



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 Nos.: IT-05-87-T
IT-05-87/1-PT
Date: 9 July 2008
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: 9 July 2008

PROSECUTOR

v.

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

PUBLIC

**DECISION ON ĐORĐEVIĆ MOTIONS FOR ACCESS TO MATERIALS IN
THE MILUTINOVIĆ ET AL. CASE**

Prosecutor v. Milutinović et al.

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

Prosecutor v. Vlastimir Đorđević

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Dragoljub Đorđević and Mr.
Veljko Đurđić for Vlastimir Đorđević

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 “Vlastimir Đorđević’s Motion for Access to All Audio Proceedings from the *Milutinović et al.* Case in B/C/S,” filed 11 June 2008 (“Audio Motion”), and “Vlastimir Đorđević’s Motion for Access to Confidential Materials from the *Milutinović et al.* Case Beyond the Date of the 21 November 2007 Decision,” filed 19 June 2008 (“Update Motion”) (collectively “Motions”), and hereby renders its decisions thereon.

1. On 21 November 2007, the Trial Chamber, in its “Decision on Đorđević Motion for Access to Materials in *Milutinović et al.* Case,” issued 21 November 2007 (“Decision”), granted, in part, the Đorđević Defence’s motion for access to confidential materials in the above-captioned proceedings, for material up to and including the date of that Decision. The Đorđević Defence therefore has already been granted access to the non-Rule 70 confidential (English) transcripts in *Milutinović et al.*

2. In the Audio Motion, the Đorđević Defence now seeks the B/C/S audio recordings of the hearings, because he purportedly cannot read the English transcripts that already have been disclosed to him and B/C/S transcripts do not exist. After consultation with the Đorđević Defence, the Registry of the Tribunal has made available to the Đorđević Defence the B/C/S audio recordings for days when there was only public session. The Đorđević Defence requests access to the B/C/S audio-recordings for days when there was some private or closed sessions, and submits that it will respect all protective measures in relation to these materials.

3. The law of the Tribunal already provides that, in what the Chamber considers analogous circumstances, the disclosure obligations of the Prosecution under Rule 66(A) may be satisfied by providing material in audio format.¹ Importantly, the Registry of the Tribunal has voluntarily offered to copy the B/C/S audio-recordings of the hearings and provide them to the Đorđević Defence. Because the prior access Decision only speaks of transcripts, and not audio recordings, an order is required to grant the Đorđević Defence access to the confidential portions of the audio-recordings. The Chamber finds that, based upon the Registry’s approach to this situation, it is

¹ See *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Joint Defence Motion Seeking the Trial Chamber to Order the Registrar to Provide the Defence with BCS Transcripts of Proceedings in Two Past Cases Before the International Tribunal, 6 March 2006, p. 5 (considering (1) “that Rule 66(A)(i) provides for a disclosure of copies of the supporting material and that on its literal interpretation, the Rule can be satisfied by a disclosure of the specified material in audio format” and (2) “that the objective of Rule 66(A) is to adequately inform the Accused of the nature and cause of the charges against them, and that the Accused are so informed as long as the material is provided in a language that they understand; irrespective of whether it is provided in audio or some other format”) (emphasis in original).

appropriate to make such an order, but does not do so on the basis that the Đorđević Defence is entitled to the material, a question which the Chamber decides is unnecessary to answer at this time.

4. This order will only pertain to non-Rule 70 portions of the audio-recording, and the Registry therefore will have to cross-reference the information provided by the Prosecution about the transcripts in this regard with the audio-recordings, in order to ascertain which Rule 70-protected portions of the audio-recordings will require further authorisation from the Rule 70 provider prior to their disclosure to the Đorđević Defence.

5. In the Update Motion, the Đorđević Defence requests the Chamber to extend the Decision to include *inter partes* non-Rule 70 confidential material up to and including the date of the Update Motion. It is also requested that an order be issued granting such disclosure on a prospective basis. The Chamber is of the view that it would be appropriate to update the disclosure to the Đorđević Defence, but not to order such disclosure on a prospective basis.

6. The Prosecution has not responded to the Motions within the time period prescribed in the Rules.

7. Accordingly, the Trial Chamber, pursuant to Rules 54, 70, and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the Motions, in part, and ORDERS as follows:

- a. The Đorđević Defence is granted access to the non-Rule 70-protected portions of the *inter partes* confidential audio-recordings of the hearings in the case of *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T.
- b. The Registry shall identify the above material and disclose it to the Đorđević Defence, in accordance with the directions contained within this Decision.
- c. The Registry and the Prosecution shall disclose to the Đorđević Defence information in accordance with the Trial Chamber's "Decision on Đorđević Motion for Access to Materials in *Milutinović et al.* Case," issued 21 November 2007, updated through to the date of this current Decision, *i.e.*, 22 November 2007 to 9 July 2008.

- d. All other conditions of the Trial Chamber's "Decision on Đorđević Motion for Access to Materials in *Milutinović et al.* Case," issued 21 November 2007, continue to apply and shall be respected by the Đorđević Defence.

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



Judge Iain Bony
Presiding

Dated this ninth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]