



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-95-5/18-T

Date: 31 March 2010

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge O-Gon Kwon, Presiding Judge  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:** Mr. John Hocking

**Decision of:** 31 March 2010

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

**DECISION ON GENERAL MILETIĆ'S REQUEST FOR ACCESS TO CONFIDENTIAL  
INFORMATION IN THE KARADŽIĆ CASE**

*Prosecutor v. Radovan Karadžić* (Case No. IT-95-5/18-T)

**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

**Appointed Counsel**

Mr. Richard Harvey

*Prosecutor v. Popović et al.* (Case No. IT-05-88-T)

**Office of the Prosecutor**

Mr. Peter McCloskey

**Counsel for the Accused**

Zoran Živanović and Mira Tapušковиć for Vujadin Popović  
John Ostojić and Predrag Nikolić for Ljubiša Beara  
Jelena Nikolić and Stéphane Bourgon for Drago Nikolić  
Christopher Gosnell and Tatjana Cmerić for Ljubomir Borovčanin  
Nataša Fauveau Ivanović and Nenad Petrušić for Radivoje Miletić  
Dragan Krgović and David Josse for Milan Gvero  
Peter Haynes and Simon Davis for Vinko Pandurević

**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 seized of “General Miletić’s Request for Access to Confidential Information in the Karadžić Case”, filed on 3 March 2010 (“Motion”) by Defence counsel for Radivoje Miletić, the “Vujadin Popović Defence Notification on Joining ‘General Miletić’s Request for Access to Confidential Information in the Karadžić Case’ (“Popović Joinder”) filed on 8 March 2010 by Defence counsel for Vujadin Popović, the “Motion on Behalf of Drago Nikolić Joining ‘Requete Du General Miletić Aux Fins D’Access A Des Informations Confidentielles Dans L’Affaire Karadzic [sic]” (“Nikolić Joinder”) filed on 10 March 2010 by Defence counsel for Drago Nikolić, and the “Motion on Behalf of Vinko Pandurevic [sic] Joining General Miletić’s [sic] Request for Access to Confidential Information in the Karadžić Case” (“Pandurević Joinder”) filed on 12 March 2010 by Defence counsel for Vinko Pandurević, and hereby issues its decision thereon.

### I. Background and Submissions

1. In the Motion, the Miletić Defence seeks access to *inter partes* confidential material from *Prosecutor v. Radovan Karadžić* (Case No. IT-95/18-T) (“*Karadžić case*”), namely confidential transcripts of all hearings in closed session (including those in private session) and evidence which will be admitted or presented confidentially during the remainder of the trial, including confidential orders and/or decisions regarding such evidence.<sup>1</sup> This request is limited to material relating to (i) events in Srebrenica in 1995, (ii) Radovan Karadžić’s relationships and contacts in 1995, including any documentation on the preparation, compilation, distribution and execution of Directive No. 7, and (iii) the convoy and passage of humanitarian aid.<sup>2</sup> In support, the Miletić Defence argues that there is a significant geographical and temporal overlap between its case and the *Karadžić case*, that there is an interrelation between the factual bases for the allegations against Miletić and Radovan Karadžić (“Accused”), and that the material sought may be relevant and important to Miletić’s defence.<sup>3</sup> The Miletić Defence also points out that although the trial proceedings against Miletić have been concluded, the proceedings are not yet finished and the Prosecution continues to disclose documents to him.<sup>4</sup> Given the advanced stage of the case against Miletić, the Miletić Defence requests access to all relevant evidence specified in the Motion as soon as possible following its presentation in the *Karadžić case*.<sup>5</sup> It assures the

<sup>1</sup> Motion, para. 1.

<sup>2</sup> Motion, para. 2.

<sup>3</sup> Motion, paras. 5 – 6 . (quoting *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Karadžić’s Motion for Access to Confidential Material in the *Popović et al.* Case, 30 July 2009, para. 13). See Motion, para. 8.

<sup>4</sup> Motion, para. 7.

<sup>5</sup> Motion, para. 9.

Trial Chamber that the confidentiality of documents will be maintained and the protective measures ordered in the *Karadžić* case will be respected.<sup>6</sup>

2. On 4 March 2010, the Accused filed a “Response to Militec [*sic*] Access Motion” (“Accused’s Response to Motion”) in which he states that he supports the relief sought in the Motion.<sup>7</sup> On 5 March 2010, the Prosecution filed the “Prosecution’s Response to General Miletić’s Request for Access to Confidential Materials in the *Karadžić* Case” (“Prosecution’s Response to Motion”) stating that it does not object to the Chamber granting Miletić access to the confidential materials and filings in the *Karadžić* case except for (i) Rule 70 materials for which the providers’ consent must be obtained first and (ii) confidential material related to witnesses who are subject to protective measures of delayed disclosure.<sup>8</sup> With respect to the latter, the Prosecution objects to the immediate disclosure of such material but accepts that Miletić should be given access to it at the same time as the Accused. The Prosecution further states that, should the Chamber grant the Motion, it will identify, as soon as practicable, (i) the Rule 70 material, for which it will seek the provider’s consent for disclosure to Miletić, and (ii) the confidential *inter partes* material related to witnesses covered by delayed disclosure.<sup>9</sup>

3. In the Popović Joinder, the Popović Defence states that it fully agrees with the arguments contained in the Motion and thus joins Miletić’s request. On 9 March 2010, the Prosecution filed the “Prosecution’s Response to Popovic’s [*sic*] Notification on Joining Miletić’s [*sic*] Request for Access to Confidential Materials in *Karadžić* Case” (“Prosecution’s Response to the Popović Joinder”), where it submits that it does not object to access being given to *inter partes* confidential materials to Popović for the same reasons and under the same conditions as detailed in the Prosecution’s Response to Motion.<sup>10</sup>

4. In the Nikolić Joinder, the Nikolić Defence joins and adopts *mutatis mutandis* all the arguments found in the Motion.<sup>11</sup> However, the Nikolić Defence also requests the Chamber to grant Nikolić access to *all* confidential materials in the *Karadžić* case.<sup>12</sup> On 11 March 2010, the Prosecution filed the “Prosecution’s Response to Nikolić Motion on Joining Miletić’s [*sic*] Request for Access to Confidential Materials in *Karadžić* Case” (“Prosecution’s Response to the Nikolić Joinder”). The Prosecution first notes that the Nikolić Defence requests access to *all* confidential materials in the *Karadžić* case and yet, at the same time, “adopts *mutatis mutandis*

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<sup>6</sup> Motion, para. 9.

<sup>7</sup> Accused’s Response to Motion, para. 1.

<sup>8</sup> Prosecution’s Response to Motion, paras. 3, 5.

<sup>9</sup> Prosecution’s Response to Motion, paras. 5–7.

<sup>10</sup> Prosecution’s Response to the Popović Joinder, para. 2.

<sup>11</sup> Nikolić Joinder, paras. 1–2.

<sup>12</sup> Nikolić Joinder, para. 3.

all arguments found [in the Motion]” despite the fact that the Motion is limited to specific categories of material only.<sup>13</sup> The Prosecution accordingly interprets this request as limited to the materials requested in the Motion and does not object to Nikolić having access to the specified confidential materials for the same reasons and under the same conditions as detailed in the Prosecution’s Response to Motion.<sup>14</sup>

5. In the Pandurević Joinder, the Pandurević Defence joins and adopts all the arguments raised in the Motion, but also requests the Chamber to grant him access to *all* confidential materials in the *Karadžić* case.<sup>15</sup> On the same day, the Prosecution filed the “Prosecution’s Response to Pandurović’s [*sic*] Motion on Joining Miletic’s [*sic*] Request for Access to Confidential Materials in Karadžić Case” (“Prosecution’s Response to the Pandurević Joinder”) where it notes that Pandurević requests access to *all* confidential material in the *Karadžić* case even though he “adopts *mutatis mutandis* all arguments found [in the Motion.]”<sup>16</sup> As with the Nikolić Joinder, the Prosecution interprets this request as being limited only to specific confidential *inter partes* materials sought in the Motion.<sup>17</sup> Finally, the Prosecution does not object to Pandurević having access to the specified confidential materials for the same reasons and under the same conditions as detailed in the Prosecution’s Response to Motion.<sup>18</sup>

## II. Applicable Law

6. The Chamber notes the well-established principle of the Tribunal that proceedings should be conducted in a public manner to the extent possible.<sup>19</sup> Further, the Chamber observes that generally, “[a] party is always entitled to seek material from any source to assist in the preparation of his case.”<sup>20</sup> In exceptional circumstances, however, a Chamber may restrict the access of the public, as well as the access of a party, to certain material under the provisions of the Rules.<sup>21</sup> Such confidential material can be categorised into three types: *inter partes*, *ex*

<sup>13</sup> Prosecution’s Response to the Nikolić Joinder, para. 1. (quoting the Nikolić Joinder, para. 2.).

<sup>14</sup> Prosecution’s Response to the Nikolić Joinder, paras. 1 – 2.

<sup>15</sup> Pandurević Joinder, p. 2.

<sup>16</sup> Prosecution’s Response to the Pandurević Joinder, para. 1.

<sup>17</sup> Prosecution’s Response to the Pandurević Joinder, para. 1.

<sup>18</sup> Prosecution’s Response to the Pandurević Joinder, para. 2.

<sup>19</sup> Rule 78 provides, “All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”

<sup>20</sup> *Prosecutor v. 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 (“*Blaškić* Decision”), para. 14; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brđanin* Case, 24 January 2007 (“*Brđanin* Decision”), para. 10.

<sup>21</sup> *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, Decision on Vladimir Đorđević’s Motion for Access to All Material in *Prosecutor v. Limaj et al.*, Case Not. IT-03-66, 6 February 2008 (“*Đorđević* Decision”), para. 6.

*parte*, and Rule 70. The Chamber will not deal with *ex parte* material in this decision as Miletić, Popović, Nikolić, and Pandurević (collectively “Applicants”) do not seek access to it.

7. In determining whether a party must be given access to confidential material, the Trial Chamber must “find a balance between the right of [that] party to have access to material to prepare its case and the need to guarantee the protection of witnesses.”<sup>22</sup> To that end, it is well established that a party may obtain confidential material from another case to assist it in the preparation of its case, if (a) the material sought has been “identified or described by its general nature”; and (b) a legitimate forensic purpose” exists for such access.<sup>23</sup>

8. The first requirement is not a particularly onerous one. The Appeals Chamber has held that requests for access to “all confidential material” can be sufficiently specific to meet the identification standard.<sup>24</sup>

9. With respect to the second requirement, the standards for access differ for each category of confidential material. With regards to confidential *inter partes* material, a “legitimate forensic purpose” for disclosure in subsequent proceedings will be shown if the applicant can demonstrate that the material is relevant and essential.<sup>25</sup> The relevance of such material may be determined “by showing the existence of a nexus between the applicant’s case and the original case from which the material is sought.”<sup>26</sup> To establish a nexus, the applicant is required to demonstrate a “geographical, temporal or otherwise material overlap” between the two proceedings.<sup>27</sup> The essential nature of the material, in turn, means that the party seeking it must demonstrate “a good chance that access to this evidence will materially assist the applicant in

<sup>22</sup> *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-AR73, Decision on Appeal from Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002, p. 2.

<sup>23</sup> *Blaškić* Decision, para. 14; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Material, 16 November 2005 (“First *Blagojević and Jokić* Decision”), para. 11; *See also Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Defence Motions for Access to All Confidential Material in *Prosecutor v. Blaškić* and *Prosecutor v. Kordić and Čerkez*, 7 December 2005 (“*Delić* Order”), p. 6.

<sup>24</sup> *Brđanin* Decision, para. 11; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Materials in the *Blagojević and Jokić* Case, 18 January 2006, para. 8; *Prosecutor v. Blaškić*, Case No. IT-95-14-R, Decision on Defence Motion on behalf of Rasim Delić Seeking Access to All Confidential Material in the *Blaškić* Case, 1 June 2006, p. 12.

<sup>25</sup> *See Blaškić* Decision, para. 14; First *Blagojević and Jokić* Decision, para. 11; *See also Delić* Order, p. 6; *Đorđević* Decision, para. 7.

<sup>26</sup> *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder and Balaj Motion for Access to Materials in the *Limaj* Case, 31 October 2006, para. 7; *Đorđević* Decision, para. 7.

<sup>27</sup> *See Blaškić* Decision, para. 15; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Motion by Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez* Case, 23 January 2003, p. 4; *Đorđević* Decision, para. 7.

preparing his case.”<sup>28</sup> The standard does not require the applicant to go so far as to establish that the material sought would likely be admissible evidence.<sup>29</sup>

10. Material can be deemed confidential by virtue of the fact that it has been provided by a state or person subject to restrictions on its use pursuant to Rule 70.<sup>30</sup> In such cases, where an applicant has satisfied the legal standard for access to *inter partes* material, the entity that has provided the material must still be consulted before the material can be given to another accused before the Tribunal, and the material must remain confidential.<sup>31</sup> This is the case even where the Rule 70 provider(s) consented to the use of the material in one or more prior cases.<sup>32</sup>

11. Pursuant to Rule 75 (F)(i) of the Rules, protective measures that have been ordered for a witness or victim in any proceedings before the Tribunal shall continue to have effect *mutatis mutandis* in any other proceedings, unless and until they are rescinded, varied, or augmented.

### III. Discussion

#### **A. Nature of Access Requested: prospective basis**

12. This Trial Chamber has already dealt with two “ongoing request(s)” for access to confidential materials in the *Karadžić* case, namely that of the accused Momčilo Perišić and Jovica Stanišić.<sup>33</sup> As stated in those decisions, it has been the preferred approach of Trial Chambers to limit access to materials to the date of the request (or decision upon that request).<sup>34</sup> However, as a matter of judicial economy, and based upon the particular circumstances of the proceedings in the *Popović* case, including the fact that the case against the Applicants is at an advanced stage, as well as the proceedings in the present case, the Chamber considers that the Applicants’ access to the material in the *Karadžić* case should be accomplished in as streamlined a manner as possible and that access on an ongoing basis is warranted.

<sup>28</sup> First *Blagojević and Jokić* Decision, para. 11; *Đorđević* Decision, para. 7; *Blaškić* Decision, para. 14.

<sup>29</sup> *Đorđević* Decision, para. 7.

<sup>30</sup> Material produced pursuant to an order under Rule 54 *bis* may also require similar procedures before it can be disclosed to an accused in another case.

<sup>31</sup> See *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Prosecution’s Preliminary Response and Motion for Clarification Regarding the Appeal Chamber’s Decision Dated 4 December 2002 on Paško Lubičić’s Motion for Access to Confidential Material, Transcripts and Exhibits in the *Blaškić* Case, 8 March 2004, paras. 11 – 12; *Đorđević* Decision, para. 15; *Delić* Order, p. 6.

<sup>32</sup> *Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Jadranko Prlić’s Motion for Access to All Confidential Material in *Prosecutor v. Rasim Delić*, 2 December 2005, p. 4.

<sup>33</sup> Decision on Momčilo Perišić’s Motion for Access to Confidential Materials in the *Radovan Karadžić* Case (“Perišić Decision”), 14 October 2008. See Decision on Jovica Stanišić’s Motion for Access to Confidential Materials in the *Karadžić* Case (“Stanišić Decision”), 20 May 2009.

<sup>34</sup> Perišić Decision, para. 18. See Stanišić Decision, para. 11.

13. The parties in the *Karadžić* case should bear in mind that confidential material from this case will be disclosed to the Applicants on an ongoing basis and should remain vigilant about protecting information they think should not be so disclosed. If they consider that specific materials should not be made available to the Applicants, they should register its objection with the Chamber.

#### **B. Access to confidential *inter partes* material**

14. Applying the legal standards to the Motion, the Chamber notes that Miletić and Popović both request only certain confidential *inter partes* material from the *Karadžić* case, it being clearly described in the Motion. In the Chamber's view, Pandurević and Nikolić do the same, despite using some language suggesting otherwise. Thus, the Chamber is satisfied that the material sought by the Applicants has been sufficiently identified.

15. With respect to the second requirement, the Trial Chamber finds that there is a clear geographical and temporal overlap between the *Popović* and *Karadžić* cases, as well as a significant factual nexus between the two. According to the *Popović* indictment, the Applicants are all alleged to have been members, together with the Accused, of a joint criminal enterprise the aim of which was to forcibly transfer or deport the Bosnian Muslim population from Srebrenica and Žepa and murder the able-bodied men from Srebrenica between 11 July 1995 and 1 November 1995.<sup>35</sup> Similarly, the Third Amended Indictment in the *Karadžić* case alleges that the Accused participated in a joint criminal enterprise between 11 July 1995 and 1 November 1995 with the goal of "eliminat[ing] the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men from Srebrenica."<sup>36</sup> The Chamber also recalls that the Prosecution does not object to the Applicants being given access to the confidential *inter partes* materials which are specified in the Motion.

16. For all those reasons, the Chamber is satisfied that the Applicants have shown a "legitimate forensic purpose" for disclosure of confidential *inter partes* material from the *Karadžić* case. The material sought by them is relevant and essential, and there is a good chance that access to this evidence will materially assist them in preparing their cases both now and during the potential appeal case, if any.

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<sup>35</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Indictment, 4 August 2006, paras. 26, 96 – 97; *See Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Karadžić's Motion for Access to Confidential Material in the *Popović et al.* Case ("Decision on Karadžić's Motion for Access in the *Popović* Case"), 30 July 2009, para. 13.

<sup>36</sup> Third Amended Indictment, 27 February 2009, para. 20. *See* Decision on Karadžić's Motion for Access in the *Popović* Case, para. 13.

### C. Access to confidential Rule 70 material

17. As noted by the Prosecution, some of the confidential *inter partes* material requested by the Applicants might fall into the category of Rule 70 material. In respect of such material, if any, the Chamber will order that the Prosecution and/or the Accused seek the consent of the Rule 70 provider(s) before it can be disclosed to the Applicants.

### D. Delayed disclosure material

18. The Chamber recalls that for certain witnesses in this case the Chamber has granted or continued the protective measure of delayed disclosure. This essentially turns the material relating to those witnesses' identities and evidence into *ex parte* material, until such time as it is disclosed to the Accused in accordance with the time frames set out in the decisions granting or continuing delayed disclosure. Given that the Applicants seek only *inter partes* material from the present case, it follows that they can only be given the material relating to delayed disclosure witnesses when it is disclosed to the Accused.

19. The Prosecution does not object to this course of action, which is understandable given the late stage of the Applicants' trial and the fact that the Prosecution will most likely not be calling those witnesses to give evidence in the Applicants' case. Accordingly, the Chamber agrees that the Applicants should be given access to material relating to delayed disclosure witnesses, but considers that this material should be disclosed to them only once it has been disclosed to the Accused.<sup>37</sup>

## IV. Disposition

20. Accordingly, for all the reasons outlined above, the Trial Chamber, pursuant to Rules 54, 70, and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby **GRANTS** the Motion, the Popović Joinder, the Nikolić Joinder, and the Pandurević Joinder, in part, and:

- a. **ORDERS** the parties, on an ongoing basis, to identify for the Registry the following *inter partes* material in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, for disclosure to the Applicants:

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<sup>37</sup> In instances where an applicant from one case sought access to confidential information from another case, including access to materials related to delayed disclosure witnesses who were to give evidence in the applicant's case, the Appeals Chamber held that such materials should continue to be subject to the same protective measure in the applicant's case. See *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, p. 6; *Brđanin* Decision, para. 17.



- (i) closed and private session testimony transcripts which are not subject to Rule 70 or delayed disclosure and which are produced in the pre-trial and trial proceedings, in so far as they are concerned with (1) events in Srebrenica in 1995 (2) relationships and contacts of the Accused in 1995 and any document in connection with the preparation, compilation, distribution and execution of Directive No. 7; and (3) the convoy and passage of humanitarian aid;
  - (ii) confidential and under seal trial exhibits, which are not subject to Rule 70 or delayed disclosure, and which are concerned with items (1), (2) and (3) specified in (i) above;
  - (iii) all confidential filings in the pre-trial and trial proceedings, which are not subject to rule 70 or delayed disclosure and which are concerned with items (1), (2) and (3) as specified in (i) above.
- b. **ORDERS** the parties to determine, without delay and before disclosure, which of the material outlined in (a) above is subject to the provisions of Rule 70, and immediately thereafter to contact the providers of such material to seek their consent for its disclosure to the Applicants, and, where Rule 70 providers consent to such disclosure, to notify the Registry on a periodic basis of such consent.
- c. **ORDERS** the Prosecution to determine, without delay and before disclosure, which of the material outlined in (a) above is subject to the protective measure of delayed disclosure, and immediately thereafter to notify the Registry and the Applicants on a periodic basis of when such material can be disclosed to the Accused, and thus available for disclosure to the Applicants.
- d. **REQUESTS** the Registry to withhold disclosure of any material subject to Rule 70 until such time as the parties inform the Registry that consent for disclosure has been obtained, even in respect of those providers who have consented to the use of the relevant material in a prior case. Where consent cannot be obtained from provider(s) of any material subject to Rule 70, the material shall not be disclosed.
- e. **REQUESTS** the Registry to withhold disclosure to the Applicants of any material subject to delayed disclosure until such time as the Prosecution informs the Registry that the material has been disclosed to the Accused.

- f. **REQUESTS** the Registry to disclose to the Applicants:
- (i) the confidential and *inter partes* and non-Rule 70 material once it has been identified by the parties in accordance with paragraph (a);
  - (ii) the Rule 70 material once the parties have identified such material and informed the Registry of the consent of the Rule 70 provider(s) in accordance with paragraphs (a), (b), and (c); and
  - (iii) the material subject to delayed disclosure, once the Prosecution has informed the Registry that such material has been disclosed to the Accused.
- g. **ORDERS** that no confidential and *ex parte* material from the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T be disclosed to the Applicants.
- h. **ORDERS** that the Applicants, as well as their respective Defence Teams, and any employees who have been instructed or authorised by the Applicants, shall not disclose to the public, or to any third party, any confidential or non-public material disclosed from the *Karadžić* case, including witness identities, whereabouts, statements, or transcripts, except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Applicants' cases. If any confidential or non-public material is disclosed to the public when directly and specifically necessary, any person to whom disclosure is made shall be informed that he or she is forbidden to copy, reproduce, or publicise confidential or non-public information or to disclose it to any person, and that he or she must return the material to the Applicants as soon as it is no longer needed for the preparation of their respective cases.
- i. For the purpose of this Decision, "the public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Tribunal, the staff of the Registry, the Prosecutor and his representatives, the Applicants and their respective counsels, and any employees who have been instructed or authorised by their counsels to have access to the confidential material. "The public" also includes, without limitation, the Applicants' families, friends, and associates; accused and defence

counsel in other cases or proceedings before the Tribunal; the media; and journalists.

j. **ORDERS** that nothing in this Decision shall affect the disclosure obligations of the Prosecution under Rules 66 and 68; and **RECALLS** that it is the responsibility of the Prosecution to determine whether there is additional material related to the *Karadžić* case that should be disclosed to the Applicants but which is not covered by the terms of this Decision.

k. **RECALLS** that, pursuant to Rule 75(F)(i), any protective measures that have been ordered in respect of a witness in the *Karadžić* case shall continue to have effect in the case against the Applicants, except in so far as they have been varied in accordance with this Decision.

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



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Judge O-Gon Kwon  
Presiding

Dated this thirty-first day of March 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]