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-95-5/18-T
IT-05-88/2-T
Date: 12 January 2012
Original: English

IN THE TRIAL CHAMBER

Before: **Judge O-Gon Kwon, Presiding Judge**
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: **Mr. John Hocking**

Decision of: **12 January 2012**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ZDRAVKO TOLIMIR'S MOTION FOR DISCLOSURE OF CONFIDENTIAL MATERIALS FROM THE *KARADŽIĆ* CASE

Prosecutor v. Radovan Karadžić (Case No. IT-95-5/18-T)
Office of the Prosecutor
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused
Mr. Radovan Karadžić

Standby Counsel
Mr. Richard Harvey

Prosecutor v. Zdravko Tolimir (Case No. IT-05-88/2-T)
Office of the Prosecutor
Mr. Peter McCloskey

Defence:
Mr. Zdravko Tolimir
Mr. Aleksandar Gajić

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 "Urgent Motion for Disclosure of Confidential Materials from the *Karadžić* Case", filed by Zdravko Tolimir ("Tolimir") on 5 December 2011 ("Motion"), and hereby issues its decision thereon.

I. Submissions

1. In the Motion, Tolimir seeks access to "all confidential and confidential and *inter partes*" materials from the case of *Prosecutor v. Radovan Karadžić* (Case No. IT-95/18-T) ("*Karadžić* case"), namely (i) transcripts from closed and private sessions; (ii) all confidential exhibits from the case, as well as documents marked for identification ("MFI Documents") and documents not admitted into evidence ("MNA Documents"); (iii) all confidential submissions of the parties and confidential decisions of the Trial and Appeals Chambers ("confidential filings"); and (iv) other confidential material.[1] Tolimir requests all these materials insofar as they relate to counts 1 to 8 of the current operative indictment in the case of *Prosecutor v. Zdravko Tolimir* (Case No. IT-05-88/2-T) ("*Tolimir* Indictment").[2] In addition, Tolimir also requests access to all "confidential and confidential and *inter partes* material" in which he is mentioned in any context.[3] Finally, he requests "*prompt* access to all *public* material" from the *Karadžić* case, given that these materials, even though public, are not "automatically easily accessible."[4]

2. In support, Tolimir submits that there is a "significant factual nexus" between his case and the *Karadžić* case, as they both pertain to events related to Srebrenica in July 1995, as well as the related events in the municipalities of Srebrenica, Žepa, Rogatica, Bratunac, Zvornik, and Vlasenica.[5]

3. Tolimir requests that access be provided on a continuous basis and that the Chamber issue an order setting a day of the month by which the Registry should disclose the materials, both confidential and public, from the previous month.[6] Tolimir also asks that this Motion be considered as urgent, given that his defence case is due to start in January 2012.[7]

[1] Motion, paras. 1, 5.
[2] Motion, para. 6.
[3] Motion, para. 7.
[4] Motion, para. 10.
[5] Motion, para. 3.
[6] Motion, paras. 8, 10.
[7] Motion, para. 11.

4. On 8 December 2011, the Accused filed his "Response to Tolimir Access Motion", urging the Chamber to grant the Motion in its entirety.[8]

5. On 9 December 2011, the Office of the Prosecutor ("Prosecution") filed the "Prosecution's Response to Zdravko Tolimir's Urgent Motion for Disclosure of Confidential Materials from the Karadžić Case" ("Prosecution Response"), stating that it does not oppose the Motion, except insofar as it concerns (i) confidential material provided under Rule 70 of the Rules of Procedure and Evidence ("Rules"); (ii) confidential material subject to delayed disclosure; and (iii) confidential material related to other protective measures, enforcement of sentences, remuneration of counsel, fitness to stand trial, subpoenas, applications for video-conference links, provisional release, orders to release transcripts or broadcasts of a hearing, the Accused's health, and internal memoranda assessing state co-operation.[9] With respect to (i), the Prosecution notes that it can disclose the Rule 70 material only once the consent for such disclosure is obtained from the Rule 70 provider.[10] As for (ii), the Prosecution notes that Tolimir should not be given access to materials for which delayed disclosure orders have been issued, in accordance with the time frames set out in such orders.[11] Finally, in relation to (iii), the Prosecution argues that the material mentioned therein should be excluded because it "may contain sensitive information that is of little or no evidentiary value to Tolimir and he made no showing as to why access to it is warranted."[12]

6. The Prosecution opposes the request that the Chamber issue a strict monthly deadline as there is neither precedent for such an order nor need, given that both the Prosecution and the Registry discharge their duties diligently.[13] If, however, the Chamber is minded to issue such a deadline, the Prosecution submits that it should be set on a "quarterly rather than a monthly basis".[14]

II. Applicable Law

7. The Chamber notes the well-established principle that Tribunal proceedings should be conducted in a public manner to the extent possible.[15] Further, the Chamber observes that generally, "[a] party is always entitled to seek material from any source to assist in the

[8] Response to Tolimir Access Motion, 8 December 2011, para. 1.
[9] Prosecution Response, paras. 1, 3–6.
[10] Prosecution Response, para. 8.
[11] Prosecution Response, para. 9.
[12] Prosecution Response, para. 10.
[13] Prosecution Response, para. 7.
[14] Prosecution Response, para. 7.
[15] Rule 78 provides, "All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided."

preparation of his case."[16] 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.[17] Such confidential material can be categorised into three types: *inter partes*, *ex parte*, and Rule 70.

8. In determining whether a party must be given access to confidential material, the Trial Chamber must "find a balance between the right of [that] party to have access to material to prepare its case and the need to guarantee the protection of witnesses."[18] To that end, it is well 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.[19]

9. The first requirement is not a particularly onerous one. The Appeals Chamber has held that requests for access to "all confidential material" can be sufficiently specific to meet the identification standard.[20]

10. With respect to the second requirement, the standards for access differ for each category of confidential material. With regards to 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.[21] 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."[22] To establish a nexus, the applicant is required to demonstrate a "geographical, temporal or otherwise material overlap" between the two

[16] *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.

[17] *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, Decision on Vladimir Đorđević's Motion for Access to All Material in *Prosecutor v. Limaj et al*., Case Not. IT-03-66, 6 February 2008 ("*Đorđević* Decision"), para. 6.

[18] *Prosecutor v. 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, p. 2.

[19] *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; *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.

[20] *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.

[21] *See Blaškić* Decision, para. 14; First *Blagojević and Jokić* Decision, para. 11; *See also Delić* Order, p. 6; *Đorđević* Decision, para. 7.

[22] *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; *Đorđević* Decision, para. 7.

proceedings.[23] The essential nature of the material, in turn, means that the party seeking it must demonstrate "a good chance that access to this evidence will materially assist the applicant in preparing his case."[24] The standard does not require the applicant to go so far as to establish that the material sought would likely be admissible evidence.[25]

11. With respect to the *ex parte* confidential material, the Appeals Chamber has held that it is of a "higher degree of confidentiality", as it contains information that has not been disclosed to the other party in that case "because of security interests of a State, other public interests, or privacy interests of a person or institution" and that, therefore, "the party on whose behalf the *ex parte* status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed."[26]

12. 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.[27] 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 another accused before the Tribunal, and the material must remain confidential.[28] This is the case even where the Rule 70 provider(s) consented to the use of the material in one or more prior cases.[29]

13. Pursuant to Rule 75 (F)(i) of the Rules, protective measures that have been ordered for a witness or victim in any proceedings before the Tribunal shall continue to have effect *mutatis mutandis* in any other proceedings, unless and until they are rescinded, varied, or augmented.

III. Discussion

A. *Ex parte* material

[23] *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; *Đorđević* Decision, para. 7.

[24] First *Blagojević and Jokić* Decision, para. 11; *Đorđević* Decision, para. 7; *Blaškić* Decision, para. 14.

[25] *Đorđević* Decision, para. 7.

[26] *Prosecutor v. 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; *Prosecutor v. 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, 12 April 2005, p. 4; *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Motion by Mićo Stanišić for Access to All Confidential Material in the *Krajišnik* Case, 21 February 2007, p. 5; *Brđanin* Decision, para. 14.

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

[28] *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 Lubičić's Motion for Access to Confidential Material, Transcripts and Exhibits in the *Blaškić* Case, 8 March 2004, paras. 11 – 12; *Đorđević* Decision, para. 15; *Delić* Order, p. 6.

14. The Chamber notes that Tolimir refers to "confidential and confidential and *inter partes*" material throughout the Motion. The Chamber considers this to be a reference to confidential and *inter partes* material alone, and thus will not consider the issue of disclosure to Tolimir of *ex parte* material from the *Karadžić* case.

B. Access to confidential *inter partes* material

15. The Chamber first notes that Tolimir requests access to a number of different categories of material, including all confidential *inter partes* transcripts from closed and private sessions, confidential filings,[30] and confidential exhibits admitted in the *Karadžić* case. Thus, the Chamber is satisfied that the material sought by Tolimir has been sufficiently identified.

16. The Trial Chamber also finds that there is a clear geographical and temporal overlap between the case of Zdravko Tolimir and the *Karadžić* case, as well as a significant factual nexus between the two cases. Both cases relate to the alleged existence of a joint criminal enterprise to eliminate the Bosnian Muslims in Srebrenica ("Srebrenica JCE"), and the related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica. In addition, according to the *Tolimir* Indictment, Tolimir is alleged to have participated in the Srebrenica JCE together with the Accused.[31] Similarly, the Third Amended Indictment in the *Karadžić* case ("Indictment") alleges that the Accused participated in the Srebrenica JCE, along with "commanders, assistant commanders, senior officers, and chiefs of the [Army of the Republika Srpska ("VRS")] operating in or with responsibility over territory within the Drina Corps area of responsibility", and thus along with Tolimir, who was one of seven assistant commanders in the VRS, reporting directly to General Ratko Mladić.[32] Accordingly, the Chamber is satisfied that Tolimir has shown a legitimate forensic purpose for the disclosure of all *inter partes* and confidential transcripts (including closed and private sessions), confidential exhibits, and confidential filings[33] from the *Karadžić* case insofar as these are connected to the Srebrenica JCE and the related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica. In addition, the Chamber also considers that Tolimir has

[29] *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.

[30] On the issue of disclosure of confidential filings, *see 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. Karadžić*, IT-95/18-T, Decision on Motion for Access to Confidential Materials in Completed Cases, para. 14.

[31] *Tolimir* Indictment, paras. 27, 35, 71.

[32] Indictment, para. 22.

[33] With respect to the confidential filings in the *Karadžić* case, the Chamber notes paragraph 19 below, and the exceptions to disclosure carved out therein.

shown a legitimate forensic purpose for the disclosure of all *inter partes* and confidential materials in which his name is mentioned.

17. The Chamber notes that Tolimir also seeks access to MNA and MFI Documents from the *Karadžić* case. However, he does not provide any reasons as to why he needs access to such documents. As far as MFI Documents are concerned, these will be disclosed to him if and when they are admitted into evidence in the *Karadžić* case. Furthermore, the Chamber cannot see why the parties and the Registry should be burdened with providing Tolimir with MNA Documents given that they are not part of the record in the *Karadžić* case. In any event, Tolimir will have access to the confidential transcripts from the *Karadžić* case and will therefore be able to read discussions relating to both MFI and MNA Documents. Accordingly, the Chamber will not order the parties or the Registry to provide the MFI and MNA Documents to Tolimir.

18. The Chamber will also not make an order for disclosure in relation to the public material in the *Karadžić* case. In the Chamber's view, doing so would unnecessarily burden both the parties and the Registry with no commensurate gain to Tolimir, as this material is, or will eventually become, available to him. Nevertheless, the Chamber encourages both the Prosecution and the Registry to assist Tolimir in case a request is made for specific public material which is not easily accessible to him.

19. The Chamber finally notes that the Prosecution wishes to exclude certain confidential and *inter partes* material, namely material relating to remuneration of counsel, provisional release, fitness to stand trial, the Accused's health, notices of non-attendance in court, modalities of trial, protective measures, subpoenas, video conference links, orders to redact public transcripts and broadcast, and internal memoranda assessing state co-operation.[34] The Chamber also notes Tolimir's submission that the material he seeks is confined to the *Tolimir* Indictment and in particular to the Srebrenica JCE and the related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica.[35] Accordingly, the Chamber considers that most of the material listed above is indeed of little or no evidentiary value to Tolimir, the exception being material relating to the protective measures, subpoenas, and video conference links, connected to witnesses linked to the Srebrenica JCE and/or related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica. Accordingly, the Chamber shall not order the Prosecution to disclose to Tolimir the confidential and *inter partes* material relating to remuneration of counsel, provisional release, fitness to stand trial, the Accused's health, notices of non-attendance in court, modalities of trial, orders to redact public

[34] *See* Prosecution Response, para. 10.
[35] *See* Motion, paras. 3, 6.

transcripts and broadcast, and internal memoranda assessing state co-operation. All other types of confidential filings, insofar as they relate to witnesses and/or material that are linked to the Srebrenica JCE and/or related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica shall be disclosed.

C. Access to confidential Rule 70 material

20. As noted by the Prosecution, some of the confidential *inter partes* material requested by Tolimir might fall into the category of Rule 70 material. In respect of such material, if any, the Chamber will order that the Prosecution and/or the Accused seek the consent of the Rule 70 provider(s) before it can be disclosed to Tolimir.

D. Delayed disclosure material

21. The Chamber recalls that for certain witnesses in this case it has granted or continued the protective measure of delayed disclosure. This essentially turns the material relating to those witnesses' identities and evidence into *ex parte* material, until such time as it is disclosed to the Accused in accordance with the time frames set out in the decisions granting or continuing delayed disclosure. Given that Tolimir seeks only *inter partes* material from the present case, it follows that he can only be given the material relating to delayed disclosure witnesses when such material is disclosed to the Accused.[36] Accordingly, the Chamber considers that Tolimir should be given access to material relating to delayed disclosure witnesses, but only after such material has been disclosed to the Accused.

E. Nature of access requested: prospective basis

22. As noted above, Tolimir seeks that the *inter partes* confidential material from the *Karadžić* case be disclosed to him "continuously".[37] This Trial Chamber has already dealt with several "ongoing request(s)" for access to confidential materials in the *Karadžić* case.[38] As stated in those decisions, while it has been the preferred approach of Trial Chambers to limit

[36] In instances where an applicant from one case sought access to confidential information from another case, including access to materials related to delayed disclosure witnesses who were to give evidence in the applicant's case, the Appeals Chamber held that such materials should continue to be subject to the same protective measure in the applicant's case. *See Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on "Motion by Mićo Stanišić for Access to all Confidential Materials in the Krajišnik Case", 21 February 2007, p. 6; *Brđanin* Decision, para. 17.

[37] *See* Motion, para. 8.

[38] Decision on Momčilo Perišić's Motion for Access to Confidential Materials in the *Radovan Karadžić* Case ("*Perišić* Decision"), 14 October 2008; Decision on Jovica Stanišić's Motion for Access to Confidential Materials in the *Karadžić* Case ("*Stanišić* Decision"), 20 May 2009; Decision on General Miletić's Request for Access to Confidential Information in the *Karadžić* Case ("*Miletić* Decision"), 31 March 2010.

access to materials to the date of the request (or decision upon that request),[39] as a matter of judicial economy, this Chamber considers that Tolimir's access to the material in the *Karadžić* case should be provided in as streamlined a manner as possible and that access on an ongoing basis is warranted.[40]

23. The parties in the *Karadžić* case should bear in mind that confidential material from this case will be disclosed to Tolimir on an ongoing basis and should remain vigilant about protecting information they think should not be so disclosed. If they consider that specific materials should not be made available to Tolimir, for example, because additional protective measures are being sought for certain witnesses and/or material, they should inform the Registry and the Chamber accordingly.

In terms of the deadline to be set for the Prosecution for the said disclosure, the Chamber accepts that the Prosecution and the Registry have so far discharged their disclosure duties diligently, and thus does not consider that a strict deadline is necessary. However, given that the Prosecution has only recently started the Srebrenica JCE component of its case in the *Karadžić* case and given that Tolimir is due to start presenting his case at the end of January 2012, the Chamber encourages both the parties and the Registry to comply with this decision as soon as practicable and to disclose the confidential and *inter partes* material to Tolimir on a regular basis so as to make it usable during his defence case.[41]

IV. Disposition

24. Accordingly, for all the reasons outlined above, the Trial Chamber, pursuant to Rules 54, 70, and 75 of the Rules, hereby **GRANTS** the Motion in part, and:

a. **ORDERS** the parties to identify for the Registry, on an ongoing basis, the following *inter partes* material in the *Karadžić* case, for disclosure to Tolimir:

(i) all closed and private session testimony transcripts which are not subject to Rule 70 or delayed disclosure and which are produced in the pre-trial and trial proceedings, in so far as they are concerned with the Srebrenica JCE and the related events in the municipalities of Srebrenica, Žepa, Vlasenica, Zvornik, Bratunac, and Rogatica, or mention Tolimir's name;

[39] *Perišić* Decision , para. 18; *Stanišić* Decision, para. 11; *Miletić* Decision, para. 12.

[40] *Perišić* Decision , para. 18; *Stanišić* Decision, para. 11; *Miletić* Decision, para. 12.

[41] The Chamber notes Tolimir's submission that his Motion is urgent because his case is due to start at the end of January 2012. In this respect, the Chamber is of the view that Tolimir should have filed the Motion long before his case was about to start.

(ii) all confidential trial exhibits, which are not subject to Rule 70 or delayed disclosure, and which are concerned with the issues specified in (i) above;

(iii) all confidential filings in the pre-trial and trial proceedings, which are not subject to rule 70 or delayed disclosure and which are concerned with the issues specified in (i) above, excluding material related to remuneration of counsel, provisional release, fitness to stand trial, the Accused's health, notices of non-attendance in court, modalities of trial, orders to redact public transcripts and broadcast, and internal memoranda assessing state co-operation.

b. **ORDERS** the parties to determine, without delay and before disclosure, which of the material outlined in (a) above is subject to the provisions of Rule 70, and immediately thereafter to contact the providers of such material to seek their consent for its disclosure to Tolimir, and, where Rule 70 providers consent to such disclosure, to notify the Registry on a periodic basis of such consent.

c. **ORDERS** the Prosecution to determine, without delay and before disclosure, which of the material outlined in (a) above is subject to the protective measure of delayed disclosure, and immediately thereafter to notify the Registry and Tolimir on a periodic basis of when such material can be disclosed to the Accused, and thus available for disclosure to Tolimir.

d. **REQUESTS** the Registry to withhold disclosure of any material subject to Rule 70 until such time as the parties inform the Registry that consent for disclosure has been obtained, even in respect of those providers who have consented to the use of the relevant material in a prior case. Where consent cannot be obtained from provider(s) of any material subject to Rule 70, the material shall not be disclosed.

e. **REQUESTS** the Registry to withhold disclosure to Tolimir of any material subject to delayed disclosure until such time as the Prosecution informs the Registry that the material has been disclosed to the Accused.

f. **REQUESTS** the Registry to disclose to Tolimir:

(i) the confidential and *inter partes* and non-Rule 70 material once it has been identified by the parties in accordance with paragraph (a);

(ii) the Rule 70 material once the parties have identified such material and informed the Registry of the consent of the Rule 70 provider(s) in accordance with paragraphs (a), (b), and (d); and

(iii) the material subject to delayed disclosure, once the Prosecution has informed the Registry that such material has been disclosed to the Accused.

g. **ORDERS** that no confidential and *ex parte* material from the *Karadžić* case be disclosed to Tolimir.

h. **ORDERS** that Tolimir, as well as his defence team, and any employees who have been instructed or authorised by him, shall not disclose to the public, or to any third party, any confidential or non-public material disclosed from the *Karadžić* case, including witness identities, whereabouts, statements, or transcripts, except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of Tolimir's case. If any confidential or non-public material is disclosed to the public when 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 Tolimir as soon as it is no longer needed for the preparation of his case.[42]

i. For the purpose 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, Tolimir, as well as his defence team, and any employees who have been instructed or authorised by him to have access to the confidential material. "The public" also includes, without limitation, members of Tolimir's family, friends, and associates; accused and defence counsel in other cases or proceedings before the Tribunal; the media; and journalists.

j. **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

[42] The Chamber does not consider that the additional measures sought by the Prosecution in paragraphs 13 and 14 of the Prosecution Response are warranted.

material related to the *Karadžić* case that should be disclosed to Tolimir but which is not covered by the terms of this Decision.

k. **RECALLS** that, pursuant to Rule 75(F)(i), any protective measures that have been ordered in respect of a witness in the *Karadžić* case shall continue to have effect in the case against Tolimir, except in so far as they have been varied in accordance with this Decision.

l. **DENIES** the remainder of the Motion.

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

Judge O-Gon Kwon
Presiding

Dated this twelfth day of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]