



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: 13 June 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Kevin Parker  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Order of:** 13 June 2006

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

**ORDER ON MOTION FOR ACCESS TO CONFIDENTIAL  
INFORMATION IN THE MILOŠEVIĆ CASE**

**The Office of the Prosecutor:**

Peter McCloskey

**Counsel for the Accused:**

Zoran Živanović for Vujadin Popović  
John Ostojić and Christopher Meek for Ljubiša Beara  
Jelena Nikolić and Stephane Bourgon for Drago Nikolić  
Aleksandar Lazarević and Miodrag Stojanović for Ljubomir Borovčanin  
Natacha Fauveau Ivanović for Radivoje Miletić  
Dragan Krgović for Milan Gvero  
Peter Haynes and Đorđe Sarapa for Vinko Pandurević  
Stephane Piletta-Zinan 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 “Motion of General Gvero for Access [to] Confidential Information in the Milošević Case” (“Motion”), filed on 31 March 2006, in which the Defence for Milan Gvero argues that the requirements for access to confidential material from other proceedings have been met and requests access to four categories of confidential material in the *Milošević*<sup>1</sup> case;

**NOTING** “Vinko Pandurević’s Defence Notification on Joining the Motion of General Gvero for Access [to] Confidential Information in the Milošević Case”, filed on 1 April 2006, and “Borovčanin Defence Notification on Joining the Motion of General Gvero for Access [to] Confidential Information in the Milošević Case”, filed on 10 April 2006;

**NOTING** that the Motion seeks access to confidential material that has previously been the subject of a request by Co-Accused Radivoje Miletić, and that Trial Chamber III, in its “Order on Motion of General Miletić for Access to Confidential Information in the *Milošević* Case”, issued on 22 February 2006 (“Trial Chamber III Order of 22 February 2006”), granted access to the same material under specified terms and conditions;

**NOTING** that Trial Chamber III, in its “Order on Defence Motion on Behalf of Drago Nikolić Seeking Access to All Confidential Material in the *Milošević* Case”, issued on 2 December 2005 (“Trial Chamber III Order of 2 December 2005”), granted access to substantially similar categories of confidential material to Co-Accused Drago Nikolić, and that the Trial Chamber III Order of 22 February 2006 also granted Co-Accused Drago Nikolić access to additional confidential material not already covered by the Trial Chamber III Order of 2 December 2005;

**NOTING** that the Prosecution has not filed a response to the Motion within the time specified in the Rules of Procedure and Evidence of the Tribunal (“Rules”)<sup>2</sup>;

**NOTING** that the Trial Chamber has consulted with the Judges from the *Milošević* Case, as required by Rule 75(H) of the Rules;

**CONSIDERING** that, for the same reasons considered in the Trial Chamber III Order of 22 February 2006,<sup>3</sup> the Applicants are also entitled to access to the same confidential material from the *Milošević* case to which Co-Accused Drago Nikolić and Radivoje Miletić were granted access;

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<sup>1</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, “Amended Indictment (Bosnia)”, 22 November 2002.

<sup>2</sup> See Rule 126 bis (requiring a response to be filed within fourteen days).

**CONSIDERING** that some of the material to which access is sought contains information that may identify protected witnesses, and that the Applicants have undertaken “to preserve the confidentiality of the confidential documents and to respect the protective measures ordered in the *Milošević Case*”,<sup>4</sup> as well as to comply with “any additional protective measures which the Trial Chamber may order”<sup>5</sup>;

**CONSIDERING** that, pursuant to Rule 75(F)(i) of the Rules, any protective measures that have been ordered in respect of a witness in the *Milošević case* continue to have effect in the case against the Applicants, except as they have been varied in accordance with this Order;

**CONSIDERING** that it is in the interests of justice when granting access to confidential material in the *Milošević case* to the Applicants, to extend this access to all other co-accused in the *Popović et al.* case that have not yet been granted such access;

**PURSUANT TO** Rules 54 and 75 of the Rules;

**HEREBY GRANTS THE MOTION AND ORDERS AS FOLLOWS:**

1. In consultation with the Prosecution in order to identify the material, the Registry shall make available to the Accused the following categories of confidential material from the *Milošević case* (identical to the confidential material specified in the Trial Chamber III Order of 22 February 2006):
  - (a) All confidential supporting material that accompanied the Bosnia indictment and that pertains to the Srebrenica-related charges for Counts 1-7 and 16-18, including any material pertaining to events occurring in the municipalities of Bratunac and Zvornik, during the period March to November 1995;
  - (b) All closed and private session transcripts pertaining to the Srebrenica-related charges for Counts 1-7 and 16-18, including any material pertaining to events occurring in the municipalities of Bratunac and Zvornik, during the period March to November 1995;

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<sup>3</sup> See *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order on Motion of General Miletić for Access to Confidential Information in the *Milošević Case*, 22 February 2006, pp. 1-2.

<sup>4</sup> Motion, para. 9.

<sup>5</sup> *Ibid.*

- (c) All confidential and under seal trial exhibits pertaining to the Srebrenica-related charges for Counts 1-7 and 16-18, including any material pertaining to events occurring in the municipalities of Bratunac and Zvornik, during the period March to November 1995;
- (d) All *inter partes* confidential filings pertaining to the Srebrenica-related charges for Counts 1-7 and 16-18, including any material pertaining to events occurring in the municipalities of Bratunac and Zvornik, during the period March to November 1995.
2. *Ex parte* material shall not be disclosed.
  3. The Prosecution shall determine as expeditiously as possible whether any of this confidential material falls under Rule 70, and shall contact the providers of such material without delay to seek their consent for disclosure of that material.
  4. Subject to the consent of such Rule 70 providers where applicable, the Accused shall have access to these four categories of *inter partes* confidential material.
  5. The Registry shall contact the Prosecution to determine which confidential material in the case, if any, is covered by Rule 70, and shall withhold provision of such material until such time as the Prosecution informs the Registry that consent for disclosure has been obtained.
  6. The Accused shall not disclose to the media any confidential or non-public material provided by the Prosecution.
  7. Except where directly and specifically necessary for the preparation and presentation of the case, and only upon leave granted by the Trial Chamber, the Accused shall not disclose to the public, to the media, or to the family members and associates of the Accused:
    - (a) the names, identifying information or whereabouts of any witness or potential witness identified by the Prosecution, or any other information which would enable any witness or potential witness to be identified, or would breach the confidentiality of the protective measures already in place, or
    - (b) any non-public evidence (including documentary, audio-visual, physical or other evidence) or any written statement of a witness or potential witness, or prior testimony disclosed to the Accused, or the contents thereof, in whole or in part.

8. The Accused shall not disclose to the public any confidential or non-public material disclosed from the *Milošević* case except to the limited extent that such disclosure is directly and specifically necessary for the preparation and presentation of the Accused's case, and only after obtaining leave of the Trial Chamber. If any confidential or non-public material is disclosed to the public, the Accused shall inform any person to whom disclosure is made that he or she is forbidden to copy, reproduce, or publicise the material or to disclose it to any other person, and that he or she must return the material to the Accused as soon as the material is no longer needed for the preparation of the Accused's case.
9. If a member of the Defence team withdraws from the case, all material in his or her possession shall be returned to the lead Defence counsel for the relevant Defence team.
10. The Accused shall have no contact with the witnesses concerned with the material to be disclosed, unless otherwise decided by the Trial Chamber, and then only upon such conditions as are established by the Trial Chamber.
11. Subject to the protective measures and orders prescribed above, the protective measures already in place in relation to the material disclosed shall remain in place.
12. For the purpose of this Order:
  - (a) the "Accused" means Milan Gvero, Vinko Pandurević, Ljubomir Borovčanin, Vujadin Popović, Ljubiša Beara, and Milorad Trbić, their Defence counsels and immediate legal assistants and staff, and others specifically assigned by the Tribunal to their Defence team;
  - (b) the "public" means all persons, governments, organizations, entities, clients, associations and groups, other than Judges of the Tribunal and the staff of the Registry (assigned either to Chambers or the Registry), the Prosecution, or the Accused. The "public" includes, without limitation, family, friends, and associates of the Accused, and those accused and their defence counsel in other cases or proceedings before the Tribunal;
  - (c) the "media" means all video, audio and print media personnel, including journalists, authors, television and radio personnel, and their agents and representatives.

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

Dated this thirteenth day of June 2006

At The Hague

The Netherlands



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**Judge Carmel Agius, Presiding**

**[Seal of the Tribunal]**