IT-00-39-A
A8688-A8686
25 February 2009

8688

UNITED
NATIONS

	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-00-39-A
		Date:	25 February 2009
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Acting Registrar: **Mr. John Hocking**

Order of: **25 February 2009**

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

ORDER REGARDING RULE 75 MOTION BY STOJAN ŽUPLJANIN

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Momčilo Krajišnik *pro se*:

Mr. Momčilo Krajišnik

Counsel for Momčilo Krajišnik on the Matter of JCE:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz

Amicus Curiae:

Mr. Colin Nicholls, QC

Counsel for Stojan Župljanin:

Mr. Tomislav Višnjić
Mr. Igor Pantelić

Downloaded from worldcourts.com. Use is subject to terms and conditions. See worldcourts.com/terms.htm

THE APPEALS 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 ("Appeals Chamber" and "International Tribunal", respectively),

NOTING the "Motion by Stojan Župljanin for Access to All Confidential Materials in the Krajišnik Case", filed on 3 February 2009 ("Motion") by Stojan Župljanin ("Župljanin"), in which Župljanin requests "to obtain access to all confidential materials in the *Krajišnik* Case";[1]

NOTING the "Notification in Relation to Motion by Stojan Župljanin for Access to All Confidential Material in the Krajišnik Case", filed on 5 February 2009 by Momčilo Krajišnik, in which he notifies the Appeals Chamber and the parties that he does not object to the Motion;

NOTING the "Prosecution's Response to Motion by Stojan Župljanin for Access to All Confidential Materials in the Krajišnik Case" ("Prosecution Response"), filed on 6 February 2009, in which the Prosecution submits that it does not object to the Motion to the extent that the Appeals Chamber impose the same restrictions on the disclosure to, and use by, the Župljanin Defence of this material as have been imposed by the Appeals Chamber's decision of 21 February 2007 in this case, which was based on a "substantially similar motion" filed by Mićo Stanišić ("*Stanišić*" and "*Stanišić* Decision", respectively);[2]

NOTING that in the *Stanišić* Decision, the Appeals Chamber granted in part Stanišić's request for access to *inter partes* confidential materials in the *Krajišnik* case under certain conditions;[3]

NOTING that upon a further request by Stanišić for variation of protective measures in the *Krajišnik* case, the Appeals Chamber in "the practical interests of judicial consistency and economy" and light of the *Stanišić* Trial Chamber's "organic familiarity" with Stanišić's case referred that request to the *Stanišić* Trial Chamber;[4]

CONSIDERING that the cases of Stanišić and Župljanin were joined on 23 September 2008;[5]

CONSIDERING that while pursuant to Rule 75(G) of the Rules of Procedure and Evidence, Župljanin had an obligation to apply to the Appeals Chamber as the Chamber seized with the

---

[1] Motion, paras 1, 13.
[2] Prosecution Response, paras 2-3, with reference to Decision on "Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case," 21 February 2007.
[3] *Stanišić* Decision, pp. 6-9.
[4] Order Regarding Rule 75 Motion by Mićo Stanišić, 22 August 2007 ("*Stanišić* Order"). The Appeals Chamber notes that the *Stanišić* Trial Chamber subsequently ruled on Stanišić's request: *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Mićo Stanišić's Motion to Rescind or Vary the Delayed Disclosure Orders in *Prosecutor v. Krajišnik*, 31 January 2008.

Downloaded from worldcourts.com. Use is subject to terms and conditions. See worldcourts.com/terms.htm

Krajišnik case ("the first proceedings"), Rule 75(G) does not prohibit this Chamber from referring the matter to the Chamber seized with Župljanin's own case ("the second proceedings");[6]

CONSIDERING that practical interests of judicial consistency and economy strongly favor referral to the *Stanišić and Župljanin* Trial Chamber, particularly in light of its previous decision on the variation of protective measures imposed in the *Krajišnik* case *vis-à-vis* the co-accused Stanišić,[7] the potential need to harmonize this decision with the request presented in the Motion, and its organic familiarity with Župljanin's case;

HEREBY DECLINES to decide the Motion and instead **REFERS** it to the *Stanišić and Župljanin* Trial Chamber.

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

Dated this twenty-fifth day of February 2009,
At The Hague,
The Netherlands.

Judge Fausto Pocar
Presiding

[Seal of the International Tribunal]

[5] *Prosecutor v. Mićo Stanišić & Prosecutor v. Stojan Župljanin*, Case Nos. IT-04-79-PT & IT-99-36/2-PT, Decision on Prosecution's Motion for Joinder and for Leave to Consolidate and Amend Indictments, 23 September 2008, p. 24.
[6] *Cf. Stanišić* Order, p. 1 with further references.
[7] *Cf. supra*, note 4.

Downloaded from worldcourts.com. Use is subject to terms and conditions. See worldcourts.com/terms.htm