



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-PT

Date: 14 June 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Order of: 14 June 2006

PROSECUTOR

v.

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

ORDER ON GENERAL OJDANIĆ'S APPLICATION WITH REGARD TO RULE 70

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

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. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrač 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”);

BEING SEIZED of “General Ojdanić’s Application for an Order Applying Rule 70 to Specific Information to be Provided to the Defense by the United States Government”, filed publicly by the defence of Dragoljub Ojdanić (“Defence”) on 7 June 2006 (“Application”), which requests an order stating that Rule 70 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) shall apply to information to be provided to the Defence by the United States Government;

NOTING the “Decision on Request of the United States of America for Review”, issued by the Appeals Chamber on 12 May 2006 (“Appeal Decision”), setting aside a decision of this Trial Chamber “insofar as it order[ed] the United States, pursuant to Rule 54*bis*, to produce to Ojdanić the documents and information requested”,¹ and inviting “Ojdanić and the United States to immediately resume their negotiations for provision of the information requested ... and to conclude them as expediently as possible in light of the pending commencement of the trial in this case”;²

NOTING that Article 29 of the Statute of the Tribunal provides that “States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law”;

NOTING that Rule 70 creates an incentive for such cooperation by States, organisations, and individuals, by allowing them to share sensitive information with the Tribunal “on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information’s sources will be protected”;³

CONSIDERING that paragraphs (B) through (E) relate to material in the possession of the Prosecutor and that paragraph (F) of Rule 70 provides for the Trial Chamber to order that the same provisions apply to materials in the possession of the Defence;

CONSIDERING that, although obtaining a preliminary order from the Trial Chamber confirming the provisions of Rule 70(F) seems unnecessary in light of the terms of the Rule, because those

¹ *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-05-87-AR108*bis*.2, Decision on Request of the United States of America for Review, 12 May 2006, para. 46.

² *Ibid.*

³ *Prosecutor v. Milošević*, Case Nos. IT-02-54-AR108*bis* & IT-02-54-AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19.


provisions apply to any information provided by a government to the defence under Rule 70, the Appeals Chamber has held that the purpose of the Rule is “to encourage third parties to provide confidential information to the defence in the same way that Rule 70(B) encourages parties to do the same for the Prosecution”,⁴ a purpose which is served by explicitly affirming the applicability of Rule 70 to confidential material provided to the Defence;⁵

CONSIDERING that the United States Government has conditioned any provision of the requested information to the Defence on an order by the Trial Chamber stating that the provisions of Rule 70 apply to the information;⁶

PURSUANT TO Rules 54 and 70 of the Rules,

HEREBY ORDERS that the provisions of Rule 70 apply *mutatis mutandis* to any information provided by the United States Government to the Defence in response to its request.

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



Krister Thelin
Judge

Dated this fourteenth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ *Prosecutor v. Orić*, Case No. IT-03-68-AR73, Public Redacted Version of ‘Decision on Interlocutory Appeal Concerning Rule 70’, 26 March 2004, para. 6.

⁵ *Ibid.*, paras. 6–7.

⁶ Application, Annex A, pp. 5–6 (attaching a letter to defence counsel from the Legal Counselor of the Embassy of the United States of America, which states that “the first step necessary to enter into the Rule 70 information-sharing process with the United States is for you to obtain ... an order applying the protections of Rule 70 to any information to be provided to the defense by the United States”, and “[a]s soon as these steps are completed we are prepared to make responsive information available to you”).