



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-99-37-PT  
Date: 27 July 2004  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**Decision of:** 27 July 2004

**PROSECUTOR**

v.

**SLOBODAN MILOŠEVIĆ**

**DECISION ON MOTIONS OF THE DEFENCE IN  
*PROSECUTOR v MILUTINOVIĆ, OJDANIĆ AND ŠAINOVIĆ*  
FOR ACCESS TO CERTAIN CONFIDENTIAL FILINGS**

**The Office of the Prosecutor**

Mr. Geoffrey Nice  
Ms. Cristina Romano  
Mr. Milbert Shin

**The Accused**

Mr. Slobodan Milošević

**Counsel for the Accused**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević, for Milan Milutinović  
Mr. Toma Fila and Mr. Goran Petrović for Nikola Šainović  
Mr. Tomislav Višnjić, Mr. Peter Robinson, and Mr. Vojislav Seležan, for Dragoljub Ojdanić

**Amici Curiae**

Mr. Stephen Kay, QC  
Mr. Timothy L.H. McCormack



**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 on Behalf of Mr. Milan Milutinović for Access to Certain Confidential Filings in the Case of the Prosecutor v. Slobodan Milošević, Case No IT-02-54-T” filed on 14 May 2004, together with a “Defence Motion Requesting Access to Certain Confidential Filings in the Case of the Prosecutor v. Slobodan Milošević” filed on behalf of the accused, Nikola Šainović on 18 May 2004 (together the “Motions”),

**NOTING** the joint response filed on behalf of the Office of the Prosecutor (“Prosecution”) on 28 May 2004 (“Prosecution Response”) and the Application for leave to file a reply and Reply to the Prosecution Response filed on behalf of the accused Milan Milutinović on 1 June 2004 (“Application for Leave and Reply”),

**NOTING** that the defence in the Milutinović case seek access to three categories of confidential documents in the case of the Prosecutor v. Slobodan Milošević (the “Milošević case”), namely (1) confidential annexes 1 and 2 to the *Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis*, filed on 3 March 2004; (2) confidential *Response by the Prosecution to the Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis* insofar as it relates to the Kosovo part of the Milošević case; and (3) *Index to Prosecution’s Witness Summaries* in relation to the Kosovo part of the Milošević case,

**CONSIDERING** that confidential annexes 1 and 2 consist of extracts of evidence produced in the Milošević case by way of transcript and exhibits respectively,

**CONSIDERING** that the Prosecution pre-trial brief has now been filed in the Milutinović case and that disclosure in that case is complete save for material related to certain protected witnesses,

**CONSIDERING** that the defence teams in the Milutinović case are bound by Orders for non-disclosure preventing the disclosure by them to the public of confidential material provided to them under Rules 66 and 68 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

**CONSIDERING** that a review by the Trial Chamber of the material to which access is sought confirms that all such material, with the exception of one item, contained in Annex 2, is material to

which the defence may have access, either because the item is already in the public domain or because it reflects or summarises statements of witnesses who are to be called in the Milutinović case, so that the original statement or testimony of the witness should, by now, have been disclosed to the defence,

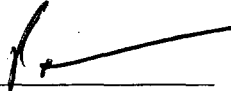
**CONSIDERING** also that the *Index to Prosecution's Witness Summaries* has not been filed in the Milošević case and constitutes an internal document prepared by a party in connection with the investigation or preparation of a case which, pursuant to Rule 70 of the Rules, is not subject to disclosure,

**PURSUANT TO** Rules 54 and 66 of the Rules of Procedure and Evidence of the International Tribunal

**HEREBY ORDERS** as follows:

- (1) the Defence Application for Leave and Reply is granted and the Reply is accepted as properly filed in this matter;
- (2) **DIRECTS** the Registry to provide the defence in the Milutinović case with (a) copies of confidential annex 1 to the *Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis*; and (b) copies of the confidential and unredacted *Response by the Prosecution to the Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis*, pages 1 – 45 only;
- (3) **DIRECTS** the Prosecution within two weeks from the date of this Decision to file a confidential and *ex parte* submission to the Trial Chamber addressing the exhibit referred to in the pre-penultimate item on page 98 of confidential Annex 2 to the *Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis*, informing the Trial Chamber whether it intends to call the witness to whom this exhibit relates in the Milutinović case and of any other matter that may be relevant to disclosure to the defence in the Milutinović case;
- (4) **REMAINS SEISED** of the Motions insofar as they relate to confidential Annex 2 to the *Amici Curiae Motion for Judgement of Acquittal Pursuant to Rule 98 bis*; and
- (5) **DENIES** the Motions in respect of the *Index to Prosecution's Witness Summaries*.

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

  
Judge Patrick Robinson  
Presiding

Dated this twenty-seventh day of July 2004  
At The Hague  
The Netherlands  
Case No. IT-02-54-T/IT-99-37-PT

[Seal of the Tribunal]

27 July 2004

