

IT-04-84-T
D28241-D28237
05 MARCH 2008

28241 AT



**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-04-84-T
Date: 5 March 2008
Original: English

IN TRIAL CHAMBER I

**Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle**

Registrar: Mr Hans Holthuis

Decision of: 5 March 2008

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON VLASTIMIR ĐORĐEVIĆ'S MOTION FOR ACCESS
TO TRANSCRIPTS, EXHIBITS AND DOCUMENTS**

Prosecutor v. Haradinaj et al.

Prosecutor v. Đorđević

Office of the Prosecutor

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
Mr Gilles Dutertre
Mr Philip Kearney

Mr Thomas Hannis
Mr Chester Stamp

Counsel for the Accused

Counsel for the Accused

Mr Ben Emmerson QC, Mr Rodney Dixon and
Ms Susan L. Park for Mr Ramush Haradinaj
Mr Gregor Guy-Smith and Ms Colleen Rohan for
Mr Idriz Balaj
Mr Richard Harvey and Mr Paul Troop for
Mr Lahi Brahimaj

Mr Dragoljub Đorđević
Mr Veljko Đurđić

I. PROCEDURAL BACKGROUND

1. On 29 October 2007, the Accused Vlastimir Đorđević (“Applicant”) filed a motion,¹ seeking disclosure of the following material from the *Haradinaj et al.* case: (a) all public and non-public transcripts of the proceedings, (b) all public and non-public exhibits, and (c) all documentary evidence and motions submitted by the parties.² The Applicant argues that there is a significant geographical and temporal overlap between his case and the *Haradinaj et al.* case and that the requested disclosure would facilitate, and could be of significant value in, the preparation of his defence.³ The Applicant further submits that he has a right to full access to the trial record in the *Haradinaj et al.* case, on the basis of his right to a fair and expeditious trial.⁴ The Applicant assures the Trial Chamber that he would respect all protective measures ordered by this Trial Chamber in relation to the requested material.⁵ The Prosecution has not filed a response to the Applicant’s Motion.

II. APPLICABLE LAW

2. All public material is available to the Applicant through the Registry without any need to motion the Trial Chamber.

3. As for confidential *inter partes* material, the applicant must identify or describe by its general nature the material it seeks and show a legitimate forensic purpose for gaining access to it.⁶ Such purpose may be established by showing the existence of a geographical and temporal nexus between the applicant’s case and the case from which the material is sought.⁷ Furthermore, the Trial Chamber must be satisfied that there is a good chance that access to the material would materially assist the applicant in his or her case.⁸

4. As for material that has been provided pursuant to Rule 70 of the Rules of Procedure and Evidence (“Rules”), the Prosecutor must obtain the consent of the provider before the

¹ Vlastimir Đorđević’s Motion for Access to Transcripts, Exhibits and Documents, 29 October 2007 (“Motion”).

² Motion, paras 1, 8.

³ Motion, paras 2, 3, 6.

⁴ Motion, para. 4.

⁵ Motion, para. 7.

⁶ *Prosecutor v. Krajišnik*, Appeals Chamber Decision on “Motion by Mićo Stanišić for Access to All Confidential Materials in the Krajišnik Case”, 21 February 2007, p. 4.

⁷ *Ibid.*, at pp. 4-5.

⁸ *Ibid.*, at p. 4.

material or its source can be disclosed to another accused before the Tribunal.⁹ This is the case even where the Rule 70 provider has consented to the disclosure of the material in one or more prior cases.¹⁰

5. Confidential *ex parte* material has been withheld from a party because of security interests of a State, other public interests, or privacy interests of a person or institution.¹¹ The party with access to such material enjoys a protected degree of trust that it will not be disclosed.¹² Therefore, third party access to such material may be granted only in exceptional circumstances.¹³

6. Pursuant to Rule 75(F)(i), 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

7. The Applicant has described in general terms the material he seeks. The indictment in the *Haradinaj et al.* case and the indictment in the case of the Applicant both concern crimes allegedly committed in Kosovo.¹⁴ The *Haradinaj et al.* indictment concerns events that allegedly took place between 1 March and 30 September 1998,¹⁵ whereas the Applicant is charged with crimes that are alleged to have occurred after this period.¹⁶ However, events in 1998 are also pleaded in the Applicant's indictment.¹⁷ In addition, the parties in the *Haradinaj et al.* case made certain allegations during the proceedings regarding the actions of the Applicant, and tendered documents naming the Applicant.¹⁸ The Trial Chamber concludes that there is a geographical and temporal link between the Applicant's case and the *Haradinaj et al.* case. It is also satisfied that access to confidential *inter partes* material from the *Haradinaj et al.* case is likely to be of assistance to the preparation of the Applicant's defence. This also covers Rule 70 material, subject to the specific consent of the provider.

⁹ Ibid, at pp. 5-6.

¹⁰ Ibid, at p. 6.

¹¹ Ibid, at p. 5.

¹² Ibid.

¹³ *Prosecutor v. Limaj et al.*, Decision on Vlastimir Đorđević's Motion for Access to All Material in Prosecutor v. Limaj et al., Case No. IT-03-66, 6 February 2008, para. 14.

¹⁴ *Prosecutor v. Haradinaj et al.*, Fourth Amended Indictment, 16 November 2007, para. 13; *Prosecutor v. Đorđević*, Third Amended Joinder Indictment, 6 July 2006, para. 19.

¹⁵ *Prosecutor v. Haradinaj et al.*, Fourth Amended Indictment, 16 November 2007, para. 13.

¹⁶ *Prosecutor v. Đorđević*, Third Amended Joinder Indictment, 6 July 2006, paras 14, 20.

8. With regard to confidential *ex parte* material, the Applicant has put forward no particular reasons why he should be allowed access to such material in the *Haradinaj et al.* case. The Trial Chamber therefore denies the Motion in this respect.

IV. DISPOSITION

9. Accordingly, the Trial Chamber, pursuant to Rules 54, 70, and 75 of the Rules, hereby **GRANTS** the Motion in part, and:

ORDERS the Prosecution to identify for the Registry, without undue delay, the following *inter partes* material in the *Haradinaj et al.* case for disclosure to the Applicant:

- (i) all closed and private session transcripts produced in the pre-trial and trial proceedings and not subject to Rule 70;
- (ii) all confidential trial exhibits not subject to Rule 70; and
- (iii) all confidential filings made by the parties in the pre-trial and trial proceedings and not subject to Rule 70.

ORDERS the Prosecution to determine without undue delay which of the requested material 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 the Applicant, and, upon receiving a reply, inform the Registry whether consent for the disclosure of that material has been obtained or not.

ORDERS the Registry to disclose to the Applicant, without undue delay:

- (i) the confidential *inter partes* material from the *Haradinaj et al.* case not subject to Rule 70, once it has been identified by the Prosecution; and
- (ii) the Rule 70 material once it has been identified by the Prosecution and only if the consent of the provider has been obtained.

ORDERS that no confidential *ex parte* material from the *Haradinaj et al.* case be disclosed to the Applicant.

ORDERS that the Applicant, his Defence team, and any employees who have been instructed or authorised by the Applicant to have access to the confidential material, shall

¹⁷ Ibid, paras 61-64.

¹⁸ See e.g. T. 6226-6231, 6520-6522, 9890-9894; D171.

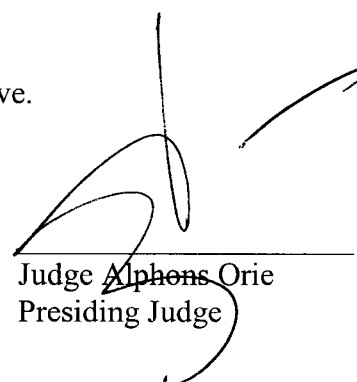
not, without express leave of a Chamber finding that it has been sufficiently demonstrated that third party disclosure is absolutely necessary for the preparation of the defence of the Applicant, disclose to the public or to any third party any confidential material from the *Haradinaj et al.* case. Such confidential material includes but is not limited to the identities and whereabouts of protected witnesses.

ORDERS that the Applicant, his Defence team, and any employees who have been instructed or authorised by the Applicant to have access to the confidential material, shall inform any person to whom disclosure is made pursuant to the procedure set out above that he or she is forbidden to copy, reproduce, publicise or disclose such material to any person, and that he or she must return it to the Applicant as soon as his or her possession of the material is no longer needed for the preparation of the Applicant's case.

REQUESTS the Registry to facilitate the Applicant's access to public material in the *Haradinaj et al.* case.

DENIES the motion in all other respects.

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



Judge Alphons Orié
Presiding Judge

Dated this 5th day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]