



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: 31 October 2006
Original: English

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: 31 October 2006

THE PROSECUTOR

v.

**FATMIR LIMAJ
HARADIN BALAJ
ISAK MUSLIU**

**DECISION ON HARADINAJ MOTION FOR ACCESS, BALAJ
MOTION FOR JOINDER, AND BALAJ MOTION FOR ACCESS
TO CONFIDENTIAL MATERIALS IN THE LIMAJ CASE**

The Office of the Prosecutor:

Ms. Helen Brady

Counsel for the Defence:

For Fatmir Limaj:

Mr. Michael Mansfield Q.C.
Mr. Karim Khan

For Haradin Bala:

Mr. Gregor Guy-Smith
Mr. Richard Harvey

For Isak Musliu:

Mr. Michael Topolski Q.C.
Mr. Steven Powles

Counsel for Applicant Ramush Haradinaj:

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

Counsel for Applicant Idriz Balaj:

Mr. Gregor Guy-Smith

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 (“Appeals Chamber” and “International Tribunal”, respectively) is seized of appeals against the Judgement of Trial Chamber II in this case, rendered on 30 November 2005. The Appeals Chamber is also presently seized of the “Confidential Motion on Behalf of Ramush Haradinaj for Access to Confidential Materials in the *Limaj Case*” (“Haradinaj Motion for Access”), filed on 3 August 2006; the “Confidential Motion by Idriz Balaj Requesting Leave to Join the Motion by Ramush Haradinaj ‘Seeking Access to Confidential Materials in the *Limaj et al. Case*’, Filed on 3 August 2006 and Confidential Reply by Idriz Balaj to Prosecution’s Response to the Motion by Ramush Haradinaj Seeking Access to Confidential Materials in the *Limaj et al. Case* Filed on 16 August 2006” (“Joinder and Reply Motion”), filed on 21 August 2006; and the “Motion by Idriz Balaj for Access to Confidential Materials in the *Limaj Case*” (“Balaj Motion for Access”), filed on 12 September 2006.

I. BACKGROUND

2. In his motion, Haradinaj seeks access to “all confidential transcripts of all closed and private sessions from the trial proceedings, all confidential filings made during the trial, and all confidential exhibits from the trial” in *Prosecutor v. Limaj et al.* (“*Limaj Case*”) for use in preparing for his own trial.¹ On 16 August 2006, the Prosecution filed a response (“Prosecution Response to Haradinaj Motion for Access”),² requesting that the Appeals Chamber reject the motion except in granting Haradinaj access to confidential material relating to *Limaj* Witness L-95, who is named by the Prosecution as expected to testify in *Prosecutor v. Haradinaj et al.* (“*Haradinaj Case*”).³ On 21 August 2006, Haradinaj filed a “Confidential Application For Leave to Reply and Reply on Behalf of Ramush Haradinaj to Prosecution Response to Defence Motion For Access to Confidential Materials in the *Limaj Case*” (“Haradinaj Reply”). On the same day, the Defence of Idriz Balaj, a co-accused of Haradinaj, filed the confidential Joinder and Reply Motion requesting leave to join the Haradinaj Motion for Access and to reply to the Prosecution Response to Haradinaj Motion for Access. On 31 August, the Prosecution filed a response to the Joinder and Reply Motion (“Prosecution Response to Joinder and Reply Motion”) requesting the Appeals Chamber to reject the motion in its entirety.⁴ Balaj did not file a reply to this response. On 12 September 2006 the

¹ Haradinaj Motion for Access, para. 2.

² Prosecution Response to Confidential Defence Motion on Behalf of Ramush Haradinaj for Access to Confidential Material in the *Limaj Case*, 16 August 2006.

³ *Ibid.*, para. 6.

⁴ Prosecution Response to Confidential Defence Motion by Idriz Balaj Requesting Leave to Join the Motion of Ramush Haradinaj for Access to Confidential Material in the *Limaj Case*, and Requesting Leave to Reply to the Prosecution’s

Defence for Balaj filed the Balaj Motion for Access. In this motion, Balaj requests “access to [the] confidential materials in the *Limaj Case*” but not to “any of the confidential crime-based materials relating exclusively to the individual crimes allegedly committed in the Llapushnik Prison Camp”.⁵ On 26 September 2006, the Prosecution filed a response to the Balaj Motion for Access.⁶ On 3 October, the Defence for Balaj filed a “Reply by Idriz Balaj to ‘Prosecution Response to Motion by Idriz Balaj for Access to Confidential Materials in the *Limaj Case*’, filed 26 September 2006” (“Balaj Reply”).

II. DISCUSSION

A. Procedural Issues

3. In his Joinder and Reply Motion, Balaj requests leave to join the Haradinaj Motion for Access, filed 18 days earlier. Although the Prosecution rightly observes that a joinder motion by a co-accused should be filed in a timely manner,⁷ it is in the interest of judicial economy to allow joinder in this particular case. Both Haradinaj and Balaj (collectively “Applicants”) seek access to the same confidential material, with the exception that Balaj does not seek access to “any of the confidential crime-based materials relating exclusively to the individual crimes allegedly committed in the Llapushnik Prison Camp”.⁸ The Appeals Chamber accordingly grants the Joinder and Reply Motion. The Appeals Chamber dismisses the Balaj Motion for Access as moot, since this motion was filed as a precautionary measure “in the event that the Appeals Chamber denies the Joinder Motion.”⁹

4. The Haradinaj Motion for Access and the Joinder and Reply Motion concern a request for access to information in the *Limaj Case*, which is a case “where an appeal has been filed from a judgement”.¹⁰ Thus, time limits regarding motions are set by paragraphs 12-16 of the Practice

Response to the Motion by Ramush Haradinaj Seeking Access to Confidential Material in the *Limaj Case*, 31 August 2006.

⁵ Motion by Idriz Balaj for Access to Confidential Materials in the *Limaj Case*, 12 September 2006, paras 16-17.

⁶ Prosecution Response to Defence Motion by Idriz Balaj Requesting Access to Confidential Material in the *Limaj Case*, 26 September 2006 (“Prosecution Response to Balaj Motion for Access”).

⁷ Prosecution Response to Joinder and Reply Motion, paras 6-7.

⁸ See Joinder and Reply Motion, para. 11.

⁹ Balaj Motion for Access, para. 5.

¹⁰ Practice Direction on Procedure for the Filing of Written Submissions in the Appeal Proceedings Before the International Tribunal (IT/155/Rev.3), 16 September 2005, para. 12.

Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (“Practice Direction”).¹¹

5. Pursuant to paragraph 13 of the Practice Direction, “the opposition party shall file a response within ten days of the filing of the motion”. Thus, the Prosecution Response to the Haradinaj Motion for Access was untimely, as it was filed on 16 August, thirteen days after the Haradinaj Motion for Access. Although no justification for the delay has been offered, the Appeals Chamber notes the persistent confusion with regards to the applicable rules of procedure in appeals proceedings – even though a prior ruling of the Appeals Chamber should have cleared the matter up.¹² Although confusion does not constitute good cause for late filings,¹³ the Appeals Chamber considers that the Response fulfils the purpose of clarifying the Prosecution’s position in that the Prosecution agrees that Haradinaj should have access to all confidential material relating to Witness L-95.¹⁴ It is thus in the interest of justice to take the Prosecution Response to the Haradinaj Motion for Access into consideration.

6. Further, pursuant to paragraph 14 of the Practice Direction, “the moving party may file a reply within four days of the filing of the response”. Accordingly, “it is not necessary for a party who has filed a motion before [the Appeals Chamber] to seek leave to file a reply to a response to that motion”.¹⁵ Also, pursuant to paragraph 16 of the Practice Direction, “should the last day of a time prescribed fall upon a non-working day of the International Tribunal it shall be considered as falling on the first working day thereafter.” Consequently, the Defence Reply to the Haradinaj Motion for Access has been filed timely and thus is validly before the Appeals Chamber.¹⁶ In light of the Appeals Chamber’s decision to grant the Joinder and Reply Motion, there is no need to consider whether to accept the untimely response and untimely reply to the Balaj Motion of Access.

B. Applicable Legal Standard on Access to Confidential Material

7. “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

¹¹ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005 (“*Blagojević and Jokić*, Decision on Access”), para. 3 (noting that the Practice Direction governs in place of the default time limits set by Rule 126bis of the Rules of Procedure and Evidence (“Rules”).

¹² *See ibid.*

¹³ *Ibid.*, para. 4.

¹⁴ Prosecution Response to Haradinaj Motion for Access, para. 6.

¹⁵ *Blagojević and Jokić*, Decision on Access, para. 3.

¹⁶ The reply was filed on Monday, 21 August.

is a good chance that it would”.¹⁷ The applicant can meet this standard by “showing the existence of a nexus between the applicant's case and the case from which such material is sought.”¹⁸ Such a factual nexus may be established, for example, “if the cases stem from events alleged to have occurred in the same geographic area and at the same time,”¹⁹ although this may neither always be necessary nor always sufficient.²⁰ Rather, a case-specific analysis is required in each instance.

C. Submissions of the Parties

8. The Applicants attempt to establish the relevance of the material sought by showing that both their own indictment and the *Limaj* indictment allege an attack on civilians and a state of armed conflict during the same time period in Kosovo. This, they contend, provides sufficient “temporal, material and geographical links between the two cases”.²¹ Further, the Applicants submit that “certain witnesses in the *Limaj* Case have been listed by the Prosecution as potential witnesses” in their case, and that “there are many other witnesses from *Limaj* who could also be witnesses in the present case.”²²

9. The Prosecution agrees with the Applicants that there is a common temporal link between the *Limaj* Case and the *Haradinaj* Case²³ and that the claim of a state of armed conflict in Kosovo and the allegations of “targeting of Serbs and perceived Albanian collaborators are common to both cases”²⁴. Yet, the Prosecution argues that “there is no common geographical link”.²⁵ Specifically, the Prosecution points out that “[t]he *Limaj* Case concerned crimes committed in Shtime, Glogovac and Lipjan Municipalities and focused on the Llapushnik Prison Camp, whereas the *Haradinaj* Case concerns crimes committed in the Dukagjin area, a number of municipalities not covered in the *Limaj* Indictment, the Jablanica detention centre, and Lake Radonjić.”²⁶ The Prosecution further states that it “does not expect to call any victim witnesses from the *Limaj* Case as witnesses in the *Haradinaj* Case.”²⁷ As to non-victim witnesses, at this time the Prosecution has only identified four

¹⁷ Decision on Ljube Boškoski's Motion for Access to Confidential Materials, 8 June 2006, para. 2 (internal quotation marks omitted), quoting *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, para. 3.

¹⁸ *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, para. 4.

¹⁹ *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*, 16 May 2002, para. 15.

²⁰ See *ibid.*, paras 15-16.

²¹ *Haradinaj* Motion for Access, para. 7.

²² *Ibid.*, para. 6.

²³ Prosecution Response to *Haradinaj* Motion for Access, para. 4; see also *Haradinaj* Motion for Access, para. 5.

²⁴ Prosecution Response to *Haradinaj* Motion for Access, para. 4; see also *Haradinaj* Motion for Access, para. 5.

²⁵ Prosecution Response to *Haradinaj* Motion for Access, para. 4.

²⁶ *Ibid.* (footnotes omitted).

²⁷ *Ibid.*, para. 5.

witnesses common to both cases and does not oppose provision of confidential material relating to the testimony of Witness L-95 – the only one of these four witnesses to testify in closed session.²⁸

10. The Applicants specify and expand their submissions in reply. Specifically, the Applicants consider it relevant that the *Limaj* Case and *Haradinaj* Case “are the only two cases before the ICTY that both concern alleged [Kosovo Liberation Army (“KLA”)] perpetrators in Kosovo during the same time period”.²⁹ The Applicants emphasise that “the materials sought could clearly assist the Defence ... as they could be relevant to the nature of the armed conflict alleged, the scope and substance of the alleged KLA campaign to target the civilian population and the alleged operations, organisation, and command structures of the Serb forces and the KLA”.³⁰ The Applicants note that “[e]ven though the particular alleged offences in each case may have taken place in and around different villages, these locations are situated very close to each other in the same region of western Kosovo, and the Prosecution’s allegations about the armed conflict and crimes against humanity, including the armed forces that were allegedly involved and commanded (the Serb forces and the KLA), which are common to both cases, cover the same region and territory in both cases”.³¹ The Applicants further assert that “it is established in the jurisprudence of the ICTY that no geographic overlap is required for particular towns and villages where alleged offences occurred.”³²

D. Application of the Legal Standard

11. In assessing the Applicants’ request, a comparison of the *Limaj* and *Haradinaj* Indictments is useful. Both allege crimes occurring in Kosovo in the spring and summer of 1998.³³ As to the specific crimes alleged and the precise locations of these crimes, however, there is no substantive overlap. The *Limaj* Indictment primarily alleges crimes occurring at and around the Lapušnik/Llapushnik Prison Camp, which Limaj allegedly commanded as a KLA leader and where

²⁸ *Ibid.*,

²⁹ See *Haradinaj* Reply, para. 4.

³⁰ *Haradinaj* Reply, para. 4; see also Joinder and Reply Motion, paras 7, 8, 9.

³¹ *Haradinaj* Reply, para. 5.

³² *Haradinaj* Reply, para. 6 (referencing *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Decision on “Slobodan Praljak’s Motion for Access to Confidential Testimony and Documents in *Prosecutor v. Naletilić and Martinović*” and “Jadranko Prlić’s Notice on Joinder to Slobodan Praljak’s Motion for Access”, 13 June 2005 (“*Naletilić and Martinović* Decision”), and *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Joint Motion of Enver Hadžihasanović, Mehmed Alagić and Amir Kubara for Access to All Confidential Material, Transcripts and Exhibits in the Case *Prosecutor v. Tihomir Blaškić*, signed 24 January 2003 and filed 27 January 2003 (“*Blaškić* Decision”)).

³³ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-I, Indictment, 24 January 2003 (“*Limaj* Indictment”), paras 14, 18, 21, 26; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Amended Indictment, 25 October 2006 (“*Haradinaj* Indictment”), para. 12.

his co-accused worked.³⁴ The *Haradinaj* Indictment alleges crimes occurring further to the west, in the Dukagjin Operation Zone,³⁵ where Haradinaj allegedly commanded the KLA forces and where his co-accused worked under him.³⁶ The *Haradinaj* Indictment does not rely on Haradinaj's connections to KLA forces in other regions of Kosovo, but rather emphasizes that "each KLA operational area in Kosovo acted independently of the senior command authority" and "Ramush Haradinaj was one of the most independent zone commanders."³⁷

12. The factual nexus between the *Limaj* Case and the *Haradinaj* Case is more tenuous than in the *Blaškić* Decision, relied upon by the Applicants,³⁸ in which the accused in *Hadžihasanović* gained access to confidential material from *Blaškić*. The *Blaškić* Decision observed that the "Indictment against *Hadžihasanović et al.* covers the same geographic area and time period" as the *Blaškić* Indictment, and that the *Hadžihasanović* proceedings were the "flipside" to the *Blaškić* proceedings.³⁹ In the case at hand, however, the specific geographic areas at issue are entirely separate, and the movements of Limaj and his co-accused do not seem relevant to those of the Applicants.

13. The *Naletilić and Martinović* Decision relied on by the Applicants is similarly inapposite. There, the accused in *Prlić et al.* obtained access to confidential information in light of "substantive geographic and temporal overlap."⁴⁰ It is also worth noting that the *Prlić* indictment specifically linked the accused with Naletilić, charging that all were members of the same Joint Criminal Enterprise ("JCE").⁴¹ By comparison, in this case, no JCE or similar link between the accused of the *Haradinaj* Case and the *Limaj* Case is alleged in any of the indictments or in the Trial Judgement of

³⁴ *Limaj* Indictment, paras 1-4, 16, 18-19, 21-24. Other alleged crimes took place in the nearby municipalities of Stimlje/Shtime, Glogovac/Gillogoc, and Lipjan/Lipjan, as well as in the nearby Beriša/Berisha mountains. *Ibid.*, para. 14. These locations are also to the east of those identified in the *Haradinaj* Indictment.

³⁵ *Haradinaj* Indictment, paras 3, 14 (also identifying the relevant municipalities within this zone).

³⁶ *Ibid.*, paras 8, 11.

³⁷ *Ibid.*, para. 4.

³⁸ See *supra* note 32.

³⁹ *Blaškić* Decision, p. 4. The *Blaškić* Indictment involved crimes committed by Croatian Defence Council forces in Bosnia from 1992 to 1994 (see *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Second Amended Indictment, 26 March 1999, para. 1 ("Blaškić Indictment")), while the Indictment in *Hadžihasanović* involved crimes committed by Army of Bosnia and Herzegovina forces in Bosnia from 1993 to 1994 (see *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-PT, Third Amended Indictment, 26 September 2003, paras 7, 9 ("Hadžihasanović Indictment")). Although the respective cases involved somewhat different areas in Bosnia, there was certainly significant overlap. In fact both Indictments identify the villages of Busovača, Gornji Vakuf, Novi Travnik, Travnik, Vitez, Zenica, and Žepče. (See *Blaškić* Indictment, para. 1 and *Hadžihasanović* Indictment, para. 14)

⁴⁰ *Naletilić and Martinović* Decision, p. 6.

⁴¹ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Amended Indictment, 16 November 2005, para. 16.

the *Limaj* Case.⁴² To the contrary, the *Haradinaj* Indictment indicates that the various KLA leaders acted independently.⁴³

14. Since the *Haradinaj* Case involves distinct crimes committed in different locations from the *Limaj* Case, and since the Prosecution does not allege significant connections between the accused in the respective cases, there is no good chance that most of the confidential information in *Limaj*, which is largely victim evidence, would materially assist the Applicants. Accordingly, general disclosure is unwarranted.

15. Nonetheless, both the *Limaj* Case and the *Haradinaj* Case have elements in common. Both involve allegations that an armed conflict has taken place and that the civilian population has been attacked extensively or systematically by KLA forces. Additionally, in both cases, the Prosecution makes reference to the structure and organization of the KLA, although the *Haradinaj* Indictment does not appear to rely on Haradinaj's relations with the KLA General Staff Headquarters or with leaders in other operational zones.⁴⁴

16. In order for the Applicants to prepare their case, the principle of equality of arms requiring that no party be placed at a disadvantage vis-à-vis the opponent⁴⁵ indicates that they should be granted access to any confidential *inter partes* material which stands a good chance to be useful to them in preparing their case. The question is whether there is any confidential *inter partes* material relevant to the elements common to the two cases that has a good chance of aiding the Applicants as they prepare their defence.

17. The *Limaj* Trial Judgement deals with these common issues in paragraphs 36-65 (structure and organisation of the KLA), paragraphs 83-179 (establishment of an armed conflict, structure of the KLA), and paragraphs 180-228 (attack on civilian population). These parts of the Judgement, however, rely largely upon publicly available evidence, though citing occasionally to closed session testimony of confidential witnesses and confidential 92bis statements.⁴⁶ Thus, the Appeals Chamber

⁴² See generally *Limaj* Indictment; *Haradinaj* Indictment; *Prosecutor v. Limaj et al.*, Case No. IT-04-84-T, Judgement, 30 November 2005 ("*Limaj* Trial Judgement").

⁴³ *Haradinaj* Indictment, para. 4.

⁴⁴ See *ibid.*

⁴⁵ *Prosecutor v. Aleksovski*, Case No. I-95-14/1-A, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, paras 23-25.

⁴⁶ *Limaj* Trial Judgement, para. 58, footnotes 193, 194 (testimony/statements of Witness L-95); para. 62, footnote 213 (testimony/statements of Witness L-64); para. 104, footnote 360 (testimony/statements of Witness L-04), footnote 361 (cross-referencing para. 249 citing Witness L-84's statement); para. 124, footnote 431 (testimony/ statement of Witness L-12); para. 108, footnotes 368, 369 (testimony/statement of Witness L-95); para. 119, footnote 410 (testimony/statement of Witness L-95); para. 149, footnote 495 (testimony/statement of Witness L-95), footnote 497 (testimony/statement of Witness L-64); para. 203, footnote 668 (testimony/statements of Witnesses L-96, L-06, L-10, L-07), footnote 669 (testimony/statements of Witnesses L-06, L-10, L-96, L-07, L-12, L-96 and cross-referencing paras 243-282 with further testimony/statements by Witnesses L-04, L-06, L-07, L-10, L-12, L-96), footnote 670

is not persuaded that there is a good chance that this confidential evidence will aid the Applicants in preparing their defence, unless the Prosecution uses the same witnesses against them. It is the Prosecution's responsibility to establish the elements of an armed conflict and widespread attacks on civilian population. To the extent that the Prosecution does not use the confidential material that it used in the *Limaj* Case to try to establish these elements, it seems unlikely that the Applicants could benefit from such material. Indeed, in light of the *Haradinaj* Indictment's assertion that Haradinaj acted independently from KLA commanders (such as Limaj) in other regions, it is unclear whether evidence related to the overall structure of the KLA could be relevant to the Prosecution's case or, correspondingly, to the Applicants' defence. Accordingly, the Appeals Chamber will deny the Applicants access to confidential material in the *Limaj* Case, except where the Prosecution seeks to use the same witnesses or exhibits in the *Haradinaj* Case.

18. The Prosecution has indicated that one confidential witness from the *Limaj* Case, Witness L-95, is scheduled to testify in the *Haradinaj* Case.⁴⁷ This witness apparently has some knowledge of events within the Dukagjin Operation Zone commanded by Haradinaj.⁴⁸ As the Prosecution acknowledges,⁴⁹ there is a good chance that access to materials in the *Limaj* Case related to this witness will materially aid the Applicants in preparing their defence, particularly since it appears that his testimony in the *Limaj* Case touched in passing on events in the Dukagjin Operation Zone. Accordingly, the Appeals Chamber grants the Applicants access to material in the *Limaj* case in relation to Witness L-95. The Prosecution does not represent that it intends to call any other confidential witnesses from the *Limaj* Case. Should it do so, however, then disclosure of material from the *Limaj* Case related to these witnesses would also be appropriate for similar reasons. Finally, in the interests of justice, the Appeals Chamber will grant Lahi Brahimaj, the co-accused of the Applicants, access to the same confidential material provided to the Applicants.⁵⁰

19. The parties have filed most of their submissions confidentially.⁵¹ Since only the Prosecution Response to Balaj Motion for Access contains material that is arguably confidential, the Appeals Chamber accordingly will request the Registry to lift the confidentiality on the other filings.⁵²

(testimony/statements of Witnesses L-07, L-10, L-06), footnotes 671, 672 (testimony/statement of Witness L-95); para. 208, footnote 681 (testimony/statements of Witnesses L-10, L-64), para. 208, footnote 683 (testimony/statements of Witnesses L-06, L-10).

⁴⁷ Prosecution Response to Haradinaj Motion for Access, para. 6.

⁴⁸ See *Limaj* Trial Judgement, para. 203.

⁴⁹ Prosecution Response to Haradinaj Motion for Access, para. 6.

⁵⁰ See *Naletilić and Martinović* Decision, p. 7.

⁵¹ With the exception of the Balaj Motion for Access and the Balaj Reply, all filings were done confidentially.

III. DISPOSITION

20. For the foregoing reasons, the Appeals Chamber **GRANTS** the Joinder and Reply Motion and accordingly **DISMISSES** as moot the Balaj Motion for Access.

21. The Appeals Chamber **GRANTS IN PART** the Haradinaj Motion for Access and, subject to the conditions set forth below, allows the Applicants and also, in the interest of justice, their co-accused Lahi Brahimaj access to the following materials classified as *inter partes* and confidential:

- (a) all material from the *Limaj* Case in relation to Witness L-95, and
- (b) all material from the *Limaj* Case in relation to witnesses, who have testified in the *Limaj* Case and who will in the future be listed by the Prosecution to testify in the *Haradinaj* Case.

22. The Appeals Chamber **ORDERS** the Prosecution:

- (a) to identify to the Appeals Chamber and the Registry, within 10 days from the date of this decision or, alternatively, within 10 days from the date it has become known to the Prosecution that a past *Limaj* witness is to testify in the *Haradinaj* Case, that such a witness is to testify and further to identify what, if any, material related to that witness has been provided subject to Rule 70;
- (b) within 15 days from the date of this decision or, alternatively, within 15 days from the date it has become known to the Prosecution that a past *Limaj* witness is to testify in the *Haradinaj* Case, to seek leave from the Rule 70 providers to disclose this material to the Applicants and Brahimaj and inform the Appeals Chamber and the Registry whether such consent has been obtained.

23. The Appeals Chamber **REQUESTS** the Registry:

- (a) to lift the confidentiality of the Haradinaj Motion for Access, the Prosecution Response to Haradinaj Motion for Access, the Haradinaj Reply, the Joinder and Reply Motion, and the Prosecution Response to Joinder and Reply Motion.
- (b) to provide the Applicants and Brahimaj with all confidential *inter partes* material from the *Limaj* Case related to Witness L-95 and to any witnesses identified in the future by the

⁵² See *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Order on Motions for Access to Confidential Material, 27

Prosecution pursuant to paragraph 22(a) of this decision, in electronic format where possible, except material identified by the Prosecution as provided pursuant to Rule 70;

- (c) where the Rule 70 providers have consented to further disclosure upon a request from the Prosecution under paragraph 22(b) of this decision, to provide the Applicants and Brahimaj with all such material, in electronic format where possible;

24. The Appeals Chamber, save as otherwise required by this decision, **ORDERS** that the *inter partes* confidential material provided by the Registry shall remain subject to any protective measures previously imposed by the Trial Chamber.

25. The Appeals Chamber **ORDERS** that the Applicants and Brahimaj, all their Counsel, and any employees who have been instructed or authorized by Counsel to have access to the *inter partes* confidential material described above shall not, without express leave of the Appeals Chamber:

- (a) disclose to any third party, the names of witnesses, their whereabouts, transcripts of witness testimonies, exhibits, the contents thereof or any information which would enable them to be identified or would breach the confidentiality of the protective measure already in place;
- (b) disclose to any third party, any documentary 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; or
- (c) contact any witness whose identity was subject to protective measures.

26. The Appeals Chamber **ORDERS** that if, for the purpose of preparing their case, the Applicants or Brahimaj disclose non-public material to third parties pursuant to authorisation by the Appeals Chamber, any person to whom disclosure of the confidential material in this case is made shall be informed that he or she is forbidden to copy, reproduce, or publicise, in whole or in part any non-public information or to disclose it to any other person, and further that, if any such person has been provided with such information, he or she must return it to the Applicants or Brahimaj, or to their respective counsel, as soon as it is no longer needed for the preparation of the case.


27. For the purposes of the above paragraphs, third parties exclude: i) Haradinaj, Balaj, and Brahimaj, ii) their Counsel; iii) any employees who have been instructed or authorized by their Counsel to have access to confidential material; and (iv) personnel from the International Tribunal, including members of the Prosecution.

28. The Appeals Chamber further **ORDERS** that, if Counsel for the Applicants or Brahimaj or any members of the Defence team who are authorized to have access to confidential material should withdraw from the case, any confidential material to which access is granted in this decision and that remains in their possession shall be returned to the Registry of the International Tribunal.

29. The remainder of the Haradinaj Motion for Access is **DISMISSED**.

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

Dated this 31st day of October 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]