



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-09-92-T
Date: 13 August 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 13 August 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON THE DEFENCE MOTION FOR
CERTIFICATION TO APPEAL THE DECISION ON
SUBMISSIONS RELATIVE TO THE PROPOSED "EDS"
METHOD OF DISCLOSURE**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 3 July 2012, the Defence filed a motion for certification to appeal the Decision on Submissions Relative to the Proposed “EDS” Method of Disclosure (“Motion” and “Impugned Decision” respectively).¹ It submits that certification to appeal is warranted pursuant to Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) as the Chamber failed to: (1) order disclosure of materials through the Tribunal’s Electronic Disclosure System (“EDS”) with meta-data included; (2) grant additional time to the Defence in respect of disclosure without full meta-data; and (3) issue a ruling on the EDS disclosure submissions for more than seven months after the initial Defence filing on the matter.²

2. On 17 July 2012, the Prosecution filed its response (“Response”), arguing that the Motion fails to meet the conditions for certification.³ In particular, the Prosecution emphasises that neither the Rules nor the Tribunal’s jurisprudence requires it to provide the Defence with meta-data through the EDS.⁴

II. APPLICABLE LAW

3. Pursuant to Rule 73 (B) of the Rules, a Trial Chamber may grant certification of an interlocutory appeal if the impugned decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The purpose of a request for certification to appeal is not to show that an impugned decision is incorrectly reasoned, but rather to demonstrate that the two cumulative conditions set out in Rule 73 (B) have been met.⁵

III. DISCUSSION

¹ Defence Motion for Certification to Appeal the Decision on Submissions Relative to the Proposed “EDS” Method of Disclosure, 3 July 2012; Decision on Submissions Relative to the Proposed “EDS” Method of Disclosure, 26 June 2012.

² Motion, paras 1, 5-20.

³ Prosecution Response to Defence Motion for Certification to Appeal the Decision on Submissions Relative to the Proposed “EDS” Method of Disclosure, 17 July 2012, paras 2, 8.

⁴ Response, para. 5.

⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Prosecution’s Request for Certification to Appeal the Trial Chamber’s Decision on Protective Measures of 13 September 2007, 7 November 2007, p. 3.

4. As a preliminary matter, the Chamber notes that the Defence incorrectly premises each of its three arguments for certification to appeal on alleged judicial errors.⁶ The appropriate forum for arguments on judicial errors is the appeal itself, not the request for certification to appeal. Accordingly, the portions of the Motion concerned with alleged judicial errors will not be further considered.

5. The Chamber will nonetheless analyse whether the issue of the Prosecution's provision of incomplete meta-data through the EDS meets the requirements of Rule 73 (B) of the Rules. The Chamber notes that the Defence's argument for additional time in respect of incomplete meta-data relates to this same issue.

6. In relation to the first prong of Rule 73 (B) of the Rules, considering the volume of disclosure in this case and the importance of disclosure in general to a fair trial, the Chamber is satisfied that the meta-data issue significantly affects the fair and expeditious conduct of the proceedings.

7. In relation to the second prong of Rule 73 (B) of the Rules, the Chamber considers that an immediate resolution of the meta-data issue would provide clarity to all parties in relation to both past and future disclosures. Should the Impugned Decision be overturned, the effects would be much easier to identify and remedy at this stage of the proceedings than following an appeal from the Judgement. As such, the Chamber considers that an immediate resolution of this matter by the Appeals Chamber would materially advance the proceedings.

IV. DISPOSITION

8. For the foregoing reasons, and pursuant to Rules 73 (B) of the Rules, the Trial Chamber hereby

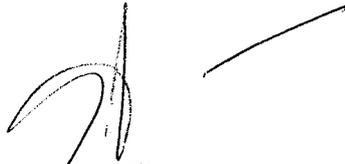
GRANTS the Motion in part, allowing certification to appeal the Impugned Decision with respect to the following issues:

- i) re-disclosure of the EDS documents with full meta-data; and
- ii) additional time to process documents provided through the EDS without meta-data;
and

⁶ Motion, paras 5, 13, 19. For example, the Defence argues at paragraph 13, that by denying additional time without providing reasons, "the Chamber acted in error, and thus Appellate review of this point is required."

DISMISSES the remainder of the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this thirteenth of August 2012.
At The Hague
The Netherlands

[Seal of the Tribunal]