



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-05-87-T
Date: 20 February 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 20 February 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

EX PARTE

DECISION ON ŠAINOVIĆ MOTION FOR ORDER PURSUANT TO RULE 70

Counsel for the Accused

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović

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 (“Tribunal”) is seized of a partially confidential and *ex parte* “Defence Application: Requesting an Order Applying to Rule 70 to Specific Information to be Provided to the Defence by the Government of the United States of America with Confidential and *Ex-Parte* Annex A,” filed on 29 January 2007 (“Motion”) by the Šainović Defence (“Defence”), and hereby renders its decision thereon.

1. In its Motion, the Defence requests that the Trial Chamber issue an order providing that the provisions of Rule 70 shall apply *mutatis mutandis* to any information provided by the United States Government to the Defence in response to a Defence request.¹ The Defence submits that the material in question is comprised of information from the United States that is relevant to the Indictment.² The Defence further submits that the Rule 70 provider will only produce the material if it is done confidentially and pursuant to an order of the Chamber providing that the provisions of Rule 70 would apply to the material in question.³

2. The Trial Chamber notes that Rule 70 provides, in relevant part, as follows:

(F) The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused.

The Trial Chamber, based upon the submissions of the Defence, is satisfied that the material falls within the provisions of Rule 70(F).

3. The Chamber notes that the Šainović Defence has made the Motion *ex parte* of both the Prosecution and the co-Accused of Šainović. The Chamber interprets this decision to mean that the United States has also conditioned the disclosure of the material upon it being restricted to the Šainović Defence. The Chamber will thus implement this arrangement in its Order below.

4. Finally, the Chamber notes that the Rule 70 provider has only granted its conditioned permission for disclosure to the Šainović Defence, and not for the material to be adduced as evidence in the trial. Such use of the material would require further permission from the Rule 70 provider.

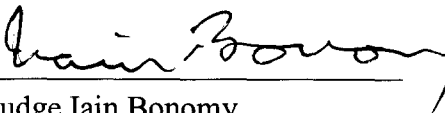
¹ Motion, paras. 4, 6.

² Motion, paras. 2, 4, 6, Annex A.

³ Motion, para. 5.

5. For the foregoing reasons and pursuant to Rules 54 and 70 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby GRANTS the Motion and ORDERS that the Šainović Defence team, which includes Nikola Šainović, counsel, and any employees who have been instructed or authorised to have access to confidential material, shall not disclose the material to any persons (including the other Accused and Defence teams), governments, organisations, entities, clients, associations, or groups, without the prior approval of the Rule 70 provider.

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



Judge Iain Bonomy
Presiding

Dated this twentieth day of February 2007
At The Hague
The Netherlands

[Seal of the Tribunal]