



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 Nos.: IT-95-5/18-T
IT-05-88-A

Date: 6 February 2013

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IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 6 February 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON GVERO DEFENCE REQUEST FOR ACCESS TO CONFIDENTIAL
MATERIALS FROM THE *KARADŽIĆ* CASE**

Prosecutor v. Radovan Karadžić (Case No. IT-95-5/18-T)

Office of the Prosecutor

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The Accused

Mr. Radovan Karadžić

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Prosecutor v. Popović et al. (Case No. IT-05-88-A)

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Peter Haynes QC and Simon Davis for Vinko Pandurević

THIS TRIAL 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 (“Tribunal”) is seised of the “Gvero Defence Request for Access to Confidential Information and Materials from the *Karadžić* Case”, filed confidentially on 24 December 2012 (“Motion”) by Milan Gvero’s defence counsel (“Gvero”), and the “Gvero Defence Request for a Leave to Reply and Reply to Prosecution Response to Request for Access to Confidential Information and Materials from the *Karadžić* Case”, filed confidentially on 14 January 2013 (“Reply”), and hereby issues its decision thereon.

I. Submissions

1. On 31 March 2010 in the “Decision on General Miletić’s Request for Access to Confidential Information in the *Karadžić* Case” (“Access Decision”), the Chamber granted Radivoje Miletić, Vujadin Popović, Drago Nikolić, and Vinko Pandurević (“Miletić et al.”) access to the following *inter partes* material (“Disclosed Material”) in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T (“*Karadžić* case”):

- (i) closed and private session testimony transcripts which are not subject to Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) or delayed disclosure and which are produced in the pre-trial and trial proceedings, in so far as they are concerned with (1) events in Srebrenica in 1995 (2) relationships and contacts of Radovan Karadžić (“Accused”) in 1995 and any document in connection with the preparation, compilation, distribution and execution of Directive No. 7; and (3) the convoy and passage of humanitarian aid;
- (ii) confidential and under seal trial exhibits, which are not subject to Rule 70 or delayed disclosure, and which are concerned with items (1), (2) and (3) specified in (i) above;
- (iii) all confidential filings in the pre-trial and trial proceedings, which are not subject to Rule 70 or delayed disclosure and which are concerned with items (1), (2) and (3) as specified in (i) above.¹

2. In the Motion, Gvero submits that he has recently been added as one of the appellants in the case of *Prosecutor v. Popović* case, Case No. IT-05-88-A (“*Popović* case”) and, due to a sequence of events outlined in the Motion, was unable to join Miletić et al. in their original

request for access to confidential material in the *Karadžić* case.² Thus, Gvero now seeks access to the Disclosed Material.³ In addition, Gvero requests to be provided on an “ongoing basis” with the following specific *inter partes* and confidential, non-Rule 70, information and materials, including “trial transcripts, admitted exhibits, and written filings and rulings” related to: (i) the organisation and structure of the Army of Republika Srpska (“VRS”); (ii) the drafting of Directives, and in particular, Directives No. 7 and No. 7.1; and (iii) VRS meetings with members and/or representatives of UNPROFOR between January and September 1995 (“Additional Material”).⁴ In support, Gvero argues that given the charges against him and the findings made in the trial judgement in the *Popović* case, the “same legitimate forensic purpose justifying access to the above-listed categories exists on [his] part as well”, and furthermore that the arguments raised by Miletić et al. as to the temporal, geographical, and substantial overlap between the *Popović* case and the *Karadžić* case also apply to Gvero.⁵

3. On 7 January 2013, the Office of the Prosecutor (“Prosecution”) filed confidentially the “Prosecution’s Response to Gvero Defence Request for Access to Confidential Information and Materials from the *Karadžić* Case” (“Response”).⁶ The Prosecution does not oppose granting Gvero access to the Disclosed Material on the same terms it was granted to Miletić et al. but argues that Gvero’s request for access to the Additional Material should be denied on the basis that it is encompassed by the Disclosed Material, particularly by the Chamber’s order in the Access Decision to provide Miletić et al. access to all materials related to the events in Srebrenica in 1995.⁷ The Prosecution further argues that to the extent Gvero is seeking access to materials not covered by the Disclosed Material as defined in the Access Decision, he has failed to show a legitimate forensic purpose for its disclosure.⁸ In the Prosecution’s submission, other than the Srebrenica component, the case against the Accused does not geographically, temporally, or otherwise materially overlap with the case against Gvero.⁹ Thus the Prosecution contends that Gvero has not shown the existence of a sufficient nexus between his case and

¹ Access Decision, paras. 16, 17, 19, 20.

² Motion, paras. 1, 7.

³ Motion, paras. 2–3. Gvero submits that he filed the Motion confidentially pending the issuance of a public redacted version of the *Prosecutor v. Popović*, Case No. IT-05-88-A, Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero”, Confidential and *ex parte*, 30 November 2012 (“*Popović* Decision”). Motion, fn. 1.

⁴ Motion, paras. 1, 4, 8. The Chamber notes that the relief sought in paragraph 8 of the Motion only references category (iii) of the Additional Material, while paragraph 4 includes the additional categories (i) and (ii) as detailed above. The Chamber assumes Gvero intended for the relief sought to include all three categories and therefore will follow paragraph 4 of the Motion in this regard.

⁵ Motion, para. 5.

⁶ The Prosecution submits that it also filed the Response confidentially pending the issuance of a public redacted version of the *Popović* Decision. Response, fn. 1.

⁷ Response, paras. 2, 4, 7, 17.

⁸ Response, paras. 8–14, 16.

other components of the case against the Accused justifying access to materials other than those covered by the Access Decision.¹⁰ Furthermore, the Prosecution notes that while Gvero seeks access to the confidential *inter partes* “non-Rule 70” materials, the Chamber in fact, also granted access to Rule 70 materials, with the provider’s consent.¹¹ To the extent that Gvero also seeks access to Rule 70 materials, the Prosecution objects to its disclosure before the provider’s consent is obtained.¹²

4. In the Reply, Gvero first requests leave to reply to the Response (“Request for Leave to Reply”), submitting that a reply will assist the Chamber “to better assess and dispose of the matter before it”.¹³ Gvero then maintains that he should be granted access to the Additional Material.¹⁴ In relation to the information and materials regarding “the drafting of Directives, and in particular, Directives No. 7 and No. 7.1”, he argues *inter alia* that one of his appeal grounds addresses the “so-called ‘full method’ purportedly applied in drafting of the Directive 7” and that in order for him to develop arguments in this regard, it is essential for him to “gain insight into all available materials regarding drafting of [Directive No. 7] *and all other Directives*, both preceding and following the Directive No. 7”.¹⁵ Gvero further submits that with respect to the remaining two categories of the Additional Material, he will be “satisfied if the entirety of this material is provided” as part of the Disclosed Material.¹⁶ Finally, Gvero clarifies that he wishes to receive Rule 70 material “once the consent for [it] has been obtained by the Prosecution”.¹⁷

5. The Accused did not file a response to the Motion.

II. Applicable Law

6. The Chamber notes the well-established principle that Tribunal proceedings should be conducted in a public manner to the extent possible.¹⁸ Further, the Chamber observes that generally, “[a] party is always entitled to seek material from any source to assist in the

⁹ Response, para. 8.

¹⁰ Response, para. 8.

¹¹ Response, paras. 5–6 (emphasis added). *See* Access Decision, paras. 20(b), (d), (f)(ii).

¹² Response, paras. 6, 15.

¹³ Reply, para. 1. Gvero submits that he filed the Reply confidentially pending the issuance of a public redacted version of the *Popović* Decision. Reply, fn. 3.

¹⁴ Reply, para. 2.

¹⁵ Reply, paras. 4–5 (emphasis added).

¹⁶ Reply, para. 6.

¹⁷ Reply, para. 7.

¹⁸ Rule 78 provides: “All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”

preparation of his case.”¹⁹ In exceptional circumstances, however, a Chamber may restrict the access of the public, as well as the access of a party, to certain material under the provisions of the Rules.²⁰ Such confidential material can be categorised into three types: *inter partes*, *ex parte*, and Rule 70.

7. In determining whether a party must be given access to confidential material, the Trial Chamber must “find a balance between the right of [that] party to have access to material to prepare its case and the need to guarantee the protection of witnesses.”²¹ To that end, a party may obtain confidential material from another case to assist it in the preparation of its case, if (a) the material sought has been “identified or described by its general nature”; and (b) a “legitimate forensic purpose” exists for such access.²²

8. The first requirement is not a particularly onerous one. The Appeals Chamber has held that requests for access to “all confidential material” can be sufficiently specific to meet the identification standard.²³

9. With respect to the second requirement, the standards for access differ for each category of confidential material. With regards to confidential *inter partes* material, a “legitimate forensic purpose” for disclosure in subsequent proceedings will be shown if the applicant can demonstrate that the material is relevant and essential.²⁴ The relevance of such material may be determined “by showing the existence of a nexus between the applicant’s case and the original case from which the material is sought”.²⁵ To establish a nexus, the applicant is required to demonstrate a “geographical, temporal or otherwise material overlap” between the two

¹⁹ *Prosecutor v. 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; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Mičo Stanišić’s Motion for Access to All Confidential Materials in the *Brđanin Case*, 24 January 2007 (“*Brđanin Decision*”), para. 10.

²⁰ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, 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 (“*Đorđević Decision*”), para. 6.

²¹ *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. 2.

²² *Blaškić Decision*, para. 14; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Motions for Access to Confidential Material, 16 November 2005 (“*First Blagojević and Jokić Decision*”), para. 11. See also *Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Defence Motions for Access to All Confidential Material in *Prosecutor v. Blaškić* and *Prosecutor v. Kordić and Čerkez*, 7 December 2005 (“*Delić Order*”), p. 6.

²³ *Brđanin Decision*, para. 11; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Materials in the *Blagojević and Jokić Case*, 18 January 2006, para. 8; *Prosecutor v. Blaškić*, Case No. IT-95-14-R, Decision on Defence Motion on behalf of Rasim Delić Seeking Access to All Confidential Material in the *Blaškić Case*, 1 June 2006, p. 12.

²⁴ See *Blaškić Decision*, para. 14; *First Blagojević and Jokić Decision*, para. 11. See also *Delić Order*, p. 6; *Đorđević Decision*, para. 7.

²⁵ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder and Balaj Motion for Access to Materials in the *Limaj Case*, 31 October 2006, para. 7; *Đorđević Decision*, para. 7.

proceedings.²⁶ The essential nature of the material, in turn, means that the party seeking it must demonstrate “a good chance that access to this evidence will materially assist the applicant in preparing his case”.²⁷ The standard does not require the applicant to go so far as to establish that the material sought would likely be admissible evidence.²⁸

10. Material can be deemed confidential by virtue of the fact that it has been provided by a state or person subject to restrictions on its use pursuant to Rule 70 of the Rules.²⁹ In such cases, where an applicant has satisfied the legal standard for access to *inter partes* material, the entity that has provided the material must still be consulted before the material can be given to another accused before the Tribunal, and the material must remain confidential.³⁰ This is the case even where the Rule 70 provider(s) consented to the use of the material in one or more prior cases.³¹

11. Pursuant to Rule 75(F)(i) of the Rules, 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

12. The Chamber preliminarily recalls that Gvero and the Prosecution filed the Motion, the Response, and the Reply confidentially pending the issuance of a public redacted version of the *Popović* Decision.³² The Chamber notes that a public redacted version of the *Popović* Decision was issued on 16 January 2013³³ and thus considers that it is in the interests of justice to issue this Decision publicly. The Chamber shall also reclassify the Motion, the Response, and the Reply as public filings.

²⁶ See *Blaškić* Decision, para. 15; *Prosecutor v. Kordić and 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; *Dorđević* Decision, para. 7.

²⁷ First *Blagojević and Jokić* Decision, para. 11; *Dorđević* Decision, para. 7; *Blaškić* Decision, para. 14.

²⁸ *Dorđević* Decision, para. 7.

²⁹ Material produced pursuant to an order under Rule 54 *bis* of the Rules may also require similar procedures before it can be disclosed to an accused in another case.

³⁰ See *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Prosecution’s Preliminary Response and Motion for Clarification Regarding the Appeal Chamber’s Decision Dated 4 December 2002 on Paško Lubičić’s Motion for Access to Confidential Material, Transcripts and Exhibits in the *Blaškić* Case, 8 March 2004, paras. 11–12; *Dorđević* Decision, para. 15; *Delić* Order, p. 6.

³¹ *Prosecutor v. Delić*, Case No. IT-04-83-PT, Order on Jadranko Prlić’s Motion for Access to All Confidential Material in *Prosecutor v. Rasim Delić*, 2 December 2005, p. 4.

³² See *supra*, footnotes 3, 6, 13.

³³ *Prosecutor v. Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 30 November 2012 Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 16 January 2013.

A. Request for Leave to Reply

13. The Chamber considers that further submissions from Gvero on this issue may be of assistance in ruling on the Motion. Therefore pursuant to Rules 54 and 126 *bis* of the Rules, the Chamber grants the Request for Leave to Reply and shall consider Gvero's submissions in the Reply in this Decision.

B. Ex parte material

14. The Chamber notes that Gvero requests access only to "*inter partes* and confidential materials" from the *Karadžić* case.³⁴ Accordingly, the Chamber will not deal with *ex parte* material in this Decision.

C. Confidential *inter partes* material

15. The Chamber first notes that Gvero requests access to only certain confidential and *inter partes* material from the *Karadžić* case, namely the Disclosed Material and the Additional Material. Thus, the Chamber is satisfied that the material sought by Gvero has been sufficiently identified.

16. With respect to the second requirement, as already determined in the Access Decision, the Chamber finds that there is a clear geographical and temporal overlap between the *Popović* case and the *Karadžić* case, as well as a significant factual nexus between them.³⁵ According to the *Popović* indictment, Gvero is alleged to have been a member, together with Miletić et al. and the Accused, of a joint criminal enterprise the aim of which was to forcibly transfer or deport the Bosnian Muslim population from Srebrenica and Žepa and murder the able-bodied men from Srebrenica between 11 July 1995 and 1 November 1995.³⁶ Similarly, the Third Amended Indictment in the *Karadžić* case alleges that the Accused participated in a joint criminal enterprise between 11 July 1995 and 1 November 1995 with the goal of "eliminat[ing] the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men from Srebrenica".³⁷ The Chamber also recalls that the Prosecution does not object to Gvero being given access to the Disclosed Material.

³⁴ See Motion, paras. 1, 4, 7–8.

³⁵ See Access Decision, para. 15.

³⁶ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Indictment, 4 August 2006, paras. 26, 96–97; *See Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Karadžić's Motion for Access to Confidential Material in the *Popović et al.* Case ("Decision on Karadžić's Motion for Access in the *Popović* Case"), 30 July 2009, para. 13.

³⁷ Third Amended Indictment, para. 20. *See* Decision on Karadžić's Motion for Access in the *Popović* Case, para. 13.

17. The Chamber is therefore satisfied that Gvero has shown a legitimate forensic purpose for disclosure of the Disclosed Material. This material is relevant and essential, and there is a likely chance that access to it will materially assist him in preparing his appeal.

18. Turning to the Additional Material, the Chamber recalls that the Prosecution requests that Gvero's access be denied on the basis that it is encompassed by the Disclosed Material. In the Reply, Gvero submits that he will be "satisfied" if the entirety of the material relating to (i) the organisation and structure of the VRS and (ii) VRS meetings with members and/or representatives of UNPROFOR between January and September 1995 is provided as part of the Disclosed Material. Therefore, the Chamber considers that the Reply revises Gvero's original request in the Motion and that now, in addition to the Disclosed Material, he only requests access to the *inter partes* confidential non-Rule 70 information and materials regarding "the drafting of Directives, and in particular, Directives No. 7 and No. 7.1". As such, the Chamber shall not consider further Gvero's request for access to the information and materials regarding the other two categories.

19. With regard to information and materials relating to "the drafting of Directives, and in particular, Directives No. 7 and No. 7.1", the Chamber considers that information and materials relating to the drafting of Directive No. 7 will be provided as part of the Disclosed Material since the Access Decision refers to "any document in connection with the preparation, compilation, distribution and execution of Directive No. 7".³⁸ The Chamber similarly considers that information and materials regarding the drafting of other Directives will be provided in the Disclosed Material insofar as they relate to the "events in Srebrenica in 1995".³⁹ In the event that there is any information in the *Karadžić* case about other Directives which are not somehow linked to Directive No. 7 or the events in Srebrenica in 1995, the Chamber is satisfied that Gvero has demonstrated a legitimate forensic purpose for the disclosure of confidential and *inter partes* material from the *Karadžić* case in relation to those other Directives. The Chamber is satisfied that this material is relevant and essential, and there is a likely chance that access to this evidence will materially assist him in preparing his appeal.

D. Access to confidential Rule 70 material

20. As noted by the Prosecution, some of the confidential *inter partes* material requested by Gvero might fall into the category of Rule 70 material. The Chamber recalls Gvero's submission in the Reply that he would like to receive Rule 70 material once the Prosecution has

³⁸ See Access Decision, para. 20(a)(i).

³⁹ See Access Decision, para. 20(a)(i).

obtained consent to disclose it. With respect to such material, if any, the Chamber shall order that the Prosecution and/or the Accused seek the consent of the Rule 70 provider(s) before it can be provided to Gvero.

E. Delayed disclosure material

21. The Chamber again recalls that for certain witnesses called by the Prosecution in this case, it granted or continued the protective measure of delayed disclosure granted in previous proceedings. This protective measure essentially turned the material relating to those witnesses' identities and evidence into *ex parte* material, until such time as it was disclosed to the Accused in accordance with the time frames set out in the decisions granting or continuing delayed disclosure. Given the current stage of the *Karadžić* case and particularly the fact that the Prosecution has closed its case, all the material relating to the delayed disclosure witnesses called by the Prosecution has already been disclosed to the Accused and thus is no longer *ex parte* in nature.

22. In addition, at present there appear to be no delayed disclosure witnesses on the Accused's witness list. For those delayed disclosure witnesses from the *Karadžić* case who, although unlikely, may be called to give evidence before the Appeals Chamber in the *Popović* case pursuant to Rule 115 of the Rules, the protective measure of delayed disclosure will apply *mutatis mutandis* in the *Popović* case and thus the related material cannot be disclosed to Gvero other than in accordance with the timeframes set out in the decisions granting or continuing the delayed disclosure.⁴⁰ The Chamber shall therefore order, in the abundance of caution, that any material relating to these delayed disclosure witnesses be disclosed to Gvero in accordance with the timeframes set out in the applicable delayed disclosure decisions. As for the delayed disclosure witnesses from the *Karadžić* case who will not be giving evidence in the *Popović* case, as stated above, the related material has already been disclosed to the Accused and thus can be disclosed to Gvero pursuant to the Prosecution's disclosure obligations under the Rules.

F. Nature of access requested – prospective basis

23. As noted above,⁴¹ Gvero seeks access to *inter partes* confidential material in the *Karadžić* case on an "ongoing basis". The Chamber has already dealt with a number of such

⁴⁰ In instances where an applicant from one case seeks access to confidential information from another case, including access to materials related to delayed disclosure witnesses who were to give evidence in the applicant's case, the Appeals Chamber has held that such materials should continue to be subject to the same protective measure in the applicant's case. See *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, p. 6; *Brđanin* Decision, para. 17.

⁴¹ See *supra* para. 2.

“ongoing requests” for access to confidential materials in the Accused’s case.⁴² As stated in those decisions, while it has been the preferred approach of Trial Chambers to limit access to materials to the date of the request (or decision upon that request),⁴³ as a matter of judicial economy, and based on the particular circumstances of the proceedings in the *Popović* case and Gvero’s recent addition as an appellant, this Chamber considers that Gvero’s access to the material in the *Karadžić* case should be provided in as streamlined a manner as possible and that access on an ongoing basis is warranted.⁴⁴

24. The parties in the *Karadžić* case should also bear in mind that confidential material from the case will be disclosed to Gvero on an ongoing basis and therefore should remain vigilant about protecting information they think should not be so disclosed. If they consider or know that specific materials should not be made available to Gvero they should raise an objection with the Chamber.

IV. Disposition

25. Accordingly, the Chamber, pursuant to Rules 54, 70, and 75 of the Rules, hereby:

- (1) **GRANTS** the Request for Leave to Reply.
- (2) **REQUESTS** the Registry to re-classify the Motion, the Response, and the Reply as public.
- (3) **GRANTS** the Motion and:
 - a) **ORDERS** the parties in the *Karadžić* case, on an ongoing basis, to identify for the Registry the following *inter partes* material in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, for disclosure to Gvero:
 - (i) closed and private session testimony transcripts which are not subject to Rule 70 or delayed disclosure and which are produced in the pre-trial and trial proceedings, in so far as they are concerned with (1) events in Srebrenica in 1995; (2) relationships

⁴² See e.g. Access Decision; *Tolimir* Decision; Decision on Mičo Stanišić’s and Stojan Župljanin’s Requests for Access to Confidential Information in the *Karadžić* Case, 7 March 2011 (“*Stanišić and Župljanin* Decision”); Decision on Momčilo Perišić’s Motion for Access to Confidential Materials in the *Radovan Karadžić* Case (“*Perišić* Decision”), 14 October 2008; Decision on Jovica Stanišić’s Motion for Access to Confidential Materials in the *Karadžić* Case (“*Stanišić* Decision”), 20 May 2009.

⁴³ *Tolimir* Decision, para. 22; *Stanišić and Župljanin* Decision, para. 13; *Perišić* Decision, para. 18; *Stanišić* Decision, para. 11; Access Decision, para. 12.

⁴⁴ *Tolimir* Decision, para. 22; *Stanišić and Župljanin* Decision, para. 13; *Perišić* Decision, para. 18; *Stanišić* Decision, para. 11; Access Decision, para. 12.

and contacts of the Accused in 1995 and any document in connection with the preparation, compilation, distribution, and execution of Directive No. 7; (3) any document in connection with the preparation, compilation, distribution, and execution of any other Directives; and (4) the convoy and passage of humanitarian aid;

- (ii) confidential and under seal trial exhibits, which are not subject to Rule 70 or delayed disclosure, and which are concerned with items (1), (2), (3), and (4) specified in (i) above; and
 - (iii) all confidential filings in the pre-trial and trial proceedings, which are not subject to Rule 70 or delayed disclosure and which are concerned with items (1), (2), (3), and (4) as specified in (i) above.
- b) **ORDERS** the parties in the *Karadžić* case to determine, without delay and before disclosure, which of the material outlined in paragraph (a) above is subject to the provisions of Rule 70, and immediately thereafter to contact the provider(s) of such material to seek consent for its disclosure to Gvero, and, where the Rule 70 provider(s) consent to such disclosure, to notify the Registry on a periodic basis of such consent.
- c) **ORDERS** the parties in the *Karadžić* case to determine, without delay and before disclosure, which of the material outlined in paragraph (a) above is subject to the protective measure of delayed disclosure and immediately thereafter to notify the Registry and Gvero on a periodic basis of when such material can be disclosed to Gvero.
- d) **REQUESTS** the Registry to withhold disclosure of any material subject to Rule 70 until such time as the parties in the *Karadžić* case inform the Registry that consent for disclosure has been obtained, even in respect of those Rule 70 provider(s) who have consented to the use of the relevant material in a prior case. Where consent cannot be obtained from provider(s) of any material subject to Rule 70, the material shall not be disclosed.

- e) **REQUESTS** the Registry to withhold disclosure to Gvero of any material subject to delayed disclosure until such time as the Prosecution informs the Registry that the material can be disclosed in accordance with the timeframes set out in the applicable delayed disclosure decisions.
- f) **REQUESTS** the Registry to disclose to Gvero:
- (i) the confidential and *inter partes* and non-Rule 70 material once it has been identified by the parties in the *Karadžić* case in accordance with paragraph (a);
 - (ii) the Rule 70 material once the parties in the *Karadžić* case have identified such material and informed the Registry of the consent of the Rule 70 provider(s) in accordance with paragraph (b); and
 - (iii) the material subject to delayed disclosure, once the parties in the *Karadžić* case have, in accordance with paragraph (c), informed the Registry that such material can be disclosed to Gvero.
- g) **ORDERS** that no confidential and *ex parte* material from the *Karadžić* case be disclosed to Gvero.
- h) **ORDERS** that Gvero, as well as his defence team, and any employees who have been instructed or authorised by him, shall not disclose to the public, or to any third party, any confidential or non-public material disclosed from the *Karadžić* case, including witness identities, whereabouts, statements, or transcripts, except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of Gvero's case. If any confidential or non-public material is disclosed to the public when directly and specifically necessary, any person to whom disclosure is made shall be informed that he or she is forbidden to copy, reproduce, or publicise confidential or non-public information or to disclose it to any person, and that he or she must return the material to Gvero as soon as it is no longer needed for the preparation of Gvero's case.
- i) For the purpose of this Decision, "the public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Tribunal, the staff of the Registry, the

Prosecutor and his representatives, Gvero, as well as his defence team, and any employees who have been instructed or authorised by him to have access to the confidential material. “The public” also includes, without limitation, members of Gvero’s family, friends, and associates; accused and defence counsel in other cases or proceedings before the Tribunal; the media; and journalists.

- j) **ORDERS** that nothing in this Decision shall affect the disclosure obligations of the Prosecution under Rules 66 and 68; and **RECALLS** that it is the responsibility of the Prosecution to determine whether there is additional material related to the *Karadžić* case that should be disclosed to Gvero but which is not covered by the terms of this Decision.
- k) **RECALLS** that, pursuant to Rule 75(F)(i), any protective measures that have been ordered in respect of a witness in the *Karadžić* case shall continue to have effect in the case against Gvero, except in so far as they have been varied in accordance with this Decision.

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



Judge O-Gon Kwon
Presiding

Dated this sixth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]