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11 September 2012
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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-09-92-T
IT-05-88-A
Date: 11 September 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 11 September 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON MOTION BY VUJADIN POPOVIĆ FOR
ACCESS TO CONFIDENTIAL INFORMATION IN THE
*MLADIĆ CASE***

The Prosecutor v. Popović et al. (IT-05-88-A)

Office of the Prosecutor
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Mr Zoran Živanović
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Counsel for Vinko Pandurević
Mr Peter Haynes
Mr Simon Davis

The Prosecutor v. Ratko Mladić (IT-09-92-T)

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I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 14 August 2012, the Defence for Vujadin Popović (“Applicant”) filed a motion requesting access to confidential *inter partes* materials from the case of *Prosecutor v. Ratko Mladić* (“Motion” and “Mladić case” respectively) in light of an earlier decision by the Chamber on motions by Radivoje Miletić and Drago Nikolić, who are co-accused in the *Popović et al.* case (“Miletić and Nikolić Decision”).¹ In the Motion, the Applicant seeks access to confidential materials including transcripts of closed session hearings, confidential exhibits admitted, and confidential decisions and orders regarding evidence.² The Motion is restricted to *inter partes* materials which relate to a) events that occurred in Srebrenica in 1995; b) the organization, structure and hierarchy of the Army of Republika Srpska; and c) the drafting of Directives, and, in particular, Directive no. 7 and no. 7/1.³ The Applicant states that the acts and conduct of the accused, Vujadin Popović, overlap with the charges against the accused, Ratko Mladić, in relation to events that occurred in Srebrenica.⁴ As such, the Applicant argues that this demonstrates the nexus between the two cases and thus represents the legitimate forensic purpose for granting the requested access.⁵

2. On 28 August 2012, the Prosecution responded to the Motion, stating that it does not object to the grant of access to specific confidential *inter partes* materials from the *Mladić* case, as long as the same conditions contained in the *Miletić* and *Nikolić* Decision apply, and that it is limited to material that is relevant to the topics already specified in the Motion.⁶

II. APPLICABLE LAW

3. The Chamber recalls and refers to the applicable law governing requests for access to confidential *inter partes* materials from other cases before the Tribunal, as set out in its previous decision.⁷

¹ Motion of Vujadin Popović for Access to Confidential Information in the *Mladić* Case, 14 August 2012, paras 2, 4; Decision on Motions by Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case, 5 July 2012.

² Motion, paras 2, 4.

³ *Ibid.*

⁴ Motion, para. 3.

⁵ *Ibid.*

⁶ Prosecution Response to Motion of Vujadin Popović for Access to Confidential Information in the *Mladić* Case, 28 August 2012, paras 1-2.

⁷ Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012 (“*Krstić* Access Decision”), paras 3-9.

III. DISCUSSION

4. The Chamber is satisfied that the Applicant has identified, with specificity, the confidential *inter partes* materials it seeks access to. Further, the Chamber finds that there is a geographical, temporal, and substantial overlap between those crimes for which Vujadin Popović was convicted in relation to Srebrenica, and the charges against the accused in this case, Ratko Mladić. As such, a legitimate forensic purpose has been demonstrated, and the Chamber considers that granting access is likely to materially assist in the preparation of the Applicant's case.

5. In relation to Rule 70 material, the Chamber considers that the Applicant may only be given access to such material once the provider has consented to its disclosure to the Applicant. It is the responsibility of the relevant party to identify to the Registry any such Rule 70 material and to seek its provider's consent to disclosure.

6. The Chamber further considers that material relating to protected witnesses for whom orders of delayed disclosure have been issued must be excluded from any access granted by this decision. Although it is possible that such material may have forensic value to the Applicant, any such potential value does not outweigh the consideration the Chamber must give to the safety and protection of victims and witnesses, pursuant to Articles 20 (1) and 22 of the Tribunal's Statute and Rule 75 (A) of the Tribunal's Rules of Procedure and Evidence ("Rules").

7. The Chamber notes that the requested categories of material may include evidentiary material containing sensitive information of little or no value to the Applicant. The Chamber considers the following categories as having no forensic purpose and shall therefore be excluded from any access granted by this decision: remuneration; provisional release; fitness to stand trial; reports of the Reporting Medical Officer; Registry submission of expert reports on health issues; notice of non-attendance in court; modalities of trial; protective measures; subpoenas; video-conference links; orders to redact public transcripts and public broadcasts of a hearing; witness scheduling; witness appearance, witness attendance; execution of arrest warrant; enforcement of sentences; health of the Accused; and notices of compliance filed in respect of other access decisions.⁸ While several of the listed categories fall outside the scope of the Applicant's request by definition, the Chamber includes them here in the interests of clarity and consistency with past decisions.

⁸ *Miletić and Nikolić* Decision, para. 10; *Krstić* Access Decision para. 12; Addendum to Decision on Defence Request for Access to Confidential Materials from the *Krstić* Case, 24 May 2012; Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Mladić* Case, 18 October 2011, paras 16-17.

8. Finally, for reasons of judicial economy, and taking into account the current stage of the *Mladić* case, the Applicant's access to confidential *inter partes* materials in the *Mladić* case is granted on an ongoing basis, pursuant to the restrictions set out in this decision.

IV. DISPOSITION

6. For the foregoing reasons, and pursuant to Rules 54 and 75 of the Rules, the Chamber

GRANTS the Motion;

ORDERS the Prosecution and the *Mladić* Defence to identify, on an ongoing basis, to the Registry for disclosure to the Applicant *inter partes* confidential materials in the *Mladić* case, including confidential transcripts of closed session hearings, confidential exhibits admitted, and confidential decisions and orders regarding evidence, which relate to the following matters, subject to the restrictions set out in paragraphs 5-7 of this decision:

- (i) events that occurred in Srebrenica in 1995;
- (ii) the organization, structure and hierarchy of the Army of Republika Srpska; and
- (iii) the drafting of Directives and, in particular, Directives no. 7 and no. 7/1;

ORDERS the Prosecution and the *Mladić* Defence to determine without undue delay which of the requested material used as evidence in the *Mladić* case is subject to the provisions of Rule 70 of the Rules, and to seek the consent of the material's providers for its disclosure to the Applicant, and, where such consent is given, to identify that material to the Registry;

REQUESTS the Registry to disclose to the Applicant, the following material:

- (i) the *inter partes* confidential, non-Rule 70 material once it has been identified by the Prosecution and *Mladić* Defence in accordance with this decision; and
- (ii) the Rule 70 material once the Prosecution and *Mladić* Defence have identified such material upon receiving consent from the Rule 70 providers;

ORDERS the Applicant, if disclosure to specified members of the public is directly and specifically necessary for the preparation and presentation of their cases, to file a motion to the Chamber seeking such disclosure. 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, and the Applicant, including counsel and any persons involved in the preparation of the case who have been instructed or authorised by the Applicant to have access to the confidential material from this case. "The public" also includes, without limitation, family members, and friends of the Applicant, accused and defence counsel in other cases or proceedings before the Tribunal, the media, and journalists;

ORDERS that if, for the purposes of the preparation of the Applicant's case, confidential material is disclosed to the public – pursuant to prior authorisation by the Chamber – any person to whom disclosure of the confidential material is made shall be informed that he or she is forbidden to copy, reproduce or publicise, in whole or in part, any confidential information or to disclose it to any other person, and further that, if any such person has been provided with such information, he or she must return it to the Applicant as soon as the information is no longer needed for the preparation of the Applicant's case;

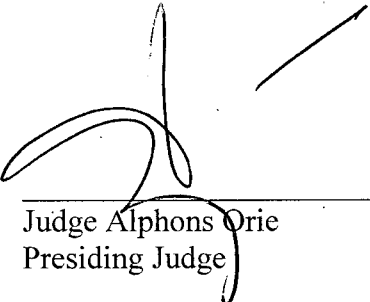
ORDERS that the Applicant, and any persons involved in the preparation of his case who have been instructed or authorised by the Applicant to have access to the confidential material from this case, and any other persons for whom prior authorisation by the Chamber has been granted by a separate decision shall not disclose to any members of the public the names of witnesses, their whereabouts, transcripts of witness testimonies, exhibits, or any information which would enable witnesses to be identified and would breach the confidentiality of the protective measures already in place;

ORDERS that the Applicant and any persons who have been instructed or authorised by the Applicant to have access to the confidential material from this case shall return to the Registry the confidential material which remains in their possession as soon as it is no longer needed for the preparation of the Applicant's case;

ORDERS that nothing in this decision shall affect the disclosure obligations of the Prosecution under Rules 66 and 68 of the Rules; and

AFFIRMS that, pursuant to Rule 75 (F) (i) of the Rules, any protective measures that have been ordered in respect of any witness in the *Mladić* case shall continue to have effect in the case against the Applicant.

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



Judge Alphons Orie
Presiding Judge

Dated this Eleventh day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]