanced by Kordić or the Prosecution in their appeals";¹

NOTING that Kordić submits that it would be in the interests of justice for the Appeals Chamber to order the Registry to disclose the above documents for the reasons set out in paragraphs 14 to 17 of this Chamber's 16 May 2002 decision and paragraph 10 of its 16 October 2002 decision;²

NOTING that Kordić incorporates by reference the arguments set forth in his "Request for Assistance of Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in Prosecutor v. Blaškić" filed on 4 February 2001 and his "Supplemental Request for Assistance of Appeals Chamber in Gaining Access to Non-Public Post-

¹ The Request, para. 7.

² *Prosecutor v. Blaškić*, Decision on Appellants Dario Kordić and Mario Čerkez's Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Pleadings and Hearing Transcripts Filed in the Prosecutor v. Blaškić, Case No. IT-95-14-A, 16 May 2002 (hereinafter "Appeals Chamber's 16 May 2002 Decision"). *Prosecutor v. Blaškić*, Decision on Appellants Dario Kordić and Mario Čerkez's Supplemental Request for Assistance of the Appeals Chamber in Gaining Access to Non-Public Post Trial Submissions, Appellate Briefs and Hearing Transcripts Filed in Prosecutor v. Blaškić, Case No. IT-95-14-A, 16 October 2002 (hereinafter "Appeals Chamber's 16 October 2002 Decision").

Appeal Pleadings and Hearings Transcripts Filed in the Prosecutor v. Blaškić" filed on 20 June 2002;³

NOTING the "Prosecutor's Consolidated Response to Dario Kordić's and Mario Čerkez's Request for Assistance of Appeals Chamber in Gaining Access to Blaškić's Fourth Rule 115 Motion" filed on 3 June 2003 ("Prosecution's Consolidated Response"), and the "Prosecutor's Addendum to Its Consolidated Response of 3 June 2003 to Dario Kordić's and Mario Čerkez's Request for Assistance of Appeals Chamber in Gaining Access to Blaškić's Fourth Rule 115 Motion" filed confidentially on 12 June 2003 ("Prosecution's Addendum");

NOTING that the Prosecution does not oppose the Request except to the extent that it includes documents which relate to the Appellant's "Third Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115" filed confidentially on 10 June 2002 ("Third Rule 115 Motion");⁴

NOTING that, in the event the Appeals Chamber grants the Request, the Prosecution submits that access should be granted subject to protective measures that would preserve the confidentiality of non-public information and preserve the anonymity of witnesses who are fearful of reprisal;⁵

NOTING the Appellant's "Consolidated Response to Dario Kordić's and Mario Čerkez's Request for Assistance of Appeals Chamber in Gaining Access to Appellant's Fourth Rule 115 Motion" filed on 10 June 2003 ("Appellant's Consolidated Response");

NOTING that the Appellant does not oppose the Request in general, but he submits that all references to the material regarding his Third Rule 115 Motion should be redacted from his Fourth Rule 115 Motion before Applicants Kordić and Čerkez are granted access to it;⁶

NOTING that, in the event the Appeals Chamber grants the Request, the Appellant submits that access should be conditioned on the imposition of appropriate protective measures;⁷

NOTING "Dario Kordić's Reply in Support of his Request for Assistance of Appeals Chamber in Gaining Access to Blaškić's Fourth Rule 115 Motion" filed on 6 June 2003 ("Kordić Reply"), where he submits that he is not in a position to respond to the arguments advanced in the

³ The Request, para. 7.

⁴ See Prosecution's Consolidated Response, paras. 3 & 5.

⁵ Prosecution's Addendum, paras. 7 – 14.

⁶ Appellant's Consolidated Response, para. 1.

⁷ Appellant's Consolidated Response, para. 2.

Prosecution's Consolidated Response because he does not know the nature of the materials in the Appellant's Third Rule 115 Motion;⁸

CONSIDERING that Kordić and Čerkez have been denied access to materials relating to the Appellant's Third Rule 115 Motion;⁹

NOTING that on 8 August 2003, the Appellant filed his Redacted Public Version of Appellant's Corrected Fourth Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115;

NOTING that Kordić and Čerkez have had access to the Appellant's confidential trial material;¹⁰

CONSIDERING FURTHER that this Chamber previously found that Kordić and Čerkez were "entitled to be informed about the arguments advanced in the present appeal to the extent that those arguments bear materially upon issues that are presented in their own appeals";¹¹

CONSIDERING FURTHER that Kordić and Čerkez have satisfied the conditions for the access sought in that they have: (a) described the materials sought by their general nature, and (b) shown a legitimate forensic purpose for such access;

HEREBY GRANTS the Applicants Kordić and Čerkez's Request with the exception of any submission related to the Appellant's Third Rule 115 Motion; and

ORDERS:

The Prosecution and the Appellant to file within ten days versions of the Fourth Rule 115 Motion, including all documents the Appellant sought to admit as additional evidence pursuant thereto, and all Responses, Replies and Rebuttal material related thereto, with all references to the Appellant's Third Rule 115 Motion redacted therefrom;

The Registry to grant Applicants Kordić and Čerkez access to the documents referred to above.

⁸ Kordić Reply, para. 4.

⁹ See Appeals Chamber's 16 October 2002 Decision.

¹⁰ Access was granted provided that the materials related to witnesses who did not object to such access and who were either to be called to testify or whose testimony constituted exculpatory evidence. *Prosecutor v. Dario Kordić and Mario Čerkez*, Further Order on Motion for Access to Non-Public Materials in the Lašva Valley and Related Cases, Case No. IT-95-14/2-PT, 16 February 1999.

¹¹ Appeals Chamber's Decisions of 16 May 2002, para. 17, and of 16 October 2002, para. 10.

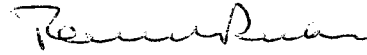
Applicants Kordić and Čerkez, their counsel and any employees thereof who have been instructed or authorised by counsel to access the confidential appellate submissions in the case at hand:

- (i) Not to disclose to any third party, the names of witnesses, their whereabouts, copies of witness statements, the contents of the witness statements, transcripts of witness testimonies, the contents thereof, or any information which would enable them to be identified and would breach the confidentiality of the protective measures already in place unless absolutely necessary for the preparation of Applicants Kordić and Čerkez's appeal, and always with leave of the Appeals Chamber.
- (ii) Not to disclose to any third party, any documentary or other evidence, or any written statement of a witness or the contents, in whole or in part, of any non-public evidence, statement or prior testimony.
- (iii) Not to contact any witness without first demonstrating to the Appeals Chamber that the witness may materially assist Applicants Kordić and Čerkez's appeal in some identified way and that such assistance is not otherwise reasonably available to them. If the Appeals Chamber authorizes such contact, the Prosecution will be given a right to be present during any contact or interview, if the witness requests such presence.

If for the purposes of preparing Applicants Kordić and Čerkez's appeal, confidential material is disclosed to third parties - provided that the conditions set out in paragraph (i) above are met - any person to whom disclosure of the confidential material in this case is made must be informed that he or she is forbidden to copy, reproduce or publicise, in whole or in part, any non-public information or to disclose it to any other person, and further that, if any such person has been provided with such information, he or she must return it to Applicants Kordić and Čerkez or their counsel as soon as it is no longer needed for the preparation of the appeal.

Third parties exclude: (i) Applicants Kordić and Čerkez, (ii) persons employed by counsel's law firms, (iii) personnel from the International Tribunal, or (iv) members of the Office of the Prosecutor.

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



Judge Fausto Pocar
Presiding Judge

Done this twenty eighth day of January 2004,
At The Hague,
The Netherlands.

