

IT-05-5/18-7T  
D15074 - D15071  
24 APRIL 2009

~~IT-04-83-A~~  
~~A862 - A859~~  
~~24 April 2009~~

~~862~~

~~MB~~

15074

TR

UNITED  
NATIONS

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-04-83-A  
Date: 24 April 2009

**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

**PROSECUTOR**

v.

**RASIM DELIĆ**

***PUBLIC***

**PROSECUTION RESPONSE TO MOTION BY RADOVAN**

**KARADŽIĆ FOR ACCESS TO ALL**

**CONFIDENTIAL MATERIAL**

*The Prosecutor v. Rasim Delić:*

**The Office of the Prosecutor:**

Ms. Michelle Jarvis

**Counsel for Rasim Delić:**

Ms. Vasvija Vidović  
Mr. John Jones

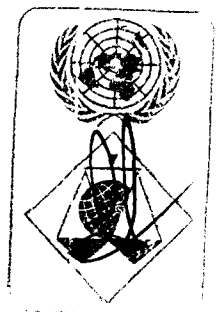
*The Prosecutor v. Radovan Karadžić:*

**The Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused:**

Radovan Karadžić



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

**Case No. IT-04-83-A**

**THE PROSECUTOR**

v.

**RASIM DELIĆ**

***PUBLIC***

---

**PROSECUTION RESPONSE TO MOTION BY RADOVAN KARADŽIĆ  
FOR ACCESS TO ALL CONFIDENTIAL MATERIAL**

---

1. The Prosecution opposes the motion<sup>1</sup> because the Applicant has failed to demonstrate a legitimate forensic purpose in access to the confidential materials in this case.

2. The Applicant argues “he has met all of the requirements set forth in Rule 75 to allow him access to confidential material from Mr. Rasim Delić’s case”<sup>2</sup> on the basis that “there is a significant geographical and temporal overlap between his case and the Delić case.”<sup>3</sup> Without amplification, he asserts that a review of the respective indictments “reveals that the two cases are intertwined.”<sup>4</sup> He points to the broadest of geographical overlaps: “The Karadžić and Delić Indictments both involve crimes alleged to have occurred in Bosnia and Herzegovina.”<sup>5</sup> The Prosecution concurs with the observations made by counsel for Delić in his opposition to the Motion: “If that were the criterion, practically every accused person before the Tribunal would automatically have access to confidential material in all other cases.”<sup>6</sup>

---

<sup>1</sup> Motion by Radovan Karadžić for Access to Confidential Materials in the Delić Case, 14-Apr-09.

<sup>2</sup> Motion, para.2.

<sup>3</sup> Motion, para.6.

<sup>4</sup> Ibid.

<sup>5</sup> Motion, para.7.

<sup>6</sup> Response by Rasim Delić to Motion by Radovan Karadžić for Access to Confidential Materials in the Delić Case, 17-Apr-09, para.2.

3. The Applicant next justifies access to provide “context.” He alleges: “the factual bases for the allegations against Dr. Radovan Karadžić and Rasim Delić are interrelated in the sense that the crimes against Bosnian Serbs in the Delić case provide context to the crimes charged against Dr. Karadžić.”<sup>7</sup> Again, the Prosecution concurs in the observation made by counsel for Delić: “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.”<sup>8</sup>

4. Tribunal case-law confirms that “[a] party is always entitled to seek material from *any* source to assist in the preparation of his case”.<sup>9</sup> With regard to confidential material, however, the Tribunal must “find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses”.<sup>10</sup> An applicant must show that “the material sought is likely to assist the applicant’s case materially or at least that there is a good chance that it would”.<sup>11</sup> The Applicant meets this standard by “showing the existence of a nexus between the applicant’s case and the case from which such material is sought”.<sup>12</sup>

5. Such a nexus may be established, for example, “if the cases stem from events alleged to have occurred in the same geographic area at the same time”.<sup>13</sup> However, an applicant must allege more than that the alleged events in both his case and the case to which he seeks access occurred during the armed conflict in Bosnia and Herzegovina. For example, access was denied in two cases where the applicant merely alleged that acts occurred in a conflict in Bosnia and Herzegovina, whereas the crimes alleged in the respective indictments occurred in two separate areas within the same region: Eastern Bosnia and Central Bosnia;<sup>14</sup> Southwest Bosnia and Central Bosnia.<sup>15</sup> Access

---

<sup>7</sup> Motion, para.9.

<sup>8</sup> Delić Response to Motion, para.4.

<sup>9</sup> *Brdanin*, IT-99-36-A, Decision on Mićo Stanišić’s Motion For Access To All Confidential Materials In The Brdanin Case, 24-Jan-07, para.10; *Mrkšić*, IT-95/13-1-A, Decision on Veselin Šljivančanin’s Motion Seeking Access to Confidential Material in the *Kordić and Čerkez* Case, 22-Apr-08, para.7

<sup>10</sup> *Hadžihasanović*, IT-01-47-AR73, Decision on Appeal from Refusal to Grant Access to Confidential Material in another Case, 23-Apr-02 (*Hadžihasanović* Decision), p.2.

<sup>11</sup> *Blagojević*, IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the *Blagojević and Jokić* Case, 18-Jan-06 (*Blagojević* Decision), para.4; *Blaškić*, IT-95-14-A, Decision on Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits from the *Aleksovski* Case, 8-Mar-02, p.3.

<sup>12</sup> *Blagojević* Decision, para.4.

<sup>13</sup> *Ibid.*, para. 4.

<sup>14</sup> *Delić*, IT-04-83-T, Decision on Popović Defence Motion For Access To Confidential Material in Prosecutor v. Rasim Delić, 25-Jul-07.

was also denied where the applicant sought access to confidential material on the mere allegation that the conflict arose out of alleged political tensions between different ethnic groups in the former Yugoslavia that were exacerbated by the war.<sup>16</sup> An applicant receives access to confidential materials in another case only because they “relate to the material facts arising in the [applicant’s case].”<sup>17</sup> Thus, access to confidential material will be denied where, as here, the Applicant has alleged nothing more than a remote or abstract relationship between the events at issue in the respective cases.<sup>18</sup>

6. This motion should be rejected as a “fishing expedition”, that is, seeking to access material in order to discover whether there is any case at all to make.<sup>19</sup> The Applicant has not demonstrated any basis for access to confidential materials in this case. Rather, his argument implies that he should have access to something *because* it is confidential. Plainly, that showing is insufficient.

Word count: 976



Michelle Jarvis  
Appeals Counsel

Dated this 24th day of April  
At The Hague, The Netherlands

<sup>15</sup> *Naletilić*, IT-98-34-A, Decision on joint defence motion by Enver Hadžihasanović and Amir Kubura for access to all confidential material, filings, transcripts and exhibits in the Naletilić and Martinović case, 7-Nov-03.

<sup>16</sup> *Limaj*, IT-03-66-A, Decision on Ljube Bošković’s Motion for Access to Confidential Materials, 8-Jun-06.

<sup>17</sup> *Mrkšić* Decision, para.7; *Bošković*, IT-04-82-PT, Decision on Motion Filed By Defence for Naser Orić for Access To Relevant Portion of Transcript of Rule 65 *ter* Conference of 23 March 2006, 11-Dec-06.

<sup>18</sup> *Gotovina*, IT-06-90-PT, *Decision on Ivan Čermak’s and Mladen Markač’s Joint Motion for Access to Confidential Testimony and Documents in Prosecutor v. Slobodan Milošević Case*, 1-Mar-07, pp.3-4 (rejecting motion for access as a fishing expedition where although there was a “partly geographical and temporal overlap” between the respective cases “insofar as the conflict between the forces of the RSK [the Republic of Serbian Krajina] and the Republic of Croatia is concerned,” “the Applicants failed to describe the documents sought with the required specificity.”).

<sup>19</sup> *Hadžihasanović* Decision, p.3.

