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17 APRIL 2009

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**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**IT-04-83-A**

**IN THE APPEALS CHAMBER**

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

**Acting registrar:** Mr. John Hocking

**Date:** 17 April 2009

**THE PROSECUTOR**

**v.**

**RASIM DELIĆ**

***PUBLIC***

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

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*The Prosecutor v. Rasim Delić*

*The Prosecutor v. Radovan Karadžić*

**The Office of the Prosecutor:**

Ms. Michelle Jarvis

**The Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

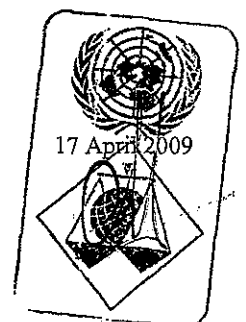
**Counsel for Rasim Delić:**

Ms. Vasvija Vidović  
Mr. John Jones

**The Accused:**

Radovan Karadžić

Case No. IT-04-83-A



1. The Chamber should deny the *Motion by Radovan Karadžić for Access to Confidential Materials in the Delić case* filed on 14 April 2009 (“**the Motion**”) as a paradigmatic example of a “*fishing expedition*”.
2. There is no relevant overlap of issues between the case against Radovan Karadžić (“**the Accused**”) and that against Rasim Delić. That there is no relevant overlap is perhaps best demonstrated by the Accused’s own desperate assertion that “*the Karadžić and Delić Indictments both involve crimes alleged to have occurred in Bosnia and Herzegovina*” (*Motion*, paragraph 7)! If that were the criterion, practically every accused person before the Tribunal would automatically have access to confidential materials in all other cases.
3. The attempt to find temporal overlap fares little better. The alleged temporal overlap consists of the *Karadžić Indictment* covering the period 1991-1995 and the *Delić Indictment* covering the period 1995 (*Motion*, paragraph 8). It does not require an astute observer to note that the war in Bosnia and Herzegovina covered the period, 1991-1995. Again, the alleged overlap is completely fictitious.
4. The Accused also seeks refuge in an argument of “*context*”. He simply asserts that “*the crimes against Bosnian Serbs in the Delić case provide context to the crimes charged against Dr. Karadžić*” (*Motion*, paragraph 9), without any attempt to explain what the relevant context is. It is self-evident that not every crime against any person of Bosnian Serb ethnicity provides relevant context to the case against Dr. Karadžić. Even if it did, “*context*” is something quite different from material which will *materially assist* the Accused to prepare and present his case.
5. The alleged relevance of crimes against Bosnian Serbs to the issue of whether or not the Accused participated in a joint criminal enterprise (*Motion*, paragraph 10) is also something which is simply asserted, but not explained, by the Accused.
6. Finally, the Accused fails completely to identify, as the Tribunal’s case-law requires him to do, the material sought in anything other than the most general terms. The Appellant seeks access to “all confidential closed and private session testimony, all closed session hearing transcripts, all confidential exhibits; and all confidential inter partes filings and submissions and all confidential trial and

*Appeals Chamber decisions*” (*Motion*, paragraph 1). Thus the defining criterion for the material sought is simply *that it be confidential in nature*. In short, the Accused seeks materials *on the basis of their confidentiality* alone, not on any other basis. That is the clearest sign that the *Motion* is nothing other than the most blatant “*fishing expedition*”, of the very sort which the Tribunal has time-and-again deprecated in its case-law. The Accused has made not attempt 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.

7. Set against the Accused’s fishing expedition, for absolutely anything that is confidential in the *Delić* case, are the very legitimate and compelling security concerns of the protected witnesses in that case. Revealing their identities to Radovan Karadžić, when he has failed to demonstrate in accordance with the Tribunal’s established criteria why he should be granted such access, would run completely counter to the Tribunal’s duty to protect those witnesses who are most in need of such protection.
8. For the foregoing reasons, it is respectfully submitted that the *Motion* should be denied.

Dated this 17<sup>th</sup> day of April 2009

*H. Vidović*

Vasvija Vidović and John Jones  
Counsel and Co-Counsel for Rasim Delić

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