



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-05-88-PT
Date: 8 November 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean-Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 8 November 2005

THE PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ
MILORAD TRBIĆ

**DECISION ON DEFENCE MOTION ON BEHALF OF DRAGO
NIKOLIĆ SEEKING ACCESS TO ALL CONFIDENTIAL
MATERIAL IN THE *KRSTIĆ* CASE**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Zoran Živanović for Vujadin Popović
John Ostojic for Ljubiša Beara
Jelena Nikolić and Stéphane Bourgon for Drago Nikolić
Alan Newman and Miodrag Stojanović for Ljubomir Borovčanin
Natacha Fauveau Ivanović for Radivoje Miletić
Dragan Krgović for Milan Gvero
Đorđe Sarapa for Vinko Pandurević
Colleen Rohan for Milorad Trbić

TRIAL CHAMBER II 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”)

BEING SEISED OF the “Defence Motion on Behalf of Drago Nikolić Seeking Access to All Confidential Material in the *Krstić* case” filed by Counsel for Drago Nikolić (respectively “Defence” and “Accused”) on 13 October 2005 (“Motion”), in which the Defence, pursuant to Rules 75(G)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), seeks access to all confidential material in both trial and appeals proceedings (including the exhibits and the filings) in the *Krstić* case¹, with the exception of the transcripts which have already been disclosed to the Defence (“Requested Material”);

NOTING the “Response to Drago Nikolić’s Request for Confidential Material in the *Krstić* case” filed by the Office of the Prosecutor (“Prosecution”) on 27 October 2005 (“Response”), in which the Prosecution does not oppose the Defence having access to the Requested Material with the exception of i) any confidential filing made by the Prosecution; and ii) any *ex parte* material;

NOTING the “Applicant’s Motion Seeking leave to Reply to the Prosecution Response to Drago Nikolić’s Request for Confidential Material in the *Krstić* Case” filed by the Defence on 3 November 2005, which does not materially advance the arguments put forward in support of the Motion but simply reiterates them;

RECALLING the Trial Chamber’s “Decision on Miletić’s Request to Have Access to Confidential Information in the *Krstić* Case” rendered on 18 October 2005, in which the Trial Chamber previously granted access for all accused and defence counsel in the case No. IT-05-88-PT, with the exception of Zdravko Tolimir who has not yet been transferred to the Tribunal, to all transcripts of hearings held in closed session, all relevant exhibits kept under seal and all confidential decisions rendered, in the case of *Prosecutor v. Radislav Krstić*, Case No. IT-98-33;

PURSUANT TO Rule 54 and 75(G)(ii) of the Rules;

HEREBY DECIDES that the Motion is moot and **REITERATES** that

- i) the Registry shall provide access for the accused and defence counsel in the case No. IT-05-88-PT to all transcripts of hearings held in closed session when they have not yet been disclosed, all relevant exhibits kept under seal and all confidential decisions

rendered, in the case of *Prosecutor v. Radislav Krstić*, Case No. IT-98-33, with the exception of any *ex parte* material;

- ii) the accused and defence counsel in the case No. IT-05-88-PT shall not disclose to the public any non-public evidence; and
- iii) the accused and defence counsel in the case No. IT-05-88-PT shall not disclose to the public, the names of witnesses, their whereabouts, the contents of the witness statements, transcripts of witness testimonies, their contents thereof, or any information which would enable them to be identified and which would breach the confidentiality of the protective measures issued in the course of the proceedings against Radislav Krstić.

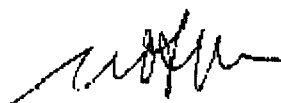
For the purpose of this decision, “the public” shall mean and include all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the Tribunal, the staff of the Registry, the Prosecutor and her representatives, the accused in this case, the defence counsel, legal assistants and other members of the Defence team, their agents or representatives. “The public” shall also include, without limitation, family, friends and associates of the accused; accused in other cases or proceedings before the Tribunal; defence counsel in other cases or proceedings before the Tribunal and the media and journalists.

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

Dated this eighth day of November 2005

At The Hague

The Netherlands



Judge Carmel Agius

Presiding

[Seal of the Tribunal]

¹ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33.