

IN TRIAL CHAMBER I

Before:

Judge Alphons Orie, Presiding

Judge Amin El Mahdi

Judge Joaquín Martín Canivell

Registrar:

Mr. Hans Holthuis

Decision of:

23 March 2004

PROSECUTOR

v.

Miodrag JOKIC

**DECISION ON PAVLE STRUGAR'S REQUEST FOR VARIATION OF PROTECTIVE
MEASURES**

The Office of the Prosecutor

Ms. Susan Somers

Mr. Philip Weiner

Mr. David Re

Counsel for Miodrag Jokic:

Mr. Zarko Nikolic

Mr. Eugene O'Sullivan

Counsel for Pavle Strugar:

Mr. Goran Rodic

Mr. Vladimir Petrovic

TRIAL CHAMBER I (the "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 (the "Tribunal");

BEING SEISED of the "Defence Motion: Requesting the acquisition of the text of the Plea Agreement and the factual basis thereof made between Admiral Miodrag Jokic and the Prosecution" (the "Motion") filed with Trial Chamber II by Counsel of Pavle Strugar (the "Strugar Defence") on 19 March 2004, and referred to this Trial Chamber by Trial Chamber II through its "Decision on Defence Motion Requesting Access to Miodrag Jokic's Plea Agreement and Related Documents";

NOTING that the Motion moves the Trial Chamber to order:

1. the Office of the Prosecutor (the "Prosecution") to provide the Strugar Defence with the text of the Plea Agreement entered into by Miodrag Jokic and the Prosecution filed confidentially on 27 August 2003 (the "Plea Agreement");
2. the Registrar of the Tribunal (the "Registry") to disclose to the Strugar Defence the transcripts of the closed sessions of the Sentencing Hearing of Miodrag Jokic held on 4 December 2003 (the "Sentencing Hearing").

NOTING the arguments of the Strugar Defence, in particular that it needs to acquaint itself with the subject-matter of the Plea Agreement and of testimonies potentially crucial to the cross-examination of Miodrag Jokic because (a) Miodrag Jokic was a co-accused of Pavle Strugar; (b) Miodrag Jokic held a senior position in the JNA and participated in the highest-level decision-making processes during the Indictment period;¹

NOTING further that the Strugar Defence accepts the need "to adhere to any protective measures of confidentiality" in relation to the transcripts of the Sentencing Hearing;²

NOTING further that Article 21(b) and (e) of the Statute of the Tribunal (the "Statute") enshrine the rights of an accused person to have adequate time and facilities to prepare his defence, including the examination of witnesses against him;³

CONSIDERING that the Prosecution and Counsel for Miodrag Jokic do not oppose that the Plea Agreement and the transcripts of the Sentencing Hearing be made available to the Strugar Defence on condition that it does not disclose their content to the public;

RECALLING that the Plea Agreement was filed with the Trial Chamber confidentially on 27 August 2003 and also as a confidential Annex to the "Prosecution's Brief on the Sentencing of Miodrag Jokic" on 14 November 2003;

RECALLING further that, during the Sentencing Hearing, two witnesses called by the Prosecution were heard in closed session,⁴ and submissions by the parties with respect to those witnesses were heard in private session;⁵

CONSIDERING that other portions of the Sentencing Hearing held in private session⁶ refer to Miodrag Jokic's provisional release and do not appear to have any bearing on the testimony of Miodrag Jokic in subsequent proceedings;

CONSIDERING that Rule 54 of the Rules of procedure and Evidence (the "Rules") allows a Judge or Trial Chamber to issue orders as may be necessary for purposes of an investigation or for the preparation or conduct of the trial;

CONSIDERING that Rule 79 of the Rules allows a Trial Chamber to order that the press and public be excluded from all or part of the proceedings for reason, *inter alia*, of the protection of the interests of justice;

PURSUANT TO Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 79 of the Rules,

HEREBY ORDERS:

- i. The Prosecution to provide, as soon as possible, the Strugar Defence with the text of the Plea

Agreement filed confidentially on 27 August 2003;

- ii. The Registry to provide, as soon as possible, the Strugar Defence with copy of pages 208-235 (closed session) and 293-294 (private session) of the transcripts of the Sentencing Hearing of 4 December 2003 in the case of *The Prosecutor v. Miodrag Jokic*;
- iii. The Strugar Defence and Pavle Strugar not to disclose to any third party:
 - a. the names of the witnesses who testified in closed session, their whereabouts, copies of transcripts of witness testimonies, the contents thereof, or any information which would breach the confidentiality with regard to their identity, their position, and their testimony;
 - b. copies of the Plea Agreement, or the contents thereof, which have not been otherwise made public by the Trial Chamber in the Sentencing Judgement delivered on 18 March 2004.

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

Judge Alphons Orie
Presiding

Dated this 23rd day of March 2004,
At The Hague
The Netherlands

[Seal of the Tribunal]

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- 1. Motion, paras 4; 8-9.
 - 2. Motion, para. 10.
 - 3. Motion, para. 5.
 - 4. Sentencing Hearing of 4 December 2003, T. 208-235
 - 5. Sentencing Hearing of 4 December 2003, T. 293-294.
 - 6. Sentencing Hearing of 4 December 2003, T. 258-259; 296-297.