



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-03-73-PT
Date: 26 May 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Pre-Trial Judge
Registrar: Mr. Hans Holthuis
Decision: 26 May 2004

PROSECUTOR

v.

**IVAN ČERMAK
MLADEN MARKAČ**

**DECISION RELATING TO
PROSECUTOR'S DISCLOSURE OBLIGATIONS**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Mark Ierace

Counsel for the Accused:

Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak
Mr. Miroslav Šeparović and Mr. Goran Mikuličić for Mladen Markač

1. This decision is made by Judge Kevin Parker, the designated Pre-Trial Judge in this matter by virtue of an order of Trial Chamber II dated 31 March 2004.

2. The decision is in respect of a "Joint Motion for Order Regarding Prosecutor's Obligation to Disclose Supporting Material," filed jointly for Ivan Čermak and Mladen Markač ("Defence") on 13 May 2004 ("Motion"), in which the Defence requests that the Trial Chamber order the Prosecutor to issue a certificate when disclosure of the supporting material and prior statements of the Accused is completed.

3. The Prosecutor's response to the Motion, filed on 19 May 2004, contends that the Defence has been provided with copies of all documents which are required to be disclosed pursuant to Rule 66(A)(i) of the Rules of Procedure and Evidence ("Rules"), except for a transcript of video recordings of Mladen Markač's prior interview with the Office of the Prosecutor. The Prosecutor further requests that the documents in Annexes A and B to the Prosecution Response, being among the documents provided to the Defence, be kept under seal of confidentiality as they contain identifying information.

4. Pursuant to Rule 66 (A)(i) of the Rules the Prosecutor is required to provide the Defence *inter alia* with copies of all prior statements of the accused; and pursuant to Rule 43(vi) audio or video recordings of interviews of a suspect with the Office of the Prosecutor are to be transcribed if the suspect becomes an accused. It is the position, therefore, that disclosure under Rule 66(A)(i) has not been completed until the Prosecutor provides the Defence with written statements of all the Accuseds' prior interviews with the Office of the Prosecutor.

In the circumstances, pursuant to Rule 65*ter* (C) and Rule 54, I **HEREBY ORDER**

- (A) The Prosecutor to notify the Defence and the Trial Chamber of the date it completes its disclosure obligations pursuant to Rule 66(A)(i) of the Rules;
- (B) There shall be no public disclosure of the documents in Annex A and Annex B of the Prosecutor's Response.

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

Dated this twenty-sixth day of May 2004
At The Hague
The Netherlands



Judge Kevin Parker
Pre-Trial Judge

[Seal of the Tribunal]