

UNITED
NATIONS

IT-03-82-97
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08 June 2006

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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-03-66-A
Date: 8 June 2006
Original: English

918.

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Andréia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 8 June 2006

PROSECUTOR

v.

**Fatmir LIMAJ
Haradin BALA
Isak MUSLIU**

**DECISION ON LJUBE BOŠKOSKI'S MOTION FOR ACCESS
TO CONFIDENTIAL MATERIALS**

The Office of the Prosecutor:

Mr. Dan Saxon
Mr. Bill Smith
Mr. Anees Ahmed

Counsel for Mr. Ljube Boškosi

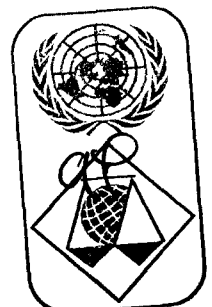
Ms. Edina Rešidović

Counsel for Mr. Johan Tarčulovski

Mr. Antonio Apostolski

Counsel for the Defence:

Mr. Michael Mansfield QC and Mr. Karim A.A. Khan for Mr. Fatmir Limaj
Mr. Gregor Guy-Smith and Mr. Richard Harvey for Mr. Haradin Bala
Mr. Michael Topolski QC and Mr. Steven Powles for Mr. Isak Musliu



1. The Appeals 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”) is seized of the “Defence Motion for Access to All Confidential Transcripts and Documents in *Prosecutor v. Limaj et al. Case*” (“Motion for Access”), filed on 6 April 2006 by counsel for Ljube Boškoski (“Applicant”). On 13 April 2006, the “Prosecution’s Response to the ‘Defence Motion for Access to All Confidential Transcripts and Documents in *Prosecutor v. Limaj et al. Case*’ Filed by Counsel for Ljube Boškoski, Accused in the Case of *Prosecutor v. Boškoski (Case No. IT-04-82-PT)*” (“Response”) was filed.¹

2. The Applicant seeks access to “all confidential transcripts and documents” in the case of *Prosecutor v. Limaj et al.* (“*Limaj case*”).² The Appeals Chamber has held that an accused seeking *inter partes* confidential material in another case may receive that material if it “is likely to assist the applicant’s case materially, or [...] there is a good chance that it would”.³ This standard can be met “by showing a factual nexus between the two cases”.⁴ Such a nexus exists, for example, “if the cases stem from events alleged to have occurred in the same geographical area at the same time”.⁵

3. The Applicant asserts that the events in his case “are geographically and temporally related” to the events in the *Limaj case*.⁶ He explains that the charges against him stem from events that occurred in the village of Ljuboten in the Former Yugoslav Republic of Macedonia (“FYROM”).⁷ Drawing attention to Ljuboten’s proximity to Kosovo – where the events at issue in the *Limaj case* occurred – the Applicant points out that the village lies 12 kilometers from the border between the FYROM and Serbia and Montenegro.⁸ Attempting to show overlap in the subject matter of the two

¹ The Applicant has not filed a reply to the Response. The accused in *Prosecutor v. Limaj et al.*, Case Nos. IT-03-66 and IT-03-66-A, filed no submissions in response to the Motion for Access.

² Motion for Access, p. 1. The Applicant never specifies the number(s) of the proceeding or proceedings referred to in the Motion for Access as the “*Limaj case*”. The Appeals Chamber presumes that the Applicant refers to case nos. IT-03-66 and IT-03-66-A. The Appeals Chamber, in referring to the *Limaj case*, likewise refers to the proceedings with case nos. IT-03-66 and IT-03-66-A.

³ *Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Galić Case, 16 February 2006 (“*Galić Decision*”), para. 3 (quoting *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case, 18 January 2006 (“*Blagojević and Jokić Decision*”), para. 4).

⁴ *Blagojević and Jokić Decision*, para. 4.

⁵ *Ibid.* While the introductory paragraph of the Motion for Access indicates that the Applicant is requesting “all confidential transcripts and documents” from the *Limaj case*, other paragraphs could be read to suggest that the Applicant seeks only materials containing information about the Albanian National Liberation Army. See Motion for Access, paras 8, 10. As will be discussed below, the Motion for Access offers no reason to believe that “there is a good chance that” any confidential material from the *Limaj case* “is likely to assist the [A]pplicant’s case materially”. Therefore, the Applicant’s inconsistency with regard to the scope of his request proves irrelevant.

⁶ Motion for Access, paras 2-3.

⁷ *Ibid.*, para. 4.

⁸ *Ibid.*, paras 3-4.

cases, the Applicant notes that, according to the Amended Indictment⁹ in his case, “simmering political tensions” between ethnic groups in the FRYOM “were exacerbated by the war in Kosovo”.¹⁰ This indictment, the Applicant also observes, “alleges that the armed conflict in the FRYOM ... spread out from the areas bordering Kosovo.”¹¹ Relatedly, the Applicant asserts that “[b]oth cases implicate the activities of the” Albanian National Liberation Army (“NLA”).¹²

4. The Prosecution responds that there is no “geographical, temporal or other[] material overlap” between the two cases that would justify granting the Applicant access to confidential material in the *Limaj* case.¹³ First, the Prosecution notes that the accused in the *Limaj* case were charged with crimes allegedly committed between May and August 1998, whereas the Applicant has been charged with crimes allegedly committed in August 2001.¹⁴ Second, the Prosecution asserts that “as the events central to the ... indictments” in the two different cases “occurred in different countries, there is no geographical overlap between the two cases.”¹⁵ The Prosecution adds that the “geographical proximity of Ljuboten to the Kosovo border” is “immaterial”, as the charges against the Applicant are “not temporally and spatially broad based” but instead arise from a discrete set of events occurring around one village over one weekend.¹⁶ In the *Boškoski* case, the Prosecution also states, it has “neither charge[d] nor alleged any crimes which were committed by persons from Kosovo or by any persons with any links with that territory.”¹⁷ Finally, the Prosecution asserts that “Boškoski is ... wrong to suggest that both the cases (i.e. *Limaj* and *Boškoski* Cases) ‘implicate the activities of the NLA.’”¹⁸ “While the” Kosovo Liberation Army (“KLA”) “operated in Kosovo,” the Prosecution explains, “the NLA operated in Macedonia.”¹⁹ Indeed, the Prosecution points out, “the NLA came into existence” after the events at issue in the *Limaj* case.²⁰ Moreover, the Prosecution asserts, it has not, in the *Boškoski* case, charged “any member of the Macedonian security forces for any ... actions against the NLA or vice versa.”²¹

⁹ *Prosecutor v. Ljube Boškoski & Johan Tarčulovski*, Case No. IT-04-82-PT (“*Boškoski* case”), Amended Indictment, 2 November 2005. On 4 April 2006, two days before the Motion for Access was filed, the Prosecution filed its “Second Amended Indictment” in the *Boškoski* Case. There are only a handful of minor differences between the Amended Indictment and the Second Amended Indictment. None are relevant to this decision. The Motion for Access makes no reference to the Second Amended Indictment.

¹⁰ Motion for Access, para. 6 (quoting Amended Indictment, para. 51). Paragraph 51 of the Second Amended Indictment repeats verbatim paragraph 51 of the Amended Indictment.

¹¹ *Ibid.*, para. 5 (citing Amended Indictment, para. 54). Paragraph 54 of the Second Amended Indictment repeats verbatim paragraph 54 of the Amended Indictment.

¹² *Ibid.*, para. 7.

¹³ Response, para. 10 (emphasis omitted).

¹⁴ *Ibid.*, para. 11.

¹⁵ *Ibid.*, para. 12.

¹⁶ *Ibid.*, para. 13.

¹⁷ *Ibid.*, para. 13.

¹⁸ *Ibid.*, para. 17 (quoting Motion for Access, para. 7).

¹⁹ *Ibid.*

²⁰ *Ibid.*, para. 16.

²¹ *Ibid.*, para. 15

5. The Appeals Chamber concludes that the Applicant has not shown a legitimate factual nexus between his case and the *Limaj* case. The accused in the *Limaj* case were charged with alleged crimes occurring over three years before, and in a different country than, the alleged crimes with which the Applicant has been charged.²² While the charges against the Applicant arise out of events that happened in and around a village near Kosovo,²³ neither this fact, nor the Prosecution's allegations that "simmering political tensions" between ethnic groups in the FRYOM "were exacerbated by the war in Kosovo" and that armed conflict in the FRYOM "spread out from the areas bordering Kosovo" demonstrate more than an extremely remote and abstract relationship between the events at issue in the two cases. Moreover, the Applicant offers no support for his assertion that "[b]oth cases implicate the activities of the NLA", and the Appeals Chamber cannot itself detect any basis for this assertion. Neither the indictment on which the accused in the *Limaj* case were tried nor the 312 page Trial Judgement in that case mentions the NLA. Even the Second Amended Indictment in the Applicant's case mentions the NLA only in a final section entitled "Additional Facts".

6. As the Applicant has not demonstrated a nexus between his case and the *Limaj* case, and as he offers no reason why, notwithstanding the absence of a nexus, there might be "a good chance" that confidential materials from the *Limaj* case would assist his case materially, the Appeals Chamber cannot grant him access to *inter partes* confidential materials from the *Limaj* case. Likewise, the Appeals Chamber cannot grant the Applicant access to *ex parte* confidential materials from the *Limaj* case. As the Applicant has failed to meet the standard for obtaining access to *inter partes* confidential materials, he has necessarily failed to demonstrate that he should be granted access to *ex parte* confidential materials, which are of a higher degree of confidentiality.

7. For the foregoing reasons, the Motion for Access is **DENIED**.

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

Dated this 8th day of June 2006,
At The Hague,
The Netherlands.

[Seal of the Tribunal]



Judge Fausto Pocar
Presiding



²² Compare Second Amended Indictment (charging crimes allegedly occurring in the FYROM no earlier than 10 August 2001), with *Prosecutor v. Limaj et al.*, Case No. It-03-66, Second Amended Indictment, 6 November 2003 (charging crimes allegedly occurring in Kosovo "through to on or about 26 July 1998").

²³ See Second Amended Indictment.