



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-04-81-PT

Date: 7 February 2006

Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. Hans Holthuis

**Order of:** 7 February 2006

**PROSECUTOR**

**v.**

**MOMČILO PERIŠIĆ**

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**SECOND ORDER ON DEFENCE MOTION FOR ACCESS TO ALL  
CONFIDENTIAL MATERIAL IN THE *PROSECUTOR v. KRSTIĆ*  
CASE**

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**Office of the Prosecutor**

Ms. Susan Somers  
Mr. Philip Weiner

**Counsel for Radislav Krstić**

Mr. Nenad Petrušić

**Counsel for Momčilo Perišić**

Mr. James Castle

**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 (“International Tribunal”) is seized of a “Prosecutor’s Request for Certification of Interlocutory Appeal of Order on Defence Motion for Access to All Confidential Material in the Prosecutor v. Krstić case and in the Alternative Prosecution’s Motion for Reconsideration of Order Granting Confidential *Ex Parte* Material to Accused” and hereby renders a decision thereon.

1. On 16 November 2005 counsel for the Accused Momčilo Perišić (the “Defence”) filed a motion seeking access to “all confidential material”<sup>1</sup> in the *Krstić* trial and appeals case, including “exhibits, transcripts of closed sessions and the filings” for both the trial and appellate stages of the case (“Motion”).
2. On 28 November 2005 the Prosecution filed a response to the Motion (“Response”).<sup>2</sup>
3. On 25 January 2006 the Trial Chamber issued an order granting the Defence access to all confidential material, including *ex parte* confidential material, in the *Krstić* trial and appeals case (“Original Order for Access”).<sup>3</sup>
4. On 1 February 2006 the Prosecution filed a motion for certification or, in the alternative, reconsideration of the part of the Trial Chamber’s order that granted the Accused access to *ex parte* confidential material.<sup>4</sup>
5. A trial chamber has the “inherent power” to reconsider its own decisions *inter alia* if it is satisfied that “its previous decision was erroneous” and that this error has “caused prejudice.”<sup>5</sup> The Chamber is satisfied that *ex parte* material was not specifically

<sup>1</sup> Applicant’s Motion Seeking Access to Confidential Material in the *Krstić* Case with Appendix A, Case No. IT-04-81-PT, 16 November 2005, paras. 1 and 14.

<sup>2</sup> Prosecution Response to the Request of Momčilo Perišić for Confidential Material in the Radislav Krstić Case, Case No. IT-04-81-PT, 28 November 2005.

<sup>3</sup> Order on Defence Motion for Access to All Confidential Material in the Prosecutor v. *Krstić* Case, Case No. IT-04-81-PT, 25 January 2006.

<sup>4</sup> Prosecutor’s Request for Certification of Interlocutory Appeal of Order on Defence Motion for Access to All Confidential Material in the Prosecutor v. *Krstić* case and in the Alternative Prosecution’s Motion for Reconsideration of Order Granting Confidential *Ex Parte* Material to Accused, Case No. IT-04-81-PT, 6 February 2006.

<sup>5</sup> *Prosecutor v. Delalić, Mucić, Delić, and Landžo* (“Čelebići Sentencing Appeal Judgement”), Case No. IT-96-21-Abis, Judgement on Sentence Appeal, 8 April 2003, para. 49; *See also Prosecutor v. Kvočka, Radić, Zigić, and Prčać*, Case No. IT-98-30/1-A, Decision, 22 March 2004 (“*Kvočka et al.* Appeal Decision”); *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on “Prosecution’s Preliminary Response and Motion for Clarification Regarding Decision on Joint Motion of Hadžihasanović, Alagić and Kubura of 24 January 2003”, 26 May 2003 (“*Blaškić* Appeal Decision”); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Reconsideration of Decisions Concerning Supreme Defence Council Documents and Implementation of Appeals Chamber Review Decision, para. 27.

requested in the original Motion and it therefore considers that its decision was made in error.<sup>6</sup> In addition, giving effect to the Original Order for Access could result in protected material being inappropriately disclosed to a third party and therefore this error causes prejudice.

### Disposition

6. **PURSUANT TO** Rules 54 and 75 of the Rules, the Trial Chamber hereby **ORDERS** as follows:

- (1) The motion for reconsideration is **GRANTED** and this Order supersedes the Original Order for Access in its entirety.
- (2) The motion for a stay and for certification is **DISMISSED** as unnecessary.
- (3) The Registry shall give the Defence access to *inter partes* confidential material in the *Krstić* trial and appeals case but shall not give the Defence access to any *ex parte* material filed in the case.
- (4) The Registry shall give the Defence access to *inter partes* confidential material in the *Krstić* trial and appeals case that was acquired pursuant to Rule 70 only if and when the consent of the provider(s) has been obtained by the relevant party. The Registry shall contact the Prosecution and Counsel for Radislav Krstić to determine which confidential material in the case, if any, is covered by Rule 70, and shall withhold disclosure of such material until such time as the relevant party informs the Registry that consent for disclosure has been obtained. The relevant party shall determine as expeditiously as possible whether any of the requested material falls under Rule 70, and shall contact the providers of such material without delay to seek their consent for disclosure of that material, even in respect of those providers who consented to the use of the relevant material in a prior case. The parties shall be responsible for informing the Registry as appropriate.
- (5) The Registry shall give the Defence access to all non-Rule 70 *inter partes* confidential material from the *Krstić* trial and appeals case without awaiting the parties' responses in respect of permission to disclose the Rule 70 material identified by them.

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<sup>6</sup> See *Prosecutor v. Blagojević and Jokić*, Case No. IT-04-81-PT, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case, 18 January 2006, para. 6.

- (6) The protective measures which have already been ordered in relation to the material to be made accessible to the Defence shall remain in place.
- (7) The Accused and the Defence shall not contact any witness whose identity was subject to protective measures in *Krstić* trial and appeals case.
- (8) The Accused and the Defence shall not disclose to the public any confidential or non-public material disclosed to it from the *Krstić* trial and appeals case, except to the limited extent that disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Accused's case. If any confidential or non-public material is disclosed to the public, any person to whom disclosure is made shall be informed that he is forbidden to copy, reproduce, or publicise confidential or non-public information or to disclose it to any person, and that he must return the material to the Defence as soon as it is no longer needed for the preparation of the Accused's case.

For the purpose of this Order, "the public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor and her representatives, and the Accused, the Defence, and any employees who have been instructed or authorised by the Defence to have access to the confidential material. "The public" also includes, without limitation, families, friends, and associates of the Accused; Accused and defence counsel in other cases or proceedings before the International Tribunal; the media; and journalists.

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




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Judge Patrick Robinson  
Presiding

Dated this seventh day of February 2006  
At The Hague  
The Netherlands

[Seal of the Tribunal]