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19 May 2009

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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-04-83-A
Date: 19 May 2009
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision: 19 May 2009

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON MOTION BY RADOVAN KARADŽIĆ FOR
ACCESS TO CONFIDENTIAL MATERIALS IN THE RASIM
DELIĆ CASE**

The Prosecutor v. Rasim Delić

The Prosecutor v. Radovan Karadžić

The Office of the Prosecutor:

The Office of the Prosecutor:

Ms. Michelle Jarvis

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

Counsel for Rasim Delić:

The Accused:

Ms. Vasvija Vidović
Mr. John Jones

Mr. Radovan Karadžić *pro se*

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A. Introduction

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 “International Tribunal”, respectively) is seized of a motion by Radovan Karadžić (“Karadžić”), an accused in another case before the International Tribunal, for access to confidential materials in the case of Rasim Delić (“Delić”).¹ Delić and the Prosecution oppose the Motion.² Karadžić did not reply to the Delić and the Prosecution response.

B. Submissions

2. In his Motion, Karadžić requests that the Appeals Chamber grant him access to confidential materials from the Delić case, including (1) “all confidential closed and private session testimony transcripts”; (2) “all closed session hearing transcripts”; (3) “all confidential exhibits”; and (4) “all confidential *inter partes* filings and submissions and all confidential Trial and Appeals Chamber decisions.”³ Karadžić argues that “[a]n accused is always entitled to seek confidential material from another case before the Tribunal”, as long as the accused “is able to describe the documents sought by their general nature as clearly as possible [...] and if [he] can show that such access is likely to assist his case materially”.⁴ Karadžić submits that “the Appeals Chamber has accepted that requests for access to ‘all confidential material’ are sufficiently specific.”⁵

3. Karadžić alleges that there is a “significant geographical and temporal overlap between his case and the Delić case.”⁶ More precisely, he argues that both cases “involve crimes alleged to have occurred in Bosnia and Herzegovina”,⁷ and overlap temporally, as Karadžić is charged with crimes committed between 1991 and 1995, and Delić with crimes committed in 1995.⁸ Karadžić further

¹ Motion by Radovan Karadžić for Access to Confidential Materials in the Delić Case, 9 April 2009 (filed on 14 April 2009) (“Motion”).

² Response by Rasim Delić to Motion by Radovan Karadžić for Access to Confidential Materials in the Delić case, 17 April 2009 (“Delić Response”); Prosecution Response to Motion by Radovan Karadžić for Access to All Confidential Material, 24 April 2009 (filed on 27 April 2009) (“Prosecution Response”). The Appeals Chamber notes the Prosecution’s “Request for Leave to File Notice of Supplemental Authority in Relation to Prosecution Response to Motion by Radovan Karadžić for Access to All Confidential Material” (“Prosecution’s Request”) filed on 14 May 2009. However, because the Appeals Chamber dismisses the Motion, it finds that it need not consider the Prosecution’s Request.

³ Motion, para. 1.

⁴ Motion, para. 3, quoting *Prosecutor v. 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; *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. 3.

⁵ Motion, para. 3.

⁶ Motion, para. 6.

⁷ Motion, para. 7.

⁸ Motion, para. 8.

asserts that “the crimes against Bosnian Serbs in the Delic [*sic*] case provide context to the crimes charged against Dr. Karadzic [*sic*].”⁹

4. Finally, Karadžić submits that access to confidential materials in the Delić case is important to the investigation and preparation of his own case, and that the principle of equality of arms requires that he be granted access to these materials.¹⁰

5. Delić responds that the Motion should be denied, as it is “a paradigmatic example of a ‘fishing expedition’”¹¹ and there is no relevant overlap of issues between his case and Karadžić’s case.¹² Delić argues that Karadžić’s arguments with regard to the geographical and temporal overlap between the two cases are fictitious, as is the argument that the crimes in the Delić case provide context to the crimes in the Karadžić case.¹³ Delić also submits that Karadžić fails to sufficiently identify the material he seeks, and fails “to demonstrate how having access to materials in the Delić case, which are defined as a class only by their confidential nature, will materially assist his case.”¹⁴

6. The Prosecution agrees with Delić that the Motion should be denied as Karadžić “has failed to demonstrate legitimate forensic purpose in access to the confidential materials” in the Delić case.¹⁵ The Prosecution submits that Karadžić “has alleged nothing more than a remote or abstract relationship between the events at issue in the respective cases”¹⁶ and that “his argument implies that he should have access to something *because* it is confidential”, which is insufficient.¹⁷

C. Discussion

7. The Appeals Chamber recalls that a party is always entitled to seek material from any sources, including from another case before the International Tribunal, to assist in the preparation of its case, provided that the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown.¹⁸ The Appeals Chamber has held

⁹ Motion, para. 9.

¹⁰ Motion, paras 10-11. *See also* Motion, para. 6.

¹¹ Delić Response, para. 1. *See also* Delić Response, paras 6, 8.

¹² Delić Response, para. 2.

¹³ Delić Response, paras 2-4.

¹⁴ Delić Response, para. 6.

¹⁵ Prosecution Response, para. 1.

¹⁶ Prosecution Response, para. 5.

¹⁷ Prosecution Response, para. 6.

¹⁸ *See 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; *Martić* Decision, para. 9; *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; *Prosecutor v. Radoslav 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.

that access to confidential materials is granted wherever the party seeking access has demonstrated that such material may be of material assistance to his case.¹⁹ The requesting party may demonstrate the relevance of the material sought “by showing the existence of a nexus between the applicant’s case and the cases from which such material is sought, *i.e.* if the cases stem from events alleged to have occurred in the same geographical area and at the same time.”²⁰

8. In the instant case, the Appeals Chamber is not convinced that these conditions have been met. Karadžić fails to establish the existence of a temporal or geographic overlap between his case and that of Delić. The Appeals Chamber finds that the mere fact that both cases concern crimes committed in Bosnia and Herzegovina cannot be deemed as sufficiently specific since, as argued by Delić and the Prosecution,²¹ if such a link was sufficient, practically every accused person before the International Tribunal would automatically have access to confidential materials in all other cases. Karadžić’s vague argument that, being charged for crimes committed between 1991 and 1995, his case overlaps with that of Delić, whose case concerns crimes committed in 1995²² does not demonstrate a sufficient temporal overlap between the cases.

9. Moreover, Karadžić fails to even attempt to support his contention “that the crimes against Bosnian Serbs in the Delić case provide context to the crimes charged against [him].”²³ Consequently, the Appeals Chamber is not satisfied that a legitimate forensic purpose for Karadžić’s access to the confidential materials in the Delić case has been shown.

10. As a result, the Appeals Chamber declines to address the issues of whether Karadžić properly identified the material he seeks access to since the fulfilment of this condition would not in any case overcome Karadžić’s failure to demonstrate a legitimate forensic purpose.

¹⁹ *Šljivančanin* Decision, para. 7; *Krajišnik* Decision, p. 4; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Appellants Dario Kordić and Mario Čerkez’s Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in the Prosecutor v. Blaškić, 16 May 2002 (“*Blaškić* Decision”), para. 14.

²⁰ *Šljivančanin* Decision, para. 7; *Krajišnik* Decision, p. 4; *Blaškić* Decision, para. 15.

²¹ Delić Response, para. 2; Prosecution Response, para. 2.

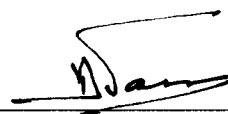
²² Motion, para. 8.

²³ Motion, para. 9.

D. Disposition

11 On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Motion in its entirety.

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



Judge Andréia Vaz
Presiding Judge

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

[Seal of the International Tribunal]