



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: 23 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: 23 February 2007

PROSECUTOR

v.

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

**DECISION ON PROSECUTION MOTION FOR ORDER OF
NON-DISCLOSURE IN RELATION TO MICHAEL PHILLIPS**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 seised of a confidential “Prosecution’s Motion for Order of Non-Disclosure,” filed on 16 February 2007 (“Motion”), and hereby renders its decision thereon.¹

1. In its Motion, the Prosecution requests that the following conditions, as requested by the United States, be ordered pursuant to Rule 70 by the Chamber in relation to the disclosure of material in connection with Michael Phillips: (a) that “a supplemental information sheet ... disclosing extracts of interview notes taken contemporaneously with the receipt of Michael Phillips’s personal notebooks” be disclosed to the Accused and their respective Defence teams, on the condition that the material not be disclosed to others apart from the Accused and their respective Defence teams, without the prior approval of the Rule 70 provider; and (b) that the material may only be introduced into the trial record under seal and be referred to during the trial in closed session, unless otherwise authorised by the Rule 70 provider.² The Rule 70 provider made such disclosure contingent upon the Prosecution securing an order from the Chamber granting these conditions.³

2. The Prosecution submits that the material was provided by the Rule 70 provider to the Prosecution pursuant to Rule 70(B) and that the Rule 70 provider does not wish the material to become public or be shared with third-parties, because the information therein includes material that concerns national security, sensitive material, or information that was deemed irrelevant by the Rule 70 provider.⁴ The Prosecution seeks the disclosure of the material as part of the underlying material to support its anticipated renewed request to add Mr. Phillips to the Rule 65 *ter* witness list.⁵

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

(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial

¹ The Chamber recognises that the Prosecution motion on this matter was filed confidentially. The Chamber nevertheless publicly issues this decision, which contains no confidential information. The Trial Chamber notes that the Prosecution moves the Chamber pursuant to Rule 53(A) and Rule 54. Motion, para. 1. However, the Chamber notes that Rule 54 is not the proper Rule pursuant to which a party may move a chamber.

² Confidential Prosecution Motion for Order of Non-Disclosure, 16 February 2007 (“Motion”), para. 7.

³ Motion, para. 8.

⁴ Motion, para. 7.

⁵ Motion, para. 1, note. 1.

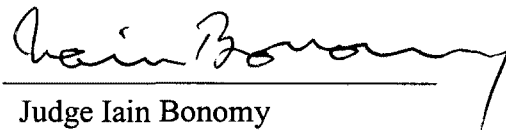
information and shall in any event not be given in evidence without prior disclosure to the accused.

The Trial Chamber, based upon the submissions of the Prosecution, is satisfied that the material has been provided to the Prosecution by the Rule 70 provider on a confidential basis and that therefore the requirements of Rule 70 have been satisfied. Whether the Chamber will ultimately grant leave for Mr. Phillips to be added to Prosecution's Rule 65 *ter* witness list is another matter, and the Chamber will deal with that issue if it arises again in the trial.

4. For the foregoing reasons and pursuant to Rules 54 and 70, the Chamber hereby GRANTS the Prosecution's Motion and ORDERS as follows:

- (a) The Prosecution, Accused, and their respective Defence teams, which include counsel and any employees who have been instructed or authorised to have access to confidential material, shall not disclose the material to any persons, governments, organisations, entities, clients, associations, or groups, without the prior approval of the Rule 70 provider.
- (b) The material shall be introduced into the record only under seal and referred to in the trial only in closed session, unless previously authorised by the Rule 70 provider.

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


Judge Iain Bonomy
Presiding

Dated this twenty-third day of February 2007
At The Hague
The Netherlands

[Seal of the Tribunal]