



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-95-5/18-PT

Date: 5 June 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 5 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR ACCESS TO CONFIDENTIAL MATERIALS IN
COMPLETED CASES**

Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić



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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”) is seised of the Accused’s “Motion for Access to Confidential Materials in Completed Cases”, filed on 16 April 2009 (“Motion”), and hereby renders its decision thereon.

I. Background and Submissions

1. On 14 April 2009, the Accused filed a “Motion to Exceed Word Limit: Access to Confidential Material in Completed Cases”, not opposed by the Office of the Prosecutor (“Prosecution”).¹ On 15 April 2009, the Chamber issued its “Decision on Accused’s Motion to Exceed Word Limit: Access to Confidential Material in Completed Cases” granting the Accused leave to exceed the word limit in the Motion by 4,000 words.

2. In paragraph one of his Motion, the Accused requests that the Trial Chamber grant him access to all *inter partes* confidential material from “the pre-trial and trial proceedings” in 32 completed cases of which no Chamber is currently seised.² However, in paragraph 13 of the Motion he requests access to “all *inter partes* confidential material” from the 32 completed cases. The Chamber interprets this request as a request for materials from both the pre-trial and trial phases *as well as* from the appellate phase of the cases in question. Indeed, various other Accused’s motions, filed before the Appeals Chamber and seeking access to materials from proceedings pending on appeal, would suggest that he is interested in materials from all three phases of the proceedings.

3. With reference to the jurisprudence of the Tribunal, the Accused argues that his request meets all of the requirements set forth in Rule 75 of the Tribunal’s Rules of Procedure and Evidence (“Rules”)³ and submits that he will respect all protective measures ordered in the relevant proceedings that shall continue to have effect *mutatis mutandis* in the present case should the Chamber grant his Motion.⁴ The Accused argues, with regard to each of the completed cases concerned, that there is a significant geographical and temporal overlap between his and the completed cases, as well as an interrelation between the factual bases.⁵ He further submits that the requested material is of crucial importance to the effective preparation of his defence, arguing that

¹ Prosecution Response to Karadžić’s Motion to Exceed Word Limit: Access to Confidential Material in Completed Cases, filed on 14 April 2009.

² Motion, paras. 1 and 13.

³ Motion, paras. 2–4.

⁴ Motion, para. 5.

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it is relevant to the allegations in the Third Amended Indictment (“Indictment”) and that there will be a significant overlap in the witnesses who testify.⁶ The Accused further submits that the principle of equality of arms requires that his request be granted, as “all such materials ‘stand a good chance’ to be useful” in the preparation of his defence.⁷

4. The scope of the Accused’s request is as follows:⁸

- (a) all confidential closed and private session testimony transcripts (“category A materials”);
- (b) all closed session hearing transcripts (“category B materials”);
- (c) all confidential exhibits (“category C materials”); and
- (d) all confidential *inter partes* filings and submissions and all confidential Trial Chamber decisions (“category D materials”).

5. In the “Prosecution’s Response to Karadžić’s Motion for Access to Confidential Materials in Completed Cases”, filed on 1 May 2009 (“Response”), the Prosecution opposes granting the Accused access to all category B and D materials, on the basis that his request is overly broad and amounts to a “fishing expedition”,⁹ and that he has failed to demonstrate a legitimate forensic purpose in this regard.¹⁰ It also opposes access to the category A and B materials in the cases of *Prosecutor v. Hadžihasanović and Kubura*, *Prosecutor v. Martić*, *Prosecutor v. Slobodan Milošević*, *Prosecutor v. Mucić et al.*, and *Prosecutor v. Orić*.¹¹ The Prosecution further raises the issue of *ex parte* materials, something not raised by the Accused himself, noting that he has not shown a legitimate forensic purpose with regard to such material.¹² Finally, the Prosecution does not oppose the Motion insofar as it relates to category A and B materials in the remaining completed cases, and requests the Chamber to order specific modifications to the existing protective measures in these cases, and to attach conditions as to disclosure of these materials to third parties.¹³

6. In their responses to the Motion, the accused in the *Orić* and *Hadžihasanović and Kubura* cases request the Chamber to deny the Motion.¹⁴ The accused Hazim Delić in the *Mucić et al.* case

⁵ Motion, para. 6.

⁶ Motion, paras. 6 and 10.

⁷ Motion, paras. 6 and 11.

⁸ Motion, para. 1.

⁹ Response, paras. 3, 22.

¹⁰ Response, para. 24.

¹¹ Response, paras. 2, 9–14.

¹² Response, paras. 18–20.

¹³ Response, paras. 2, 25–30.

¹⁴ Response by Naser Orić to Karadžić’s Motion for Access to Confidential Materials in Completed Cases, filed on 28 April 2009 (“Orić Response”), para. 13; Response on Behalf of Enver Hadžihasanović to Motion for Access to Case No. IT-95-5/18-PT

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requests that the Chamber grant the Motion, provided that the Chamber “subjects disclosure to protective measures adopted by the original Trial Chamber”.¹⁵ The accused Zoran Žigić in the *Kvočka et al.* case does not oppose the Motion.¹⁶

II. Applicable Law

7. The Chamber notes the well-established principle of the Tribunal that proceedings should be conducted in a public manner to the extent possible.¹⁷ Further, the Chamber observes that, in general, “[a] party is always entitled to seek material from any source to assist in the preparation of his case”.¹⁸ In exceptional circumstances, however, a Chamber may restrict the access of the public, as well as the access of a party, to certain material under the provisions of the Rules.¹⁹ Such confidential material can be categorised into three types: *inter partes*, *ex parte*, and subject to Rule 70.

8. In determining access to such material, 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”.²⁰ It is established that a party may obtain confidential material from another case to assist it in the preparation of its case, if (a) the material sought has been “identified or described by its general nature”; and (b) a “legitimate forensic purpose” exists for such access.²¹

Confidential Materials in Completed Cases, filed on 1 May 2009 (“Hadžihasanović Response”), para. 14; Amir Kubura’s Response to Radovan Karadžić’s Motion for Access to Confidential Materials in Completed Cases, filed on 7 May 2009 (“Kubura Response”), para. 5.

¹⁵ Hazim Delić’s Response to Radovan Karadžić’s Motion for Access to Confidential Materials in Completed Cases, filed on 6 May 2009 (“Hazim Delić Response”), para. 5.

¹⁶ Response to Radovan Karadžić’s Motion for Access to Confidential Materials in Completed Cases Filed by the Accused Zoran Žigić, filed on 4 May 2009 (“Žigić Response”), paras. 2–4.

¹⁷ Rule 78 provides, “All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”

¹⁸ *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 (“*Blaškić Decision*”), para. 14; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brđanin Case*, 24 January 2007 (“*Brđanin Decision*”), para. 10.

¹⁹ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, Decision on Vlastimir Đorđević’s Motion for Access to All Material in *Prosecutor v. Limaj et al.*, Case No. IT-03-66, 6 February 2008 (“*Đorđević Decision*”), para. 6.

²⁰ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-AR73, Decision on Appeal From Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002, p. 2.

²¹ *Blaškić Decision*, para. 14; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Material, 16 November 2005 (“*First Blagojević and Jokić Decision*”), para. 11; *Prosecutor v. Mrkšić and Šljivančanin*, Case No. IT-95-13/1-A, Decision on Veselin Šljivančanin’s Motion Seeking Access to Confidential Material in the *Kordić and Čerkez Case*, 22 April 2008, para. 7; see also *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 (“*Delić Order*”), p. 6.

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9. The first requirement is not a particularly onerous one. The Accused correctly asserts that the Appeals Chamber has held that requests for access to “all confidential material” can be sufficiently specific to meet the identification standard.²²

10. With respect to the second requirement, the standards for access differ for each category of confidential material. In respect of confidential *inter partes* material, a “legitimate forensic purpose” for disclosure in subsequent proceedings will be shown if the applicant can demonstrate that the material is relevant and essential.²³ The relevance of such material may be determined “by showing the existence of a nexus between the applicant’s case and the original case from which the material is sought”.²⁴ To establish a nexus, the applicant is required to demonstrate a “geographical, temporal or otherwise material overlap” between the two proceedings.²⁵ To show that it is essential, the party seeking it must demonstrate “a good chance that access to this evidence will materially assist the applicant in preparing his case.”²⁶ The standard does not require the applicant to go so far as to establish that the material sought would likely be admissible evidence.²⁷

11. Material can be deemed confidential by virtue of the fact that it has been provided by a state or person subject to restrictions on its use pursuant to Rule 70.²⁸ In such cases, where an applicant has satisfied the legal standard for access to *inter partes* material, the entity that has provided the material must still be consulted before the material can be given to that applicant before the Tribunal, and the material must remain confidential.²⁹ This is the case even where the Rule 70 provider(s) consented to the use of the material in one or more prior cases.³⁰

²² Motion, para. 3; *Brđanin* Decision, para 11; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Materials in the *Blagojević and Jokić* Case, 18 January 2006, para. 8; *Prosecutor v. 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.

²³ See *Blaškić* Decision, para. 14; First *Blagojević and Jokić* Decision, para. 11; see also *Delić* Order, p. 6; *Dorđević* Decision, para. 7.

²⁴ *Prosecutor v. 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 Materials in the *Limaj* case, 31 October 2006, para. 7; *Dorđević* Decision, para. 7.

²⁵ See *Blaškić* Decision, para. 15; *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 and Čerkez* Case, 23 January 2003, p. 4; *Dorđević* Decision, para. 7.

²⁶ First *Blagojević and Jokić* Decision, para. 11; *Dorđević* Decision, para. 7; *Blaškić* Decision, para. 14.

²⁷ *Dorđević* Decision, para. 7.

²⁸ Material produced pursuant to an order under Rule 54 *bis* may also require similar procedures before they can be disclosed to an accused in another case.

²⁹ See *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Prosecution’s Preliminary Response and Motion for Clarification Regarding the Appeal 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, paras. 11–12; *Dorđević* Decision, para. 15; *Delić* Order, p. 6.

³⁰ *Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Jadranko Prlić’s Motion for Access to All Confidential Material in *Prosecutor v. Rasim Delić*, 2 December 2005, p. 4.

III. Discussion

A. Time for responses/leave to reply

12. The Chamber notes that the Žigić Response, the Hazim Delić Response, and the Kubura Response were filed outside the 14 days time limit pursuant to Rule 126 *bis*. The Chamber further notes the submission of the Kubura Defence that the Motion was received only on 23 April 2009.³¹ In light of the fact that the proceedings in the cases in question have been completed and that there may have been delays in the transmission of the Motion to the defence teams concerned, the Chamber considers it appropriate to extend the time limit for the above responses retrospectively, and to consider them.

B. Identification of the materials sought

13. Counsel for Naser Orić submits that the Accused fails to identify the materials sought by requesting access to “all confidential” material.³² In the Response, the Prosecution does not dispute that the Accused has identified or described the material sought by its general nature. The Chamber recalls that requests for access to “all confidential material” can be sufficiently specific to meet the standard required³³ and finds that the Accused has identified the material sought with sufficient particularity.

C. Access to confidential *inter partes* material

14. It is the Prosecution’s submission that the Accused has not demonstrated a legitimate forensic purpose for access to category B and D materials and that his request for access to such materials amounts to a fishing expedition. However, the Chamber will follow the recent decision by the Appeals Chamber, which held that, in light of the principle of equality of arms, “once an accused has been granted access to confidential exhibits and confidential or closed session testimonies of another case before the Tribunal, he should not be prevented from accessing filings, submissions, decisions and hearing transcripts which may relate to such confidential evidence”.³⁴ Consequently, the Chamber will grant the Accused access to the different categories of materials

³¹ Kubura Response, para. 1 (footnote I).

³² Orić Response, paras. 10–11.

³³ *Brđanin* Decision, para 11; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Materials in the *Blagojević and Jokić* Case, 18 January 2006, para. 8; *Prosecutor v. 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.

³⁴ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Dragomir Milošević* Case, para. 11. See also *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Motion by Radovan Karadžić for Access to Confidential Material in the Perišić Case, 26 May 2009, para. 20.

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requested, including category B and D, in those completed cases, in regard to which the Chamber is satisfied that the Accused has demonstrated a legitimate forensic purpose and is not conducting a “fishing expedition”, i.e. seeking access to material in order to discover whether he has any case at all to make.³⁵

(i) Case of *Prosecutor v. Hadžihasanović and Kubura*

15. The Accused submits that there is a geographical and temporal overlap between the *Hadžihasanović and Kubura* case and his own case, and that the allegations in both cases “derive from similar factual incidents, namely incidents that are alleged to have occurred in and around the Lasava [*sic*] valley area”.³⁶ He further submits that access to confidential materials in this case will allow him “to show the context in which Serb actions alleged to be criminal were committed”.³⁷ The Prosecution argues that this reasoning does not satisfy the requirements of a legitimate forensic purpose and that there is no geographical overlap between the cases in question.³⁸ Counsel for Enver Hadžihasanović submits that the charges in the present case, concerning crimes against Bosnian Muslims, are unrelated to the charges in the *Hadžihasanović and Kubura* case, concerning crimes against Bosnian Croats and Bosnian Serbs.³⁹ The arguments advanced in the Response and the Hadžihasanović Response are supported by Counsel for Amir Kubura.⁴⁰

16. The Chamber notes that the Accused does not assert that the factual bases of both cases are interrelated and it considers the reference to incidents “in and around” the Lašva Valley area as too vague and misleading. The Indictment does not charge the Accused with crimes in the municipalities in which that area is located, nor does it charge the Accused with crimes in any of the municipalities contained in the indictment in *Hadžihasanović and Kubura*.⁴¹ In the absence of geographical and factual overlap, the Chamber is not satisfied that the Accused has shown the existence of a nexus between his case and the *Hadžihasanović and Kubura* case. The temporal overlap between the two cases alone is insufficient to show a legitimate forensic purpose for access to the requested materials.⁴² Accordingly, the Chamber is not satisfied that there is a good chance

³⁵ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-PT, Decision on Motion by Mario Čerkez for Access to Confidential Supporting Material, 10 October 2001, para. 11; *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-PT, Decision on Ivan Čermak’s and Mladen Markač’s Joint Motion for Access to Confidential Testimony and Documents in *Prosecutor v. Slobodan Milošević* Case, 1 March 2007, p. 3.

³⁶ Motion, para. 6(J)(ii).

³⁷ Motion, para. 6(J)(iii).

³⁸ Response, paras. 9–10.

³⁹ Hadžihasanović Response, para. 12.

⁴⁰ Kubura Response, para. 3.

⁴¹ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-PT, Third Amended Indictment, 26 September 2003.

⁴² *Prosecutor v. Gotovina et al.*, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Gotovina et al.* Case, 12 May 2009, para. 7.

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that granting access to the requested materials would materially assist the Accused in the preparation of his case.

(ii) *Case of Prosecutor v. Martić*

17. The Accused argues that there is significant geographic and temporal overlap between, and that there are interrelated factual bases in, his own case and the *Martić* case.⁴³ Additionally, the Accused submits that it is alleged that “Martić was part of a joint criminal enterprise with [the Accused]”.⁴⁴ The Prosecution does not dispute that both cases overlap in relation to crimes alleged in Bosanski Novi municipality and the alleged participants in, and purposes of, the joint criminal enterprises.⁴⁵ However, the Prosecution submits that the Accused has failed to satisfy the test in respect of other aspects of the *Martić* case and requests that Accused should not be granted access to confidential materials insofar as they relate to the shelling of Zagreb in May 1995 or the crimes carried out in the SAO Krajina.⁴⁶

18. Applying the legal standards for access to the present Motion, the Chamber finds that there is a clear and material overlap between the two cases with respect to the events that took place in the municipality of Bosanski Novi. The indictment in the *Martić* case charges crimes committed between 1 August 1991 to 31 December 1995, *inter alia* in Bosanski Novi,⁴⁷ namely persecutions, deportations, and forcible transfer, which are also alleged under counts three, seven and eight of the Indictment. Moreover, both the indictment in *Martić* and the Indictment allege that the Accused and Milan Martić were members of a common joint criminal enterprise to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from areas of Bosnia and Herzegovina by means which included the commission of crimes.⁴⁸ Accordingly, the Chamber is satisfied that there is a good chance that access to the material in the *Martić* case relating to these crimes would materially assist the Accused in the preparation of his defence.

19. However, the Chamber is not satisfied that the Accused has established that a substantial geographic overlap exists between the two cases as far as crimes in the other locations mentioned in the *Martić* indictment are concerned. Absent a geographical nexus, the temporal overlap between the two cases alone is insufficient to show a legitimate forensic purpose for gaining access to

⁴³ Motion, para. 6(Q).

⁴⁴ Motion, para. 6(Q)(3).

⁴⁵ Response, para. 11.

⁴⁶ Response, para. 11.

⁴⁷ *Prosecutor v. Martić*, Case No. IT-95-11-PT, Second Amended Indictment, 9 December 2005 (“*Martić* indictment”), para. 21ff.

⁴⁸ See Indictment, para. 11; *Martić* indictment, para. 6.

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materials relating to incidents in these locations. Consequently, the Chamber will order that the Accused shall be granted access to confidential material in the *Martić* case, only in so far as they are concerned with the events in Bosanski Novi.

(iii) Case of *Prosecutor v. Slobodan Milošević*

20. The Accused argues that there is significant geographic overlap, especially with regard to alleged crimes in Kotor Varoš, Prijedor, and Srebrenica, as well as temporal overlap between, and interrelated factual bases in, his own case and the *Slobodan Milošević* case.⁴⁹ Additionally, the Accused submits that Milošević and the Accused himself were allegedly members of a joint criminal enterprise.⁵⁰ The Prosecution notes that the Accused only refers to the portion of the *Slobodan Milošević* case related to Bosnia and Herzegovina and requests that access to confidential materials should be limited to this portion, on the basis that the Accused has not sought access to materials relating to other parts of the case and that, in any event, there is no geographical overlap with the parts of the case concerning Croatia or Kosovo.⁵¹

21. The Chamber notes that the Motion explicitly refers only to the Bosnia and Herzegovina indictment in the *Slobodan Milošević* case.⁵² This indictment relates to crimes committed in several municipalities in Bosnia and Herzegovina between 1 March 1992 until 31 December 1995,⁵³ including genocide, persecutions, extermination, murder, deportation, and inhumane acts, which are also alleged under counts one and three to eight of the Indictment. The *Slobodan Milošević* indictment also charges crimes in relation to incidents in Sarajevo between April 1992 and November 1995, including murder and attacks on civilians,⁵⁴ which are also alleged under counts five, six and ten of the Indictment. Moreover, both the indictment in *Slobodan Milošević* and the Indictment here allege that the Accused and Milošević were members of a common joint criminal enterprise to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from areas of Bosnia and Herzegovina by means which included the commission of crimes.⁵⁵

22. The Chamber notes that the geographical scope of the *Slobodan Milošević* indictment is broader than that of the Indictment, since the latter does not include allegations in relation to the municipalities of Bihać, Bileća, Bosanska Dubica, Bosanska Gradiška, Bosanski Šamac, Čelinac,

⁴⁹ Motion, para. 6(S).

⁵⁰ Motion, para. 6(S)(iii).

⁵¹ Response, para. 12.

⁵² Motion, para. 6(S), footnote 41.

⁵³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Amended Indictment, 22 November 2002 ("*Slobodan Milošević* indictment"), para. 32ff.

⁵⁴ *Slobodan Milošević* indictment, paras. 43–45.

⁵⁵ Indictment, para. 11; *Slobodan Milošević* indictment, para. 7.

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Doboj, Gacko, Nevesinje, Prnjavor, Rudo, Šekovići, Šipovo, Teslić, and Trebinje.⁵⁶ As far as these municipalities are concerned, the Chamber can see no significant overlap between the two cases. The Chamber is also not satisfied that the Accused has shown a legitimate forensic purpose for gaining access to materials relating to the parts of the case concerning Croatia and Kosovo. Consequently, the Chamber will grant the Accused access to confidential materials in the *Slobodan Milošević* case only in so far as they are concerned with the events in Bosnia and Herzegovina, except for those events in the municipalities specifically mentioned in the present paragraph.

(iv) *Case of Prosecutor v. Mucić et al.*

23. The Accused claims that there is a geographical and temporal overlap between his own case and the case of *Mucić et al.*, as both cases involve “crimes alleged to have occurred in Bosnia and Herzegovina”,⁵⁷ incidents alleged to have occurred between 1992 and 1995,⁵⁸ and interrelated factual bases.⁵⁹ The Prosecution argues that there is no nexus between the two cases that satisfies the prerequisites for access to confidential materials, as the case of *Mucić et al.* related to crimes committed in the Konjić municipality between May 1992 and October 1992, whereas the Indictment does not concern crimes in that municipality or its surroundings.⁶⁰ However, Counsel for Hazim Delić submits that access to the requested materials would assist the Accused in the preparation of his defence, because the determinations made by the Appeals Chamber in the case of *Mucić et al.* as to the degree of control exercised by the Federal Republic of Yugoslavia over the Bosnian Serb armed forces could be relevant to the threshold of effective control required to hold the Accused responsible as a superior of these forces under Article 7(3) of the Statute.⁶¹

24. The Chamber recalls that “the mere fact that both cases concern crimes committed in Bosnia and Herzegovina cannot be deemed as sufficiently specific”⁶² and notes that there is no geographical overlap, given that none of the charges in the Indictment is alleged to have been committed in the Konjić municipality, the location of the crimes charged in the *Mucić et al.* indictment.⁶³ The Accused does not provide any proof for his claim that the factual bases of the cases in question are interrelated and merely asserts that access to confidential materials in the

⁵⁶ Cf. *Slobodan Milošević* indictment, para. 40.

⁵⁷ Motion, para. 6(U)(i).

⁵⁸ Motion, para. 6(U)(ii).

⁵⁹ Motion, para. 6(U)(iii).

⁶⁰ Response, para. 13.

⁶¹ Hazim Delić Response, paras. 3–4.

⁶² *Prosecutor v. Delić*, Case No. IT-04-83-A, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Rasim Delić Case, 19 May 2009, para. 8.

⁶³ *Prosecutor v. Mucić et al.*, Case No. IT-96-21-T, Amended Indictment, 30 October 1996, para. 14.

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Mucić et al. case is relevant “to show the context” of the charges in the Indictment.⁶⁴ In the absence of geographical and factual overlap between the cases in question the Chamber is not satisfied that the Accused has shown the existence of a nexus between his case and the *Mucić et al.* case.

(v) Case of *Prosecutor v. Orić*

25. The Accused argues that there is significant geographic and temporal overlap between, and that there are interrelated factual bases in, his own case and the *Orić* case.⁶⁵ He further submits that his request aims at showing “the context of the events in which Dr. Karadžić are [*sic*] charged”.⁶⁶ Counsel for Naser Orić submits that there is a complete lack of temporal overlap between the two cases,⁶⁷ that the Accused has not shown how access to confidential material in the *Orić* case will materially assist his case, and that “not every crime committed in the Bosnian context provides relevant context to the Accused’s case.”⁶⁸ The Prosecution responds that there is neither temporal nor material overlap between the two cases, concurs with the submissions of Counsel for Naser Orić, and requests that the Accused be denied access to confidential materials in the *Orić* case.⁶⁹

26. The Chamber notes that Orić was charged with crimes against Bosnian Serbs in Srebrenica municipality between June 1992 and March 1993,⁷⁰ whereas the Accused is charged with crimes committed against Bosnian Muslims in Srebrenica and its surroundings between July and November 1995.⁷¹ In the absence of temporal or other material overlap between both cases, the geographic overlap between the two cases alone is insufficient to show a legitimate forensic purpose for gaining access to confidential materials. The Accused does not indicate how the material sought would help to show the context of the events in the Indictment. Accordingly, the Chamber is not satisfied that there is a good chance that granting access to the requested materials would materially assist the Accused in the preparation of his case.

(vi) Remaining Cases

27. The Chamber notes that there is some material overlap, geographical, temporal, or otherwise, between the Indictment and the indictments in the following cases:

⁶⁴ Motion, para. 6(U)(iii).

⁶⁵ Motion, para. 6(Y).

⁶⁶ Motion, para. 6(Y)(iii).

⁶⁷ Orić Response, para. 6.

⁶⁸ Orić Response, paras. 3 and 9.

⁶⁹ Response, para. 14.

⁷⁰ *Prosecutor v. Orić*, Case No. IT-03-68 PT, Third Amended Indictment, 30 June 2005, para. 19ff.

⁷¹ Indictment, para. 20.

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- (a) *Prosecutor v. Banović*: The indictment in this case relates to crimes committed between 24 May 1992 and 30 August 1992 in the Omarska and Keraterm camps in the municipality of Prijedor,⁷² including persecutions and murder, which are also alleged under counts three, five and six of the Indictment in relation to the same municipality and timeframe. Moreover, both Banović and the Accused are alleged to have participated in what appears to be a common joint criminal enterprise. Even though the *Banović* indictment does not specifically mention the Accused, it does refer to the “Bosnian Serb Leadership”. Furthermore, the objective of that joint criminal enterprise is defined in the *Banović* indictment as “the permanent forcible removal of Bosnian Muslim, Bosnian Croat or other non-Serb inhabitants from the territory of the planned Serbian State in Bosnia and Herzegovina”,⁷³ which is similar to the objective “to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of BiH claimed as Bosnian Serb territory”,⁷⁴ alleged in the Indictment.
- (b) *Prosecutor v. Blagojević and Jokić, Prosecutor v. Obrenović, and Prosecutor v. Momir Nikolić*: The indictments in these cases relate to crimes committed between July and November 1995 in Srebrenica and its surroundings,⁷⁵ including genocide, persecutions, extermination, murder, and forcible transfer, which are also alleged under counts two to six and eight of the Indictment in relation to the same location and timeframe. Many of the alleged incidents in the indictments in all of these cases are identical.⁷⁶ Moreover, it appears that the Accused is alleged to have participated with Blagojević, Jokić, and Nikolić, in a common joint criminal enterprise relating to Srebrenica. Neither the *Blagojević and Jokić* indictment nor the *Obrenović and Nikolić* indictment explicitly mention the Accused as a member of this joint criminal enterprise. However, the objective of the joint criminal enterprise defined in the Indictment is “to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men from Srebrenica”,⁷⁷ which is similar to the objective, alleged in the *Obrenović and Nikolić* indictment and the *Blagojević and Jokić* indictment, “to forcibly transfer the women and children from the

⁷² *Prosecutor v. Fuštar et al.*, Case No. IT-95-8/1-PT, Third Amended Indictment, 5 July 2002 (“*Banović* indictment”), para. 26ff.

⁷³ *Banović* indictment, para. 17.

⁷⁴ Indictment, para. 9.

⁷⁵ *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002 (“*Obrenović and Nikolić* indictment”), para. 35ff.; *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-T, Fourth Amended Joinder Indictment, 14 May 2004 (“*Blagojević and Jokić* indictment”), para. 35ff.

⁷⁶ See Indictment, Schedule E. See also *Blagojević and Jokić* indictment, paras. 43–46; *Obrenović and Nikolić* indictment, paras. 43–46.

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Srebrenica enclave ... and to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave".⁷⁸

- (c) *Prosecutor v. Brđanin*: The indictment in this case relates to crimes committed in several municipalities in Bosnia and Herzegovina between 1 April 1992 and 31 December 1992,⁷⁹ including genocide, persecutions, extermination, deportation and forcible transfer, which are also alleged under counts one, three, four, seven and eight of the Indictment in relation to the same municipalities and timeframe. Moreover, the *Brđanin* indictment lists the Accused as a participant in a joint criminal enterprise with the objective of "the permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state".⁸⁰
- (d) *Prosecutor v. Češić*: The indictment in this case relates to crimes committed in Brčko municipality between May and June 1992,⁸¹ including murder, which is also charged under counts five and six of the Indictment in relation to the same municipality and timeframe.
- (e) *Prosecutor v. Deronjić*: The indictment in this case relates to persecutions committed in Bratunac municipality between the end of April 1992 and 9 May 1992,⁸² which are also charged under count three of the Indictment in relation to the same municipality and timeframe.
- (f) *Prosecutor v. Erdemović*: The indictment in this case relates to murders committed in Zvornik municipality on or about 16 July 1995 in relation to the events in Srebrenica,⁸³ which are also charged under counts five and six of the Indictment in relation to the same municipality and timeframe.
- (g) *Prosecutor v. Galić*: The indictment in this case relates to crimes committed between 10 September 1992 and 10 August 1994 in relation to a campaign of shelling and

⁷⁷ Indictment, para. 20.

⁷⁸ *Obrenović and Nikolić* indictment, para. 30; *Blagojević and Jokić* indictment, para. 30.

⁷⁹ *Prosecutor v. Brđanin*, IT-99-36-T, Sixth Amended Indictment, 9 December 2003 ("*Brđanin* indictment"), para. 35ff.

⁸⁰ *Brđanin* indictment, paras. 27.1–27.2.

⁸¹ *Prosecutor v. Češić*, Case No. IT-95-10/1-PT, Third Amended Indictment, 26 November 2002, para. 12ff.

⁸² *Prosecutor v. Deronjić*, Case No. IT-02-61-PT, Second Amended Indictment, 30 September 2003, para. 27ff.

⁸³ *Prosecutor v. Erdemović*, Case No. IT-96-22-PT, Indictment, 10 October 1997, para. 12.

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sniping in Sarajevo,⁸⁴ including murder, terror, and unlawful attacks on civilians, which are also charged under counts five, six, nine, and ten of the Indictment in relation to the same municipality and timeframe. Many of the alleged incidents in the schedules annexed to both indictments are identical.⁸⁵

- (h) *Prosecutor v. Jelisić*: The indictment in this case relates to crimes committed in Brčko municipality between May 1992 and June 1992,⁸⁶ including genocide and murder, which are also charged under counts one, five, and six of the Indictment in relation to the same municipality and timeframe.
- (i) *Prosecutor v. Krajišnik and Prosecutor v. Plavšić*: The common indictment in these cases relates to crimes committed in several municipalities in Bosnia and Herzegovina between 1 July 1991 and 30 December 1992,⁸⁷ namely genocide, persecutions, extermination, murder, deportation, and inhumane acts, which are also alleged under counts one and three to eight of the Indictment in relation to the same municipalities and timeframe. Many of the alleged incidents in the Schedules annexed to both indictments are identical.⁸⁸ Moreover, both the *Krajišnik and Plavšić* indictment and the Indictment here allege that the Accused, Krajišnik, and Plavšić were members of a joint criminal enterprise to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from areas of Bosnia and Herzegovina.⁸⁹
- (j) *Prosecutor v. Krnojelac*: The indictment in this case relates to crimes committed in Foča municipality between April 1992 and August 1993,⁹⁰ including persecutions, which are also alleged under count three of the Indictment, as well as murders in relation to incidents at KP Dom prison, which are also alleged under counts five and six of the Indictment.⁹¹

⁸⁴ *Prosecutor v. Galić*, Case No. IT-98-29-I, Indictment, 26 March 1999 (“*Galić* indictment”), para. 16ff.

⁸⁵ See, e.g., Indictment, Schedule F, Incidents 3, 4, and 6–10, which are identical to incidents identified in the First Schedule to the *Galić* indictment.

⁸⁶ *Prosecutor v. Jelisić et al.*, Case No. IT-95-10-PT, Second Amended Indictment, 20 October 1998, para. 14ff.

⁸⁷ *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39&40-PT, Amended Consolidated Indictment, 7 March 2002 (“*Krajišnik and Plavšić* indictment”), paras. 15, 18, 24, and 27.

⁸⁸ See, e.g., Indictment, Schedule A, Incidents 1.1, 3.2, 4.1, 4.2, 5.2, 6.1, 8.2, 8.3, 9.1, 10.1, 10.4, 10.8, 12.1, 13.1, 15.1, 15.2, 16.1, and 16.2, which are identical to incidents identified in Schedule A appended to the *Krajišnik and Plavšić* indictment.

⁸⁹ See Indictment, para. 11; *Krajišnik and Plavšić* indictment, para. 4.

⁹⁰ *Prosecutor v. Krnojelac*, Case No. IT-97-25-I, Third Amended Indictment, 25 June 2001 (“*Krnojelac* indictment”), para. 4.9.

⁹¹ *Krnojelac* indictment, paras. 5.32–5.34. See also Indictment, Schedule B, Incident 8.

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- (k) *Prosecutor v. Krstić*: The indictment in this case relates to crimes committed in Srebrenica and its surroundings between 11 July 1995 to 1 November 1995,⁹² namely genocide, persecutions, extermination, murder, deportation, and forcible transfer, which are also alleged under counts two to eight of the Indictment in relation to the same municipality and timeframe. Many of the incidents alleged in both indictments are identical.⁹³ Moreover, as commander of the VRS Drina Corps,⁹⁴ Krstić is alleged in the Indictment to be a member of a joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica.⁹⁵
- (l) *Prosecutor v. Kovačević*: The indictment in this case relates to charges of genocide, persecutions, extermination, murder, and deportation in Prijedor municipality between 29 April 1992 and 31 December 1992,⁹⁶ which are also charged under counts one and three to seven of the Indictment in relation to the same municipality and timeframe. Moreover, the *Stakić* indictment lists both Kovačević and the Accused as participants in a joint criminal enterprise with the objective of “permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state”.⁹⁷
- (m) *Prosecutor v. Kunarac et al.*: The indictment in this case relates to crimes committed in Foča municipality between July 1992 and February 1993,⁹⁸ mainly torture and rape. These underlying offences form part of the persecutions charged in relation to the same municipality and timeframe under count three of the Indictment.⁹⁹
- (n) *Prosecutor v. Kvočka et al., Prosecutor v. Mejakić et al., and Prosecutor v. Sikirica et al.*: The indictments in these cases relate to crimes committed between 24 May 1992 and 30 August 1992, including persecutions and murder in relation to incidents in the Keraterm, Omarska, and Trnopolje camps (Prijedor municipality),¹⁰⁰ which are also

⁹² *Prosecutor v. Krstić*, Case No. IT-98-33-PT, Amended Indictment, 27 October 1999 (“*Krstić* indictment”), para. 21ff.

⁹³ See Indictment, Schedule E, Incidents 2, 3, 5–7, 9, 10, 14, and 15, which are identical to incidents identified in para. 24 of the *Krstić* indictment.

⁹⁴ *Krstić* Indictment, para. 12.

⁹⁵ See Indictment, para. 22.

⁹⁶ *Prosecutor v. Kovačević*, Case No. IT-97-24-I, Amended Indictment, 15 June 1998, para. 22ff.

⁹⁷ See *Prosecutor v. Stakić*, Case No. IT-97-24-PT, Fourth Amended Indictment, 11 April 2002, paras. 26–27. Kovačević had been initially charged jointly with Stakić (see *Prosecutor v. Drljača, Kovačević, and Stakić*, Case No. IT-97-24-I, Indictment, 13 March 1997).

⁹⁸ *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-PT, Amended Indictment, 2 December 1999, para. 4.3.

⁹⁹ Indictment, para. 60(b) and (c).

¹⁰⁰ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-PT, Amended Indictment, 26 October 2000 (“*Kvočka et al.* indictment”), para. 24ff.; *Prosecutor v. Mejakić et al.*, Case No. IT-02-65, Consolidated Indictment, 5 July 2002

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alleged under counts three, five, and six of the Indictment. Additionally, the *Sikirica et al.* indictment charges these and other incidents in Prijedor municipality as genocide,¹⁰¹ which is also alleged under count one of the Indictment in relation to the same municipality and timeframe. Moreover, the *Mejakić et al.* indictment lists Kvočka, Sikirica, and the other accused in the *Mejakić et al.* case as participants in a joint criminal enterprise with the objective of “the permanent forcible removal of Bosnian Muslim, Bosnian Croat or other non-Serb inhabitants from the territory of the planned Serbian State in Bosnia and Herzegovina”.¹⁰² This appears to correspond to what is alleged in the Indictment as an “overarching” joint criminal enterprise to permanently remove Bosnian Muslim and Bosnian Croat inhabitants from areas of Bosnia and Herzegovina claimed as Bosnian Serb territory.¹⁰³

- (o) *Prosecutor v. Mrđa*: The indictment in this case charges the murder of approximately two hundred men on Vlasić Mountain in Skender Vakuf municipality on 21 August 1992,¹⁰⁴ which is also charged under counts five and six of the Indictment.¹⁰⁵
- (p) *Prosecutor v. Dragan Nikolić*: The indictment in this case relates to crimes committed at Sušica camp in Vlasenica municipality between early June 1992 and 30 September 1992,¹⁰⁶ including persecutions and murder, which are also alleged under counts three, five, and six of the Indictment.
- (q) *Prosecutor v. Stakić*: The indictment in this case relates to crimes committed in Prijedor municipality between 30 April 1992 and 30 September 1992, including genocide, persecutions, extermination, murder, deportation, and inhumane acts,¹⁰⁷ which are also alleged under counts one and three to eight of the Indictment in relation to the same municipality and timeframe. Moreover, the *Stakić* indictment lists the Accused as a participant with Stakić in a joint criminal enterprise with the objective of

(“*Mejakić et al.* indictment”), para. 29ff.; *Prosecutor v. Sikirica et al.*, Case No. IT-95-8-PT, Second Amended Indictment, 3 January 2001 (“*Sikirica et al.* indictment”), para. 35ff.

¹⁰¹ *Sikirica et al.* Indictment, paras. 26–34.

¹⁰² *Mejakić et al.* Indictment, paras. 19–21.

¹⁰³ See Indictment, para. 11.

¹⁰⁴ *Prosecutor v. Mrđa*, Case No. IT-02-59-S, Amended Indictment, 4 August 2003, para. 16.

¹⁰⁵ See Indictment, Schedule B, Incident 15.6.

¹⁰⁶ *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-PT, Second Amended Indictment, 7 January 2002, para. 3.

¹⁰⁷ See *Prosecutor v. Stakić*, Case No. IT-97-24-PT, Fourth Amended Indictment, 11 April 2002 (“*Stakić* indictment”), paras. 39ff.

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“permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state”.¹⁰⁸

- (r) *Prosecutor v. Tadić*: The indictment in this case relates to crimes committed between 23 May 1992 and 31 December 1992,¹⁰⁹ including persecutions and murder in relation to incidents in Prijedor municipality,¹¹⁰ which are also alleged under counts three, five, and six of the Indictment in relation to the same municipality and timeframe.
- (s) *Prosecutor v. Talić*: The indictment in this case relates to crimes committed in several municipalities of Bosnia and Herzegovina between 1 April 1992 and 31 December 1992, including genocide, persecutions, extermination, deportation, and inhumane acts,¹¹¹ which are also alleged under counts one, three, four, seven and eight of the Indictment in relation to the same municipalities and timeframe. Moreover, the *Talić* indictment lists the Accused as a participant with Talić in a joint criminal enterprise with the objective of “the permanent forcible removal of Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state”.¹¹²
- (t) *Prosecutor v. Vasiljević*: The indictment in this case relates to crimes committed in Višegrad municipality between April 1992 and October 1992,¹¹³ including persecutions, extermination and murder,¹¹⁴ which are also alleged under counts three, and four to six of the Indictment in relation to the same municipality and timeframe.
- (u) *Prosecutor v. Zelenović*: The indictment in this case relates to crimes committed in Foča municipality between April 1992 and February 1993,¹¹⁵ namely torture and rape.¹¹⁶ These underlying offences form part of the persecutions charged in relation to the same municipality and timeframe under count three of the Indictment.¹¹⁷

¹⁰⁸ See *Stakić* indictment, paras. 26–27.

¹⁰⁹ *Prosecutor v. Tadić*, Case No. IT-95-1-T, Indictment (Amended), 14 December 1995 (“*Tadić* indictment”), para. 1.

¹¹⁰ See *Tadić* indictment, para. 4ff.

¹¹¹ *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Corrected Version of Fourth Amended Indictment, 10 December 2001 (“*Brđanin and Talić* indictment”), para. 35ff.

¹¹² *Brđanin and Talić* indictment, paras. 27.1–27.2.

¹¹³ *Prosecutor v. Lukić et al.*, Case No. IT-98-32-PT, Amended Indictment, 12 July 2001 (“*Lukić et al.* indictment”) para. 29.

¹¹⁴ *Lukić et al.* indictment, para. 5ff.

¹¹⁵ *Prosecutor v. Janković et al.*, Case No. IT-96-23/2-I, Amended Indictment, 20 April 2001 (“*Janković et al.* indictment”), paras. 4.3–4.4.

¹¹⁶ *Janković et al.* indictment, para. 5.1ff.

¹¹⁷ Indictment, para. 60(b) and (c).

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28. Accordingly, the Chamber is of the view that there is a good chance that access to the materials in the cases listed in the previous paragraph will materially assist the Accused in the preparation of his case, insofar as these cases overlap with the present case.

29. However, the Chamber notes that the geographical scope of certain of these cases is broader than that of the Indictment. As far as the indictments in these cases charge events in municipalities that are not included in the Indictment, the Chamber can see no significant overlap between these cases and the present case. Notably, the Indictment does not include allegations in relation to:

- (a) the municipalities of Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Čelinac, Prnjavor, Šipovo, and Teslić, which are included in the *Talić* indictment;¹¹⁸
- (b) the municipalities of Čelinac, Prnjavor, Šipovo, and Teslić, which are included in the *Brđanin* indictment;¹¹⁹
- (c) the municipalities of Bileća, Čelinac, Doboј, Gacko, Nevesinje, Prnjavor, Rudo, Šipovo, Teslić, and Trnovo, which are included in the *Krajišnik and Plavšić* indictment.¹²⁰

30. With regard to the case of *Prosecutor v. Milan Babić*, the Chamber notes that the indictment in that case relates to crimes committed in Croatia between 1 August 1991 and 15 February 1992,¹²¹ while the geographical scope of the Indictment is limited to certain municipalities in Bosnia and Herzegovina. The Chamber is not satisfied that the Accused has established that a geographic overlap exists between the two cases. Absent a geographical nexus, the partial temporal overlap between the two cases alone is insufficient to show a legitimate forensic purpose for gaining access to materials in the *Babić* case. Accordingly, the Chamber is not satisfied that there is a good chance that access to the material in the *Babić* case would materially assist the Accused in the preparation of his defence.

¹¹⁸ Cf. *Brđanin and Talić* indictment, para. 4.

¹¹⁹ Cf., *Brđanin* indictment, para. 47.

¹²⁰ Cf. *Krajišnik and Plavšić* indictment, para. 18.

¹²¹ *Prosecutor v. Milan Babić*, Case No. IT-03-72-I, Indictment, 6 November 2003, para. 13ff.

D. Access to confidential *ex parte* materials

31. As noted earlier, nowhere in the Motion does the Accused request access to *ex parte* material. Therefore, the Prosecution's opposition to granting him access to any *ex parte* material is moot.¹²²

IV. Disposition

32. For the reasons outlined above, the Chamber, pursuant to Rules 54, 70, and 75 of the Rules, hereby **GRANTS** the Motion **in part** and allows the Accused, subject to the conditions set forth below, access to all *inter partes* confidential material, including all confidential closed and private session testimony transcripts, all closed session hearing transcripts, all confidential exhibits, all confidential *inter partes* filings and submissions, and all confidential Trial Chamber and Appeals Chamber decisions, in the following cases:

- | | |
|--|--|
| (a) <i>Prosecutor v. Banović;</i> | (b) <i>Prosecutor v. Blagojević and Jokić;</i> |
| (c) <i>Prosecutor v. Obrenović;</i> | (d) <i>Prosecutor v. Momir Nikolić;</i> |
| (e) <i>Prosecutor v. Češić;</i> | (f) <i>Prosecutor v. Deronjić;</i> |
| (g) <i>Prosecutor v. Erdemović;</i> | (h) <i>Prosecutor v. Galić;</i> |
| (i) <i>Prosecutor v. J elisić;</i> | (j) <i>Prosecutor v. Krnojelac ;</i> |
| (k) <i>Prosecutor v. Krstić;</i> | (l) <i>Prosecutor v. Kovač ević;</i> |
| (m) <i>Prosecutor v. Kunarac et al.;</i> | (n) <i>Prosecutor v. Kvočka et al.;</i> |
| (o) <i>Prosecutor v. Mejakić et al.;</i> | (p) <i>Prosecutor v. Sikirica et al.;</i> |
| (q) <i>Prosecutor v. Mrđa;</i> | (r) <i>Prosecutor v. Dragan Nikolić;</i> |
| (s) <i>Prosecutor v. Stakić;</i> | (t) <i>Prosecutor v. Tadić ;</i> |
| (u) <i>Prosecutor v. Vasiljević;</i> | (v) <i>Prosecutor v. Zelenović;</i> |
- (w) *Prosecutor v. Talić*, in so far as the materials do not relate to the municipalities of Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Čelinac, Prnjavor, Šipovo, and Teslić;
- (x) *Prosecutor v. Brđanin*, in so far as the materials do not relate to the municipalities of Čelinac, Prnjavor, Šipovo, and Teslić;

¹²² See Response, paras. 18–20.

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- (y) *Prosecutor v. Plavšić*, in so far as the materials do not relate to the municipalities of Bileća, Čelinac, Doboj, Gacko, Nevesinje, Prnjavor, Rudo, Šipovo, Teslić, and Trnovo;
- (z) *Prosecutor v. Krajišnik*, in so far as the materials do not relate to the municipalities of Bileća, Čelinac, Doboj, Gacko, Nevesinje, Prnjavor, Rudo, Šipovo, Teslić, and Trnovo;
- (aa) *Prosecutor v. Martić*, in so far as the materials are concerned with events in Bosanski Novi;
- (bb) *Prosecutor v. Slobodan Milošević*, in so far as the materials are concerned with events in Bosnia and Herzegovina, and in so far as the materials do not relate to the municipalities of Bihać, Bileća, Bosanska Dubica, Bosanska Gradiška, Bosanski Šamac, Čelinac, Doboj, Gacko, Nevesinje, Prnjavor, Rudo, Šekovići, Šipovo, Teslić, and Trebinje.

33. The Chamber **ORDERS** the Prosecution:

- (a) to identify to the Chamber and the Registry, within 14 days of this Decision, what *inter partes* confidential material in the cases identified in paragraph 32 can be immediately disclosed to the Accused and what *inter partes* confidential materials, if any, cannot be immediately disclosed to the Accused, due to protective measures already in force, or pending the Prosecution's request to the Chamber for additional protective measures or an agreement by Rule 70 providers;
- (b) to file, by the same date, its request, if any, for additional protective measures of any *inter partes* confidential material in the cases identified in paragraph 32;
- (c) to contact, by the same date, the Rule 70 providers in relation to any material subject to a condition relating to disclosure under Rule 70, and to seek their consent for its disclosure to the Accused, and, where Rule 70 providers consent to such disclosure, to notify the Registry of such consent.

34. The Chamber **REQUESTS** the Registry to disclose to the Accused:

- (a) the material that can be immediately disclosed once it has been identified as such by the Prosecution in accordance with paragraph 33(a);
- (b) the remaining material, once notified by the Prosecution that it is appropriate to do so following upon paragraphs 33(b) and 33(c).

35. The Chamber **ORDERS** that no confidential and *ex parte* material from the cases listed in paragraph 32 above be disclosed to the Accused.

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36. The Chamber **ORDERS** that the Accused and his legal associates, assigned by the Registry, shall not disclose to the public, or to any third party, any confidential or non-public material disclosed from the cases listed in paragraph 32 above, including witness identities, whereabouts, statements, transcripts, or any information which would enable them to be identified and would breach the confidentiality of the protective measures already in place except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Accused's case. If any confidential or non-public material is disclosed to the public where directly and specifically necessary, any person to whom disclosure is made shall be informed that he or she is forbidden to copy, reproduce, or publicise confidential or non-public information or to disclose it to any person, and that he or she must return the material to the Accused as soon as it is no longer needed for the preparation of the Accused's case.

37. The Chamber **ORDERS** that if, for the purposes of the preparation of the Accused's defence, non-public material is disclosed to the public, any person to whom disclosure of the confidential material 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 Accused and/or his legal advisers as soon as the information is no longer needed for the preparation of the Accused's defence.

38. For the purposes of this Decision, "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 his representatives, and the Accused and his legal advisers, assigned by the Registry. "The public" also includes, without limitation, families, friends, and associates of the Accused; accused and defence counsel in other cases or proceedings before the Tribunal; and the media and journalists.

39. The Chamber **ORDERS** that nothing in this Decision shall affect the disclosure obligations of the Prosecution under Rules 66 and 68; and **RECALLS** that it is the responsibility of the Prosecution to determine whether there is additional material related to the cases listed in paragraph 32 above that should be disclosed to the Accused but which is not covered by the terms of this Decision.

40. The Chamber **RECALLS** that, pursuant to Rule 75(F)(i), any protective measures that have been ordered in respect of a witness in the cases listed in paragraph 32 above shall continue to have effect in the case against the Accused, except insofar as they have been varied in accordance with this Decision.

41. The Chamber **ORDERS** that if any of the Accused's legal associates, assigned by the Registry, 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.

42. The Chamber **ORDERS** the Accused, on completion of proceedings against him, including any appeal, to return all confidential material for which the access is granted in this Decision to the Registry.

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


Judge Iain Bonomy, Presiding

Dated this fifth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

