



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: 26 November 2004
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 26 November 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

**Ms. Susan Somers
Mr. Philip Weiner**

Counsel for the Accused

**Mr. Peter Morrissey
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”),

HAVING BEEN APPOINTED as pre-trial Judge in this case by virtue of the Order of the Trial Chamber dated 10 December 2001,

BEING SEISED of a partly confidential “Prosecution’s Application for Leave to Disclose Rule 66(A)(ii) Material Pursuant to Trial Chamber’s Decision of 7 May 2004” filed on 5 November 2004 (“Motion”) by the Office of the Prosecutor (“Prosecution”), seeking leave from the Trial Chamber to disclose material, which falls under Rule 66 (A)(ii) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), to the Defence of Sefer Halilović (“Accused”),

NOTING the “Defence Response to Motion for Leave to Disclose Rule 66 (A)(ii) Material” filed on 19 November 2004 (“Response”) by the Defence of the Accused, stating (1) “the Defence concludes that the prosecution Motion should be granted;”¹ (2) “the Defence asks the Trial Chamber to order the prosecution to finish all disclosure in this case no later than 10 December 2004;”² and (3) “the prosecution should be ordered to show good cause every time it seeks leave to disclose new material to the Defence and it should be ordered to explain the reasons for its continued investigation and disclosure every time leave is being sought,”³

NOTING that, pursuant to Rule 65 *ter* of the Rules, the “pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial,”⁴ and the “pre-trial Judge shall be entrusted with all of the pre-trial functions set forth in Rule 66, Rule 67, Rule 73 *bis* and Rule 73 *ter*, and with all or part of the function set forth in Rule 73,”⁵

NOTING that Rule 66 (A)(ii) of the Rules provides:

(A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands

(i) ...

(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.

¹ Response, para. 9.

² Response, para. 10. Emphasis added in original.

³ Response, para. 11.

⁴ See Rule 65 *ter* (B).

⁵ See Rule 65 *ter* (C).

NOTING that the Motion was submitted pursuant to the Trial Chamber's decision of 7 May 2004,⁶ which ordered that, unless otherwise agreed between the parties, any further disclosure of material falling under Rule 66(A)(ii) of the Rules shall only be made with leave of the pre-trial Judge, and that the Prosecution shall provide the pre-trial Judge with information regarding the materials,⁷

NOTING that the material for which the Prosecution seeks leave to disclose to the Defence is an Addendum, dated 20 October 2004, to the witness statement of Nedžad Mehanović ("Addendum"), and that the Prosecution states that the Addendum clarifies the previous witness statement of Nedžad Mehanović,⁸

NOTING that, in the decision of 30 September 2004,⁹ the Trial Chamber denied the Defence motion¹⁰ requesting, *inter alia*, an order to the Prosecution to explain the nature and extent of the ongoing investigation and the reasons thereof,

NOTING that leave is sought to disclose the Addendum because the Defence has not agreed to its disclosure without leave¹¹ and because the Addendum was taken after 15 December 2003,¹² the deadline by which the Prosecution was ordered to complete all disclosure,¹³

CONSIDERING that, on this occasion, the Defence does not object to the Motion to disclose the Addendum,

CONSIDERING that the rights of the Accused include the right to have adequate time and facilities for the preparation of his defence, as set forth in Article 21 of the Statute of the International Tribunal ("Statute"), and that the trial in this matter is expected to commence soon,¹⁴

⁶ *Prosecutor v. Halilović*, Case No. IT-01-48-PT, "Decision on Defence Objection to Prosecution Continued Disclosure," 7 May 2004.

⁷ The Trial Chamber ordered:

unless otherwise agreed between the Prosecution and the defence, any further disclosure shall only be made with the leave of the pre-trial Judge and the Prosecution shall, prior to such disclosure, provide him with the information set out in operative paragraph (2) above.

Paragraph (2) of the order provided:

- (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 raised in other statements of the same witness already disclosed; and
- (b) 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;

⁸ Motion, para. 2.

⁹ *Prosecutor v. Halilović*, Case No. IT-01-48-PT, "Decision on Prosecution's Application for Leave to Disclose Further Material and Defence Renewed Motion to Cease Investigations," 30 Sept. 2004.

¹⁰ *Prosecutor v. Halilović*, Case No. IT-01-48-PT, "Defence Renewed Motion to Stop Investigation and for other Relief," 6 July 2004.

¹¹ This was not explicitly indicated by the filing of the parties. However, in light of the Motion, it is assumed that the Defence, absent leave, has not agreed to its disclosure.

¹² Motion, para. 2.

¹³ *Prosecutor v. Halilović*, Pre-Trial Conference, 15 July 2003, T. 142.

CONSIDERING that the Prosecution is required at all times to complete its disclosure obligations with due diligence and that continued disclosure of material on a piecemeal basis over an extended period of time is an inefficient use of the resources available to both parties and not in the interests of the good administration of justice, and may, if such practice continues without justification, adversely affect the rights of the Accused pursuant to Article 21 of the Statute to be informed of the case against him and to have adequate time and facilities for the preparation of his defence,¹⁵

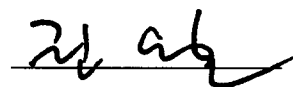
CONSIDERING that it is within the discretion of the pre-trial Judge to consider the reasons given by the Prosecution when leave is sought for each further disclosure pursuant to the Trial Chamber's decision of 7 May 2004,¹⁶ and that the pre-trial Judge shall review each matter by determining whether disclosure may be necessary for the preparation or conduct of trial pursuant to Rule 54 of the Rules,

CONSIDERING that the Trial Chamber has already denied a prior Defence motion requesting, *inter alia*, an order to the Prosecution to explain the nature and extent of the ongoing investigation and the reasons thereof,¹⁷

PURSUANT TO Article 21 of the Statute and Rules 54, 65 *ter*, 66 (A)(ii) of the Rules,

HEREBY GRANT the Motion and **ORDER** the Prosecution to immediately disclose the Addendum to the Defence, and to complete its disclosure obligations under Rule 66(A)(ii) of the Rules by Friday, 17 December 2004.

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



O-Gon Kwon
Pre-Trial Judge

Dated this twenty-six day of November 2004
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ Status Conference, 9 Sept. 2004, at T. 176.

¹⁵ See note 9.

¹⁶ See note 6.

¹⁷ See note 9.