

IT-01-42-T
D 3792 - D 3790
23 March 2004

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**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

Case No. IT-01-42-T
Date: 23 March 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 23 March 2004

PROSECUTOR

v.

PAVLE STRUGAR

**DECISION ON DEFENCE MOTION REQUESTING ACCESS TO
MIODRAG JOKIĆ'S PLEA AGREEMENT AND RELATED
DOCUMENTS**

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Philip Weiner

Counsel for the Accused:

Mr. Goran Rodić
Mr. Vladimir Petrović

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 (“Tribunal”);

NOTING the “Defence Motion Requesting the Acquisition of the Text of the Plea Agreement and the Factual Basis Thereof Made between Admiral Miodrag Jokić and the Prosecution” dated 19 March 2004 and filed on 22 March 2004 (“Motion”), whereby the Defence requests the Trial Chamber in connection with the forthcoming testimony of Jokić in the Strugar case: (i) to order the Prosecution to provide the Defence with the text of the subject Plea Agreement and the Factual Basis thereof along with any related annexes; and (ii) to order the Registrar to disclose to the Defence the transcripts of the closed sessions of the Sentencing Hearing of Admiral Jokić;

NOTING that Pavle Strugar was originally indicted with, among others, Miodrag Jokić on 27 February 2001;

NOTING that on 27 August 2003 the Office of the Prosecutor and Miodrag Jokić filed jointly a plea agreement under seal in the matter of *Prosecutor v. Miodrag Jokić* with Trial Chamber I and that the confidential status of this agreement has not been lifted;

NOTING that Trial Chamber I remained seised of the subsequent sentencing proceedings in the matter of *Prosecutor v. Miodrag Jokić*;

CONSIDERING that while the Rules of Procedure and Evidence (“Rules”) do not explicitly deal with the procedure for granting access to documents under seal in a separate proceedings, there is an analogous procedure with respect to protective measures granted to witnesses pursuant to Rule 75 of the Rules, which requires that protective measures granted in one proceedings shall have effect in other proceedings and may be modified by the chamber seised of the first proceedings, or if no chamber remains seised of the first proceedings, by the chamber seised of the second proceedings;

CONSIDERING that while Trial Chamber I delivered the sentencing judgement in the case of *Prosecutor v. Miodrag Jokić* on 18 March 2004, and therefore is no longer formally seised of the proceedings, the purpose of the above Rule is to refer the matter to the Chamber that is in the best position to decide on the matter in the particular circumstances;

CONSIDERING that as Trial Chamber I, comprising the same judges, dealt initially with the matter, it is in the best position to assess whether good cause exists for keeping Miodrag Jokić’s plea agreement and related documents under seal of confidentiality, and therefore it will be in the interests of justice to refer the matter to Trial Chamber I, section A;

HAVING CONSULTED with Judge Orić, the Judge presiding over the proceedings in the matter of the *Prosecutor v. Miodrag Jokić*;

PURSUANT to Rule 54 of the Rules;

HEREBY REFERS the Motion to Trial Chamber I for disposition.

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



Judge Kevin Parker
Presiding

Dated this twenty-third day of March 2004
At The Hague
The Netherlands

[Seal of the Tribunal]