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-03-67-T

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IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: **Mr John Hocking**

Decision of: **27 August 2010**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON MOTIONS BY MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN SEEKING DISCLOSURE OF CONFIDENTIAL DOCUMENTS IN THE VOJISLAV ŠEŠELJ CASE (IT-03-67)

The Office of the Prosecutor
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The Accused
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I. INTRODUCTION

1. Trial Chamber III ("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, firstly, of the motion filed publicly on 10 March 2010 by Mićo Stanišić, accused in Case No. IT-08-91 *The Prosecutor v. Stanišić and Župljanin* ("Stanišić and Župljanin Case"), seeking disclosure of all confidential documents produced in this case, Number IT-03-67, *The Prosecutor v. Vojislav Šešelj* ("Stanišić Motion"),[1] and secondly, of the motion filed publicly on 19 March 2010 by Stojan Župljanin, also an accused in the Stanišić and Župljanin Case, in which Mr Župljanin states that he joins the Stanišić Motion ("Župljanin Motion").[2]

II. PROCEDURAL BACKGROUND

2. On 10 March 2010, Mićo Stanišić respectfully sought by public motion the disclosure of all confidential documents used in this case ("Šešelj Case"), namely: (1) all documents collected by the Prosecution during the investigative phase to prepare the case, (2) all transcripts of hearings conducted in closed session, (3) all submissions by the parties and all confidential decisions, and (4) all confidential Prosecution exhibits.[3]

3. By public motion filed on 19 March 2010, Stojan Župljanin joined the Mićo Stanišić Motion and respectfully sought *mutatis mutandis* access to the same documents.[4]

4. On 23 March 2010, the Office of the Prosecutor ("Prosecution") respectfully sought by public motion an extension of the time-limit to respond to the Stanišić

[1] "Motion by Mićo Stanišić for Access to All Confidential Materials in the Šešelj Case", public document, 10 March 2010 ("Stanišić Motion").
[2] "Motion on Behalf of Stojan Župljanin Joining Mićo Stanišić's Motion for Access to All Confidential Materials in the Šešelj Case", public document, 19 March 2010 ("Župljanin Motion").
[3] Stanišić Motion, paras 1-3.
[4] Župljanin Motion, para. 1.

Motion, until 6 April 2010, which was the deadline for responding to the Župljanin Motion.[5]

5. In an oral decision handed down on 30 March 2010, the Chamber granted the Prosecution Motion and set the deadline for responding to the Stanišić Motion at 6 April 2010.[6]

6. During the hearing of 30 March 2010, Vojislav Šešelj ("Accused") informed the Chamber that he did not contest disclosure of the group of documents requested by Mićo Stanišić and Stojan Župljanin ("Applicants").[7]

7. In a written response filed confidentially in part on 6 April 2010, the Prosecution respectfully requested that the Chamber deny the Stanišić Motion and Župljanin Motion ("Response").[8]

III. ARGUMENTS OF THE PARTIES

A. Arguments Made in the Stanišić Motion

8. In his motion, Mićo Stanišić respectfully requests, pursuant to Rules 54 and 75(G)(i) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), disclosure of all of the confidential documents used in the Šešelj Case, namely: (1) all documents collected by the Prosecution during the investigative phase and in preparation of their case, (2) all transcripts of hearings conducted in closed session, (3) all confidential submissions of the parties and all confidential decisions, and (4) all confidential Prosecution exhibits.[9]

9. In support of his request, Mićo Stanišić contends that, in view of the charges brought against him and against the Accused, the two cases overlap with one another due to pre-existing overlap between the factual basis of the charges brought against

[5] "Prosecution's Urgent Motion for Extension of Time to Respond to Mićo Stanišić's Motion for Access to All Confidential Materials in the Šešelj Case", public document, 23 March 2010.
[6] Hearing of 30 March 2010, T(F), p. 15826.
[7] Hearing of 30 March 2010, T(F), pp. 15861-15862.
[8] "Prosecution's Response to Motions by Mićo Stanišić and Stojan Župljanin for Access to All Confidential Materials in the Šešelj Case", public document with confidential annex, 6 April 2010 ("Response").
[9] Stanišić Motion, paras 1-3.

him and those brought against the Accused.[10] Mićo Stanišić points out, first, that there is a chronological overlap between his case and the Šešelj Case. He thus contends, on the one hand, that the crimes of which he himself stands accused cover the period running from 1 April 1992 to 30 December 1992, inclusive, and, on the other hand that the crimes of which Vojislav Šešelj stands accused concern the period running between 1 August 1991 and September 1993.[11] Mićo Stanišić next states that the two cases overlap geographically, inasmuch as the municipalities of Bosanski Šamac, Zvornik, Ilijaš, Vogošća, Bijeljina and Brčko appear in both Indictments.[12] Finally, Mićo Stanišić submits that the crimes named are similar and that, under the Indictment, there was, at that time, an armed conflict in which the Accused and Mićo Stanišić are said to have participated.[13]

10. Mićo Stanišić requests authorization to gain access to the documents identified in his motion due to their potential importance for the preparation of his defence. Mićo Stanišić believes that he has demonstrated a sufficient nexus between the two cases and that the access requested will allow him to acquaint himself with all of the facts of the Šešelj Case that could establish his innocence or attenuate his responsibility.[14]

11. Mićo Stanišić at the same time pledges to comply with all protective measures granted in the Šešelj Case, as well as any additional protective measures that the Chamber may order.[15]

[10] Stanišić Motion, para. 4.
[11] Stanišić Motion, paras 7-8, 10-11, citing *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Third Amended Indictment, filed on 7 December 2007, French version filed on 2 January 2008, paras 5-8 ("Indictment Against Vojislav Šešelj"), and also *The Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91, Second Amended Consolidated Indictment, filed on 23 November 2009, para. 4, 10-11 ("Indictment Against Mićo Stanišić and Stojan Župljanin") – the Chamber notes, however, that the period covered by the Indictment runs between 1 April 1992 and 31 December 1992, *not* 30 December 1992 as cited in the Stanišić Motion at paragraph 8.
[12] Stanišić Motion, para. 8.
[13] Stanišić Motion, paras 8-9.
[14] Stanišić Motion, paras 10-11.
[15] Stanišić Motion, para. 12.

B. Arguments Made in the Župljanin Motion

12. In his motion, Stojan Župljanin announces he is joining the Stanišić Motion and incorporating *mutatis mutandis* all of its arguments, while acknowledging that the municipalities named in the indictment brought against him are not identical to those named in the Šešelj Case.[16]

13. In support of his request, Stojan Župljanin submits that the crimes alleged in the two indictments are of a similar nature, that the members of the joint criminal enterprise are "almost identical" and that the alleged crimes were purportedly committed "at around the same time."[17]

14. Stojan Župljanin believes, in view of the above, that there is a sufficient substantive and temporal overlap between the two cases and that the requested disclosure arises from a legitimate forensic purpose.[18]

C. Arguments Made in the Response

15. In its Response, the Prosecution respectfully requests that the Stanišić Motion and the Župljanin Motion[19] be denied and points out that the requested disclosure of the documents is subject to two distinct governing standards: on the one hand, the request for disclosure of documents in the possession of the Prosecution is subject to the provisions of Rule 66 (B) of the Rules; on the other hand, the request for disclosure of documents issuing from the trial is subject to the provisions of Rule 75 (G) of the Rules.

16. Regarding the documents collected during the investigative phase, the Prosecution opposes any and all disclosure, pointing out, on the one hand, that the Applicants have not established how, in their own cases, the Prosecution failed to carry out its obligations as spelled out in Rule 66 (B) of the Rules, and, on the other, that any request of this nature must be made to the Chamber seized of the Stanišić and

[16] Župljanin Motion, paras 3-4.
[17] Župljanin Motion, para. 4.
[18] Župljanin Motion, paras 4-5.
[19] Response, paras 3, 31.

Župljanin Case.[20] The Prosecution adds that the request lacks specificity, because it pertains to "all documents collected from investigations carried out by the Prosecution in preparation for their case."[21]

17. Concerning the other confidential documents requested, the Prosecution believes that the motions are overly broad and that the Applicants have failed to establish a legitimate forensic purpose.[22] As to the Stanišić Motion, the Prosecution acknowledges that there does exist a geographic and temporal overlap between the two cases, but believes that this overlap is insufficient to authorize disclosure of all of the confidential information requested.[23] As to the Župljanin Motion, the Prosecution believes that the lack of a relevant nexus is even more telling, as Stojan Župljanin did not specifically identify the documents requested and has launched off on a "fishing expedition" to discover information.[24] The Prosecution underscores that Stojan Župljanin himself acknowledges the lack of a geographic overlap between the crimes of which he stands charged and those of which the Accused stands charged.[25] Concerning both motions more generally, the Prosecution underscores that neither Applicant has established a legitimate forensic purpose, particularly with regard to Croatia and Vojvodina.[26] Lastly, the Prosecution believes that, due to the breadth of these requests, the Applicants are endeavouring to reverse the burden, obliging the Prosecution to justify non-disclosure of such evidence.[27]

18. The Prosecution states, meanwhile, that the transcripts of the Šešelj Case have already as of this time been disclosed to the Applicants.[28]

19. In closing, the Prosecution submits that the Applicants have not established how access to the components of the case file that were not part of the trial record would be of material assistance to them in preparing their defence.[29]

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[20] Response, paras 13-18.
[21] Response, para. 15, citing Stanišić Motion, para. 3.
[22] Response, paras 19-26.
[23] Response, para. 21. The Prosecution notes that six municipalities appearing in both cases have been pinpointed: Bosanski Šamac, Zvornik, Ilijaš, Vogošća, Bijeljina and Brčko.
[24] Response, para. 22.
[25] Response, para. 22.
[26] Response, para. 23.
[27] Response, para. 25.
[28] Response, para. 24 and Confidential Annex.

IV. APPLICABLE LAW

A. Rule 66 (B)

20. According to the language of Rule 66 (B) of the Rules, on request, the Prosecution shall permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

21. The Appeals Chamber recently affirmed that, for a Chamber to order the Prosecution to disclose evidence pursuant to Rules 66 and 68, it falls to the Defence to carry the burden of proof and to cumulatively (i) prove that the document requested is in the Prosecution's custody or control, (ii) set forth a *prima facie* case for its relevance to the presentation of the Defence case and (iii) specifically identify the requested documents.[30]

B. Rule 75 (G)

22. Following Rule 75 (G) of the Rules, a party in the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings, must apply to any Chamber remaining seized of the first proceedings, however it is constituted, or to the Chamber seized of the second proceedings, if no Chamber remains seized of the first proceedings.

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[29] Response, para. 27.

[30] *Karamera et al v. The Prosecutor*, Case No. ICTR-98-44-AR73.18, "Decision on Joseph Nzirorera's Appeal from Decision on Alleged Rule 66 Violation", 17 May 2010, paras 12, 13 and 32 citing *The Prosecutor v. Karamera et al.*, Case No. ICTR-98-44-AR73.11, "Decision on Prosecution's Interlocutory Appeal Concerning Disclosure Obligations", 23 January 2008, para. 12; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-98-54A-R68, "Decision on Motion for Disclosure", 4 March 2010, para. 14; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, "Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal's Rules of Procedure and Evidence", 25 September 2006, paras 10-11; see also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "Decision on Prosecution's Motion for Leave to Call Rebuttal Material", 13 December 2006; *Ferdinand Nahimana et al. c. Le Procureur*, Case No. ICTR-99-52-A, "*Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'appelant et aux fins d'assistance du Greffe pour accomplir des investigations complémentaires en phase d'appel*", 8 December 2006.

23. Our jurisprudence recognizes three classes of confidential documents: *inter partes* documents, *ex parte* documents and documents within the ambit of Rule 70 of the Rules. Varying standards govern access to each of these classes.[31]

24. The Chamber notes that the Applicants are requesting disclosure of "all confidential documents", without specifying whether these are *inter partes*, *ex parte* or such as may fall within the ambit of Rule 70. [32] Out of concern for judicial economy, the Chamber will hear the Motion as a request for access to the *inter partes* documents, to the *ex parte* documents and to those documents within the ambit of Rule 70 of the Rules.

25. As concerns the *inter partes* confidential documents, a party has the right to ask to review documents that have been filed in another proceeding before the Tribunal and that will help it to prepare its case, provided that it has identified the documents requested or described their general nature and that it has provided a legitimate forensic purpose for such access.[33] For a request for access to confidential documents to be granted, the Trial Chamber must first be persuaded that the moving party has demonstrated that the exhibits at issue are "likely to assist the [party's] case materially, or at least there is a good chance that it would",[34] without needing to explain specifically how it is that each of these documents may assist the party in question.[35] This condition is satisfied whenever the moving party demonstrates "that there is a factual nexus between the case of the said party and the cases in which these exhibits were tendered", in other words, geographic, temporal or otherwise substantive overlaps between the two cases.[36] The Chamber recalls, moreover, that the

[31] "Decision on Stanišić Motion for Access to Confidential Materials in the Šešelj Case pursuant to Rule 75 (G)(i)", 24 April 2008 ("*Stanišić* Decision"), para. 11.
[32] Stanišić Motion, para. 1; Župljanin Motion, para. 1.
[33] See *Stanišić* Decision, para. 12; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, "Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case", 19 May 2009 ("*Milošević* Decision"), para. 7.
[34] *Stanišić* Decision, para. 12; *Milošević* Decision, para. 8.
[35] *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, "Decision on Motion by Radivoje Miletić for Access to Confidential Information", 9 September 2005 ("*Miletić* Decision"), p. 4.
[36] *Stanišić* Decision, para. 12; *Milošević* Decision, para. 8; see also *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, "Decision on Momčilo Perišić's Request for Access to Confidential Material in the Dragomir Milošević Case", public document, 27 April 2009, para. 5; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14-14/2-A, "Decision on Motion by Hadžihasanović, Alagić, and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the

principle of equality of arms presupposes that the accused will be placed in a situation similar to that of the Prosecution, which has access to all submissions filed *inter partes*, so that the accused may understand the proceedings and the evidence and weigh their relevance in relation to his own case.[37] As a result, once an accused has been authorized to peruse confidential Prosecution exhibits or confidential transcripts of testimony or testimony heard in closed session that were in another proceeding before the Tribunal, the accused must have the opportunity to peruse the motions, submissions, decisions and transcripts that relate to them.[38]

26. As concerns the *ex parte* confidential documents, requirements for proving a legitimate forensic purpose are "more stringent" and access to this class of documents is only to be granted on an exceptional basis.[39] As it so happens, "*ex parte* material, being of a higher degree of confidentiality, by nature contains information which has not been disclosed *inter partes* because of security interests of a State, other public interests, or privacy interests of a person or institution" and, consequently, "the party on whose behalf *ex parte* status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed".[40]

27. Lastly, documents may be considered confidential due to the fact that their use is made subject to restrictions arising under Rule 70 of the Rules. In such cases, "neither the material provided under Rule 70 to either the Prosecution or the Defence in a case nor its sources may be released to the accused in another case prior to obtaining consent from the provider of that information and that this holding does not depend upon whether that material was used as evidence in a previous case".[41]

Kordić & Čerkez Case", 23 January 2003, p. 4; *The Prosecutor v. Milan Martić*, Case No. It-95-11-A, "Decision on Motion by Jovica Stanišić for Access to Confidential Testimony and Exhibits in the Martić Case pursuant to Rule 75(G)(i)", filed by Jovica Stanišić pursuant to Rule 75(G)(i) of the Rules, 22 February 2008, para. 9.

[37] *Miletić* Decision, p. 4.

[38] *Milošević* Decision, paras 11-12.

[39] Stanišić Motion, para. 13.

[40] *Stanišić* Decision, para. 14; *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, "Decision on 'Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case", 21 February 2007 ("*Krajišnik* Decision"), p. 5.

[41] *Stanišić* Decision, para. 14; *Krajišnik* Decision, p. 6.

V. DISCUSSION

A. Regarding the Documents Obtained by the Prosecution During the Investigative Phase

28. The Chamber points out that the Applicants are seeking access to "all documents collected from investigations carried out by the Prosecution in preparation of their case"[42] and doing so indiscriminately.

29. In its Response, the Prosecution indicates that the Applicants have each filed a motion pursuant to Rule 66(B) in the Stanišić and Župljanin Case and that in those motions they fail to elaborate upon ways in which the Prosecution has failed to comply with its obligations in their case.[43] The Chamber observes, however, that the Prosecution fails to identify passages in these motions and in the responses submitted, and that the Applicants do not provide the least reference thereto in their submissions.

30. Considering nonetheless, on the one hand, that the Applicants do not specifically identify the requested exhibits and their contents, and on the other hand, that they do not describe their relevance to the Defence case, the Chamber finds that the request has no proper basis in law.

B. Regarding the Confidential *Inter Partes* Documents

31. *Preliminary Observation*

The Chamber notes that, as the Prosecution puts it, the transcripts from the Šešelj Case were allegedly already disclosed to the Applicants, thus rendering their request for disclosure moot in part. However, in reviewing the confidential annex attached by the Prosecution to its Response, the Chamber could not identify specifically which transcripts had been disclosed and so finds that the request for disclosure is therefore not moot.

32. The Chamber notes that the Applicants are requesting disclosure of several types of confidential *inter partes* documents: all transcripts of hearings conducted in

[42] Stanišić Motion, paras 1-3.

closed session, all submissions by the parties and all confidential decisions, as well as all of the confidential evidence.[44]

33. As concerns temporal, factual and geographic overlaps between the Šešelj Case and the Stanišić and Župljanin Case, the Chamber observes that the Indictment against the Accused covers the period running from 1 August 1001 until September 1993 and that the Indictment Against Mićo Stanišić and Stojan Župljanin covers the period running from 1 April 1992 until at least 31 December 1992.[45] The Chamber thus considers there to be sufficient temporal overlap, albeit partial, between the two cases.

34. As concerns the factual overlap, the Chamber notes that Mićo Stanišić, Stojan Župljanin and Vojislav Šešelj are accused of crimes such as persecution, murder, torture, cruel treatment and expulsion, committed in the context of a joint criminal enterprise, acting together with other participants, including Radovan Karadžić, Biljana Plavšić, General Ratko Mladić and Momčilo Krajišnik.[46] For this reason, the Chamber finds that the factual overlap is sufficient.

35. Regarding, lastly, the existence of geographic overlap, the Chamber notes that Mićo Stanišić is being prosecuted for crimes committed in Bosnia and Herzegovina ("BiH"), of which some were in the following municipalities: Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf, Teslić, Zvornik, Ilijaš and Vogošća.[47] As for Stojan Župljanin, he is being prosecuted for crimes committed in BiH, in the municipalities of Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf and Teslić.[48] At the same time, the Indictment against the Accused covers an area more vast, in that the crimes alleged to have been committed in BiH, in the municipalities of Zvornik, Ilijaš and Vogošća, but also in Croatia and in Vojvodina.[49] Thus, the Chamber notes that, on the one hand,

[43] Response, para. 14.
[44] Stanišić Motion, paras 1-3.
[45] Indictment Against Vojislav Šešelj, paras 8(a), 15, 18, 28, 31, 24; Indictment Against Mićo Stanišić and Stojan Župljanin, paras 10-12.
[46] Indictment Against Vojislav Šešelj, paras 8, 15-34; Indictment Against Mićo Stanišić and Stojan Župljanin, paras 24-41.
[47] Indictment Against Mićo Stanišić and Stojan Župljanin, para. 11.
[48] Indictment Against Mićo Stanišić and Stojan Župljanin, para. 12; *Župljanin* Motion, para. 4.
[49] See Indictment Against Vojislav Šešelj, paras 6, 12 and 14.

Mićo Stanišić is being prosecuted for crimes committed in the municipalities of BiH that are common to both Stojan Župljanin (Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf and Teslić) and the Accused (Zvornik, Ilijaš and Vogošća), and on the other, that the crimes for which Stojan Župljanin and the Accused are being prosecuted were allegedly committed in BiH.[50] Furthermore, the Chamber emphasizes that, according to the Prosecution, there was a command link between Mićo Stanišić and Stojan Župljanin: "As the commander of the CSB Banja Luka, Stojan Župljanin was the senior police officer in the ARK, subordinated only to Mićo Stanišić".[51] Consequently, the Chamber holds that the geographic overlap is partial but sufficient, as the Appeals Chamber has underscored that the relevance of the exhibits requested could be established if cases "stem from events alleged to have occurred in the same geographic area and at the same time".[52]

36. The Chamber holds that the confidential documents used in the Šešelj Case, whose disclosure has been sought by the Applicants, have been sufficiently identified, that their general nature has been described and that there may be "a good chance"[53] that the confidential documents from the Šešelj Case will materially assist not merely Mićo Stanišić but also Stojan Župljanin to present their case. As a result, the Chamber finds that conditions have been met for granting the Applicants access to all transcripts held in closed session, all submissions between the parties and all confidential decisions, as well as to all of the confidential evidence in the Šešelj Case.

C. Regarding the *Ex Parte* Documents

37. Regarding the *ex parte* confidential documents, the Chamber holds that the Applicants have failed to establish that, to ensure that their fundamental right to a fair trial is upheld, they now need to peruse the documents produced in the Šešelj Case on an *ex parte* basis. Moreover, the Chamber finds that the Applicants have failed to

[50] Indictment Against Mićo Stanišić and Stojan Župljanin, para. 11; Indictment Against Vojislav Šešelj, para. 6.
[51] Indictment Against Mićo Stanišić and Stojan Župljanin, para. 18.
[52] *Krajišnik* Decision, p. 5; see also *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, "Decision on Appellants Dario Kordić and Mario Čerkez's Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in *The Prosecutor v. Blaškić*", 16 May 2002, para. 15.
[53] *Milošević* Decision, para. 8; *Stanišić* Decision, para. 12.

establish that preservation of the *ex parte* status of the documents produced in the Šešelj Case is no longer warranted. The Chamber for that reason concludes that the more stringent conditions for perusing the *ex parte* confidential documents in the Šešelj Case have not been satisfied.

D. Regarding the Documents Within the Ambit of Rule 70

38. Regarding the documents within the ambit of Rule 70 of the Rules, the Chamber is of the view that the confidential documentation tendered into evidence by the parties pursuant to Rule 70 may not be disclosed to the Applicants unless the consent of the person or entity providing such documentation has been obtained. Consequently, the Chamber grants the Applicants access to this documentation where the necessary consents have been obtained in advance.

VI. DISPOSITION

39. **FOR THE FOREGOING REASONS**, pursuant to Rules 70 and 75 of the Rules, the Chamber

ORDERS joinder of the Stanišić Motion and the Župljanin Motion,

PARTIALLY GRANTS the Stanišić Motion and the Župljanin Motion, and

(a) **ORDERS** the Prosecution to inform the Registry of the Tribunal ("Registry"), within 30 days of the date hereof, which Šešelj Case documents are already as of this time accessible *inter partes*, and will be on an ongoing basis as new *inter partes* documents are filed, and do not fall within the ambit of Rule 70 of the Rules, in order that these documents may be transmitted to the Applicants, namely:

(i) all of the testimonies and transcripts conducted in closed session and in private session;

(ii) all of the confidential exhibits admitted into evidence in the case;

(iii) all of the confidential submissions made *inter partes*; and

(iv) all of the confidential *inter partes* decisions of the Chamber.

(b) **ORDERS** the Prosecution to identify the documents within the ambit of Rule 70 of the Rules and to immediately make contact with the provider that supplied them in order to know whether they will consent to disclosure of the document, following which the Prosecution shall inform the Registry as to the response of the said provider;

(c) **ORDERS** the Registry to disclose forthwith to the Applicants those confidential *inter partes* documents that have been identified by the Prosecution in these proceedings, in accordance with paragraph (a);

(d) **ORDERS** that the Registry refrain from disclosing any and all documents falling within the ambit of Rule 70 of the Rules, until such time as the Prosecution informs the Registry that the Prosecution has obtained the provider's consent, pursuant to the terms of paragraph (b) above, and do so, even if the said provider previously accepted the document's use in a prior proceeding. If the consent of the provider that supplied the documents falling within the ambit of Rule 70 of the Rules cannot be obtained, such documents shall not be disclosed.

(e) **ORDERS** that, unless it obtains explicit authorization from the Chamber finding that it has been sufficiently established that the disclosure to third parties of the confidential *inter partes* documents defined *supra* is absolutely required for preparing the Applicants' defence, the latter, as well as their counsel and any and all persons assisting them who have been ordered or authorized to acquaint themselves with the said documents, shall refrain from:

(i) disclosing to any other person the identities of the witnesses, their addresses, their written submissions, the transcripts of their testimony, the exhibits or any and all additional information that helps to identify them and which would violate the confidentiality of existing protective measures;

(ii) disclosing to any other person any and all confidential exhibits, whether documentary or otherwise, or to reveal, partly or in whole, the contents of any and all confidential exhibits in the Šešelj Case; and

(iii) making contact with any witness whose identity is protected.

If, for purposes of preparing the Applicants' defence, confidential documents are disclosed to third parties, subsequent to authorization by the Chamber, any person who receives them shall be informed by the Applicants or their counsel that it is prohibited to copy, reproduce or make public, whether in whole or in part, any and all confidential information, or to disclose it to any further person; moreover, if a person has received one of these documents, such person must return it to the Applicants, to their Counsel or to any other person they authorize, as soon as said person no longer requires such document for preparing their Defence.

In construing paragraph (e), third parties shall exclude: (i) the Applicants; (ii) their Counsel; (iii) any expert team member who has received an order of or authorization from counsel to peruse confidential documents; and (iv) the staff of the International Tribunal, including the members of the Prosecution.

If counsel for the Applicants or a member of a Defence team who is authorized to peruse confidential documents filed *inter partes* in the Šešelj Case withdraws from the Stanišić and Župljanin Case, he or she shall return to the Registry any and all confidential documents which have been placed in his or her possession pursuant to this Decision.

(f) **REMINDS THE PARTIES** that all protective measures initially granted in the Šešelj Case remain in effect for all matters concerning the proceedings instigated against the Applicants, pursuant to Rule 75 (F)(i) of the Rules.

DENIES the Stanišić Motion and the Župljanin Motion in all other respects.

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

/signed/
Jean-Claude Antonetti

Presiding Judge

Done this twenty-seventh day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]