



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-01-48-PT
Date: 9 July 2004
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Pre-Trial Judge
Registrar: Mr. Hans Holthuis
Decision of: 9 July 2004

PROSECUTOR

v.

SEFER HALILOVIĆ

CONFIDENTIAL

**DECISION ON PROSECUTION'S APPLICATION FOR LEAVE TO DISCLOSE
FURTHER MATERIALS TO THE DEFENCE**

The Office of the Prosecutor

Mr. Vladimir Tochilovsky
Ms. Maria Tuma

Counsel for the Accused

Mr. Stefan Kirsch
Mr. Guénaél Mettraux

I, O-Gon Kwon, pre-trial Judge 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 the (i) partly confidential “Prosecution’s Application for Leave to Disclose Rule 68 Material Pursuant to Trial Chamber’s Decision of 7 May 2004” filed on 22 June 2004 and (ii) confidential “Prosecution’s Application for Leave to Disclose Rule 66(A)(ii) Material Pursuant to Trial Chamber’s Decision of May 2004” filed on 25 June 2004 (collectively, “Motions”), by the Office of the Prosecutor (“Prosecution”),

NOTING that the Motions seek leave from the Trial Chamber to disclose materials to the Defence of Sefer Halilović (“Accused”), which either fall under Rule 66 (A)(ii) or Rule 68 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

NOTING that the Prosecution was ordered to complete all disclosures by 15 December 2003,¹ and the Motions are submitted pursuant to the Trial Chamber decision of 7 May 2004 (“Decision”),²

NOTING the confidential “Prosecution’s Report of Compliance in Terms of the Trial Chamber’s Decision Dated 7 May 2004 on the Defence Objection to Prosecution Continued Disclosure” filed on 27 May 2004 by the Prosecution,

NOTING that the Decision ordered, unless otherwise agreed between the Prosecution and Defence, that any further disclosure of materials, which fall under Rule 66(A)(ii) and Rule 68 of the Rules shall only be made with the leave of the pre-trial Judge,³ and that the Prosecution shall provide the pre-trial Judge with the certain information regarding the materials,⁴

NOTING that the materials for which the Prosecution seeks leave to disclose to the Defence are the following (collectively, “Materials”):

¹ *Prosecutor v. Halilović*, Pre-Trial Conference, 15 July 2003, T. 142.

² *Prosecutor v. Halilović*, Case No. IT-01-48-PT, “Decision on Defence Objection to Prosecution Continued Disclosure” 7 May 2004.

³ Unlike the materials falling under Rule 68 of the Rules, it was not clearly indicated by the Prosecution in its application whether the Defence, absent leave, has not agreed to its disclosure. However, in light of the application and for purposes of this Decision, it is assumed that the Defence, absent leave, has not agreed to its disclosure as well.

⁴ The Trial Chamber ordered:

“(a) for each item disclosed pursuant to Rule 66 (A)(ii), the circumstances in which the additional material was obtained, the reason why the material was not disclosed within the time-frame set by the pre-trial Judge, and identifying any new material or allegations not already (b) raised in other statements of the same witness already disclosed; and

- (a) Pursuant to Rule 66 (A)(ii) of the Rules
Transcript of the closed session testimony of witness ZP, who is scheduled to give testimony in the present case against the Accused and who testified in another proceeding before the International Tribunal between 14 and 18 June 2004;
- (b) Pursuant to Rule 68 of the Rules
- (1) Letter (BCS) addressed to the Prosecution from Hajrudin Halilović, the brother of the Accused;
 - (2) English Translation of (1) above;
 - (3) Letter (BCS and German) to a Judge in Austria from Hajrudin Halilović;
 - (4) English Translation of (3) above;
 - (5) Letter to the Prosecution from the Croat Liaison Officer to the ICTY regarding Domin Rajić and Kata Ljubić;
 - (6) Official Records (BCS and English Translation) regarding Domin Rajić; and
 - (7) Official Records (BCS and English Translation) regarding Kata Ljubić.

NOTING that the Prosecution has provided certain information regarding the Materials,⁵ *inter alia*, the dates and the circumstances under which the Prosecution came into possession of the Materials,⁶

CONSIDERING the relatively recent dates that the Prosecution came into possession of the Materials,⁷ and that the Materials include those which may be exculpatory material for the Accused,

CONSIDERING that it is in the interests of justice that the Materials be disclosed to the Accused,

PURSUANT TO Rules 54 and 65 *ter* of the Rules,

HEREBY GRANT the Motions and **ORDER** the Prosecution to immediately disclose the Materials to the Defence.

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



O-Gon Kwon
Pre-Trial Judge

Dated this ninth day of July 2004
At The Hague
The Netherlands

[Seal of the Tribunal]

for each item disclosed pursuant to Rule 68, identifying whether the material forms part of a collection of material made available to all defence teams in electronic form and, if not, explaining why the material was not available for disclosure within the time-frame set by the pre-trial Judge.”

⁵ With respect to the materials, which fall under Rule 68 of the Rules, the Prosecution provided the Senior Legal Officer of the Trial Chamber a copy of the materials it wishes to disclose to the Defence.

⁶ For instance, none of the Materials were the results of re-interviews of the witnesses.

⁷ With the exception of one, all of the Materials came into the possession of the Prosecution in late April or June of this year.