



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-04-84-PT
Date: 8 May 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Hans Henrik Brydensholt
Judge Albin Eser

Registrar: Mr. Hans Holthuis

Decision of: 8 May 2006

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

**DECISION ON BOŠKOSKI MOTION
FOR ACCESS TO CONFIDENTIAL MATERIAL**

The Office of the Prosecutor:

Mr. Gilles Dutertre
Mr. Philippe Vallieres-Roland
Mr. Anees Ahmed

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson
Mr. Rodney Dixon
Mr. Michael O'Reilly

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith

Counsel for Lahi Brahimaj:

Mr. Richard Harvey

Mr. Ljube Boškosi

Counsel for Johan Tarčulovski:

Mr. Antonio Apostolski

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 “Defence Motion for Access to All Confidential Material in *Prosecutor v. Haradinaj et al.* Case” (“Motion”), filed on 6 April 2006 by counsel for Ljube Boškoski (“Boškoski Defence”), in which the Boškoski Defence seeks access to all confidential material in the *Haradinaj* case, including confidential and *ex parte* submissions, motions and decisions, which relates to the ethnic Albanian National Liberation Army (“NLA”);¹

NOTING the “Prosecution’s Response to the ‘Defence Motion for Access to All Confidential Material in *Prosecutor v. Haradinaj et al.* Case’ Filed by Counsel for Ljube Boškoski, Accused in Case of Prosecutor v. Boškoski (Case No. IT-04-82-PT)” (“Response”), filed on 20 April 2006 by the Office of the Prosecutor (“Prosecution”), in which the Prosecution submits that the Motion should be denied on the ground that the Boškoski Defence has failed to establish a material nexus between the *Haradinaj* and the *Boškoski* cases.² Should the Trial Chamber nonetheless grant the Motion, the Prosecution submits, the Boškoski Defence should neither be provided with *ex parte* filings from the *Haradinaj* case, nor with material subject to protective measures or the application of Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);

NOTING the “Defence Motion Seeking Leave to Reply to Prosecution’s Response to the ‘Defence Motion for Access to All Confidential Material in *Prosecutor v. Haradinaj et al.* Case’” (“Reply”), filed confidentially by the Boškoski Defence on 25 April 2006, in which the Boškoski Defence maintains that both cases significantly overlap;³

NOTING that counsel for Ramush Haradinaj, Idriz Balaj and Lahi Brahimaaj have not filed responses to the Motion;

RECALLING that the Appeals Chamber has held that an accused seeking access to confidential material in another case shall receive that material subject to appropriate protective measures if it

¹ The Amended Indictment of 2 November 2005 against Ljube Boškoski alleges that, at the relevant time, an armed conflict existed between the security forces of the Former Yugoslav Republic of Macedonia and the NLA (para. 52).

² The Prosecution submits that there is no temporal, geographical or other material overlap between the two cases. Furthermore, according to the Prosecution, it is unclear whether the Boškoski Defence seeks access to material pertaining to the NLA, the “Kosovo Liberation Army” (“KLA”), or both (Response, para. 12).

³ The Defence submits that the NLA and the KLA share the same acronym in Albanian, that both organisations are structured identically and inter-acted significantly (Reply, paras 8, 9).

“is likely to assist the applicant’s case materially, or [...] there is a good chance that it would”, and that this standard is met by showing a factual nexus between the two cases;⁴

CONSIDERING that there is no temporal and geographical overlap between the *Boškoski* case, which concerns events that are alleged to have taken place in 2001 on the territory of the former Yugoslav Republic of Macedonia, and the *Haradinaj* case, underlying which are incidents alleged to have taken place in 1998 in Western Kosovo;

CONSIDERING that, while both cases may have in common allegations of an armed conflict involving ethnic Albanians, the factual nexus between the two cases is too weak to make it likely that the Boškoski Defence would be assisted by access to confidential material from the *Haradinaj* case;

FINDING that the Boškoski Defence has failed to establish a material nexus between the case against the their client and the case against Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj;

FOR THE FOREGOING REASONS

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

HEREBY DENIES the Motion.

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

Dated this eighth day of May 2006

At The Hague

The Netherlands



Carmel Agius
Presiding Judge

[Seal of the Tribunal]

⁴ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005, paras 6, 8; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Galić Case, para. 3.