



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-98-29/1-T

Date: 30 November 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Date: 30 November 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

**DECISION ON MOTIONS OF THREE DEFENCE
COUNSELS IN THE POPOVIĆ CASE FOR ACCESS TO
CONFIDENTIAL MATERIALS IN THE DRAGOMIR
MILOŠEVIĆ CASE**

The Office of the Prosecutor:

Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

Counsel for Vujadin Popović, Ljubiša Beara and Ljubomir Borovčanin:

Mr. Zoran Živanović and Ms. Mira Tapušković for Vujadin Popović
Mr. John R. Ostojić and Mr. Christopher Y. Meek for Ljubiša Beara
Mr. Aleksander Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin

TRIAL CHAMBER III (“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”);

BEING SEISED of the “Popović Motion for Access to Confidential Materials in the Dragomir Milošević Case”, filed by the Defence for Vujadin Popović on 19 November 2007 and joined by the Defence for Ljubomir Borovčanin on 21 November 2007¹ as well as by the Defence for Ljubiša Beara on 22 November 2007² (“Motion”);

RECALLING that, on 23 October 2007, the Defence for Radivoje Miletić filed the “Urgent Motion of General Miletić for Access to Confidential Material in the Dragomir Milošević Case” (“Miletić Motion”);

RECALLING that, on 13 November 2007, this Trial Chamber issued its “Decision on the Urgent Motion of General Miletić for Access to Confidential Material in the Dragomir Milošević Case” (“Miletić Decision”), granting the Miletić Defence access to the confidential materials, subject to specific restrictions;

NOTING that the Defence in the current case did not respond to this Motion;

NOTING that the Defence for Vujadin Popović, joined by the Defence for Ljubomir Borovčanin as well as by the Defence for Ljubiša Beara, requests access to confidential materials in the *Dragomir Milošević* case from the period of 8 March 1995 to 31 August 1995, which were admitted in the present case, including UNPROFOR and UNMO reports, correspondence between UNPROFOR and the civilian and military authorities of Bosnia and Herzegovina and Republika Srpska and the minutes of various meetings attended by UN representatives, insofar as these documents pertain to the status as protected zones of Eastern Bosnia, Srebrenica and Žepa, and Sarajevo, and/or contain information as to the demilitarization or humanitarian assistance provided to those zones;

NOTING that the Prosecution in the current case filed a response on 26 November 2007, in which it does not object to the Motion, and furthermore notified the parties and the Trial Chamber that it obtained the consent of the provider of the confidential documents as required by this Trial Chamber in its Miletić Decision pursuant to Rule 70 of the Rules, stating that further permissions are unnecessary;

¹ “Borovčanin Defence Notification on Joining “Popović Motion for Access to Confidential Materials in the Dragomir Milošević Case””

² “Beara Defence Notification Joining the Popović Motion for Access to Confidential Materials in the Dragomir Milošević Case”

NOTING that according to the response by the Prosecution, upon receipt of the consent by the provider the documents were released to the Defence for Radivoje Miletić;

NOTING that the Defence for Vujadin Popović, joined by the Defence for Ljubomir Borovčanin as well as by the Defence for Ljubiša Beara, argued that this material is relevant to its case for the same reasons as raised in the Miletić Motion and further because the case against these Accused concerns events taking place in Eastern Bosnia, Srebrenica and Žepa, which, like Sarajevo, were UN protected zones and thus information as to their status, their demilitarization and humanitarian assistance provided to those zones could be relevant to their Defence;

CONSIDERING that a party may seek material from any source, including from another case before the Tribunal, to assist in the preparation of its case, if it is able to describe the documents sought by their general nature as clearly as possible even though it cannot describe them in detail and if a legitimate forensic purpose for such access has been shown, but that in doing so, a party may not engage in a “fishing expedition”;³

CONSIDERING that the relevance of the material being sought by a party may be determined by showing the existence of a nexus between the applicant’s case and the case from which such material is sought, that is, where a geographical, temporal or other material overlap between the cases exists the material sought is likely to be of assistance to the applicant’s case, or at least, there is a good chance that it may assist the defence of the applicant;⁴

CONSIDERING that a temporal and geographical overlap exists between the cases;

CONSIDERING that the requested material is likely to be of assistance to the case of Vujadin Popović, Ljubomir Borovčanin and Ljubiša Beara;

PURSUANT TO Articles 20 and 21 of the Statute and Rules 54 and 75 of the Rules;

HEREBY GRANTS the Motion and **ORDERS** that access be given to the Defence counsels for Vujadin Popović, Ljubomir Borovčanin and Ljubiša Beara to the confidential material in the *Dragomir Milošević* case, available to date, insofar as it concerns United Nations documents from the period of 8 March 1995 to 31 August 1995, including UNPROFOR and UNMO reports,

³ *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Motion by Hadžihasanović, Alagić, and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić & Čerkez* Case, 23 January 2003, p. 3; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Momčilo Gruban’s Motion for Access to Material, 13 January 2003, para. 5; *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR73, “Decision on Appeal from Refusal to Grant Access to Confidential Material in another Case”, 23 April 2002, p. 3.

⁴ *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR73, “Decision on Appeal from Refusal to Grant Access to Confidential Material in another Case”, 23 April 2002, p. 3.

correspondence between UNPROFOR and the civilian and military authorities of Bosnia and Herzegovina and Republika Srpska and the minutes of various meetings attended by UN representatives insofar as these documents pertain to the status as protected zones of Eastern Bosnia, Srebrenica and Žepa, and Sarajevo, and/or contain information as to the demilitarization or humanitarian assistance provided to those zones;

1. For the purpose of this disposition:

- (a) the “Prosecution” means the Prosecutor of the Tribunal and her staff;
- (b) the “Accused” means Vujadin Popović, Ljubomir Borovčanin and Ljubiša Beara, the Defence counsels and immediate legal assistants and staff and others specifically assigned by the Tribunal to the Defence teams and identified in a list to be maintained by the lead counsels and filed with the Trial Chamber *ex parte* and under seal within ten days of the entry of this order. Any and all additions and deletions to the initial list in respect of any of the above categories of persons who are necessarily identified and properly involved in the preparation of the defence shall be notified to the Trial Chamber in similar fashion within seven days of such additions or deletions;
- (c) the “public” means all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the Tribunal and the staff of the Registry (assigned to either Chambers or the Registry), the Prosecution and the Accused, as defined above. The “public” specifically includes, without limitations, family, friends and associates of the Accused, the Accused in other cases or proceedings before the Tribunal and Defence counsel in other cases or proceedings before the Tribunal;
- (d) the “media” means all video, audio and print media personnel, including journalists, authors, television and radio personnel, their agents and representatives;

- 2. as the Prosecution is familiar with the material, it shall provide it to the Registry for disclosure to the Accused;
- 3. the Accused shall not disclose to the media any confidential or non public materials provided by the Prosecution;
- 4. save as is directly and specifically necessary for the preparation and presentation of

their case and only on leave being first granted by the 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, copies of witness statements, the contents thereof, or any other information which would enable them to be identified and would breach the confidentiality of the protective measures already in place, unless absolutely necessary for the preparation of the Accused case and always with the leave of the Chamber;
or

(b) any evidence (including documentary, audio visual, physical, or other evidence) or any written statement of a witness or the contents, in whole or in part, of any non-public evidence, statement or prior testimony disclosed to the Accused;

5. if the Accused find it directly and specifically necessary to disclose such information for the preparation and presentation of their case and having obtained leave from the Trial Chamber to do so, the Accused shall inform each person among the public to whom non-public material or information is shown or disclosed, that he or she is forbidden to copy, reproduce or publicise such non-public material or information, and is not to show or disclose it to any other person. If provided with the original or any copy or duplicate of such material, such person shall return it to the Accused when such material is no longer necessary for the preparation and presentation of the Defence;
6. if a member of one of the Defence teams withdraw from the case, all material in his or her possession shall be returned to the lead Defence counsel for the relevant Defence team;
7. the Accused shall have no contact with the witnesses concerned with the material to be disclosed, unless otherwise decided by the Trial Chamber under the conditions set by the latter;
8. subject to the protective measures and orders prescribed above, the protective measures that are already in place in relation to the material disclosed should remain in place;

REQUESTS the Registrar to provide the material to which disclosure has been granted.

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



Judge Patrick Robinson
Presiding

Dated this thirtieth day of November 2007

At The Hague

The Netherlands

[Seal of the Tribunal]