

UNITED  
NATIONS



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-99-36-A  
Date: 24 January 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Christine Van Den Wyngaert

**Registrar:** Mr. Hans Holthuis

**Decision of:** 24 January 2007

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

**DECISION ON MIĆO STANIŠIĆ'S MOTION FOR ACCESS TO  
ALL CONFIDENTIAL MATERIALS IN THE *BRĐANIN* CASE**

**The Office of the Prosecutor:**

Mr. Peter Kremer  
Ms. Helen Brady  
Ms. Kristina Carey  
Ms. Katharina Margetts  
Mr. Alex Tieger

**Counsel for the Accused:**

Mr. John Ackerman

**Counsel for the Applicant:**

Mr. Stevo Bezbradica

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 “Tribunal”, respectively) is seised of two appeals in this case. The Appeals Chamber is also currently seised of the “Motion by Mićo Stanišić for Access to All Confidential Materials in the *Brđanin* Case” (“Motion”), filed on 22 November 2006.

## I. BACKGROUND

2. In the Motion, Mićo Stanišić (“Applicant”) seeks access to “all confidential material” in *Prosecutor v. Radoslav Brđanin* (“*Brđanin* Case”).<sup>1</sup> On 6 December 2006, the Prosecution filed a response.<sup>2</sup> With some qualifications, the Prosecution does not oppose the disclosure of *inter partes* confidential material from the *Brđanin* Case to the Applicant.<sup>3</sup> On 13 December 2006, the Applicant filed a reply.<sup>4</sup>

### A. Procedural Issues

3. The Motion concerns a request for access to information in the *Brđanin* Case, which is a case “where an appeal has been filed from a judgement”.<sup>5</sup> Thus, time limits regarding motions are set by paragraphs 12-16 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (“Practice Direction”).<sup>6</sup>

4. Pursuant to paragraph 13 of the Practice Direction, “the opposite party shall file a response within ten days of the filing of the motion”. Thus, the Response was untimely, as it was filed fourteen days after the Motion. No justification for the delay has been offered. Nonetheless, pursuant to its discretionary powers,<sup>7</sup> the Appeals Chamber will accept the late filing, as it fulfils the purpose of clarifying that the Prosecution agrees that the Applicant should, in principle, have access to all *inter partes* confidential material from the *Brđanin* Case.

<sup>1</sup> Motion, para. 1.

<sup>2</sup> Prosecution’s Response to Mićo Stanišić’s Motion for Access to Confidential Material in the *Brđanin* Case, 6 December 2006 (“Response”).

<sup>3</sup> *Ibid.*, para. 10.

<sup>4</sup> Defence’s Motion for Leave to Reply and Proposed Reply to Prosecution’s Response to Mićo Stanišić’s Motion for Access to Confidential Material In the *Brđanin* Case, 13 December 2006 (“Reply”).

<sup>5</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155/Rev.3), 16 September 2005, para. 12.

<sup>6</sup> *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005 (“*Blagojević and Jokić* Decision of 16 November 2005”), para. 3 (noting that the Practice Direction governs in place of the default time limits set by Rule 126*bis* of the Rules of Procedure and Evidence (“Rules”).

<sup>7</sup> See Practice Direction, para. 19.

5. Pursuant to paragraph 14 of the Practice Direction, “the moving party may file a reply within four days of the filing of the response”. Here, the Applicant did not file the Reply until 13 December 2006, seven days after the Prosecution’s Response to *Stanišić’s* Motion for Access. It is thus untimely. Nevertheless, given the discretion exercised with respect to the Prosecution’s filing and in the interests of fairness, the Appeals Chamber will also accept the Applicant’s late filing.<sup>8</sup>

### **B. Submissions of the Parties**

6. The Applicant claims that “the alleged events and facts in the Indictment against him are closely related to the charge against [Brđanin] and that access to all confidential material in that case will be of significant assistance for the preparation of the case of the Defence”.<sup>9</sup> In support of his assertion, the Applicant highlights that the Indictment against him alleges similar crimes from the same time period and the same geographical area as those alleged in the Indictment against Brđanin.<sup>10</sup> The Applicant also notes that at the time of the alleged events, both he and Brđanin occupied senior leadership positions in the Bosnian-Serb government<sup>11</sup> and that, according to the Prosecution, they both participated in the same Joint Criminal Enterprise (“JCE”).<sup>12</sup>

7. The Prosecution interprets the Applicant’s request as limited only to *inter partes* confidential material, noting, however, that it opposes disclosure of *ex parte* material.<sup>13</sup> The Prosecution does not oppose disclosure of *inter partes* confidential material provided that three conditions are met.<sup>14</sup> First, the Prosecution observes that several witnesses with particularly serious security concerns testified in the *Brđanin* Case subject to “delayed disclosure” orders from the Trial Chamber<sup>15</sup> – as to these witnesses, the Trial Chamber permitted disclosure to Brđanin only a certain number of days before the witness was due to testify.<sup>16</sup> The Prosecution requests that, at this time, any order for access *not* authorize disclosure of confidential material from the *Brđanin* Case related to those especially sensitive witnesses whom the Prosecution intends to call in the Applicant’s case.<sup>17</sup> The Prosecution represents that 1) if it decides not to call one or more of these especially

<sup>8</sup> The Appeals Chamber notes that, aside from the timing issue, the Applicant did not need to seek leave to file the Reply. See *Blagojević and Jokić* Decision of 16 November 2005, para. 3. Accordingly, except as regards timing, the Appeals Chamber disregards the Applicant’s request for leave to reply. See Reply, paras 1-3.

<sup>9</sup> Motion, para. 4.

<sup>10</sup> *Ibid.*, para. 7.

<sup>11</sup> *Ibid.*, para. 8.

<sup>12</sup> *Ibid.*, para. 9; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Revised Amended Indictment, 22 September 2005, para. 7.

<sup>13</sup> Response, paras 2, 10.

<sup>14</sup> *Ibid.*, para. 10.

<sup>15</sup> *Ibid.*, para. 4.

<sup>16</sup> See, e.g., Confidential and Under Seal Decision on Prosecution’s Tenth Motion for Protective Measures for Victims and Witnesses, 28 May 2002 (“Decision on Tenth Motion”), p. 6 (granting leave to the Prosecution to delay disclosing a witness’s identity and prior statements until 21 days before the witness’s testimony).

<sup>17</sup> Response, para. 10(1). In the *ex parte* and confidential Annex to the Response, the Prosecution identifies these witnesses.

sensitive witnesses, it “shall provide forthwith the confidential transcripts and related exhibits from the *Brdanin* case” to the Applicant;<sup>18</sup> and 2) as to the especially sensitive witnesses that will be called to testify, the Prosecution will disclose all relevant *inter partes* confidential material from the *Brdanin* Case as many days before those witnesses testify as is specified in the protective orders given in the *Brdanin* Case.<sup>19</sup> Second, the Prosecution requests that any order for access include a provision stating that access to *inter partes* confidential material acquired pursuant to Rule 70 of the Rules will only be granted where the consent of the provider has been obtained.<sup>20</sup> Finally, the Prosecution requests that the Appeals Chamber impose certain additional protective conditions.<sup>21</sup>

8. In his Reply, the Applicant emphasises that he is seeking access to *ex parte* as well as *inter partes* confidential material.<sup>22</sup> He claims that the nexus between his case and the *Brdanin* Case justifies his access to the *ex parte* material, and he asserts that it is the Prosecution’s duty to show that the granting of access to such materials will imperil the “interests of a State, other public interests, or privacy interests of a person or institution”.<sup>23</sup> The Applicant also opposes the Prosecution’s request for delayed disclosure.<sup>24</sup> Finally, the Applicant addresses the issue of Rule 70 material, arguing that only the initial information provided to the Prosecution pursuant to Rule 70 is subject to authorisation by the provider, as opposed to confidential exhibits and transcripts that stem from Rule 70 material.<sup>25</sup>

## II. DISCUSSION

### A. Scope of the Applicant’s Request

9. As indicated above, the Prosecution and the Applicant disagree as to whether the Applicant’s request covers *ex parte* confidential materials from the *Brdanin* Case. In the interest of judicial efficiency, the Appeals Chamber will treat the Motion as requesting *ex parte* confidential material as well as *inter partes* confidential material.

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, para. 8.

<sup>20</sup> *Ibid.*, para. 10(2).

<sup>21</sup> *Ibid.*, para. 10(3).

<sup>22</sup> Reply, para. 6.

<sup>23</sup> *Ibid.*, paras 5-6.

## **B. Conditions for Access to Confidential Information**

10. It is an accepted principle of the Tribunal that “[a] party is always entitled to seek material from *any* source to assist in the preparation of his case”.<sup>26</sup> With regard to confidential material, however, the Tribunal must “find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses”.<sup>27</sup> According to the jurisprudence of the Tribunal, two elements must be satisfied in order to gain access to confidential material. First, an applicant must be able to identify the documents sought or to describe them by their general nature.<sup>28</sup> Second, an applicant must also be able to “show a legitimate forensic purpose for such access”.<sup>29</sup>

11. The first element of gaining access to confidential material is not considered particularly onerous and numerous Appeals Chamber decisions have accepted requests for access to “all confidential material” as sufficiently specific.<sup>30</sup> As to the second requirement, the Appeals Chamber has applied this requirement differently depending on whether the requested confidential material was *inter partes* or *ex parte*.<sup>31</sup>

12. With regard to *inter partes* confidential material, a legitimate forensic purpose will exist where a party can show that “the material sought is likely to assist the applicant’s case materially, or at least that there is a good chance that it would”.<sup>32</sup> The Applicant can meet this standard by “showing the existence of a nexus between the applicant’s case and the case from which such

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<sup>24</sup> *Ibid.*, paras 10-13.

<sup>25</sup> *See ibid.*, para. 8.

<sup>26</sup> *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 and Hearing Transcripts Filed in the *Prosecutor v. Blaškić*, 16 May 2002 (“*Blaškić* Decision of 16 May 2002”), para. 14.

<sup>27</sup> *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR73, Decision on Appeal From Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002 (“*Hadžihasanović* Decision”), p. 2.

<sup>28</sup> *Blaškić* Decision of 16 May 2002, para. 14.

<sup>29</sup> *Ibid.*

<sup>30</sup> *See, e.g., Prosecutor v. Vidoje Blagojević and Dragan 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 of 18 January 2006”), para. 8; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on “Defence Motion on Behalf of Rasim Delić Seeking Access to All Confidential Material in the *Blaškić* Case”, 1 June 2006, p. 12.

<sup>31</sup> *See Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Defence Motion by Franko Simatović for Access to Transcripts, Exhibits, Documentary Evidence and Motions Filed by the Parties in the *Simić et al.* Case, 13 April 2005 (“*Simić* Decision”), pp. 3-4; *see also Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Ljube Bošković’s Motion for Access to Confidential Materials, 8 June 2006, para. 6.

<sup>32</sup> *Blagojević and Jokić* Decision of 18 January 2006, para. 4; *see also Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits from the *Aleksovski* Case, 8 March 2002, p. 3.

material is sought”.<sup>33</sup> Such a factual nexus may be established, for example, “if the cases stem from events alleged to have occurred in the same geographic area at the same time”.<sup>34</sup>

13. The events alleged in each Indictment clearly establish the existence of a temporal and geographical overlap between the *Brdanin* Case and the Applicant’s case. Moreover, the Applicant’s and Brđanin’s alleged participation in the same JCE suggests a clear nexus between their cases. In addition, the Applicant has clearly identified the confidential material to which he seeks access.<sup>35</sup> Therefore, subject to appropriate protective measures, the Applicant has met the requirements for access to the requested *inter partes* confidential material from the *Brdanin* Case.

14. With regard to *ex parte* confidential material, however, in light of the special considerations of confidentiality relating to such material, the Appeals Chamber has required applicants to meet a higher standard in order to establish a legitimate forensic purpose.<sup>36</sup> It is not, as the Applicant suggests,<sup>37</sup> the Prosecution’s burden to show why such disclosure should not occur, but rather the Applicant’s burden to justify such disclosure.<sup>38</sup> Here, the Applicant offers no particular reasons why this heightened showing is met, and so the Appeals Chamber denies the Motion as to such materials. The Appeals Chamber notes, however, that should the *ex parte* confidential material in the *Brdanin* Case contain any arguably exculpatory material as to the Applicant, the Prosecution has an independent obligation pursuant to Rule 68 (subject to the provisions of Rule 70) either to disclose this material to the Applicant or to seek relief from the disclosure obligation from the Trial Chamber with jurisdiction over the Applicant’s case.

### **C. Protective Measures as to Delayed Disclosure**

15. Rule 75(F)(i) provides that, “[o]nce protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal”, such measures “shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal ... unless and until they are rescinded, varied or augmented” by an appropriate Chamber.

16. In the *Brdanin* Case, the Trial Chamber ordered that “delayed disclosure” protective measures apply to several witnesses with exceptionally high security concerns.<sup>39</sup> Such measures

<sup>33</sup> *Blagojević and Jokić* Decision of 18 January 2006, para. 4.

<sup>34</sup> *Ibid.*, para. 4.

<sup>35</sup> Motion, para. 3.

<sup>36</sup> See *Simić* Decision, p. 4; see also *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Applicant’s Motion Seeking Access to Confidential Material in the Martić Case, 28 November 2006, p. 3 (citing *Simić* Decision); *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to Ex Parte Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006, para. 17.

<sup>37</sup> Reply, para. 5.

<sup>38</sup> See *Simić* Decision, p. 4.

<sup>39</sup> See, e.g., Decision on Tenth Motion, p. 6.

permitted the Prosecution to delay disclosure of these witnesses' identities and of their prior statements until shortly before their expected dates of testimony.<sup>40</sup>

17. The matter at issue is how to apply Rule 75(F)(i) to such “delayed disclosure” orders.<sup>41</sup> “Delayed disclosure” orders are clearly “protective measures” aimed at protecting witnesses. One could argue, however, that they lose their effect and become moot once disclosure is made – in this case, at the moment Brđanin received disclosure about these witnesses – and thus that there is nothing to “continue” for purposes of Rule 75(F)(i). Nonetheless, at least one Trial Chamber has interpreted Rule 75(F) to include “delayed disclosure” as a form of protective measure which continues to have effect *mutatis mutandis* in subsequent proceedings before the Tribunal,<sup>42</sup> and the Appeals Chamber considers that this is the better approach. The meaning of the expression “*mutatis mutandis*” itself requires a flexible application of the principle enshrined in this rule and suggests that the same kinds of protection given to a witness in one case should be automatically extended to this witness in a later case, regardless of whether this is literally “continuation”. Here, the sensitive witnesses in the *Brđanin* Case were protected by delayed disclosure orders. It is the view of the Appeals Chamber that, if they are going to testify in another case, the information about them from the *Brđanin* Case should similarly be subject to delayed disclosure to the defendants in these other cases (unless an order pursuant to Rule 75(G) is made).

#### **D. Protective Measures as to Material Covered by Rule 70**

18. In the *Blaškić* Decision of 16 May 2002, the Appeal Chamber stated that “[i]f there is any material covered by Rule 70(C) within the non-public appellate submissions filed in this appeal, the Prosecution should be given time to seek the consent of the providers of the Rule 70(C) related information for its disclosure to [the] Applicants”.<sup>43</sup> In accordance with this approach, the Prosecution requests that, “in circumstances where a Rule 70 provider has limited its consent to a witness testifying or document being used solely for the purposes of [the] *Brđanin* Case, the Prosecution be provided with the opportunity to recontact, as soon as practicable, the relevant Rule

<sup>40</sup> *E.g., ibid.* (setting disclosure as to one especially sensitive witness for 21 days before the witness’s projected testimony).

<sup>41</sup> The Applicant does not contest the ability of the *Brđanin* Trial Chamber (or of Trial Chambers generally) to issue such orders in the first place, and the Appeals Chamber does not address this issue. Similarly, the Applicant does not ask the Appeals Chamber to “rescind, vary or augment” these measures pursuant to Rule 75(G) – a request that, in any event, the Applicant would be better served to raise with his Trial Chamber, assuming the Appeals Chamber is no longer seised of this case, as the time of his trial approaches. Instead, the Applicant appears to claim simply that these measures are unjustified in his case, *see* Reply, paras 10-12, which the Appeals Chamber interprets as an argument that these are not the kind of protective measures that carry through to other proceedings under Rule 75(F)(i). *See also* Motion, para. 13 (undertaking to “comply with all protective measures applicable in the *Brđanin* Case” but not specifying whether, in the Applicant’s view, such measures include delayed disclosure orders).

<sup>42</sup> *Prosecutor v. Vladimir Lazarević & Sreten Lukić*, Case No. 03-70-PT, Confidential Decision on Prosecution’s Motion for Protective Measures and request for Joint Decision on Protective Measures, 19 May 2005, p. 3.

<sup>43</sup> *Blaškić* Decision of 16 May 2002, para. 26.

70 provider to ascertain whether it consents to the disclosure of the material in question to the Defence for Mićo Stanišić”.<sup>44</sup>

19. The Applicant asserts by contrast that only “the initial information that was provided to the Prosecution pursuant to Rule 70 is subject to authorisation by the provider” and that “all relevant confidential exhibits and transcripts” are not protected by Rule 70.<sup>45</sup>

20. The Appeals Chamber notes that it is settled jurisprudence that Rule 70 material includes not only initial information provided to the parties, but also information (or references to this information) used in the course of the pre-trial, trial, or appeal proceedings, assuming that the Rule 70 provider gave consent only for the use of this information in that particular case.<sup>46</sup> Accordingly, the Appeals Chamber rejects the Applicant’s suggestion that material used during trial cannot be Rule 70 material. The Appeals Chamber will grant the Prosecution’s request that Rule 70 material be disclosed to the Applicant only where the provider has given consent.

### **E. Protective Measures as to Non-Disclosure to Third Parties**

21. The Prosecution has requested that safeguards against the dissemination or reproduction of confidential material or information be included as protective measures in the Appeals Chamber’s decision.<sup>47</sup> Such protective measures are commonly incorporated in decisions on applications for access to confidential material<sup>48</sup> and will accordingly be included here.

## **III. DISPOSITION**

22. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion as to *inter partes* confidential material from the *Brđanin* Case, subject to the conditions set forth below, and **DENIES** the Motion as to *ex parte* confidential material from the *Brđanin* Case.

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

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<sup>44</sup> Response, para. 3.

<sup>45</sup> Reply, para. 8.

<sup>46</sup> See, e.g., *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Prosecution’s Motion for Clarification of the Appeals Chamber’s Decision Dated 4 December 2002 on Paško Ljubičić’s Motion for Access to Confidential Material, Transcripts and Exhibits in the *Blaškić* Case, 8 March 2004, para. 10 (noting that Rule 70 material may occur at the pre-trial, trial, or appeal stage); *Prosecutor v. Timohir Blaškić*, Case No. IT-65-14-R, Confidential Decision on ‘Defence Motion on Behalf of Rasim Delić Seeking Access to All Confidential Material in the *Blaškić* Case’, 1 June 2006, p. 12 (noting that Rule 70 status “does not depend upon whether or not that material was used as evidence in a previous case”); *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Odjanić’s Application for Access to Exhibit P92, 3 November 2006 (treating an exhibit used in trial as covered by Rule 70).

<sup>47</sup> Response, para. 10(3).

<sup>48</sup> E.g., *Blaškić* Decision of 16 May 2002, pp. 12-13; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder and Balaj Motion for Access to Confidential Materials in the *Limaj* Case, 31 October 2006, paras 25-28.



- a) to identify to the Registry, within 10 days of the date of this decision, all *inter partes* confidential materials relating to the witnesses listed in the Annex of the Response;
- b) to promptly notify the Registry should the Prosecution subsequently decide not to call at the Applicant's trial a witnesses listed in the Annex of the Response.

24. The Appeals Chamber **ORDERS** the Prosecution and the Brdanin Defence:

- a) to identify to the Registry, within 10 days of the date of this decision, all *inter partes* confidential material in the *Brdanin* Case that is subject to Rule 70 and in which the Rule 70 provider limited its consent to the use of the material for the *Brdanin* Case;
- b) to seek leave, within 15 days of the date of this decision, for disclosure of Rule 70 materials to the Applicant from all Rule 70 providers of *inter partes* confidential material in the *Brdanin* Case who limited their consent to the use of these material for the *Brdanin* Case; and
- c) where Rule 70 providers consent to disclosure to the Applicant, to notify the Registry on a periodic basis of such consent.

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

- a) to provide the Applicant with all *inter partes* confidential material from the *Brdanin* Case, in electronic format where possible, except material identified by the Prosecution or the *Brdanin* Defence pursuant to paragraphs 23(a) and 24(a) above;
- b) upon receiving notice from the Prosecution or the *Brdanin* Defence pursuant to paragraph 24(c) above that certain Rule 70 providers have consented to disclosure to the Applicant, to disclose this material to the Applicant, in electronic format where possible; and
- c) with regard to the materials identified by the Prosecution pursuant to paragraph 23(a) above, to disclose these materials only in accordance with the time frames set out in the delayed disclosure orders by the *Brdanin* Trial Chamber or upon receiving notice from the Prosecution pursuant to paragraph 23(b) above, unless this order is subsequently modified by the Appeals Chamber or, should the Appeals Chamber no longer be seised of this case, by the Trial Chamber in the Applicant's case.

26. 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.

27. The Appeals Chamber **ORDERS** that the Applicant, his 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 or, should the Appeals Chamber no longer be seized of this case, of the Trial Chamber in the Applicant's case:

(a) disclose to any third party information contained in this material in whole or in part, including the names of witnesses, their whereabouts, transcripts of witness testimonies, exhibits, written statements, prior testimony, any other information which would enable these witnesses to be identified and would breach the confidentiality of the protective measures already in place, documentary evidence, or other evidence; or

(b) contact any witness whose identity is subject to protective measures.

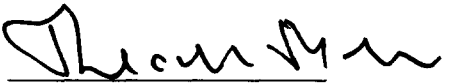
28. The Appeals Chamber **ORDERS** that if for the purposes of preparing the defence of the Applicant, non-public material is disclosed to third parties pursuant to authorization by the appropriate Chamber, any person to whom disclosure of the confidential material in this case is made shall be informed that he or she is forbidden to copy, reproduce or publicize, in whole or in part, any non-public information or to disclose it to any other person, and further that he or she must return it to the defence team of the Applicant as soon as the information is no longer needed for the preparation of his defence.

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

30. The Appeals Chamber **ORDERS** that if Counsel for the Applicant 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 Tribunal.

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

Dated this 24th day of January 2007,  
At The Hague,  
The Netherlands.



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Judge Theodor Meron  
Presiding Judge

**[Seal of the Tribunal]**