

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

IT-95-5/18-T
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Case No.: IT-95-5/18-T,
IT-08-91-T

Date: 7 March 2011

Original: English

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: 7 March 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MIĆO STANIŠIĆ'S AND STOJAN ŽUPLJANIN'S REQUESTS FOR
ACCESS TO CONFIDENTIAL INFORMATION IN THE KARADŽIĆ CASE**

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

Office of the Prosecutor

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

Prosecutor v. Mićo Stanišić and Stojan Župljanin (Case No. IT-08-91-T)

Office of the Prosecutor

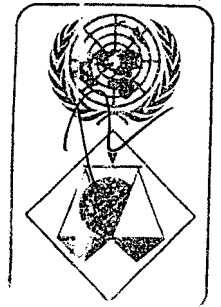
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Mr. Dragan Krgović and Mr. Igor Pantelić for Stojan Župljanin



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 “Motion by Mr. Mićo Stanišić for Access to All Confidential Materials in the Radovan Karadžić Case”, filed on 9 February 2011 (“Stanišić Motion”) by defence counsel for Mićo Stanišić (“Stanišić Defence”) and the “Motion by Mr. Stojan Župljanin for Access to All Confidential Materials in the Radovan Karadžić Case” (“Župljanin Motion”), filed on 18 February 2011 by defence counsel for Stojan Župljanin (“Župljanin Defence”), and hereby issues its decision thereon.

I. Submissions

1. In the Stanišić Motion, the Stanišić Defence seeks access to *inter partes* confidential material from *Prosecutor v. Radovan Karadžić* (Case No. IT-95/18-T) (“*Karadžić case*”), namely confidential transcripts of all hearings in closed and private session, and all filings and exhibits admitted or presented confidentially during both the pre-trial and trial proceedings.¹ In support, the Stanišić Defence argues that there is a significant geographical and temporal overlap between its case and the *Karadžić case*, that there are a number of dates and locations related to crimes alleged against Stanišić that appear in the Third Amended Indictment (“Indictment”) against Radovan Karadžić (“Accused”), and that the material sought will be essential to the preparation of Stanišić’s case for trial.² The Stanišić Defence assures the Trial Chamber that the confidentiality of documents will be maintained and that it will comply with all protective measures ordered in the *Karadžić case*.³

2. On 10 February 2011, the Accused filed a “Response to Mićo Stanišić Access Motion” (“Accused’s Response to Stanišić Motion”) in which he states that he supports the relief sought in the Stanišić Motion.⁴

3. On 18 February 2011, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Response to Mićo Stanišić’s Request for Access to Confidential Materials in *Karadžić Case*” (“Prosecution’s Response to Stanišić Motion”) stating that it does not object to the Chamber granting the Stanišić Defence access to the confidential materials and filings in the *Karadžić case* generally, but that it does object to the Chamber granting access to confidential materials and filings in the following categories: (i) confidential material where a nexus between the cases has not been established, (ii) Rule 70 materials for which the providers’ consent must

¹ Stanišić Motion, para. 3.

² Stanišić Motion, paras. 8 – 16.

³ Stanišić Motion, para. 9.

be obtained first, and (iii) confidential material related to witnesses who are subject to delayed disclosure.⁵ The Prosecution agrees that the Stanišić Defence has established a legitimate forensic interest in “confidential materials related to the existence of a Joint Criminal Enterprise [...] and the existence of an armed conflict in Bosnia and Herzegovina (“BiH”) during the events”.⁶ The Prosecution also agrees with the Stanišić Defence that there is some geographical and temporal overlap between its case and the *Karadžić* case but notes that the latter involves many more charges and that the scope of the overlap is limited to crimes committed between “1 April 1992 and 30 December 1992” in ten municipalities: Banja Luka, Bijeljina, Brčko, Ključ, Pale, Prijedor, Sanski Most, Vlasenica, Vogošća, and Zvornik.⁷ The Prosecution objects to the Stanišić Defence’s request for access to confidential material related to other components of the *Karadžić* case, including allegations relating to Sarajevo, Srebrenica, and the taking of hostages.⁸ The Prosecution further states that, should the Chamber grant the Motion, it will identify, as soon as practicable, (i) the Rule 70 material, for which it will seek the provider’s consent for disclosure to the Stanišić Defence, and (ii) the confidential *inter partes* material related to witnesses covered by delayed disclosure.⁹

4. In the Župljanin Motion, the Župljanin Defence seeks access to the same type of materials sought by the Stanišić Defence, namely, *inter partes* confidential material from the *Karadžić* case such as confidential transcripts of all hearings in closed and private session, and all filings and exhibits admitted or presented confidentially during both the pre-trial and trial proceedings.¹⁰ In support, the Župljanin Defence argues that there is a significant geographical and temporal overlap between its case and the *Karadžić* case, that Trial Chamber II granted the Accused access to all confidential material in the pre-trial proceedings of *Prosecutor v. Stanišić and Župljanin* because it found that a sufficient nexus exists between the two cases, and that the fairness of the proceedings requires that Župljanin have access to all material relevant to his case which could demonstrate his innocence, mitigate his responsibility, or lead to the dismissal of the case.¹¹ The Župljanin Defence assures the Trial Chamber that the confidentiality of documents will be maintained and that it will comply with all protective measures ordered in the *Karadžić* case.¹²

⁴ Accused’s Response to Stanišić Motion, para. 1.

⁵ Prosecution’s Response to Stanišić Motion, para. 3.

⁶ Prosecution’s Response to Stanišić Motion, para. 6.

⁷ Prosecution’s Response to Stanišić Motion, para. 5.

⁸ Prosecution’s Response to Stanišić Motion, paras. 7–11.

⁹ Prosecution’s Response to Stanišić Motion, paras. 12–14.

¹⁰ Župljanin Motion, para. 3.

¹¹ Župljanin Motion, paras. 8–15.

¹² Župljanin Motion, para. 9.

5. On 21 February 2011, the Prosecution filed the “Prosecution’s Response to Stojan Župljanin’s Request for Access to Confidential Materials in Karadžić Case” (“Prosecution’s Response to Župljanin Motion”) stating that it does not generally object to the Chamber granting the Župljanin Defence access to the confidential materials and filings in the *Karadžić* case but, as it did in relation to the Stanišić Motion above, does object to access being granted in the following categories: (i) confidential material where a nexus between the cases has not been established, (ii) Rule 70 materials for which the providers’ consent must be obtained first, and (iii) confidential material related to witnesses who are subject to delayed disclosure.¹³ The Prosecution agrees that the Župljanin Defence has established a legitimate forensic interest in confidential materials related to events that took place in 1992 in four municipalities: Banja Luka, Ključ, Prijedor, and Sanski Most.¹⁴ The Prosecution also agrees that the Župljanin Defence has a legitimate interest to confidential materials “related to the existence of a Joint Criminal Enterprise [...] and an armed conflict during these events”.¹⁵ It objects, however, to the Župljanin Defence’s request for access to confidential material related to allegations of crimes in other municipalities, as well as allegations relating to Srebrenica and the taking of hostages.¹⁶ The Prosecution further states that, should the Chamber grant the Motion, it will identify, as soon as practicable, (i) the Rule 70 material, for which it will seek the provider’s consent for disclosure to Župljanin Defence, and (ii) the confidential *inter partes* material related to witnesses covered by delayed disclosure.¹⁷

6. On 22 February 2011, the Accused filed a “Response to Župljanin Access Motion” (“Accused’s Response to Župljanin Motion”) in which he states that he supports the relief sought in the Župljanin Motion.¹⁸

II. Applicable Law

7. The Chamber notes the well-established principle that Tribunal proceedings should be conducted in a public manner to the extent possible.¹⁹ Further, the Chamber observes that generally, “[a] party is always entitled to seek material from any source to assist in the preparation of his case.”²⁰ In exceptional circumstances, however, a Chamber may restrict the

¹³ Prosecution’s Response to Župljanin Motion, para. 3.

¹⁴ Prosecution’s Response to Župljanin Motion, paras. 5–6.

¹⁵ Prosecution’s Response to Župljanin Motion, para. 6.

¹⁶ Prosecution’s Response to Župljanin Motion, paras. 7–11.

¹⁷ Prosecution’s Response to Župljanin Motion, paras. 12–14.

¹⁸ Accused’s Response to Župljanin Motion, para. 1.

¹⁹ Rule 78 provides, “All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”

²⁰ *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

access of the public, as well as the access of a party, to certain material under the provisions of the Rules.²¹ Such confidential material can be categorised into three types: *inter partes*, *ex parte*, and Rule 70. The Chamber will not deal with *ex parte* material in this decision as neither Stanišić nor Župljanin (collectively “Applicants”) seek such access.

8. 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.”²² To that end, it is well established that 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.²³

9. 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.²⁴

10. 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.²⁵ 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.”²⁶ To establish a nexus, the applicant is required to demonstrate a “geographical, temporal or otherwise material overlap” between the two

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 Mićo Stanišić’s Motion for Access to All Confidential Materials in the *Brđanin Case*, 24 January 2007 (“*Brđanin Decision*”), para. 10.

²¹ *Prosecutor v. Đorđević*, Case No. IT-05-87/1-PT, Decision on Vladimir 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.

²² *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.

²³ *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.

²⁴ *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.

²⁵ *See Blaškić Decision*, para. 14; *First Blagojević and Jokić Decision*, para. 11; *See also Delić Order*, p. 6; *Đorđević Decision*, para. 7.

²⁶ *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.²⁷ 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.”²⁸ The standard does not require the applicant to go so far as to establish that the material sought would likely be admissible evidence.²⁹

11. 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 70.³⁰ 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.³¹ This is the case even where the Rule 70 provider(s) consented to the use of the material in one or more prior cases.³²

12. 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

A. Nature of Access Requested: prospective basis

13. This Trial Chamber has already dealt with three “ongoing request(s)” for access to confidential materials in the Accused’s case, namely that of the accused Momčilo Perišić, Jovica Stanišić, and Radivoje Miletić and some of his co-accused.³³ 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),³⁴ as a matter of judicial economy, this Chamber

²⁷ 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.

²⁸ First *Blagojević and Jokić* Decision, para. 11; *Dorđević* Decision, para. 7; *Blaškić* Decision, para. 14.

²⁹ *Dorđević* Decision, para. 7.

³⁰ Material produced pursuant to an order under Rule 54 *bis* may also require similar procedures before it can be disclosed to an accused in another case.

³¹ 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.

³² *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.

³³ 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; Decision on General Miletić’s Request for Access to Confidential Information in the *Karadžić* Case (“*Miletić* Decision”), 31 March 2010.

³⁴ *Perišić* Decision, para. 18; *Stanišić* Decision, para. 11; *Miletić* Decision, para. 12.

considers that the Applicants' access to the material in the Accused's case should be provided in as streamlined a manner as possible and that access on an ongoing basis is warranted.³⁵

14. The parties in the *Karadžić* case should bear in mind that confidential material from this case will be disclosed to the Applicants on an ongoing basis and should remain vigilant about protecting information they think should not be so disclosed. If they consider that specific materials should not be made available to the Applicants, they should register an objection with the Chamber.

B. Access to confidential *inter partes* material

15. The Chamber first notes that both Applicants request access to all confidential *inter partes* transcripts from closed sessions (including private session testimony), filings,³⁶ and exhibits admitted during the pre-trial and trial proceedings in the *Karadžić* case. Thus, the Chamber is satisfied that the material sought by the Applicants has been sufficiently identified.

16. With respect to the second requirement, the Trial Chamber finds that there is a clear geographical and temporal overlap between the Applicants' case and the *Karadžić* case, as well as a significant factual nexus between the two cases as both relate to certain specified municipalities in 1992, the existence of a joint criminal enterprise, and the existence of an armed conflict in BiH. According to the indictment against them, the Applicants are both alleged to have been members of a joint criminal enterprise, from no later than 1 April 1992 until at least 31 December 1992, which allegedly included the Accused and the aim of which was to permanently remove Bosnian Muslims, Bosnian Croats, and other non-Serbs from the territory of the planned Serbian state, by means which included the commission of certain alleged crimes.³⁷ Similarly, the Indictment in the *Karadžić* case alleges that the Accused participated in a joint criminal enterprise, of which Stanišić was also allegedly a member, with the aim of permanently removing Bosnian Muslims, Bosnian Croats, and other non-Serbs from the Bosnian Serb-claimed territory in BiH by forcible transfer, extermination, and murder.³⁸ The Accused, however, is alleged to have participated in this particular joint criminal enterprise for a lengthier period of time, from at least October 1991 until 30 November 1995.³⁹

³⁵ *Perišić* Decision, para. 18; *Stanišić* Decision, para. 11; *Miletić* Decision, para. 12.

³⁶ On the issue of disclosure of confidential filings, see *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Dragomir Milošević* Case, para. 11. See also *Prosecutor v. Karadžić*, IT-95/18-T, Decision on Motion for Access to Confidential Materials in Completed Cases, para. 14.

³⁷ *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Prosecution's Second Amended Consolidated Indictment, 23 November 2009, paras. 7–14.

³⁸ Indictment, para. 11

³⁹ Indictment, paras. 9–14.

17. Looking at the geographical overlap, Stanišić is alleged to be criminally liable for crimes committed in 19 municipalities.⁴⁰ Given that Višegrad was removed from the Indictment pursuant to Rule 73 *bis*, the Accused's alleged criminal liability relates to only ten of those municipalities, namely, Banja Luka, Bijeljina, Brčko, Ključ, Pale, Prijedor, Sanski Most, Vlasenica, Vogošća, and Zvornik.⁴¹ As for Župljanin, he is alleged to be criminally liable for crimes committed in eight municipalities,⁴² only four of which overlap with those included in the Indictment against the Accused, namely, Banja Luka, Ključ, Prijedor, and Sanski Most.⁴³ The Chamber recalls here that the Prosecution does not object to the Applicants being given access to the confidential *inter partes* materials that relate to the areas of overlap with respect to the alleged crimes in the Accused's case and the Applicants' case.

18. For all these reasons, the Chamber is satisfied that the Applicants have shown a legitimate forensic purpose for disclosure of all *inter partes* and confidential transcripts (including closed and private sessions), exhibits, and filings from the Karadžić case which are related to: (i) the existence of a joint criminal enterprise of which both the Accused and the Applicants are alleged to have been members and (ii) the existence of an armed conflict in BiH. In addition, the Chamber considers that the Stanišić Defence has a legitimate forensic interest in all the categories of *inter partes* confidential material listed above which concern the municipalities of Banja Luka, Bijeljina, Brčko, Ključ, Pale, Prijedor, Sanski Most, Vlasenica, Vogošća, and Zvornik for the period of 1 April 1992 through 31 December 1992, while the Župljanin Defence has a legitimate forensic interest in the same material in relation to the municipalities of Banja Luka, Ključ, Prijedor, and Sanski Most also concerning the period of 1 April 1992 through 31 December 1992. This material sought by the Applicants is relevant and essential, and access to this evidence is likely to materially assist them in preparing their respective cases.

C. Access to confidential Rule 70 material

19. As noted by the Prosecution, some of the confidential *inter partes* material requested by the Applicants might fall into the category of Rule 70 material. In respect of such material, if any, the Chamber will order that the Prosecution and/or the Accused seek the consent of the Rule 70 provider(s) before it can be disclosed to the Applicants.

⁴⁰ *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Prosecution's Second Amended Consolidated Indictment, 23 November 2009, para. 11.

⁴¹ Indictment, para. 48.

⁴² *Prosecutor v. Stanišić and Župljanin*, IT-08-91-T, Prosecution's Second Amended Consolidated Indictment, 23 November 2009, para. 12.

⁴³ Indictment, para. 48.

D. Delayed disclosure material

20. The Chamber recalls that for certain witnesses in this case the Chamber has granted or continued the protective measure of delayed disclosure. This essentially turns the material relating to those witnesses' identities and evidence into *ex parte* material, until such time as it is disclosed to the Accused in accordance with the time frames set out in the decisions granting or continuing delayed disclosure. Given that the Applicants seek only *inter partes* material from the present case, it follows that they can only be given the material relating to delayed disclosure witnesses when it is disclosed to the Accused.

21. The Prosecution does not object to this course of action. Accordingly, the Chamber agrees that the Applicants should be given access to material relating to delayed disclosure witnesses, but considers that this material should be disclosed to them after it has been disclosed to the Accused.⁴⁴

IV. Disposition

22. Accordingly, for all the reasons outlined above, the Trial Chamber, pursuant to Rules 54, 70, and 75 of the Rules of Procedure and Evidence of the Tribunal, hereby **GRANTS** the Stanišić Motion and the Župljanin Motion in part, and:

a. **ORDERS** the parties, 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 Stanišić:

(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 the municipalities of Banja Luka, Bijeljina, Brčko, Ključ, Pale, Prijedor, Sanski Most, Vlasenica, Vogošća, and Zvornik for the period of 1 April 1992 through 31 December 1992; (2) the existence of a joint criminal enterprise which both Stanišić and the Accused are alleged to have been members of; and (3) the existence of an armed conflict in BiH.

⁴⁴ In instances where an applicant from one case sought 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 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.

- (ii) confidential 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.
- b. **ORDERS** the parties, 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 Župljanin:
- (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 the municipalities of Banja Luka, Ključ, Prijedor, and Sanski Most for the period of 1 April 1992 through 31 December 1992; (2) the existence of a joint criminal enterprise which both Župljanin and the Accused are alleged to have been members of; and (3) the existence of an armed conflict in BiH;
 - (ii) confidential 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.
- c. **ORDERS** the parties to determine, without delay and before disclosure, which of the material outlined in (a) and (b) above 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 Applicants, and, where Rule 70 providers consent to such disclosure, to notify the Registry on a periodic basis of such consent.
- d. **ORDERS** the Prosecution to determine, without delay and before disclosure, which of the material outlined in (a) and (b) above is subject to the protective measure of delayed disclosure, and immediately thereafter to notify the

Registry and the Applicants on a periodic basis of when such material can be disclosed to the Accused, and thus available for disclosure to the Applicants.

e. **REQUESTS** the Registry to withhold disclosure of any material subject to Rule 70 until such time as the parties inform the Registry that consent for disclosure has been obtained, even in respect of those providers 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.

f. **REQUESTS** the Registry to withhold disclosure to the Applicants of any material subject to delayed disclosure until such time as the Prosecution informs the Registry that the material has been disclosed to the Accused.

g. **REQUESTS** the Registry to disclose to the Applicants:

- (i) the confidential and *inter partes* and non-Rule 70 material once it has been identified by the parties in accordance with paragraph (a) and (b);
- (ii) the Rule 70 material once the parties have identified such material and informed the Registry of the consent of the Rule 70 provider(s) in accordance with paragraphs (a), (b), (c), and (d); and
- (iii) the material subject to delayed disclosure, once the Prosecution has informed the Registry that such material has been disclosed to the Accused.

h. **ORDERS** that no confidential and *ex parte* material from the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T be disclosed to the Applicants.

i. **ORDERS** that the Applicants, as well as their respective Defence teams, and any employees who have been instructed or authorised by the Applicants, 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 the Applicants' cases. 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 the Applicants as soon as it is no longer needed for the preparation of their respective cases.

j. 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, the Applicants and their respective counsels, and any employees who have been instructed or authorised by their counsels to have access to the confidential material. “The public” also includes, without limitation, the Applicants’ families, friends, and associates; accused and defence counsel in other cases or proceedings before the Tribunal; the media; and journalists.

k. **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 the Applicants but which is not covered by the terms of this Decision.

l. **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 the Applicants, 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 seventh day of March 2011.
At The Hague
The Netherlands

[Seal of the Tribunal]

