



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-04-74-PT

Date: 31 October 2005

Original: English

BEFORE THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orié

Registrar: Mr. Hans Holthuis

Order of: 31 October 2005

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

**DECISION ON RASIM DELIĆ'S MOTION FOR ACCESS TO
CONFIDENTIAL SUPPORTING MATERIAL**

The Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas for the accused Mr. Jadranko Prlić
Mr Tomislav Kužmanović for the accused Mr. Bruno Stojić
Mr. Slobodan Praljak representing himself in person
Ms Vesna Alaburić for the accused Mr. Milivoj Petković
Mr Tomislav Jonjić for the accused Mr. Valentin Ćorić
Mr Fahrudin Ibrišimović for the accused Mr. Berislav Pušić

Applicants' Counsel:

Ms. Vasvija Vidović

TRIAL CHAMBER I (“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”);

NOTING the “Defence Motion on Behalf of Rasim Delić Seeking Access to All Confidential Material in the Prlić Case” (“Defence Motion”) filed on 13 October 2005, whereby the Defence for the Accused Rasim Delić (“Applicant”) requests the Trial Chamber to issue an order for access to the supporting material in the present case;

NOTING the Prosecution’s “Response to the Defence Motion of Rasim Delić Seeking Access to all Confidential Material in the Prlić Case” (“Prosecution Response”) filed on 25 October 2005 whereby the Prosecution does not object to the Applicant gaining access to the material sought, on the conditions that (1) the Trial Chamber apply *mutatis mutandis* all protective measures that apply to the *Prlić et al* supporting material to the Applicant and his Defence team in this case, (2) that the provider of any Rule 70 material give permission that the said material be disclosed to the Applicant, and (3) that the Applicant does not receive any Prosecution filings that were made on a confidential and *ex parte* basis in the *Prlic et al* case;

CONSIDERING that the Applicant requests access to the confidential material supporting the indictment in the case the *Prosecutor v. Prlić et al.* on the grounds, *inter alia*, that: (1) a substantial material, geographical and temporal overlap exists between the *Delić* and the *Prlić* cases,¹ (2) that at the time of the alleged events, the Applicant and the Accused in the *Prlić* case all occupied leadership positions, the Applicant being the member of the Supreme Command Staff of the Army of the Republic of Croatia (the ARBiH), and the Accused in the *Prlić* case holding positions within the Croatian Republic of Herceg-Bosna Defence Council (HVO),² (3) at the time of the events alleged in both Indictments, an armed conflict was occurring involving all Accused in the *Prlić* case and the Applicant, AND (4) the Applicant’s case deals with his responsibility as a Commander pursuant to Article 7(3) of the Statute, and therefore any information relating to the command structure of the HVO, as well as the policy of the HVO on the whole territory of Bosnia and Herzegovina would be of great importance and relevance for the preparation of the Applicant’s case;³

CONSIDERING that disclosure of confidential supporting material not falling under Rules 66 and 68 is limited by the fact that a party may not engage in a fishing expedition but must establish that

¹ Motion para 11.

² Motion para 13.

³ Motion para 16.

(1) the material sought has been identified or described by its general nature as clearly as possible, and (2) a legitimate forensic purpose for such access has been shown;⁴

CONSIDERING that the relevance of the material sought by a party may be determined by showing the existence of a nexus between the Applicant's case and the case from which such material is sought;⁵ that it is sufficient if the material sought is likely to be of assistance to the applicants' case or, at least, that there is a good chance that it may assist the defence of the applicants;⁶

FINDING that the nature of the material sought has been described by its general nature as clearly as it is possible considering the lack of knowledge of the seeking party about the form and nature of the material sought and that a legitimate forensic purpose for access to material providing information has been shown;

PURSUANT TO Articles 20, 21 and 22 of the Statute and Rules 54 and 75 of the Rules;

HEREBY GRANTS the Motion and **VARIES** the order for non-disclosure on the supporting material in the present case to the extent that access to that material is granted to the accused Rasim Delić and his defence only subject to the following orders and protective measures:

1. For the purposes of this disposition:
 - (a) the "Prosecution" means the Prosecutor of the Tribunal and her staff;
 - (b) the "Applicant" means the accused *Rasim Delić*, his respective defence counsel and immediate legal assistants and staff, and others specifically assigned by the Tribunal to his defence team and identified in a list to be maintained by the lead counsel and filed with the Chamber seized of the Applicant's case *ex parte* and under seal within ten days of the entry of this order. Any and all additions and deletions to the initial list in respect of any of the above categories of persons who are necessarily identified and properly involved in the preparation of the defence shall be notified to that Chamber in similar fashion within seven days of such additions or deletions;

⁴ *Prosecutor v. Enver Hadžihašanić 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. 3.

⁵ *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.

⁶ See *Prosecutor v. Enver Hadžihašanić 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. 3.

- (c) the “public” means all persons, governments, organisations, entities, clients, associations and groups, other than the judges of the Tribunal and the staff of the Registry (assigned to either Chambers or the Registry), the Prosecution and the Applicant, as defined above. The “public” specifically includes, without limitation, family, friends and associates of the Applicant, the accused in other cases or proceedings before the Tribunal and defence counsel in other cases or proceedings before the Tribunal;
- (d) the “media” means all video, audio and print media personnel, including journalists, authors, television and radio personnel, their agents and representatives;

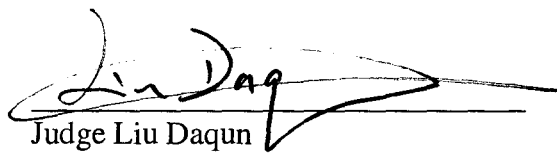
2. Since the Prosecution is familiar with the material it shall redact it as requested; and it shall provide it to the Registry for disclosure to the Applicant;
3. Material which fall under Rule 70 of the Rules shall not be disclosed unless prior authorization asked as soon as practicable is obtained by the Prosecution from the relevant authorities; the Prosecution shall be responsible for informing the Registry as appropriate;
4. The Applicants shall not disclose to the media any confidential or non-public materials provided by the Prosecution;
5. Save as is directly and specifically necessary for the preparation and presentation of his case and only on leave being first granted by the Chamber, the Applicant shall not disclose to the public, to the media or to the family members and associates of the Applicant:
 - (a) the names, identifying information or whereabouts of any witness or potential witness identified by the Prosecution, copies of witness statements, the contents thereof, or any other information which would enable them to be identified and would breach the confidentiality of the protective measures already in place, unless absolutely necessary for the preparation of the Applicant’s case and always with the leave of the Chamber; or
 - (b) any evidence (including documentary, audio-visual, physical or other evidence) or any written statement of a witness or the contents, in whole or in part, of any non-public evidence, statement or prior testimony disclosed to the Applicant;
6. If the Applicant finds it directly and specifically necessary to disclose such information for the preparation and presentation of his case and having obtained leave from the Chamber to do so, it shall inform each person among the public to whom non-public material or information (such as witness statements, transcripts of testimonies, exhibits, prior testimony,

videos, or the contents thereof), is shown or disclosed, that he or she is forbidden to copy, reproduce or publicise such non-public material or information, and is not to show or disclose it to any other person. If provided with the original or any copy or duplicate of such material, such person shall return it to the Applicant when such material is no longer necessary for the preparation and presentation of their defence;

7. If a member of the defence team withdraws from the case, all material in his or her possession shall be returned to the lead defence counsel for the relevant defence team;
8. The Applicant shall have no contact with the witnesses concerned with the material to be disclosed, unless otherwise decided by the Chamber under the conditions set by the latter;
9. Subject to the protective measures and orders prescribed above, the protective measures that are already in place in relation to the material disclosed should remain in place.

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

Dated this 31st day of October 2005,
At The Hague
The Netherlands


Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]