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26 January 2006

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**UNITED  
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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-03-68-T  
Date: 26 January 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Hans Henrik Brydenscholt  
Judge Albin Eser

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 January 2006

**PROSECUTOR**

v.

**NASER ORIĆ**

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**DECISION ON "REQUETE DU GENERAL MILETIĆ AUX  
FINS D'ACCES A DES INFORMATIONS CONFIDENTIELLES  
DANS L'AFFAIRE ORIĆ"**

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**The Office of the Prosecutor:**

Mr. Jan Wubben  
Ms. Patricia Sellers Viseur  
Mr. Gramsci di Fazio  
Ms. JoAnne Richardson

**Counsel for the Accused:**

Ms. Vasvija Vidović  
Mr. John Jones

**Counsel for the Accused Miletic:**

Ms. Natacha Fauveau Ivanović

**TRIAL CHAMBER II** (“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 SEISED OF** the “Requête du Général Miletić aux Fins d’Accès à des Informations Confidentielles dans l’Affaire Orić” filed by Defence Counsel for Radivoje Miletić in the Case Number IT-05-88-PT (“Miletić Defence”) on 11 January 2005 (“Miletić Motion”), in which the Miletić Defence seeks to have access to all confidential material (including the transcripts of all the closed sessions, relevant exhibits and confidential decisions) in the *Orić* case (“Requested Material”);

**NOTING** the “Prosecution’s Response to Defence Motion on Behalf of General Miletić Seeking Access to All Confidential Material in the *Orić* Case” filed by the Office of the Prosecutor (“Prosecution”) in the *Orić* case on 25 January 2006 (“Prosecution Response”), in which the Prosecution submits that the Miletić Defence has failed to demonstrate that i) a sufficient nexus exists between the case against Naser Orić and the case against Radivoje Miletić; and that ii) the disclosure of the identity of the witnesses for whom protective measures were granted in the *Orić* case would assist in the preparation of its case;

**NOTING** that, during the hearing of 26 January 2006, the Defence for Naser Orić (“Orić Defence”) informed the Trial Chamber that it would not respond to the Miletić Motion;

**NOTING** Rule 75(G)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) which provides that “[a] party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply [...] (i) to any Chamber, however constituted, remaining seised of the first proceedings”;

**RECALLING** that access to confidential material may be granted whenever the Chamber is satisfied that the party seeking access has established that such material may be of material assistance to his case;<sup>1</sup>

**RECALLING** further 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 cases from which such material

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<sup>1</sup> *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Motion by Mario Čerkez for access to confidential supporting material, 10 October 2001, para. 10; *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 ad hearing transcripts filed in the case of *Prosecutor v. Tihomir Blaškić*, 16 May 2002, para. 14.

is sought, for instance, if the cases stem from events alleged to have occurred in the same geographical area and at the same time;<sup>2</sup>

**CONSIDERING** that there is no reason for the Trial Chamber to depart from the reasoning it adopted in its “Decision on the Defence Motion on Behalf of Drago Nikolić Seeking Access to all Confidential Material in the Orić Case” of 8 November 2005;

**CONSIDERING** therefore that the the Miletić Defence has failed to establish a sufficient nexus between the case against Radivoje Miletić and the case against Naser Orić in view of the fact that, while the two cases stem from events alleged to have occurred in the same geographical area and share a general background which is relevant to a large number of cases before the Tribunal, they have temporal and material scopes which do not overlap;

**CONSIDERING** further that the Miletić Defence has failed to substantiate how the disclosure of the identity of the witnesses for whom protective measures were granted in the *Orić* case would assist in the preparation of the case for Radivoje Miletić;

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rules 54 and 75(G)(i) of the Rules

**HEREBY DENIES** the Miletić Motion.

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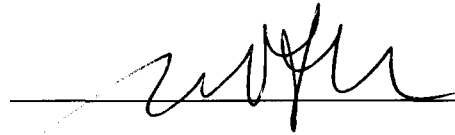
<sup>2</sup> *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Motion by Momir Talić for access to confidential documents, 3 July 2000, para. 8; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on appellants Dario Kordić and Mario Čerkez’s request for assistance of the Appeals Chamber in gaining access to appellate briefs and non-public post-appeal pleadings ad hearing transcripts filed in the *Prosecutor v. Tihomir Blaškić*, 16 May 2002, para. 15.

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

Dated this twenty-sixth day of January 2006,

At The Hague

The Netherlands

A handwritten signature in black ink, appearing to read 'Carmel Agius', written over a horizontal line.

**Carmel Agius**

**Presiding Judge**

**[Seal of the Tribunal]**