



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-02-54-T
IT-95-11-PT
Date: 25 February 2004
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 25 February 2004

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON MOTION FILED BY THE DEFENCE OF MILAN MARTIĆ
FOR ACCESS TO CONFIDENTIAL TRANSCRIPTS AND DOCUMENTS**

The Office of the Prosecutor

Mr. Geoffrey Nice
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Mr. Branislav Tapušković
Mr. Timothy L.H. McCormack

Counsel for Milan Martić

Mr. Predrag Milovančević

THIS 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 (“the International Tribunal”),

BEING SEISED of a “Motion filed by the Defence of Milan Martić (IT-95-11-PT) for Access to Confidential Transcripts and Documents”, filed on 13 February 2004 (“Motion”), in which the defence of Milan Martić seeks access to: (1) transcripts of all closed or private session testimonies in the part of the case of *Prosecutor v. Slobodan Milošević* (“*Milošević case*”) pertaining to Croatia and Bosnia and Herzegovina, as soon as practicable and on a continuous basis; (2) access to trial exhibits and documentary evidence produced during closed or private sessions in the *Milošević case* pertaining to Croatia and Bosnia and Herzegovina, as soon as practicable and on a continuous basis; and (3) liberty to apply to the Trial Chamber for specific orders in respect with [sic] any closed session material which is likely to assist the defence case and which the Prosecution is not otherwise required to disclose to the defence,

NOTING that the time permitted to the Office of the Prosecutor (“Prosecution”) to respond to the Motion has not yet elapsed but that the issues raised in the Motion are suitable for determination by the Trial Chamber without awaiting the response of the Prosecution,

NOTING further that only twelve witnesses have been heard in closed session in the *Milošević case* and that the edited transcripts of the testimony of these witnesses either have been or are to be released to the public by Order of the Trial Chamber,

NOTING that, pursuant to Rule 66 (A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), the Prosecution is required to disclose to the Martić defence all material that accompanied the indictment on confirmation, together with the statements of all witnesses the Prosecution intends to call at trial plus, pursuant to Rule 68 of the Rules, all material which tends to suggest the innocence or mitigate the guilt of the accused or which may affect the credibility of Prosecution evidence and, pursuant to Rule 66 (B) of the Rules, on request of the defence, all items that are material to the preparation of the defence or are intended for use by the Prosecution as evidence or trial or were obtained from or belonged to, the accused,

CONSIDERING the provisions of Article 21, paragraph 2, of the Statute of the International Tribunal which guarantees the right to a public hearing,

CONSIDERING that the redacted transcripts of the evidence of witnesses given in closed session and any exhibits introduced through those witnesses are or will shortly be available to the defence through the Registry of the International Tribunal,

CONSIDERING that requests for access to other confidential materials produced in the *Milošević case* are premature, as much of this material may be subject to mandatory disclosure under Rules 66 (A) and (B) and 68 of the Rules,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence

HEREBY ORDERS as follows:

- (1) counsel for the accused Milan Martić is directed to liaise with the Registrar of the International Tribunal to establish mutually convenient methods of provision of the transcripts of all open session or redacted closed session proceedings and all public exhibits in the part of the case of *Prosecutor v. Slobodan Milošević* pertaining to Croatia and Bosnia and Herzegovina; and
- (2) counsel for the accused Milan Martić is at liberty to apply to the Trial Chamber for specific orders in respect of any closed session material which he believes is likely materially to assist the defence case and which the Prosecution is not otherwise required to disclose.

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



Patrick Robinson
Judge

Dated this twenty-fifth day of February 2004
At The Hague
The Netherlands

[Seal of the Tribunal]