



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

Date: 5 September 2012

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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: 5 September 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR PARTIAL RECONSIDERATION OR
CLARIFICATION OF THE CHAMBER'S DECISION ON THE ACCUSED'S MOTION
TO UNSEAL ICMP EXHIBITS**

Office of the Prosecutor

Mr. Alan Tieger
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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 “Prosecution Motion for Partial Reconsideration or Clarification of the Chamber’s Decision on the Accused’s Motion to Unseal ICMP Exhibits”, filed on 16 May 2012, with confidential Appendices A to D, (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. The Chamber has outlined the extensive procedural background to this Motion in its “Interim Decision on Prosecution’s Motion for Partial Reconsideration or Clarification of the Chamber’s Decision on the Accused’s Motion to Unseal ICMP Exhibits” issued on 11 July 2012 (“Interim Decision”) and shall therefore not repeat it here.¹ It is sufficient to note that in the Interim Decision the Chamber ordered the Office of the Prosecutor (“Prosecution”) to provide further information in support of its Motion, which then led to the filing, on 23 July 2012, of the “Prosecution’s Further Submissions Regarding ICMP Exhibits”, with confidential Appendices A to F, confidential and *ex parte* Appendix G, and public Appendix H (“Further Submission”). Having been provided with the requested information, the Chamber can now proceed to dispose of the Motion.

2. The Prosecution asks the Chamber in the Motion to reconsider its “Decision on the Accused’s Motion to Unseal ICMP Exhibits”, issued on 25 April 2012 (“First Decision”) in which the Chamber ordered (i) the Registry to reclassify exhibits P4650, P4651, P4656, P4662, P4663, P4672, and P4673 as public exhibits;² and (ii) the Prosecution to provide public redacted versions of P4639, P4640, P4641, and P4642³ and upload a more legible copy of exhibit P4650.⁴ These exhibits were admitted during the testimony of Thomas Parsons, the director of forensic science of the International Commission on Missing Persons (“ICMP”), who testified about DNA identification—performed by the ICMP—of persons found in mass graves throughout Bosnia and Herzegovina (“BiH”). As noted in the First Decision, the main reason behind the ICMP’s insistence on the confidentiality of its documents was its concern that, if they were made public for the purposes of this trial, the families who had not yet been informed of the

¹ Interim Decision, paras. 1–11.

² First Decision, paras. 12, 15–17, 19(a).

³ First Decision, paras. 13–14, 19(b)–(c).

⁴ First Decision, para. 16.

DNA matches made by the ICMP would find out about the deaths of their relatives through judicial proceedings which in the ICMP's view is inappropriate.⁵

3. In the Motion, the Prosecution asks for reconsideration with regard to (i) reclassifying P4650, P4656, P4662, and P4663 as public exhibits; and (ii) creating public redacted versions of P4639, P4640, P4641, and P4642.⁶ The Prosecution also informs the Chamber that P4651 and P4673 can remain public as they contain no information that needs to be kept confidential.⁷ The arguments in support of the relief sought by the Prosecution are outlined in detail in the Interim Decision and shall not be repeated as such here.⁸ It is sufficient to note the Prosecution's claim that at the time the issue of confidentiality of the exhibits listed above was litigated it "failed to explicitly alert the Chamber" that confidentiality was a condition asserted under Rule 70 of the Tribunal's Rules of Procedure and Evidence ("Rules"),⁹ which is why reclassifying them as public would cause an injustice to the ICMP.¹⁰

4. In case its request for reconsideration is unsuccessful, the Prosecution asks the Chamber to provide clarification of the First Decision regarding the scope of the redactions to be made to exhibits P4639 and P4641.¹¹ It submits that these two exhibits contain personal contact information of the relatives of victims which should also be redacted.¹² The Prosecution finally notes that the reasoning applied in the First Decision in relation to the above mentioned exhibits should also apply to P5005, which is an ICMP document admitted subsequently through Ewa Tabeau and placed under seal provisionally, pending a decision on the Motion.¹³ Finally, as stated in the Interim Decision, the Prosecution makes no reference to exhibit P4672 in the Motion, despite it being one of the exhibits reclassified as public in the Decision.¹⁴

5. As also outlined in more detail in the Interim Decision, the Accused filed his "Response to the Motion for Reconsideration of Decision Making ICMP Documents Public" ("Response") on 18 May 2012, opposing the Motion¹⁵ and arguing that any claim of privilege under Rule 70 has been waived by the Prosecution's failure to assert it prior to the First Decision.¹⁶ He

⁵ First Decision, paras. 3, 11.

⁶ Motion para. 1.

⁷ Motion, footnote 3, para. 4.

⁸ Interim Decision, paras. 5–6.

⁹ Motion, paras. 1, 4.

¹⁰ Motion, paras. 1, 5, 11.

¹¹ Motion, paras. 2, 13.

¹² Motion, para. 13.

¹³ Motion, footnote 5.

¹⁴ Interim Decision, paras. 3–4; Motion paras. 1, 3, 14.

¹⁵ Response, para. 1.

¹⁶ Response, para. 2.

disputes the existence of a Rule 70 agreement,¹⁷ and contends that if the Chamber finds that the material is governed by Rule 70 conditions, it should exclude—using Rule 70(G)—the evidence of Thomas Parsons, including the material in question, as well as any other evidence that relies on ICMP identifications.¹⁸ Finally, the Accused notes that he does not oppose that further redactions be made to P4639 and P4641.¹⁹

6. Having been granted leave to reply,²⁰ the Prosecution filed, on 25 May 2012, the “Prosecution’s Reply to Accused’s Response to Motion for Reconsideration of Decision Making ICMP Documents Public” (“Reply”) addressing some but not all of the Accused’s contentions.

7. Having identified gaps in the information presented to it, in particular in relation to the alleged existence of the Rule 70 agreement between the ICMP and the Prosecution, the Chamber in the Interim Decision ordered the latter to provide further information on specific points, including relevant correspondence it exchanged with the ICMP.²¹ In the Further Submission, the Prosecution first explains the procedure it has put in place over the years for recording Rule 70 documents in its evidence database and the steps it takes to inform the Accused of the existence of Rule 70 conditions when disclosing those documents to him.²² It notes, however, that the Accused will not necessarily be appraised of existing Rule 70 conditions unless the Rule 70 provider emphasises the ongoing restrictions on the document’s use.²³

8. The Prosecution also provides the Chamber with a letter from the ICMP relating to P4650 and its confidential status, and states that it was unable to locate other correspondence dealing with the remaining exhibits at issue here.²⁴ However, it provides a number of letters and emails to and from the ICMP in relation to similar documents in which the ICMP insisted that those documents remain confidential and in which Rule 70 is referred to by the Prosecution.²⁵ The Prosecution then outlines the legal basis on which the exhibits of concern here were admitted under seal in other cases, stating that this was usually done without objections by the

¹⁷ Response, paras. 3–5.

¹⁸ Response, para. 8.

¹⁹ Response, para. 9.

²⁰ See Prosecution Request for Leave to Reply to Accused’s Response to Motion for Reconsideration of Decision Making ICMP Documents Public, 23 May 2012. On the same day, the parties were informed by the Chamber’s legal officer, via email, that the Chamber had decided to grant the Prosecution leave to reply to the Response.

²¹ Interim Decision, para. 23.

²² Further Submission, paras. 3, 12–13, footnote 5, confidential Appendix E.

²³ In that regard, the Prosecution notes that, on 22 September 2009, it explicitly informed the Accused that P4663 was subject to Rule 70 conditions. See Further Submission, para. 13.

²⁴ Further Submission, para. 2, confidential Appendix B.

²⁵ Further Submission, para. 7, confidential Appendices C and D.

defence and without much discussion by other Chambers.²⁶ The Prosecution also explains in more detail why it failed to raise Rule 70 at the time the Accused filed the motion that gave rise to the First Decision.²⁷

9. Further, in relation to P4672, the Prosecution informs the Chamber that this is not in fact an ICMP document, that no Rule 70 conditions are in place in relation thereto, and that in any event the family of the identified victim has been informed of its relative's death.²⁸ Similarly, in relation to P4639, P4640, and P4641, the Prosecution informs the Chamber that it has recently discovered that, despite being ICMP documents, they were not provided by the ICMP and thus have no Rule 70 restrictions on them. Accordingly, the Prosecution contends that P4640 can be made public, while it still requests further redactions of contact details for P4639 and P4641 as requested in the Motion.²⁹ The Prosecution also informs the Chamber that it has now made appropriate redactions to P4636, a public redacted version of the transcript of Parsons' testimony from the *Popović et al.* case.³⁰

10. The Prosecution finally submits that it has been informed that, with the exception of the families of 118 alleged victims identified by the ICMP, all other families have been notified by the relevant BiH authorities of the ICMP identifications as to the deaths of their relatives. Accordingly, since the ICMP still asserts confidential status pursuant to Rule 70 in relation to the 118 individuals in question, the Prosecution proposes that it upload public redacted versions of exhibits P4642, P4650, P4662, P4663, and P5005 which will contain no reference to the 118 names in question.³¹ However, it also notes that P4642 is the most recent list of matches but that "the names listed in exhibit P4642 [...] also appear in several other earlier versions of the list", as well as in exhibit P5005, and explains that it is in the process of obtaining the 118 names from the ICMP.³² Thus, with the exception of P4642 and P5005, it was not clear from the Further Submission whether all of the exhibits contain references to at least some of the 118

²⁶ Further Submission, para. 14, confidential Appendix A and confidential and *ex parte* Appendix G. While Appendix G was filed *ex parte* of the Accused due to the fact that it referred to confidential litigation in the *Šainović et al.* case, the Appeals Chamber has now granted the Accused access to the filings referred to therein and the Accused is aware of the contents of confidential Appendix G. See *Prosecutor v. Šainović et al.*, Case No. IT-05-87-A, Decision on Prosecution's Motion to Disclose Confidential Filings to the Accused in the *Karadžić* Case, 23 August 2012.

²⁷ Further Submission, paras. 8–11.

²⁸ Further Submission, para. 15.

²⁹ Further Submission, paras. 17–18, relying on paras. 13–14 of the Motion.

³⁰ Further Submission, para. 16.

³¹ Further Submission, paras. 19–20, confidential Appendix F, Appendix H.

³² See Further Submission, para. 20, footnotes 19 and 20.

names in question or only some do. For that reason, the Chamber ordered the Prosecution to supplement its Further Submission once it received the list of 118 names from the ICMP.³³

11. On 27 August 2012, the Prosecution filed the “Prosecution Submission Regarding Redaction of ICMP Exhibits” (“Supplemental Submission”) in which it reports that of the exhibits for which reconsideration is sought, only P4642, P4656, and P4662 contain some of the 118 names in question.³⁴ Additionally, the Prosecution contends that exhibit P5005 contains some of those names too, as does P4768, which is an exhibit admitted through Dušan Janc and based on ICMP’s lists of identified individuals.³⁵ Finally, the Prosecution provides that it has prepared redacted versions of P4642, P4656, P4662, P4768, and P5005 and will upload them on the Chamber’s discretion.³⁶

12. On 31 August 2012, the Prosecution filed the “Prosecution’s Corrigendum to Further Submission Regarding ICMP Exhibits” publicly with a confidential Appendix A (“Corrigendum”), in which it provides the Chamber with an email sent to the Prosecution by the ICMP, more specifically by Thomas Parsons, on 24 June 2008. In this email, which was related to the Accused’s request that he be provided with genetic data of 300 alleged victims and their family members so that they can be re-tested by his expert, Parsons invokes Rule 70, noting that these case files are covered by “Rule 70 public non-disclosure”.³⁷

II. Applicable Law

13. The Chamber recalls that there is no provision in the Tribunal’s Rules of Procedure and Evidence (“Rules”) for requests for reconsideration, which are a product of the Tribunal’s jurisprudence, and are permissible only under certain conditions.³⁸ The Chamber has “inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’”³⁹ Thus, the requesting party is under an obligation to satisfy the Chamber of the

³³ Due to the trial being adjourned in this period, this order was communicated to the parties by the Chamber’s legal officer over email, on 16 August 2012.

³⁴ Supplemental Submission, para. 1.

³⁵ Supplemental Submission, para. 1.

³⁶ Supplemental Submission, para. 2.

³⁷ Corrigendum, confidential Appendix A.

³⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber, 26 March 2009 (“*Prlić* Decision on Reconsideration”), p. 2.

³⁹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras. 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’Appelant en Réconsidération de la Décision du 4 avril 2006 en Raison d’une Erreur Matérielle”, 14 June 2006, para. 2.

existence of a clear error in reasoning, or the existence of particular circumstances justifying reconsideration in order to prevent an injustice.⁴⁰

14. Rule 70 deals with matters not subject to disclosure and states, in relevant parts, the following:

(A) Notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance. A Trial Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.

(D) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Trial Chamber may not compel that witness to answer any question relating to the information or its origin, if the witness declines to answer on grounds of confidentiality.

[...]

(G) Nothing in paragraph (C) or (D) above shall affect a Trial Chamber's power under Rule 89 (D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

15. As stated by the Appeals Chamber, the purpose of Rule 70 (B) to (G) is to encourage states, organisations, and individuals to share sensitive information with the Tribunal by permitting the sharing of such information on a confidential basis and by guaranteeing the providers of that information that the information and its sources would be protected.⁴¹ In addition, all that Rule 70 requires, according to the Appeals Chamber, is that the information

⁴⁰ *Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić's Motion for Reconsideration and Order for Issuance of a Subpoena Duces Tecum, 2 April 2009, p. 2; *Prlić* Decision on Reconsideration, pp. 2–3.

⁴¹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis & AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002 ("Milošević Decision"), para. 19; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Public Version of the Confidential Decision on the Alleged Illegality of Rule 70 of 6 May 2002 ("Brđanin Decision"), paras. 17–18.

was provided on a confidential basis.⁴² It has also held that Rule 70(G) has been designed to ensure that the restrictions in Rule 70(C) and (D) do not undermine the bedrock requirement of a fair trial. Accordingly, the Chambers have the power, pursuant to Rules 70(G) and 89(D), to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.⁴³

III. Discussion

16. Given the Prosecution's submission that exhibits P4651 and P4673 can remain public as reclassified by the Chamber, these shall not be discussed any further and the First Decision shall continue to apply in relation thereto.

17. Similarly, since P4672 is not an ICMP document and thus has no confidentiality conditions attached to it, it can also remain public as ordered by the Chamber in its First Decision.

18. With respect to P4639, P4640, and P4641, the Prosecution now contends that these are not subject to Rule 70 conditions, despite being ICMP documents, as they were provided by another witness.⁴⁴ The Chamber recalls that, in order to protect the coded genetic information they seemed to contain, it did not reclassify these exhibits as public but had ordered, pursuant to Rule 54 and 75, that they should remain permanently under seal and had instructed the Prosecution to file public redacted versions of the same.⁴⁵ Having now been informed that P4640 contains no coded genetic information⁴⁶ and can be made public,⁴⁷ the Chamber is of the view that it should reconsider its First Decision in relation thereto. Accordingly, it shall order that P4640 be reclassified as a public exhibit.

19. As for P4639 and P4641, the Chamber remains of the view that even though the Prosecution now asserts that they are not subject to any Rule 70 conditions, they should remain under seal as ordered in the First Decision due to the fact that they contain coded genetic information of the alleged victims and their family members.⁴⁸ Accordingly, the Chamber shall not reconsider the First Decision in relation to these two exhibits and the Prosecution remains under the obligation to file public redacted versions of the same, removing the coded genetic

⁴² *Milošević* Decision, para. 25.

⁴³ *Milošević* Decision, para. 26.

⁴⁴ Further Submission, paras. 17–18.

⁴⁵ First Decision, paras. 9, 13.

⁴⁶ Motion, para. 13, footnote 25.

⁴⁷ Further Submission, para. 18.

⁴⁸ First Decision, para. 13.

information in question.⁴⁹ In addition, and noting that the Accused does not object to this course of action, the Chamber considers that it should expand the scope of the redactions in order to protect the personal contact information of family members of alleged victims.⁵⁰ Accordingly, the Prosecution shall make further redactions to the public redacted versions of P4639 and P4641 in order to remove personal contact information of family members of alleged victims.

20. The Chamber shall now consider the status of the remaining exhibits for which reconsideration is being sought, namely P4642, P4650, P4656, P4662, and P4663. It will also consider the status of P5005, an ICMP document admitted into evidence through Ewa Tabeau and placed under seal provisionally pending resolution of the Motion, and P4768, an exhibit admitted through Dušan Janc.⁵¹

21. The Chamber recalls that in the First Decision it held as follows:

[W]hile generally sympathetic to the submission that family members of victims should not find out from the current proceedings that their relatives are dead, the Chamber is of the view that the success of this argument depends on the individual circumstances surrounding each Document, in particular the time at which the DNA matches were made and whether it is reasonable to assume that by now the family members of the listed individuals have been informed of those matches.⁵²

Having conducted that analysis, the Chamber instructed the Registry to place P4642 under seal permanently and ordered the Prosecution, using its discretion under Rule 54 of the Rules, to file a public redacted version of the same, removing the names of individuals who were matched in the last year and onwards.⁵³ None of the other exhibits were to be redacted on this basis.

22. As stated above, the Chamber has now been informed that the relatives of 118 individuals matched in the ICMP reports have not yet been told of the DNA identifications, presumably because the majority of these individuals were the subject of the most recent matches. The Chamber has also been informed that some of the 118 individuals are listed in exhibits P4642, P4656, P4662, P4768, and P5005 (collectively “Exhibits”) and that the ICMP is asserting confidentiality under Rule 70 over them. The Chamber has also been provided, among other material, with an email from the ICMP in which it invokes Rule 70 in relation to the ICMP

⁴⁹ As noted in the Interim Decision, the Prosecution informed the Chamber and the Accused, on 18 May 2012, via email, that it had uploaded public redacted versions of exhibits P4639, P4641, P4642, while P4640 needed no redactions. The Prosecution also noted that it had not redacted the personal contact details from P4639 and P4641 and requested that none of these exhibits be communicated to the public until the Chamber ruled on the Motion. *See* Interim Decision, para. 9. *See also* Further Submission, footnote 15.

⁵⁰ Motion, para. 13.

⁵¹ *See* Interim Decision, paras. 4, 22.

⁵² First Decision, para. 11.

⁵³ First Decision, paras. 14, 19(b).

materials related to the Accused's case.⁵⁴ Accordingly, the Chamber is now satisfied that the Exhibits were provided to the Prosecution on a confidential basis and that therefore the requirements of Rule 70 have been satisfied insofar as the protection of families who have not been informed of DNA matches made by the ICMP are concerned. For that reason, the Chamber considers that, in order to avoid injustice to the ICMP, it should reconsider its First Decision in relation to P4642, P4656, and P4662.

23. Accordingly, as ordered in the First Decision, P4642 shall remain under seal and the Prosecution shall upload into e-court its public redacted version. However, these redactions should relate only to the 118 individuals referred to in the preceding paragraph. Once this version is uploaded to e-court, it shall be assigned an exhibit number by the Registry. As for P4656 and P4662, relying on the Prosecution's submission that they contain some of the 118 names at issue here, the Chamber shall reconsider its First Decision and shall order that they too be placed under seal. The Prosecution shall then upload public redacted versions of these exhibits—expunging the names of any of the 118 individuals in question—which shall be assigned exhibit numbers by the Registry.

24. With respect to P5005, as stated earlier, it was placed under seal provisionally pending resolution of the Motion. Given the discussion above, the Chamber considers that it should remain under seal and orders the Prosecution to file a public redacted version of the same, which shall not contain any reference to any of the 118 individuals who have not been informed of the DNA matches made by the ICMP. This public version shall then be assigned an exhibit number by the Registry. Similarly, the Prosecution shall upload the public redacted version of P4768, removing any reference to any of the 118 individuals who have not been informed of the DNA matches made by the ICMP. This public version shall then be assigned an exhibit number by the Registry.

25. Finally, while the Exhibits are now to be classified as confidential, the Chamber shall also order the Prosecution to liaise with the ICMP in relation to this issue and track the progress of notification of the families of the 118 individuals in question. Once the Prosecution is aware that these families have been told about the DNA matches, it shall immediately inform the Chamber of this fact, following which the Exhibits shall be reclassified as public.

26. With respect to the remaining exhibits in relation to which the Prosecution originally sought reconsideration, namely P4650 and P4663, given that they do not appear to contain any

⁵⁴ Corrigendum, confidential Appendix A.

of the 118 names at issue here, the Chamber shall not reconsider its decision in relation thereto and they shall therefore remain public as ordered by the Chamber in the First Decision.

27. The Chamber recalls here the Accused's submission that the evidence of Thomas Parsons and any other evidence relying on the ICMP identifications should be excluded under Rule 70(G) if the Chamber finds that any of the exhibits should be confidential due to Rule 70 conditions.⁵⁵ Given that many of the ICMP exhibits are now public while all others have public redacted versions, where the redactions will concern only 118 individuals, the Chamber does not consider that the probative value of the exhibits with the Rule 70 condition currently in place is substantially outweighed by the need to ensure a fair trial. Accordingly, the Chamber shall not exclude Parsons' evidence nor shall it exclude any other evidence relating to ICMP identifications.

28. Finally, the Chamber wishes to express a serious concern regarding the Prosecution's practices for recording and disclosure of Rule 70 material, as outlined in the Further Submission.⁵⁶ There is no doubt that these practices led to the confusion regarding the ICMP documents and their status, starting with the Prosecution's failure to inform the Chamber and the Accused that they were under Rule 70 restrictions when seeking protective measures under Rule 75, to then mistakenly submitting that three exhibits namely P4639, P4640, and P4641 were Rule 70 documents. As noted by the Appeals Chamber, Rule 70 is an important Rule, the purpose of which is to encourage states, organisations, and individuals to share sensitive information with the Tribunal by guaranteeing the providers of that information that it and its sources would be protected.⁵⁷ Accordingly, having a system in place which ensures that protection is of utmost importance. Furthermore, the Chamber is also concerned by the fact that the Accused is not always informed that material falls under Rule 70. For that reason, the Prosecution should do its utmost to ensure that it has a reliable and efficient system for recording and disclosing Rule 70 material, both in this case and in all the other cases before the Tribunal, and that the Accused is informed of this fact in a timely and efficient manner.

IV. Disposition

29. Accordingly, the Trial Chamber, pursuant to Rules 54 and 70 of the Rules, hereby **GRANTS** the Motion in part and **ORDERS** as follows:

⁵⁵ Response, para. 8.

⁵⁶ See Further Submission, paras. 12–13, footnote 5, confidential Appendix E.

⁵⁷ *Milošević* Decision, para. 19; *Brđanin* Decision, paras. 17–18.

- (a) Exhibits P4650, P4651, P4663, P4672, and P4673 shall remain public as ordered in the First Decision.
- (b) Exhibit P4640 shall be reclassified as public.
- (c) Exhibits P4639 and P4641 shall remain under seal and the Prosecution shall upload into e-court public redacted versions of the same, as instructed in paragraph 19 above.
- (d) Exhibits P4642, P4656, and P4662 shall remain under seal and the Prosecution shall upload into e-court a public redacted version of the same, as instructed in paragraph 23 above.
- (e) Exhibit P5005 shall be placed under seal permanently and the Prosecution shall upload into e-court a public redacted version of the same, as per instructions in paragraph 24 above.
- (g) The Prosecution shall upload into e-court a public redacted version of P4768, in accordance with instructions in paragraph 24 above.
- (h) Once the above mentioned public redacted versions are uploaded into e-court by the Prosecution, the Registry shall assign exhibit numbers to them, and shall inform the Chamber and the parties accordingly.
- (i) The Prosecution shall liaise with the ICMP with respect to P4642, P4656, P4662, P4768, and P5005 and, once informed that the families of the 118 individuals in question have been informed of the DNA matches, shall report to the Chamber accordingly so that the Chamber can reclassify these exhibits as public.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]