



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-03-69-PT
Date: 12 May 2006
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 12 May 2006

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

ORDER ON MOTIONS FOR ACCESS TO CONFIDENTIAL MATERIAL

Office of the Prosecutor

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Ms. Natacha Faveau Ivanović for Radivoje Miletić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović
for Ljubomir Borovčanin
Mr. Dragan Krgović for Milan Gvero
Mr. Zoran Živanović for Vujadin Popović
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić

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”);

BEING SEIZED, pursuant to Rule 75(G)(i) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), of “General Miletić’s Motion for Access to Confidential Materials in the Stanišić and Simatović Case”, filed on 21 March 2006 (“Motion”),¹ in which the Defence of Radivoje Miletić (“Applicant Miletić”) requests access to three categories of *inter partes* confidential material relating to events at and around Srebrenica in the case of *Prosecutor v. Stanišić and Simatović*:

- a. confidential materials included in the annexes to the initial, First Amended, and Second Amended Indictments (respectively, “*Stanišić and Simatović* Initial Indictment”,² “*Stanišić and Simatović* First Amended Indictment”,³ and “*Stanišić and Simatović* Second Amended Indictment”⁴) against Jovica Stanišić and Franko Simatović (respectively, “Accused Stanišić” and “Accused Simatović”; collectively, “the Accused”);
- b. materials disclosed by the Prosecution pursuant to Rules 66 and 68 of the Rules; and
- c. statements of and interviews with the Accused, if any exist;⁵

NOTING that the Motion specifies that it seeks access only to material within the three specified categories that conforms to certain geographic and temporal specifications, namely the material relating to the events at Srebrenica in 1995 that are described in counts 55 to 65 of the *Stanišić and Simatović* Second Amended Indictment;⁶

NOTING (1) the “Borovcanin Defence Notification on Joining the ‘Requête du général Miletić aux fins d’accès à des informations confidentielles dans l’affaire Stanisic et Simatovic’”, filed on 22 March 2006; (2) the “Gvero Defence Notification on Joining the ‘Requête du général Miletić aux fins d’accès à des informations confidentielles dans l’affaire Stanisic et Simatovic’”, filed on 23 March 2006; (3) the “Popović Defence Notification on Joining the ‘Requête du général Miletić aux fins d’accès à des informations confidentiell[e]s dans l’affaire Stanišić et Simatović’ Seeking the Access to All Confidential Material in the Stanišić and Simatović Case”,

¹ The Motion was originally filed in French. An English translation was filed on 31 March 2006.

² *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Indictment, 1 May 2003 (“*Stanišić and Simatović* Initial Indictment”).

³ *Stanišić and Simatović*, Amended Indictment, 9 December 2003 (“*Stanišić and Simatović* First Amended Indictment”).

⁴ *Stanišić and Simatović*, Second Amended Indictment, 20 December 2005 (“*Stanišić and Simatović* Second Amended Indictment”), paras. 55–65.

⁵ Motion, paras. 2, 9.

⁶ *Ibid.*, paras. 1, 4–5.

filed on 24 March 2006; (4) “Vinko Pandurević’s Defence Notification on Joining the ‘Requête du général Miletić aux fins d’accès à des informations confidentielles dans l’affaire Stanišić et Simatović””, filed on 27 March 2006; and (5) the “Motion on Behalf of Drago Nikolić Joining in to the ‘Requête du général Miletić aux fins d’accès à des informations confidentielles dans l’affaire Stani[š]ić et Simatović””, filed on 27 March 2006, in which the accused Ljubomir Borovčanin (“Applicant Borovčanin”), Milan Gvero (“Applicant Gvero”), Vujadin Popović (“Applicant Popović”), Vinko Pandurević (“Applicant Pandurević”), and Drago Nikolić (“Applicant Nikolić”) inform the Trial Chamber that they join the Motion filed by Applicant Miletić (collectively, “the Applicants”);

NOTING that the Trial Chamber has not received submissions from Ljubiša Beara or Milorad Trbić, and that Zdravko Tolimir has not yet been rendered into the custody of the Tribunal;

NOTING the “Defence Response to Radivoje Miletić Defence Request for Access to Confidential Information from Prosecutor v. Stanišić, Simatović Case”, filed on 30 March 2006 by the Defence of Franko Simatović (“Simatović Defence Response”), in which the Accused Simatović contends that

- a. the *Stanišić and Simatović* Second Amended Indictment, on the one hand, and the indictment against the Applicants and their co-accused, on the other, “do not include identical accusations and ... do not relate to the same events, with the exception [of allegations pertaining] to the execution of six Muslim men and boys near the town of Trnovo” in July 1995;⁷
- b. as of the date on which the Simatović Defence Response was filed, the Trial Chamber had not yet decided on the motions by the Accused alleging defects in the form of the *Stanišić and Simatović* Second Amended Indictment, and as such “it [was] premature to discuss” whether the Srebrenica-related allegations contained in this Indictment were sufficiently similar to those in the indictment against the Applicants and their co-accused to warrant the granting of access to the confidential material sought;⁸ and
- c. the Applicants have not provided sufficient legal justification to be granted access to the suspect interview given by the Accused Simatović;⁹

and agrees only to the granting of access to materials disclosed by the Prosecution pursuant to Rule 66 in relation to the Trnovo murders;¹⁰

NOTING the “Defence Response to Requests by General Miletić and Others Regarding Access to Confidential Information”, filed on 31 March 2006 by the Defence of Jovica Stanišić

⁷ Simatović Defence Response, paras. 14, 21.

⁸ *Ibid.*, para. 17.

⁹ *Ibid.*, para. 21, p. 6.

¹⁰ *Ibid.*, para. 21, p. 6.

(“Stanišić Defence Response”), in which the Accused Stanišić opposes the Motion in its entirety¹¹ because

- a. in respect of all three categories of requested confidential material, the Applicants have failed to meet the applicable legal test to be granted access;¹²
- b. as the charges relating to the events in Srebrenica were only inserted in the *Stanišić and Simatović* Second Amended Indictment, the supporting materials accompanying the *Stanišić and Simatović* Initial Indictment and the *Stanišić and Simatović* First Amended Indictment are irrelevant to the Applicants’ request;¹³
- c. as of the date on which the Stanišić Defence Response was filed, the Trial Chamber had not yet decided on the motions by the Accused alleging defects in the form of the *Stanišić and Simatović* Second Amended Indictment;¹⁴ and
- d. none of the information contained in the suspect interview given by the Accused Stanišić relates to the events in Srebrenica, and the Applicants have therefore not provided sufficient legal justification for access to this interview;¹⁵

NOTING the “Application for Leave to Reply and General Miletić’s Consolidated Reply to the Responses of the Defence”, filed on 6 April 2006 (“Reply”), in which the Applicant Miletić rejects the arguments set forth in the Simatović Defence Response and the Stanišić Defence Response, and reiterates the following:

- a. while the charges against him, on the one hand, and those against the Accused, on the other, are not identical, paragraphs 55 to 65 of the *Stanišić and Simatović* Second Amended Indictment refer to the same Srebrenica-related events—temporally, geographically, and materially—as those alleged in the indictment in his case;¹⁶ and
- b. the events described in paragraphs 55 to 65 of the *Stanišić and Simatović* Second Amended Indictment are not limited to the events in Trnovo;¹⁷

NOTING (1) the “Borovcanin Defence Notification on Joining the ‘Demande d’autorisation de réplique et la réplique consolidée du général Miletic aux réponses de la Défense’”, filed on 7 April 2006; (2) the “Defence Notification on Behalf of Drago Nikolić Joining the ‘Demande d’autorisation de réplique et la réplique consolidée du général Miletic aux réponses de la Défense’”, filed on 13 April 2006; and (3) “Vinko Pandurević’s Defence Notification on Joining the ‘Demande d’autorisation de réplique et la réplique consolidée du général Miletic aux réponses de la Défense’”, filed on 13 April 2006, in which the Applicant Borovčanin, the

¹¹ Stanišić Defence Response, para. 12.

¹² *Ibid.*, paras. 4–5.

¹³ *Ibid.*, para. 7.

¹⁴ *Ibid.*, para. 8.

¹⁵ *Ibid.*, para. 11.

¹⁶ Reply, paras. 6–7, 9, 12.

¹⁷ *Ibid.*, para. 6.

Applicant Nikolić, and the Applicant Pandurević inform the Trial Chamber that they join the Reply (collectively, “Notifications Joining in the Reply”);

NOTING the “Prosecution’s Response to Defence Motions in *Prosecutor v. Popović (and Others)* for Access to Confidential Materials Relating to the Scorpions Srebrenica Video”, filed on 12 April 2006 (“Prosecution Response”), in which the Prosecution responds that:

- a. it is “unable to determine without extensive and time-consuming searches of its records” whether the supporting materials accompanying the *Stanišić and Simatović* Initial Indictment contain material relevant to the Motion, but it is willing to place all this material in a folder on the electronic disclosure suite (“EDS”) to which the Applicants and their co-accused may have access;¹⁸
- b. no supporting material exists for the *Stanišić and Simatović* First Amended Indictment;¹⁹
- c. it does not object to disclosure of the supporting material accompanying the *Stanišić and Simatović* Second Amended Indictment, as long as all existing protective measures remain in place;²⁰
- d. it is willing to place all the material disclosed to the Accused pursuant to Rules 66 and 68 of the Rules in a folder on the EDS to which the Applicants and their co-accused may have access;²¹ and
- e. it is willing to place the Srebrenica-related statements of, and interviews with, the Accused that are in its possession in a folder on the EDS to which the Applicants and their co-accused may have access, but only if ordered to do so by the Trial Chamber;²²

NOTING that the Prosecution Response does not mention the possibility that some of the requested material may have been provided to the Prosecution from outside sources pursuant to Rule 70 of the Rules;

NOTING the “Deputy Registrar’s Submission pursuant to Rule 33(B) on Granting Access to Confidential Material”, filed on 5 May 2006, in which the Deputy Registrar makes the following submissions:

- a. if any of the confidential material to which access is granted requires redaction of sensitive information, such redactions should be considered only as a last resort and should be performed by the parties;²³
- b. if anything less than full access to all confidential material is granted, since the Registry “does not have the necessary substantive knowledge of a case to enable it to make decisions as to the content of the material to be disclosed”, the material to which access

¹⁸ Prosecution Response, paras. 9–10, 22.

¹⁹ *Ibid.*, para. 12.

²⁰ *Ibid.*, para. 15.

²¹ *Ibid.*, paras. 17–18, 24.

²² *Ibid.*, paras. 20–21, 25.

²³ *Stanišić and Simatović*, Deputy Registrar’s Submission pursuant to Rule 33(B) on Granting Access to Confidential Material, 5 May 2006, paras. 6–7.

is granted should be compiled by the parties and “physically conveyed to the Registrar for delivery to the party seeking access”;²⁴

- c. to avoid the potential for confusion, the Trial Chamber should make separate mention of *ex parte* material;²⁵
- d. “[t]he Registry is not in a position to determine what kind of material falls under Rule 66 and Rule 68 of the Rules”; “only the Prosecution can identify and supply [such] material”; and “the Registrar does not normally have physical possession of Rule 66 and Rule 68 material”, given that such material “is disclosed directly by the Prosecution to the Defence, without any involvement of the Registry”;²⁶ and
- e. “the Registry does not possess statements or interviews of the accused, unless they have [been] introduced into a case as exhibits or filed in the case”, and “[i]f such statements or interviews exist, they would be in the possession of the Prosecution”;²⁷

NOTING that the Prosecution’s Response was not filed within the time limit specified in the Rules;²⁸ that, notwithstanding the title of the Reply, the Applicant Miletić makes no request pursuant to Rule 126 *bis* of the Rules for leave to file the Reply; and that there is similarly no such request in the Notifications Joining in the Reply;

NOTING that the current indictment against the Applicants and their co-accused charges one or more of them with the following crimes allegedly committed during and after the attack by the Bosnian Serb Army (“VRS”) on Srebrenica in July 1995: genocide,²⁹ conspiracy to commit genocide,³⁰ extermination,³¹ murder,³² persecution,³³ inhumane acts (forcible transfer),³⁴ and deportation as crimes against humanity,³⁵ and murder as a violation of the laws or customs of war;³⁶

²⁴ *Ibid.*, paras. 8–9.

²⁵ *Ibid.*, para. 10.

²⁶ *Ibid.*, paras. 12–13.

²⁷ *Ibid.*, para. 14.

²⁸ See Rule 126 *bis* of the Rules (requiring a response to be filed within 14 days); Rule 3(F) of the Rules (tolling the running of a time limit under the Rules if a “document is filed in a language *other than one of the working languages* of the Tribunal”) (emphasis added); Rule 3(A) of the Rules (providing that both English and French are the working languages of the Tribunal).

²⁹ See *Prosecutor v. Tolimir, Miletić, Gvero, Pandurević, Beara, Popović, Nikolić, Trbić, and Borovčanin*, Case No. IT-05-88-PT, Consolidated Amended Indictment, 28 June 2005 (“*Popović et al.* Consolidated Amended Indictment”), paras. 26–33. See also *Popović et al.*, Order on the Consolidated Amended Indictment, 31 October 2005, p. 3 (allowing the Prosecution to amend the indictments against the Applicants and their co-accused, and ordering that the consolidated amended indictment filed on 28 June 2005 shall be the operative indictment in the joined case of *Popović et al.*).

³⁰ *Popović et al.* Consolidated Amended Indictment, *supra* note 29, paras. 34–44.

³¹ *Ibid.*, para. 45.

³² *Ibid.*, paras. 46–47.

³³ *Ibid.*, para. 48.

³⁴ *Ibid.*, paras. 49–83.

³⁵ *Ibid.*, para. 84.

³⁶ *Ibid.*, paras. 46–47.

NOTING that the *Stanišić and Simatović* Second Amended Indictment charges the Accused with (1) persecution as a crime against humanity,³⁷ (2) murder as a crime against humanity,³⁸ and (3) murder as a violation of the laws or customs of war³⁹ in respect of the alleged execution of six Bosnian Muslim prisoners in the course of the July 1995 VRS attack on Srebrenica (“Srebrenica charges”);⁴⁰

NOTING that the *Stanišić and Simatović* Initial Indictment and the *Stanišić and Simatović* First Amended Indictment did not contain the Srebrenica charges, and that these charges were only included in the *Stanišić and Simatović* Second Amended Indictment;⁴¹

NOTING that the Applicant Miletić specifies that he seeks only the material that falls within the three categories specified above,⁴² and that this material concerns only the events in and around Srebrenica from July to November 1995, as described in paragraphs 55 to 65 of the *Stanišić and Simatović* Second Amended Indictment;⁴³

NOTING that the Motion specifically states that the request does not extend to *ex parte* material;⁴⁴

CONSIDERING that a party is always entitled to seek material from any source to assist in the preparation of its case if the item sought has been identified or described by its general nature, and if a legitimate forensic purpose for such access has been shown;⁴⁵

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

³⁷ *Stanišić and Simatović* Second Amended Indictment, *supra* note 4, para. 22 (containing Count 1).

³⁸ *Ibid.*, para. 67 (containing Count 2).

³⁹ *Ibid.* (containing Count 3).

⁴⁰ *Ibid.*, paras. 55–65 (containing the Srebrenica-related factual allegations); *Stanišić and Simatović*, T. 548 (16 March 2006) (Prosecution, at further appearance on Srebrenica-related charges, declaring that “the new charges from the Srebrenica video[—that is, those contained in paragraphs 55 to 65 of the *Stanišić and Simatović* Second Amended Indictment—]relate to Counts 1, persecution; Counts 2 and 3[,] which are both murder[;] but not Counts 4 and 5”).

⁴¹ See *Stanišić and Simatović* Initial Indictment, *supra* note 2; *Stanišić and Simatović* First Amended Indictment, *supra* note 3; *Stanišić and Simatović*, Decision on Prosecution Motion for Leave to Amend the Amended Indictment, 16 December 2005, p. 5 (granting the Prosecution’s motion to amend the *Stanišić and Simatović* First Amended Indictment to include the Srebrenica-related allegations).

⁴² See *infra*, text accompanying notes 2–5.

⁴³ Motion, paras. 1, 4–7.

⁴⁴ *Ibid.*, para. 2 n. 1.

⁴⁵ *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* [Case], 16 May 2002 (“*Blaškić* Appeal Decision”), para. 14.

material is sought;⁴⁶ that access to material may therefore be granted if the party seeking it demonstrates a general “geographical, temporal or otherwise material overlap” between the two proceedings;⁴⁷ and that the respective charges in the two cases need not, contrary to the contentions of the Accused Simatović,⁴⁸ be identical;

CONSIDERING that access to *inter partes* confidential material from another case is granted if the party seeking it can demonstrate “a good chance that access to the material[] will materially assist the applicant in preparing his case”, and that the party seeking the material need not establish that it would likely be admissible evidence or applicable legal precedent in the party’s own case;⁴⁹

CONSIDERING that, if the material sought is covered by Rule 70, the party that obtained such material in the earlier proceedings must seek the consent of the Rule 70 provider or providers before disclosing such material,⁵⁰ even in respect of a Rule 70 provider who consented to the use of the relevant material in a prior case;⁵¹

CONSIDERING that the general nature of the material sought has been adequately identified and described in light of the Applicants’ lack of knowledge about the form and nature of such material;

CONSIDERING that the similarities in the facts giving rise to the charges against the Applicants, on the one hand, and the Accused, on the other, with regard to events in and around Srebrenica from July to November 1995 constitute a sufficient geographical and temporal overlap between the two cases, and that the Applicants have demonstrated a good chance that access to the requested material will materially assist them in preparing their respective defences;

⁴⁶ *Ibid.*, para. 15.

⁴⁷ See *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 & Čerkez* Case, 23 January 2003, p. 4.

⁴⁸ See *supra* text accompanying note 7.

⁴⁹ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005, para. 11. See also *Blaškić* Appeal Decision, *supra* note 45, para. 15.

⁵⁰ See *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on “Prosecution’s Preliminary Response and Motion for Clarification Regarding Decision on Joint Motion of Hadžihasanović, Alagić and Kubura of 24 January 2003”, 23 May 2003, paras. 11–12. Accord *Blaškić* Appeal Decision, *supra* note 45, para. 26.

⁵¹ *Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Jadranko Prlić’s Motion for Access to All Confidential Materials in *Prosecutor v. Rasim Delić*, 2 December 2005, p. 4. Accord *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, p. 7.

CONSIDERING that, subsequent to the filing of the Simatović Defence Response and the Stanišić Defence Response, the Trial Chamber issued its decision on the Accused's respective motions alleging defects in the form of the *Stanišić and Simatović* Second Amended Indictment;⁵² that this decision ordered the Prosecution to implement two relatively minor changes by 15 May 2006;⁵³ and that these changes, if properly implemented, will not affect the nexus between the Applicants' case and that of the Accused;

CONSIDERING, therefore, that the Applicants have demonstrated the existence of a nexus between their case and *Stanišić and Simatović*, and that they have consequently established a legitimate forensic purpose justifying access to certain *inter partes* confidential material from *Stanišić and Simatović* as described in paragraphs (2) and (3) of the Disposition, below;

CONSIDERING that the Motion only requests access to material that falls within three categories of documents, namely: supporting material accompanying the *Stanišić and Simatović* Initial Indictment, the *Stanišić and Simatović* First Amended Indictment, and the *Stanišić and Simatović* Second Amended Indictment; materials disclosed by the Prosecution to the Accused pursuant to Rules 66 and 68; and statements of and interviews with the Accused, if any exist;⁵⁴

CONSIDERING that "prior statements obtained by the Prosecutor from the accused" are included in the category of material that is to be disclosed by the Prosecution pursuant to Rule 66(A)(i) of the Rules, and that the material sought in the third category listed in the Motion therefore falls within the second category;

CONSIDERING that, because the Registry is the formal keeper of the record, it is the material in its possession and under its control to which the Applicants seek access, and to which access may be granted by this Chamber pursuant to Rule 75(G);

CONSIDERING that material disclosed by the Prosecution to the Accused pursuant to Rules 66 and 68 of the Rules—including statements obtained by the Prosecutor from the accused—does not form part of the record of *Stanišić and Simatović* to which the Registry may provide access;

⁵² *Stanišić and Simatović*, Decision on Defence Motions Regarding Defects in the Form of the Second Amended Indictment, 12 April 2006. *See also supra* text accompanying notes 8, 14 (describing the respective arguments of the Accused that the ongoing litigation in relation to the form of the *Stanišić and Simatović* Second Amended Indictment made it premature to discuss whether the Srebrenica-related allegations contained in this Indictment were sufficiently similar to those in the indictment against the Applicants and their co-accused to warrant the granting of access to the confidential material sought).

⁵³ *Ibid.*, p. 10.

⁵⁴ Motion, paras. 2, 9.

CONSIDERING, however, that the Prosecution has an obligation, pursuant to Rule 66(B) of the Rules, to permit the inspection of items in its custody “which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonging to the accused”; that the Prosecution has an obligation to disclose mitigating or exculpatory material pursuant to Rule 68 of the Rules; and that Trial Chamber has the authority under Rules 54 and 68(ii) of the Rules to order such inspection and disclosure, either *proprio motu* or upon request;

CONSIDERING that the Prosecution has volunteered to place all material disclosed to the Accused pursuant to Rules 66 and 68—including, upon order of the Chamber, interviews of the Accused containing information on the events at Srebrenica—in a folder on the EDS to which the Applicants and their co-accused may have access;⁵⁵ and that the Trial Chamber regards this course of action as sensible and appropriate notwithstanding the objections of the Accused;⁵⁶

CONSIDERING that, although the terms of the Motion specifically request an order directed to the Registry,⁵⁷ the Motion may reasonably be construed as also requesting any necessary orders to the Prosecution for the disclosure of confidential items in its possession but not in the possession of the Registry;

CONSIDERING that nothing in this Order affects the disclosure obligations of the Prosecution under Rules 66 and 68; and that it is the responsibility of the Prosecution to determine whether there is additional material related to the *Stanišić and Simatović* proceedings that should be disclosed to the Applicants, but which is not covered by the terms of this Order;

CONSIDERING that some of the material to which access is sought contains information that may identify protected witnesses, and that the Applicants have undertaken “to preserve the confidential nature of the documents and to respect the protective measures ordered in the *Stanišić and Simatović* case”,⁵⁸ as well as to comply with “any further protective measures which may be ordered by the Trial Chamber”,⁵⁹

CONSIDERING that, pursuant to Rule 75(F)(i) of the Rules, any protective measures that have been ordered in respect of a witness in *Stanišić and Simatović* continue to have effect in the case

⁵⁵ Prosecution Response, paras. 17, 21.

⁵⁶ See *supra* text accompanying notes 15, 17.

⁵⁷ Motion, para. 9(b).

⁵⁸ *Ibid.*, para. 8.

⁵⁹ *Ibid.*

against the Applicants and their co-accused, except as they have been varied in accordance with this or a future order of the Trial Chamber;

CONSIDERING that the Trial Chamber is of the view that the existing protective measures in *Stanišić and Simatović*, as well as the Applicants' acknowledgement of their obligation to comply with those measures, are adequate to maintain the confidentiality of the material, and that it is therefore unnecessary to order any redactions to that material;

CONSIDERING that, although the Registry is the formal keeper of the record and a neutral non-party to the proceedings, this Chamber's past decisions acknowledge that it is often the parties that are in the best position to identify certain categories of material with efficiency and particularity;⁶⁰

PURSUANT TO Rules 54, 66(B), 68(ii), 75(G), and 126 *bis* of the Rules,

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


- (1) The Prosecution is granted leave to file the late Prosecution Response; the Applicant Miletić is granted leave to file the Reply; and the Applicant Borovčanin, the Applicant Nikolić, and the Applicant Pandurević are granted leave to file the Notifications Joining in the Reply. The parties are reminded of their obligation to comply with the Rules.
- (2) In consultation with the Prosecution, the Registry shall identify and give the Applicants access to all confidential and *inter partes* supporting material that pertains to the Srebrenica-related charges contained in paragraphs 55 to 65 and Counts 1 to 3 of the *Stanišić and Simatović* Second Amended Indictment.
- (3) The Prosecution shall place all the Srebrenica-related material disclosed to the Accused pursuant to Rules 66 and 68 of the Rules, including the Srebrenica-related statements of, and interviews with, the Accused that are in its possession, in a folder on the EDS to which the Applicants and their co-accused may have access.
- (4) If any of the material identified in paragraph (2) above was acquired pursuant to Rule 70 of the Rules, the Registry shall give the Applicants access to it only if and when the consent of the providers has been obtained by the Prosecution. The Registry shall contact the

⁶⁰ See, e.g., *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, Order on Sredoje Lukić's Motion for Access to Confidential Information in the *Milošević* Case, 9 May 2006, p. 5; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Order on Applicant's Motion Seeking Access to Confidential Material in the *Milošević* Case, 22 February 2006, p. 5.

Prosecution to determine which part of this material, if any, is covered by Rule 70, and shall withhold disclosure of such material until such time as the Prosecution informs the Registry that consent for disclosure has been obtained. The Prosecution shall determine as expeditiously as possible whether any of the material in question falls under Rule 70, and shall contact the providers of such material without delay to seek their consent for disclosure, even in respect of those providers who have consented to the use of the relevant material in *Stanišić and Simatović*. The Prosecution shall be responsible for informing the Registry as appropriate.

- (5) The Registry shall give the Applicants access to the non-Rule 70 material identified in paragraph (2) above without awaiting the Prosecution's response in respect of permission to disclose Rule 70 material.
- (6) The Applicants and their counsel shall not contact any witness whose identity is subject to protective measures in *Stanišić and Simatović*.
- (7) The Applicants and their counsel shall not disclose to the public any confidential or non-public material disclosed to it from *Stanišić and Simatović*, except to the limited extent that disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Applicants' respective defences. If any confidential or non-public material is disclosed to the public, any person to whom disclosure is made shall be informed that he is forbidden to copy, reproduce, or publicise confidential or non-public information or to disclose it to any person, and that he must return the material to the Applicant in question as soon as it is no longer needed for the preparation of that Applicant's case. For the purpose of this Order, "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 her representatives, and the Applicants, their counsel, and any employees who have been instructed or authorised by the Applicants' respective counsel to have access to the confidential material. "The public" also includes, without limitation, families, friends, and associates of the Applicants; accused and defence counsel in other cases or proceedings before the Tribunal; the media; and journalists.
- (8) The Motion is denied in all other respects.

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



Patrick Robinson
Presiding

Dated this twelfth day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]