



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-98-29/1-A
Date: 19 May 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 19 May 2009

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

**DECISION ON RADOVAN KARADŽIĆ'S MOTION FOR
ACCESS TO CONFIDENTIAL MATERIAL IN THE
DRAGOMIR MILOŠEVIĆ CASE**

Office of the Prosecutor:

Mr. Paul Rogers

Mr. Alan Tieger

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Mr. Branislav Tapušković

Ms. Branislava Isailović

The Applicant:

Radovan Karadžić *pro se*

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively) is seized of appeals¹ against the Judgement of Trial Chamber III rendered in the present case on 12 December 2007.² The Appeals Chamber is also presently seized of the “Motion by Radovan Karadžić for Access to Confidential Materials in the Milošević Case” filed on 14 April 2009 by Radovan Karadžić, an accused in another case before the Tribunal (“Motion” and “Karadžić”, respectively). The Office of the Prosecutor (“Prosecution”) filed a response to the Motion on 24 April 2009.³ Dragomir Milošević (“Milošević”) did not respond to the Motion. Karadžić did not reply to the Response.

I. SUBMISSIONS OF THE PARTIES

2. In his Motion, Karadžić seeks access to “all *inter partes* confidential material” from both the pre-trial and trial proceedings in the *Dragomir Milošević* case, namely, (a) all closed and private session testimony transcripts; (b) all closed session hearing transcripts; (c) all confidential exhibits; and (d) all *inter partes* confidential filings and submissions and all confidential Trial Chamber and Appeals Chamber decisions.⁴

3. With regard to the identification and description of the material sought, Karadžić points out that in the past the Appeals Chamber “has accepted that requests for access to ‘all confidential material’ are sufficiently specific”.⁵ Karadžić further avers that “there is a significant geographical and temporal overlap between his case and the [*Dragomir Milošević*] case”.⁶ In particular, he notes that the indictments in both cases relate to crimes that allegedly took place in or around Sarajevo between August 1994 and November 1995.⁷ He asserts that these factors demonstrate that the

¹ Prosecution Notice of Appeal, 31 December 2007 and Prosecution Appeal Brief, 30 January 2008; Defence Notice of Appeal Against the Trial Judgement, French original filed on 11 January 2008 (confidential); the English translation filed on 16 January 2008 (confidential); the public redacted version filed in French on 11 May 2009 and Defence Appeal Brief Including Confidential Annexes A and B and Public Annexes C and D, French original filed on 14 August 2008 (confidential); the English translation filed on 11 September 2008 (confidential); the public redacted version filed in French on 11 May 2009 (collectively, “Appeals”).

² *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/I-T, Judgement, 12 December 2007 (“*Milošević* Trial Judgement”).

³ Prosecution Response to Motion by Radovan Karadžić for Access to All Confidential Material, 24 April 2009 (“Response”).

⁴ Motion, paras 1, 13. For the purposes of this decision, the Appeals Chamber has adopted the numbering system utilised in the Motion, rather than the one in the Response.

⁵ Motion, para. 3, referring, *inter alia*, to *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brdanin* Case, 24 January 2007 (“*Brdanin* Decision”), para 11.

⁶ Motion, para. 6.

⁷ Motion, paras 7-8, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Prosecution’s Third Amended Indictment, 27 February 2009 (“*Karadžić* Third Amended Indictment”) and to *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/I-PT, Prosecution’s Amended Indictment, 18 December 2006. The Appeals Chamber

factual bases for the charges against him and Milošević are interrelated.⁸ In addition, Karadžić submits that the material sought is “crucial to the effective investigation and preparation of [his] defence case”, as “it is expected that there will be a significant overlap” between the witnesses who gave evidence in the *Dragomir Milošević* case and those who will give evidence in his case.⁹ Karadžić further submits that the “principle of equality of arms [...] requires that he be granted access to the materials requested”.¹⁰ Finally, he undertakes to comply with all protective measures already in place for material sought from the *Dragomir Milošević* case.¹¹

4. The Prosecution does not oppose the Motion “insofar as it relates to confidential evidentiary material”, referring to the material listed in categories (a) and (c) of the Motion, namely, confidential closed and private session testimony transcripts and confidential exhibits.¹² In this regard, the Prosecution acknowledges “the existence of a temporal and geographical overlap between the *Dragomir Milošević* case and [the *Karadžić*] case” and agrees that Karadžić “has a legitimate forensic interest in confidential trial exhibits and witness testimony”.¹³

5. In relation to conditions of access to this material, the Prosecution makes three points. First, it undertakes to identify for the Registry of the Tribunal (“Registry”) any material subject to Rule 70 of the Rules of Procedure and Evidence (“Rules”) and to seek the consent of the providers of this material.¹⁴ Secondly, it requests that access to material relating to “any protected witness in *Dragomir Milošević* who may be called in [the *Karadžić*] case” be delayed in accordance with the time frames for provision of witness lists set out by the Trial Chamber seized of the *Karadžić* case.¹⁵ Thirdly, the Prosecution indicates that it will identify any applicable protective measures and cooperate with the Registry to ensure that Karadžić is provided access as soon as practicable.¹⁶

6. The Prosecution, however, opposes the request for access to the material listed in categories (b) and (d) of the Motion, namely, all closed session hearing transcripts, all *inter partes* confidential filings and submissions and all confidential Trial Chamber and Appeals Chamber decisions.¹⁷ It refers to the jurisprudence of the Tribunal to support the proposition that “[a]ccess will not be

notes that the Motion refers to the “Third Amended Indictment” as filed on 18 February 2009 (Motion, para. 6 fn. 6). However, the *Karadžić* Third Amended Indictment was filed on 27 February 2009, as opposed to the Second Amended Indictment filed on 18 February 2009. In this decision, the Appeals Chamber refers to the *Karadžić* Third Amended Indictment as it is the operative one.

⁸ Motion, para. 9.

⁹ Motion, para. 10.

¹⁰ Motion, para. 11.

¹¹ Motion, para. 5.

¹² Response, para. 2.

¹³ Response, para. 8.

¹⁴ Response, para. 10.

¹⁵ Response, paras 10, 18(a)(b). See also *infra*, para. 13.

¹⁶ Response, para. 14.

granted to confidential materials that bear no relation to material facts in the Applicant's own case or for reasons that serve some other purpose".¹⁸ It argues that the purpose of the Motion is "to elicit information in the hopes that something relevant might be found" and, in this regard, constitutes a "fishing expedition".¹⁹ Accordingly, the Prosecution submits that Karadžić should be denied access to the material listed in categories (b) and (d) of the Motion as he has not demonstrated a legitimate forensic purpose for such access.²⁰ The Prosecution also objects to the disclosure of any *ex parte* material.²¹

II. APPLICABLE LAW

7. The Appeals Chamber recalls that a party is always entitled to seek material from any source, including from another case before the Tribunal, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown.²²

8. With regard to *inter partes* confidential material, the Appeals Chamber has held that the party seeking access must demonstrate a legitimate forensic purpose by establishing that such material "is likely to assist the [party's] case materially, or at least there is a good chance that it would".²³ This standard may be met by showing the existence of a factual nexus between the two cases such as a "geographical, temporal or otherwise material overlap".²⁴

¹⁷ Response, paras 15-17.

¹⁸ Response, para. 16, referring to *Prosecutor v. Mile Mrkšić and Veselin 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 ("*Šljivančanin* Decision"), para. 7; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Ivan Čermak's and Mladen Markač's Joint Motion for Access to Confidential Testimony and Documents in the *Šešelj* Case, 24 May 2007, p. 4; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Defence Motion Filed by the Defence of Franko Simatović (IT-03-69-PT) for Access to Transcripts and Documents, 20 October 2003, para. 3.

¹⁹ Response, para. 15, referring to *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Defence Motion by Franko Simatović for Access to Transcripts, Exhibits, Documentary Evidence and Motions Filed by the Parties in the *Simić et al.* Case, 13 April 2005, Separate Opinion of Judge Shahabuddeen and Judge Schomburg, para. 7.

²⁰ Response, para. 17.

²¹ Response, paras 11-13.

²² Decision on Momčilo Perišić's Request for Access to Confidential Material in the *Dragomir Milošević* Case, 27 April 2009 ("*D. Milošević* Decision"), para. 4, referring to *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Decision on Motion by Jovica Stanišić for Access to Confidential Testimony and Exhibits in the *Martić* Case Pursuant to Rule 75(G)(i), 22 February 2008 ("*Martić* Decision"), para. 9. See also *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 ("*Krajišnik* Decision"), p. 4.

²³ *D. Milošević* Decision, para. 5; *Brdanin* Decision, para. 12; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Materials, 16 November 2005 ("*Blagojević and Jokić* Decision"), para. 8.

²⁴ *D. Milošević* Decision, para. 5; *Prosecutor v. Dario Kordić and Mario 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; see also *Martić* Decision, para. 9.

III. DISCUSSION

9. The Appeals Chamber has previously stated that “[t]he first element of gaining access to confidential material is not considered particularly onerous”.²⁵ The Appeals Chamber also notes that, while paragraph 1 of the Motion only specifies that the request for access is directed towards *inter partes* material in relation to category (d), the Motion further specifies that Karadžić requests access to all *inter partes* confidential material.²⁶ Therefore, the Prosecution’s opposition to granting him access to any *ex parte* material²⁷ is moot. The Appeals Chamber understands that Karadžić is seeking access to all *inter partes* confidential material in the *Dragomir Milošević* case and is satisfied that Karadžić has identified the material sought with sufficient particularity.

10. As to the existence of a legitimate forensic purpose for access to the material sought, the Appeals Chamber concurs that there is a significant factual nexus between the two cases, in that the events addressed in the *Dragomir Milošević* case are closely related to the charges brought against Karadžić. In particular, the *Karadžić* Third Amended Indictment alleges that Karadžić participated in a joint criminal enterprise (“JCE”) between April 1992 and November 1995 with the purpose of establishing and carrying out “a campaign of sniping and shelling against the civilian population of Sarajevo [in order] to spread terror among the civilian population”.²⁸ It further identifies Milošević as acting in concert with Karadžić in the framework of this JCE.²⁹ In turn, and subject to the outcome of the pending Appeals, Milošević was found guilty of crimes committed in and around Sarajevo during the period between August 1994 and November 1995.³⁰ Although Milošević was not charged under the JCE mode of responsibility, the Appeals Chamber finds the participation of Karadžić and Milošević in the same JCE alleged in the *Karadžić* Third Amended Indictment suggests a nexus between their cases. It further notes that seven out of 17 sniping incidents and 11 out of 19 shelling incidents in Sarajevo described in the Schedules to the *Karadžić* Third Amended Indictment are identical to those analysed in the *Milošević* Trial Judgement.³¹ In light of the above, the Appeals Chamber is satisfied that a significant factual nexus between the *Karadžić* and *Dragomir Milošević* cases exists, warranting granting Karadžić access to the material listed in categories (a) and (c) of the Motion, that is, all *inter partes* confidential closed and private session testimony transcripts and all *inter partes* confidential exhibits in the *Dragomir Milošević* case.

²⁵ *Brdanin* Decision, para. 11.

²⁶ Motion, para. 13.

²⁷ See Response, paras 11-13.

²⁸ *Karadžić* Third Amended Indictment, para. 15.

²⁹ *Karadžić* Third Amended Indictment, para. 16.

³⁰ *Milošević* Trial Judgement, para. 1006; see also *ibid.*, para. 1 for reference to the relevant time period.

³¹ Compare *Karadžić* Third Amended Indictment, Schedule F: Nos 11-17 with *Milošević* Trial Judgement, Part II(4)(b)(i)(a)(c)-(f) and (ii)(a)(c); compare also *Karadžić* Third Amended Indictment, Schedule G: Nos 9-19 with *Milošević* Trial Judgement, Part II(6)(b)(ii)-(viii), (x)-(xi) and (xiv)-(xv).

11. With respect to the material listed in categories (b) and (d) of the Motion, namely, all *inter partes* confidential filings and submissions, all confidential Trial Chamber and Appeals Chamber decisions, and all closed session hearing transcripts, the Appeals Chamber recalls that it is incumbent on the party seeking access to avoid engaging in a “fishing expedition”.³² Nonetheless, it finds that the Motion does not amount to such abuse. The Appeals Chamber finds that Karadžić will be able to better understand and make use of confidential evidentiary material in the *Dragomir Milošević* case, such as exhibits and testimony transcripts, if he has access to the filings, submissions, decisions and hearing transcripts relating to that material.³³ The Appeals Chamber recalls that the applicable standard is only that there be a “good chance” that the confidential materials will materially assist the case of the party seeking access and that it does not require “accused seeking access to *inter partes* confidential materials in other cases to establish a specific reason that each individual item is likely to be useful”.³⁴ The Appeals Chamber further recalls that the principle of equality of arms supports giving the applicant a similar chance to understand the proceedings and evidence and evaluate their relevance to his own case, in common with the Prosecution which has access to all *inter partes* filings.³⁵ Accordingly, 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. The Appeals Chamber therefore grants Karadžić’s request for access to the material listed in categories (b) and (d) of the Motion. It notes, however, that, as is the practice of the Tribunal,³⁶ the Prosecution and Milošević will have the opportunity to apply to the Appeals Chamber for any additional protective measures or redactions, as detailed below, should they deem it necessary.

12. In light of the foregoing and subject to the conditions detailed below, the Appeals Chamber grants Karadžić’s request for access to all *inter partes* confidential material in the *Dragomir Milošević* case, including all confidential closed and private session testimony transcripts, all closed

³² *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR73, Decision on Appeal from Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002, p. 3.

³³ Cf. *Blagojević and Jokić* Decision, para. 11.

³⁴ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion by Radivoje Miletić for Access to Confidential Information, 9 September 2005 (“*Miletić* Decision”), p. 4.

³⁵ *Blagojević and Jokić* Decision, para. 11. See also, *Miletić* Decision, p. 4, where the Appeals Chamber considered that “the Trial Chamber’s decisions may help the Applicant to prepare his case by shedding light on the Trial Chamber’s treatment of legal and factual issues that may be common to the two cases”. The Appeals Chamber further observes that the jurisprudence referred to by the Prosecution in para. 16 of its Response is not relevant to the case at hand. In particular, the Appeals Chamber notes that in the *Šljivančanin* Decision the Appeals Chamber denied access to two confidential exhibits because they were “not sought because they relate to any of the material facts arising in the Second Proceedings, but rather because they are alleged to be of assistance to the Applicant in interpreting the findings of the Appeals Chamber in the First Proceedings [...] [a]s such, the Appeals Chamber is not satisfied that the Applicant has shown a legitimate forensic purpose justifying access to the exhibits sought” (*Šljivančanin* Decision, para. 8). Conversely, in the present case Karadžić has based his request for access on a significant factual overlap between the two cases and has demonstrated a legitimate forensic purpose.

session hearing transcripts, all confidential exhibits, all *inter partes* confidential filings and submissions and all confidential Trial Chamber and Appeals Chamber decisions.

IV. CONDITIONS OF ACCESS

A. Additional measures relating to witnesses who may be called in the *Karadžić* case

13. The Appeals Chamber notes the Prosecution's request that it be able to withhold material from Karadžić that may relate to "protected witnesses in *Dragomir Milošević* who may be called in the [*Karadžić*] case for whom delayed disclosure may be justified".³⁷ The Prosecution requests that the Registry withhold access to this material "in accordance with the time frames set out in such orders as may be issued by the *Karadžić* Trial Chamber"³⁸ or, at least, until the Prosecution is required to file its witness list in the *Karadžić* case, that is, 18 May 2009.³⁹ It submits that, should it subsequently decide to not call one or more protected witnesses from the *Dragomir Milošević* case in the *Karadžić* case, it will notify the Registry, which may allow access to the materials relating to those witnesses.⁴⁰

14. The Appeals Chamber considers that the particular time frames of the *Karadžić* case favour the approach suggested by the Prosecution. The Appeals Chamber considers that the Trial Chamber seized of the *Karadžić* case is best placed to evaluate, pursuant to Rule 69 of the Rules, whether exceptional circumstances exist to warrant delayed disclosure of the materials related to Prosecution witnesses. Considering the fact that the Prosecution was to provide its witness list by 18 May 2009, the Appeals Chamber deems that, in these circumstances, it is in the interests of judicial expediency to adopt the suggested approach. Accordingly, the Appeals Chamber allows the Prosecution to withhold the material until the Trial Chamber seized of the *Karadžić* case decides on the Prosecution's requests for delayed disclosure of *inter partes* confidential material from the *Dragomir Milošević* case. The Appeals Chamber holds that the Prosecution will have to file any such requests for delayed disclosure before the Trial Chamber seized of the *Karadžić* case by 26 May 2009.

³⁶ See *D. Milošević* Decision, paras 15, 19; *Blagojević and Jokić* Decision, paras 16, 19(c).

³⁷ Response, para. 10; see also *supra*, para. 5.

³⁸ Response, para. 18(b).

³⁹ Response, paras 18(a)(b). See also *ibid.*, para. 10, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order Following Status Conference and Appended Work Plan, 6 April 2009, para. 7(3).

⁴⁰ Response, para. 10 fn. 18, para. 18(a).

B. Rule 70 disclosure

15. The Appeals Chamber notes that, under Rule 70(B) of the Rules, information “provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence [...] shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information”. The same restriction may be applied to information in possession of the Defence under Rule 70(F) of the Rules. The Appeals Chamber has previously held that, in respect of motions seeking access to confidential material in another case, material provided under Rule 70 of the Rules shall not be released to the accused in another case unless the provider consents to such disclosure.⁴¹ Accordingly, the Appeals Chamber holds that any material that has been provided to the Prosecution under Rule 70(B) of the Rules, in addition to any material that may have been provided to Milošević under Rule 70(F) of the Rules, shall not be released to Karadžić unless and before the providers give their consent.

C. Other protective measures

16. The Appeal Chamber notes that protective measures ordered in one proceeding “shall continue to have effect *mutatis mutandis* in any other proceeding before the Tribunal”.⁴² It further recalls that once access to confidential materials from another case is granted, the Appeals Chamber determines if and what additional protective measures are necessary in order to “strike a balance between the rights of a party to have access to material to prepare its case and guaranteeing the protection and integrity of confidential information”.⁴³

17. The Appeals Chamber finds that protective measures ordered in the *Dragomir Milošević* case should continue to apply to any material released to Karadžić. This does not prevent the parties to the *Dragomir Milošević* case from applying to the Appeals Chamber for additional protective measures or redactions, if they so choose.

V. DISPOSITION

18. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion and allows Karadžić, subject to the conditions set forth below, access to all *inter partes* confidential material in

⁴¹ *D. Milošević* Decision, para. 13. See also *Krajišnik* Decision, pp. 5-6; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Galić Case, 16 February 2006 (“*Galić* Decision”), para. 12, referring to *Prosecutor v. Mladen Naletilić, a.k.a. “Tuta” and Vinko Martinović, a.k.a. “Štela”*, Case No. IT-98-34-A, Decision on “Slobodan Praljak’s Motion for Access to Confidential Testimony and Documents in *Prosecutor v. Naletilić and Martinović*” and “Jadranko Prlić’s Notice of Joinder to Slobodan Praljak’s Motion for Access”, 13 June 2005 (“*Naletilić* Decision”), p. 8.

⁴² Rule 75(F)(i) of the Rules; see also *Galić* Decision, para. 11.

⁴³ *Naletilić* Decision, p. 7; see also *Blagojević and Jokić* Decision, para. 16.

the *Dragomir Milošević* case, including all confidential closed and private session testimony transcripts, all closed session hearing transcripts, all confidential exhibits, all *inter partes* confidential filings and submissions and all confidential Trial Chamber and Appeals Chamber decisions.

19. The Appeals Chamber **ORDERS** the Prosecution:
- a. to file before the Trial Chamber seized of the *Karadžić* case, by 26 May 2009, its request, if any, for delayed disclosure of any *inter partes* confidential material in the *Dragomir Milošević* case;
 - b. to identify to the Appeals Chamber and the Registry, on the same date, what *inter partes* confidential material in the *Dragomir Milošević* case can be immediately disclosed to Karadžić (“Materials to be Immediately Disclosed”) and what *inter partes* confidential materials, if any, can not be immediately disclosed to Karadžić, pending the Prosecution’s request to the Trial Chamber for delayed disclosure (“Materials Subject to Delayed Disclosure Request”).

Materials to be Immediately Disclosed

20. The Appeals Chamber **ORDERS** the Prosecution and Milošević:
- a. to identify to the Appeals Chamber and the Registry within 10 working days from the date of the identification of the Materials to be Immediately Disclosed, what, if any, of these materials contain material that has been provided to them subject to Rule 70 of the Rules;
 - b. within 15 working days from the date of the identification of the Materials to be Immediately Disclosed, to seek leave from the Rule 70 providers to disclose this material to Karadžić.
21. The Appeals Chamber **REQUESTS** the Registry:
- a. to withhold any material provided pursuant to Rule 70 of the Rules, as identified by the Prosecution or Milošević, until the responses of the providers have been relayed;
 - b. where the providers have consented to further disclosure, to provide Karadžić, all of his legal associates and any employees who have been instructed or authorised by Karadžić and his legal associates, with all such material, in electronic format where possible;
 - c. where the providers have refused consent to further disclosure, to withhold that material.

22. The Appeals Chamber **ORDERS** the Prosecution and Milošević to apply to the Appeals Chamber for additional protective measures or redactions, if required, within 15 working days from the date of the identification of the Materials to be Immediately Disclosed.

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

- a. where no additional protective measures or redactions are requested within 15 working days from the date of the identification of the Materials to be Immediately Disclosed, and where none of these materials have, within 10 working days from the date of the identification of the Materials to be Immediately Disclosed, been identified by the Prosecution or Milošević as having been provided pursuant to Rule 70 of the Rules, to provide Karadžić, all of his legal associates and any employees who have been instructed or authorised by Karadžić and his legal associates, with all the Material to be Immediately Disclosed, in electronic format where possible;
- b. where additional protective measures or redactions are requested, to withhold that material until the Appeals Chamber has issued a decision on the request.

Materials Subject to Delayed Disclosure Request

24. The Appeals Chamber **ORDERS** the Prosecution and Milošević:

- a. to identify to the Appeals Chamber and the Registry within 10 working days from the date of the Trial Chamber's Decision on the Prosecution's Delayed Disclosure Request ("Trial Chamber Decision"), what, if any, of the materials contain material that has been provided to them subject to Rule 70 of the Rules;
- b. within 15 working days from the date of the Trial Chamber Decision, to seek leave from the Rule 70 providers to disclose this material to Karadžić.

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

- a. to withhold any material provided pursuant to Rule 70 of the Rules, as identified by the Prosecution or Milošević, until the responses of the providers have been relayed;
- b. where the providers have consented to further disclosure, to provide Karadžić, all of his legal associates and any employees who have been instructed or authorised by Karadžić and his legal associates, with all such material, in electronic format where possible;
- c. where the providers have refused consent to further disclosure, to withhold that material.

26. The Appeals Chamber **ORDERS** the Prosecution and Milošević to apply to the Appeals Chamber for additional protective measures or redactions, if required, within 15 working days from the date of the Trial Chamber Decision.
27. The Appeals Chamber **REQUESTS** the Registry:
- a. where no additional protective measures or redactions are requested within 15 working days from the date of the Trial Chamber Decision, and where none of these materials have, within 10 working days from the date of the Trial Chamber Decision, been identified by the Prosecution or Milošević as having been provided pursuant to Rule 70 of the Rules, to provide Karadžić, all of his legal associates and any employees who have been instructed or authorised by Karadžić and his legal associates, with all *inter partes* confidential material described above, in electronic format where possible;
 - b. where additional protective measures or redactions are requested, to withhold that material until the Appeals Chamber has issued a decision on the request.
28. The Appeals Chamber, unless otherwise required by this decision, **ORDERS** that the *inter partes* confidential material provided by the Registry shall remain subject to any protective measures imposed in the *Dragomir Milošević* case.
29. The Appeals Chamber **ORDERS** that Karadžić, all of his legal associates and any employees who have been instructed or authorised by Karadžić and his legal associates to have access to the *inter partes* confidential material described above shall not, without the express leave of the Appeals Chamber, through a finding that it has been demonstrated that third party disclosure is necessary for the preparation of Karadžić's defence:
- a. disclose to any third party the names of witnesses, their whereabouts, transcripts of witness testimonies, exhibits, or any information which would enable them to be identified and would breach the confidentiality of the protective measures already in place;
 - b. disclose to any third party any documentary evidence or other evidence, or any written statement of a witness or the contents, in whole or in part, of any non-public evidence, statement of prior testimony; or
 - c. contact any witness whose identity was subject to protective measures;
30. The Appeals Chamber **ORDERS** that if, for the purposes of the preparation of Karadžić's defence, non-public material is disclosed to third parties – pursuant to authorisation by the Appeals Chamber – 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 Karadžić defence team as soon as the information is no longer needed for the preparation of his defence.

31. For the purposes of the above paragraph, third parties exclude: (i) Karadžić; (ii) his legal associates; (iii) any employees who have been instructed or authorised by Karadžić and his legal associates to have access to confidential material; and (iv) personnel of the Tribunal, including members of the Prosecution.

32. The Appeals Chamber **ORDERS** that if Karadžić or any members of his legal associates who are authorised to have access to confidential material should withdraw from the case, any confidential material to which access is granted in this decision and that remains in their possession shall be returned to the Registry.

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



Judge Fausto Pocar
Presiding

Dated this 19th day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]