



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-04-83-PT/IT-01-47-T
Date: 27 April 2005
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 27 April 2005

PROSECUTOR

v.

RASIM DELIĆ

**DECISION ON JOINT DEFENCE (HADŽIHASANOVIĆ AND KUBURA) MOTION FOR
ACCESS TO ALL CONFIDENTIAL INDICTMENT SUPPORTING MATERIALS IN THE
DELIĆ CASE**

The Office of the Prosecutor

Mr. Daryl A. Mundis

Defence for Rasim Delić

Mr. Stéphane Bourgon, Duty/ Temporary Counsel

Defence for Enver Hadžihasanović and Amir Kubura

**Ms. Edina Režidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura**

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 (“International Tribunal”),

BEING SEISED of a “Joint Defence Motion for Access to All Confidential Indictment Supporting Materials in the Delić Case” filed on 4 April 2005 (“Motion”) by the defence of Enver Hadžihasanović and Amir Kubura (“Applicants”), in which the Applicants seek disclosure of all confidential indictment supporting materials in the case of *Prosecutor v. Delić*, “subject to the necessary and reasonable protective measures that have to be imposed to ensure the protection of victims and witnesses”,¹

NOTING the “Prosecution Response to Joint Defence Motion for Access to All Confidential Indictment Supporting Materials in the Delić Case” filed on 7 April 2005 (“Response”) by the Office of the Prosecutor (“Prosecution”), in which the Prosecution states that it does not object to the Motion “in light of the overlap between these two cases”,²

NOTING that the Trial Chamber ordered, *inter alia*, (i) the Prosecution to disclose the supporting materials to Rasim Delić (“Accused”); and (ii) the Accused to respond to the Motion no later than 26 April 2005,³

NOTING “Rasim Delić’s Response to Joint Defence Motion for Access to All Confidential Indictment Supporting Materials” filed on 26 April 2005 (“Delić Response”), in which the Accused “confirms that he does not object to the Applicants being granted access to all confidential Indictment Supporting Material in this case”,⁴

NOTING that the Motion submits that “there is substantial material, geographical, and temporal overlap between the two indictments”,⁵

CONSIDERING that a “party is always entitled to seek material from any source to assist in the preparation of his case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown”,⁶

¹ Motion, para. 11.

² Response, para. 2.

³ Confidential “Omnibus Decision on (i) Joint Defence (Hadžihasanović and Kubura) Motion for Access to All Confidential Indictment Supporting Materials in the Delić Case; (ii) Rasim Delić’s Notification Concerning Disclosure of the Indictment Supporting Material; and (iii) Urgent Motion Seeking the Trial Chamber to Assign Stéphane Bourgon as Counsel to Rasim Delić Until the Assignment of a Permanent Counsel and Request for an Extension of Time to File Preliminary Motions Pursuant to Rule 72 (A)”, *Prosecutor v. Delić*, Case No. IT-04-83-PT, 22 April 2005.

⁴ Delić Response, para. 5..

⁵ Motion, para. 8.

CONSIDERING that there is material overlap between the case against the Accused and the case against the Applicants in that (i) the charges against the Applicants and the Accused include crimes that allegedly occurred in Maline/Bikoši in June 1993; (ii) these crimes are alleged to have been perpetrated by subordinates of the Applicants; and (iii) the Accused is charged with command responsibility, as a superior of the Applicants, for these crimes,⁷

CONSIDERING that the Applicants have (i) identified the material sought by its general nature and (ii) shown a legitimate forensic purpose for such access,

CONSIDERING that the supporting materials remain under seal,⁸ and pseudonyms are used for three victims of rape who are mentioned in the Indictment against the Accused,

PURSUANT TO Articles 20, 21, and 22 of the Statute of the International Tribunal and Rules 53, 54, 69 and 75 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY GRANTS the Motion and **ORDERS** as follows:

(1) Prosecution shall immediately disclose the confidential indictment supporting materials of the Accused to the Applicants;

(2) Applicants shall not disclose to the public any confidential or non-public material disclosed pursuant to this Decision, including, *inter alia*, the names, identifying information and whereabouts of any witness, 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 case of the Applicants; and

(3) If a member of the defence teams of the Applicants withdraws from the case, all confidential or non-public material disclosed pursuant to this Decision in his or her possession shall immediately be returned to the Lead Defence counsel or Registry of the International Tribunal (“Registry”).

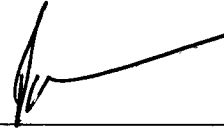
For the purpose of this decision, “the public” means and includes, all persons, governments, organizations, entities, clients, associations and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor and her representatives, and the Applicants and their defence teams. “The public” also includes, without limitation, families, friends, and

⁶“Decision on Motion by Hadžihasanović, Alagić, and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić and Čerkez Case”, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, 23 Jan. 2003, p. 3 (footnote omitted).

⁷ According to the indictments, Amir Kubura was the 7th Muslim Mountain Brigade of the 3rd Corps of the Army of Bosnia and Herzegovina (“ABiH”); Enver Hadžihasanović was the Commander of the 3rd Corps of the ABiH; and Rasim Delić was the Commander of the Main Staff of the ABiH.

associates of the Applicants; accused and defence counsel in other cases or proceedings before the International Tribunal; the media; and journalists.

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



Patrick Robinson
Presiding

Dated this twenty-seventh day of April 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ “Order to Vacate in Part the Order For Non-Disclosure”, *Prosecutor v. Delić*, Case No. IT-04-83-I, 23 Feb. 2005.