



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-04-79-PT
Date: 18 January 2007
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: Mr. Hans Holthuis

Decision: 18 January 2007

PROSECUTOR

v.

MİĆO STANIŠIĆ

**DECISION ON ACCESS TO CONFIDENTIAL MATERIAL IN
THE PLAVŠIĆ CASE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Anna Richterova
Mr. Fergal Gaynor

Counsel for the Accused:

Mr. Stevo Bezbradica

Counsel for Biljana Plavšić

Mr. Robert J. Pavich
Mr. Eugene O' Sullivan

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 (“Trial Chamber”),

NOTING the “Motion by Mićo Stanišić for Access to all Confidential Materials in the Plavšić Case” filed on 17 November 2006 pursuant to Rule 75(G)(ii) of the Rules of Procedure and Evidence (“Rules”), in which the Defence of the accused Mićo Stanišić (“Applicant”) requests access to confidential material in the case of *Prosecutor v. Biljana Plavšić* (“Plavšić case”) and namely to all: (i) confidential transcripts of closed and private sessions from the trial and appellate proceedings, (ii) confidential filings made during the trial and appellate proceedings, and (iii) confidential exhibits from the trial relating to the indictment against Biljana Plavšić,

NOTING Rule 75(F)(i) of the Rules which provides that once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures shall continue to effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented,

NOTING Rule 75(G)(ii) of the Rules which states that a party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply, if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings,

NOTING that the proceedings in the case against Biljana Plavšić are concluded, and that the Chamber which ordered the protective measures in relation to the material sought is no longer seised of the proceedings in that case,

NOTING therefore that the Trial Chamber is properly seised of the motion,

NOTING the arguments of the Applicant in support of the Motion:

1. That the charges in the indictment against Mićo Stanišić are closely related to the charges against Biljana Plavšić, and notably that: (i) both Mićo Stanišić and Biljana Plavšić are charged, *inter alia*, for having (individually and in concert with others in a joint criminal enterprise) instigated or aided and abetted persecutions of Bosnian Muslim, Bosnian Croat and other non-Serb populations in the same municipalities in Bosnia and Herzegovina

("BiH"), from the period of 1 April 1992 to 30 December 1992;¹ (ii) at the relevant time, Biljana Plavšić was first, acting co-president of the Serbian Republic of BiH (subsequently called Republika Srpska), and then member of the collective and expanded presidencies of Republika Srpska, and Mićo Stanišić was Minister of Internal Affairs in the Serbian Republic of BiH; and (iii) both Mićo Stanišić and Biljana Plavšić are alleged to have participated in a joint criminal enterprise in their respective indictments, the objective of which being the permanent removal of Bosnian Muslims and Bosnian Croats from large parts of BiH;

2. that access to confidential material in the case against Biljana Plavšić will be of significant assistance for the preparation of the Defence case, and
3. that Biljana Plavšić testified for the Prosecution in the case of *Prosecutor v. Momčilo Krajišnik*, and stated that Mićo Stanišić knew of the occurrence of some alleged crimes, and that Biljana Plavšić will probably be called to testify for the Prosecution in the instant case,

NOTING the "Prosecution's Response to Mićo Stanišić's Motion for Access to Confidential Material in the *Plavšić* case" filed on 22 November 2006 ("Response"), whereby the Prosecution submits that the Motion is misconceived insofar as it seeks access to confidential material from the "trial and appellate proceedings" in the *Plavšić* case, instead of seeking access to confidential material relating to the "sentencing proceedings" in the *Plavšić* case, and that it does not oppose to access to confidential material relating to the sentencing proceedings in the *Plavšić* case,

NOTING that the Applicant did not file a reply to Prosecution's suggestion that the Applicant is only seeking access to confidential material relating to the sentencing proceedings in the *Plavšić* case,

NOTING further that there were no trial and appellate proceedings in the *Plavšić* case, as the accused Biljana Plavšić pleaded guilty and a sentencing judgment was rendered on 27 February 2003,

NOTING therefore that the Trial Chamber can only assess whether to grant access to confidential transcripts, filings and exhibits relating the *Plavšić* sentencing proceedings,

NOTING further that, in the Response, the Prosecution requests that, should access be granted, the Chamber order (i) protective measures to maintain the confidentiality of the material in question,

¹ The temporal and geographic scope of the Indictment against Biljana Plavšić is wider with respect to this crime, as it charges her with persecutions as a crime against humanity from the period of 1 July 1991 to 30 December 1992 in 37

and (ii) that access to material acquired pursuant to Rule 70 of the Rules will only be granted where consent of the provider has been obtained,²

CONSIDERING that a party is always entitled to seek material from any source to assist in the preparation of its case, if the material sought has been identified or described by its general nature and if a legitimate forensic purpose has been shown,³

CONSIDERING that access to confidential material from another case shall be granted if the party seeking it can establish that it may be of material assistance to its case, that is, “that it is likely to assist the applicant’s case materially, or that there is at least a good chance that it would”,⁴

CONSIDERING further that material may be considered relevant where a nexus exists between the applicant’s case and the case from which such material is sought (e.g. where the charges arise out of events with geographic and temporal identity),⁵

CONSIDERING that the indictments against Mićo Stanišić⁶ and Biljana Plavšić⁷ charge Mićo Stanišić and Biljana Plavšić, respectively, with persecutions as a crime against humanity in the in the same 17 municipalities in BiH, from the period of 1 April 1992 to 30 December 1992,

CONSIDERING that there is a geographic and temporal overlap also in relation to certain other crimes charged in the case against Biljana Plavšić and the crimes charged in the case against Mićo Stanišić, e.g. the extermination and murder of Bosnian Muslims and Bosnian Croats from 1 April 1992 to 31 December 1992 during attacks on towns and villages in the municipalities of Ključ, Kotor Varoš, Prijedor, Višegrad, Vlasenica and in detention facilities in Banja Luka, Prijedor, Brčko, Pale, Vlasenica, and Zvornik, and during transfers to and from the detention facilities in Banja Luka,

municipalities of BiH.

² Prosecution’s Response to Mićo Stanišić’s Motion for Access to Confidential Material in the Plavšić case, 22 November 2006 (“Response”).

³ *Prosecutor v. Kvočka et al*, Case No.: IT-98-30/1-A, Decision on Momcilo Gruban’s Motion for Access to Material, 13 January 2003, para. 5, citing collected cases; *Prosecutor v. Limaj et al*, Case No.: IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder, and Balaj Motion for Access to Confidential Materials in the Limaj Case, 31 October 2006, para. 7.

⁴ *Prosecutor v. Blagojević and Jokić*, Case No.: IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case, 18 January 2006, para. 4; *Prosecutor v. Limaj et al*, Case No.: IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder, and Balaj Motion for Access to Confidential Materials in the Limaj Case, 31 October 2006, para. 7.

⁵ *Prosecutor v. Kvočka et al*, Case No.: IT-98-30/1-A, Decision on Momcilo Gruban’s Motion for Access to Material, 13 January 2003, para. 5, citing collected cases.

⁶ *Prosecutor v. Stanišić*, Case No.: IT-04-79-PT, Revised Amended Indictment, 25 September 2005.

⁷ *Prosecutor v. Plavšić*, Case No.: IT-00-39 & 40-PT, Amended Consolidated Indictment, 7 March 2002.

CONSIDERING that Biljana Plavšić and Mićo Stanišić held positions of authority in the Serbian Republic of BiH (Republika Srpska) during the relevant time of the crimes charged in the case against Biljana Plavšić and the case against Mićo Stanišić,

CONSIDERING further that the significant similarities in the facts giving rise to the charges against Mićo Stanišić and Biljana Plavšić, with regard to events in 17 of the municipalities of BiH during the period concerned in the respective indictments, also constitute a clear overlap between the two proceedings,

CONSIDERING that the Applicant has identified the material requested and demonstrated that the requested material may be of material assistance to the Applicant in the preparation of its case and that a nexus exists between the Applicant's case and the *Plavšić* case,

FINDS that the standard for access to confidential material has been satisfied,

PURSUANT TO Rule 75(F)(i), and Rule 75(G)(ii) of the Rules, **HEREBY GRANTS** the Motion and **ORDERS** as follows:

1. The protective measures ordered in relation to the *Plavšić* case are hereby varied to the extent that the Applicant shall be granted access to:

(a) all closed and private session transcripts produced in the sentencing proceedings of *Prosecutor v. Biljana Plavšić* (Case No: IT-00-39&40/1-S),

(b) all confidential and under seal filings produced by the parties in the sentencing proceedings *Prosecutor v. Biljana Plavšić* (Case No: IT-00-39&40/1-S),

(c) all confidential and under seal exhibits in the sentencing proceedings of *Prosecutor v. Biljana Plavšić* (Case No: IT-00-39&40/1-S).

2. The Applicant shall not disclose to the public, as defined hereafter, any of the aforementioned confidential, or any information contained therein. For the purpose of this decision, the term "public" includes all persons, governments, organisations, entities, associations and groups other than the Judges of the International Tribunal and the staff of the Registry, the Prosecutor, the accused Mićo Stanišić, members of the Defence team that the Applicant has instructed or authorized to have access to the confidential material. The term "public" specifically includes, without limitation family members and friends of the accused Mićo Stanišić, the accused in other cases or proceedings before the International Tribunal, the media and journalists. If the Applicant or any member of the Defence team who is authorized to have access to confidential material should

withdraw from the case, any confidential material to which access is granted in this decision and that remains in their possession shall be returned to the Registry,

3. The aforementioned confidential material, save as otherwise required by this decision, shall remain subject to any protective measures previously imposed by the Trial Chamber in the first proceedings,

4. The Prosecution shall identify to the Trial chamber and the Registry, by 14 February 2007, the material in the *Plavšić* case that has been provided subject to Rule 70, and subsequently, by 7 March 2007, seek leave from the Rule 70 providers to disclose this material to disclose to the Applicant and inform the Trial Chamber and Registry whether such consent has been obtained,

REQUESTS the Registry:

5. To provide the Applicant with all confidential material identified in paragraph 1, above, except material identified by the Prosecution, by 14 February 2007, as provided pursuant to Rule 70,

6. Where the Rule 70 providers have consented to further disclosure, upon a request from the Prosecution under paragraph 4, above, to provide the Applicant with such material.

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

Dated this 18th day of January 2007,

At The Hague

The Netherlands



Kevin Parker
Presiding Judge

[Seal of the Tribunal]