

**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

Case No. IT-09-92-T
IT-08-91-A
Date: 3 September 2013
Original: English

4-09-92-T
D 68803-D 68796
03 September 2013

68803
9/3.

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 3 September 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON MOTIONS ON BEHALF OF MIĆO STANIŠIĆ
AND STOJAN ŽUPLJANIN FOR ACCESS TO CONFIDENTIAL
MATERIALS FROM THE MLADIĆ CASE**

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

Office of the Prosecutor:

Dermot Groome
Peter McCloskey

Counsel for Ratko Mladić:

Branko Lukić
Miodrag Stojanović

The Prosecutor v. Stanišić and Župljanin (IT-08-91-A)

Office of the Prosecutor:

Helen Brady

Counsel for the Mićo Stanišić:

Slobodan Zečević
Stéphane Bourgon

Counsel for Stojan Župljanin:

Dragan Krgović
Aleksander Aleksić

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 23 May 2013, counsel for Mićo Stanišić (“Applicant Stanišić”) filed a motion for access to confidential materials from the *Mladić* case (“Stanišić Access Motion”) for the duration of the pre-trial and trial proceedings, including all confidential exhibits, *inter partes* filings, submissions, and confidential Chamber decisions.¹ Applicant Stanišić submits that there is a significant geographical and temporal overlap between his case and the *Mladić* case, as well as an interrelated factual basis.² Further, Applicant Stanišić submits that access to this material is essential for the proper preparation of his appeal.³
2. On 5 June 2013, the Prosecution responded to the Stanišić Access Motion.⁴ The Prosecution does not object to granting access to confidential *inter partes* material from the *Mladić* case which is relevant to the alleged joint criminal enterprise (“JCE”) to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in Bosnia Herzegovina, including the municipalities of Banja Luka, Bijeljina, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, and Vlasenica (“Overarching JCE”).⁵ However, the Prosecution argues that because the *Mladić* case is temporally and geographically broader than the *Stanišić and Župljanin* case, Applicant Stanišić should not be granted access to the portions of the *Mladić* case which relate exclusively to the three additional JCEs (“Additional JCEs”) that Mladić is alleged to have been a member of: (1) to spread terror among the civilian population of Sarajevo through a campaign of sniping and shelling (1992-1995); (2) to eliminate the Bosnian Muslims in Srebrenica (1995); and (3) to take United Nations personnel as hostages (1995).⁶
3. On 3 June 2013, counsel for Stojan Župljanin (“Applicant Župljanin”) filed a request for access to all confidential *inter partes* information and material from the pre-trial and trial phases of the *Mladić* case (“Župljanin Access Request”).⁷ Applicant Župljanin submits that there is a partial temporal and geographical overlap between the Mladić Indictment and the Indictment against him, and a substantial overlap between the cases based on his and Mladić’s alleged membership of the

¹ Motion on Behalf of Mićo Stanišić for Access to Confidential Material in the Mladić Case, 23 May 2013, paras 1, 15.

² Stanišić Access Motion, paras 7-11.

³ Stanišić Access Motion, paras 7, 12-13.

⁴ Prosecution Response to Motion of Mićo Stanišić for Access to Confidential Material in the Mladić Case, 5 June 2013 (“Prosecution Stanišić Response”).

⁵ Prosecution Stanišić Response, paras 1, 5, 10.

⁶ Prosecution Stanišić Response, paras 2, 6, 10.

⁷ Request on Behalf of Stojan Župljanin for Access to Confidential Information and Materials from the Mladić Case, 3 June 2013, paras 1, 4, 8.

Overarching JCE.⁸ Noting that the case against Mladić is broader than that against himself, Applicant Župljanin seeks access to specific categories of materials and information.⁹ These categories are: (1) confidential written filings and rulings from the pre-trial and trial phase; (2) confidential trial transcripts, confidential documents disclosed pursuant to Rule 66 (A) (i) of the Tribunal's Rules of Procedure and Evidence ("Rules"), and confidential exhibits relating to the municipalities of Banja Luka, Ključ, Kotor Varoš, Prijedor, and Sanski Most from 1 April until 31 December 1992; and (3) confidential trial transcripts, documents, and/or exhibits relating to the Republika Srpska Ministry of the Interior, the Autonomous Region of the Krajina, and Stojan Župljanin in person.¹⁰

4. On 17 June 2013, the Prosecution responded to the Župljanin Access Request.¹¹ The Prosecution does not object to granting Župljanin access to confidential *inter partes* materials from the Mladić case relevant to the Overarching JCE.¹² The Prosecution submits that such access will necessarily encompass the additional topics identified in paragraph 3, category 3 above.¹³ The Prosecution submits that Applicant Župljanin should not be granted access to those portions of the Mladić case which relate exclusively to the Additional JCEs.¹⁴ Further, the Prosecution submits that Applicant Župljanin has misdirected his request for the Prosecution to disclose material disclosed to Mladić pursuant to Rule 66 (A) (i) of the Rules, stating that such material does not generally fall within the current access regime, and that any access to this material should be limited to material that has been admitted into evidence or otherwise appears in the official case record.¹⁵

5. The Mladic Defence did not respond to the Stanišić Access Motion or the Župljanin Access Request.

II. APPLICABLE LAW

6. 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 a previous decision.¹⁶

⁸ Župljanin Access Request, paras 3, 8.

⁹ Župljanin Access Request, para. 6.

¹⁰ Župljanin Access Request, para. 4(i)-(v).

¹¹ Prosecution Response to Request on Behalf of Stojan Župljanin for Access to Confidential Information and Materials from the Mladić Case, 17 June 2013 ("Prosecution Župljanin Response").

¹² Prosecution Župljanin Response, 17 June 2013, paras 2, 7, 13.

¹³ Prosecution Župljanin Response, 17 June 2013, paras 2, 7, 13.

¹⁴ Prosecution Župljanin Response, paras 3, 9, 13.

III. DISCUSSION

7. The Chamber is satisfied that Applicants Stanišić and Župljanin (together “the Applicants”) have identified, with sufficient specificity, the material for which access is sought.

8. With regard to Applicant Stanišić, the Chamber notes that the Indictment against him charged him with crimes allegedly committed between 1 April 1992 and 31 December 1992, in municipalities including Banja Luka, Bijeljina, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, and Vlasenica, and amounting to persecutions; extermination and murder; torture, cruel treatment, and inhumane acts; and deportation and inhumane acts.¹⁷ With regard to Applicant Župljanin, the Chamber notes that the Indictment against him charged him with the same crimes in the same time period, in municipalities including Banja Luka, Ključ, Kotor Varoš, Prijedor, and Sanski Most.¹⁸ These crimes are also charged in the *Mladić* Indictment in relation to the same municipalities, from 12 May 1992 to 30 November 1995.¹⁹ Further, the *Stanišić and Župljanin* Indictment alleges membership of a JCE with a similar objective to the Overarching JCE charged in the *Mladić* Indictment.²⁰ To the extent that the confidential access sought by the Applicants relates to those Counts subject of the pending appeal, the overlap between the respective indictments remains. In light of this the Chamber finds that there is a geographical, temporal, and substantial overlap between this case and the case against the Applicants. The Chamber finds that by establishing a legitimate forensic purpose, the Applicants have demonstrated that access to confidential *inter partes* materials in this case is likely to materially assist in the preparation of their respective appeals.

9. The Chamber notes, however, that the *Mladić* Indictment is broader than the *Stanišić and Župljanin* Indictment. *Mladić* is charged with membership of the Additional JCEs, which relate to crimes allegedly committed between 1992 and 1995 in Srebrenica and Sarajevo and to the taking of United Nations personnel as hostages in 1995. The Applicants have failed to establish a legitimate forensic purpose for material related exclusively to the Additional JCEs. Therefore, any access granted by this decision should be limited to confidential *inter partes* materials relating to the alleged Overarching JCE in so far as it pertains to the time period of 1 April to 31 December 1992

¹⁵ Prosecution Župljanin Response, paras 4, 8, 13.

¹⁶ Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012, paras 3-9.

¹⁷ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Corrigendum to Prosecution’s Submission of Second Amended Consolidated Indictment, Second Amended Consolidated Indictment, 23 November 2009 (“*Stanišić and Župljanin* Indictment”), para. 11 and Counts 1-10.

¹⁸ *Stanišić and Župljanin* Indictment, para. 12 and Counts 1-10.

¹⁹ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Fourth Amended Indictment, 16 December 2011 (“*Mladić* Indictment”), Counts 3-8.

²⁰ *Stanišić and Župljanin* Indictment, paras 7-12; *Mladić* Indictment, paras 8-12.

and the municipalities in common between the respective Applicant's case and the *Mladić* case, as set out in the disposition below.

10. In relation to Applicant Župljanin's request for access to "confidential documents from the pre-trial and trial phase disclosed pursuant to Rule 66 (A) (i) of the Rules [...]", the Chamber recalls that the Tribunal's jurisprudence limits access to materials officially admitted into evidence.²¹ Disclosure under Rule 66 (A) (i) falls under the Prosecution's general disclosure obligations, which are not affected by any access granted by this decision. Thus, the Chamber will not further consider access to such materials in this decision.²²

11. With regard to Applicant Župljanin's request for materials relating to the Republika Srpska Ministry of the Interior, the Autonomous Region of the Krajina, and Stojan Župljanin in person, the Chamber considers that the access granted by this decision necessarily will encompass the relevant materials from these categories in so far as they pertain to the Overarching JCE in the overlapping time-period and municipalities. Consequently, the Trial Chamber will not further consider this request.

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

13. The Chamber further considers that material relating to protected witnesses for whom orders of delayed disclosure have been issued, and who have not yet testified in the *Mladić* case, must be excluded from any access granted by this decision, unless the witness in question also testified in the Applicants' case. Although it is possible that such material may have forensic value to the Applicants, 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 Rules. Upon the disclosure of the identity of any witness subject to the measures of delayed disclosure, access to any relevant materials as prescribed by this decision should be granted.

14. The Chamber notes that the requested categories of material may include evidentiary material containing sensitive information of little or no value to the Applicants. The Chamber

²¹ See Decision on Motions by Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* case, 5 July 2012, para. 7 and sources cited therein.

²² The same is true for documents, as opposed to exhibits, as requested in paragraph 3, category 3, since non-admitted documents are not within the domain of the Chamber.

considers the following categories as having no forensic purpose: remuneration; provisional release; fitness to stand trial; reports of the Reporting Medical Officer; Registry submission of expert reports on health issues; notices 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.²³ Information from the aforementioned categories will be excluded from any access granted by this decision.

15. Finally, for reasons of judicial economy, and taking into account the current stage of the *Mladić* case, the Applicants' 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

16. For the foregoing reasons, pursuant to Articles 20 and 22 of the Tribunal's Statute, and Rules 54, 70, and 75 of the Rules, the Chamber **GRANTS** the Stanišić Access Motion and the Župljanin Access Request in part;

ORDERS the Prosecution and the *Mladić* Defence to identify on an ongoing basis to the Registry, for disclosure to the Applicants, *inter partes* confidential materials in the *Mladić* case from the pre-trial and trial phases of the case, including (a) confidential transcripts of closed session hearings, (b) confidential exhibits, and (c) confidential filings, submissions, decisions, and orders regarding evidence, which relate to the Overarching JCE in so far as it pertains to the time period of 1 April to 31 December 1992 and the following municipalities: In relation to the Applicant Stanišić, the municipalities of Banja Luka, Bijeljina, Ključ, Kotor Varoš, Pale, Prijedor, Sanski Most, and Vlasenica; in relation to the Applicant Župljanin, the municipalities of Banja Luka, Ključ, Kotor Varoš, Prijedor, and Sanski Most. Access to such materials will be subject to the restrictions set out in paragraphs 8-14 of this decision;

²³ Decision on Motion by Vujadin Popović for Access to Confidential Information in the *Mladić* Case, 11 September 2012, para. 7; Decision on Motions by Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case, 5 July 2012, para. 10; Decision of Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012, 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.

ORDERS the Prosecution and the *Mladić* Defence to determine without undue delay which of the above material 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 respective Applicants, and, where such consent is given, to identify that material to the Registry;

REQUESTS the Registry to disclose to the Applicants, 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 Applicants, if disclosure to specified members of the public²⁴ is directly and specifically necessary for the preparation and presentation of their cases, to file a motion with the Chamber seeking such disclosure;

ORDERS that if, for the purposes of the preparation of the Applicants' respective cases, 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 Applicants, and any persons involved in the preparation of their respective cases who have been instructed or authorised by the Applicants 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;

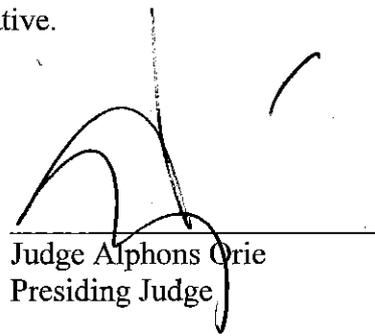
²⁴ For the purpose of this decision, "the public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Tribunal, the staff of the Registry, the Prosecutor and his representatives, and the Applicants, including counsel and any persons involved in the preparation of the case who have been instructed or authorised by the Applicants to have access to the confidential material from this case. "The public" also includes, without limitation, family members, and friends of the Applicants, accused and defence counsel in other cases or proceedings before the Tribunal, the media, and journalists.

ORDERS that the Applicants, and any persons who have been instructed or authorised by them 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 Applicants' respective cases;

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 Applicants.

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



Judge Alphons Orie
Presiding Judge

Dated this third day of September 2013
At The Hague
The Netherlands

[Seal of the Tribunal]