

IT-09-92-T  
D75766 - D75761  
17 January 2014

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**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  
Date: 17 January 2014  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 17 January 2014

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION URGENT SUBMISSION  
REGARDING STATUS OF DECISION AND DOCUMENTS  
RELATING TO WITNESS PREDRAG RADULOVIĆ**

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**Office of the Prosecutor**

Mr Dermot Groome  
Mr Peter McCloskey

**Counsel for Ratko Mladić**

Mr Branko Lukić  
Mr Miodrag Stojanović

## I. PROCEDURAL HISTORY

1. On 4 October 2013, the Prosecution filed a motion seeking to admit the statement of Predrag Radulović and 29 associated exhibits pursuant to Rule 92 *quater* of the Tribunal's Rules of Procedure and Evidence ("Rules").<sup>1</sup> On 20 December 2013, the Chamber issued a Decision ("Decision") granting this motion in part, admitting, among others, the document bearing Rule 65 *ter* number 30365 ("Report"), and the ICTY statement of Radulović, with the exception of paragraph 133 thereof ("Admitted Statement").<sup>2</sup> In the Decision, the Chamber instructed the Registry to change the status from under seal to public of the Decision, the Admitted Statement and the Report, within two weeks of the date of the Decision unless the Prosecution files a submission within that period explaining why they should remain under seal.<sup>3</sup> On 3 January 2014, the Registry changed the status of the Decision from confidential to public. On the same date, the Prosecution filed a submission ("Submission").<sup>4</sup> On 6 January 2014, the Registry advised the Chamber and the parties in an informal communication that the Decision was withdrawn from the public domain and is temporarily made confidential, pending a decision on the matter by the Chamber. On 7 January 2014, the Defence filed its Response ("Response").<sup>5</sup>

## II. SUBMISSIONS OF THE PARTIES

2. In its Submission, the Prosecution asserts that the Admitted Statement contains the same information concerning the identity of operatives and other individuals, as well as state secrets, that led the *Stanišić and Župljanin* Trial Chamber to hear portions of Radulović's testimony in private session.<sup>6</sup> The Prosecution further alleges that the Report, which was admitted into evidence, and the document bearing Rule 65 *ter* number 26215, which was discussed in the Decision but denied admission into evidence, were produced by the Republic of Serbia ("Serbia") pursuant to a Prosecution request.<sup>7</sup> The Prosecution accordingly seeks to notify Serbia and provide it with the opportunity to request protective measures for these two documents.<sup>8</sup> The Prosecution states that it

<sup>1</sup> Prosecution Motion to Admit Evidence pursuant to Rule 92 *quater*: Witness RM096, 4 October 2013 (Confidential). For the Prosecution submissions, see the Motion.

<sup>2</sup> Decision on Prosecution Motion to Admit the Evidence of Pursuant to Rule 92 *Quater*: Witness Predrag Radulović, 20 December 2013, pp. 5-6.

<sup>3</sup> Decision, p. 5.

<sup>4</sup> Prosecution Urgent Submission regarding Status of Decision and Documents for Witness RM096, 3 January 2014.

<sup>5</sup> Defence Response to Prosecution Urgent Submission regarding Status of Decision and Documents for Witness RM096, 7 January 2014.

<sup>6</sup> Submission, para. 3.

<sup>7</sup> Submission, para. 4.

<sup>8</sup> Submission, para. 4.

could provide a redacted version of the Admitted Statement, but understands that such a duplicative filing is not preferred by the Chamber.<sup>9</sup>

3. The Defence takes no position on the Submission.<sup>10</sup>

### III. APPLICABLE LAW

4. Article 20 (4) of the Statute and Rule 78 of the Rules provide that hearings and proceedings at the Tribunal shall be held in public unless otherwise provided.

5. Rule 75 (A) of the Rules provides that a Chamber may order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the Accused. Rule 75 (F) of the Rules further provides that once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal, unless and until they are rescinded, varied, or augmented.

### IV. DISCUSSION

6. The Chamber notes that the Decision has temporarily been reclassified as confidential, and the Admitted Statement and Report have not otherwise been accessible to the public. The Prosecution request that the Decision be immediately reclassified as confidential pending consideration of the Submission is hereby deemed moot.

7. The Chamber notes that as the resort to private session in the *Stanišić and Župljanin* case appears to have been spurred by witness Radulović's safety concerns,<sup>11</sup> the Chamber considers that this amounted to the granting of a protective measure under Rule 75(A) of the Rules, which applies *mutatis mutandis* to the instant case pursuant to Rule 75(F). As regards the Report and the document bearing Rule 65 *ter* number 26215, the Chamber grants the Prosecution request to provisionally place the Report and the Decision under seal for a period of 45 days to permit the Prosecution to notify Serbia of the admission of the Report and the discussion in the Decision of the document bearing Rule 65 *ter* number 26215. In relation to the Prosecution submission concerning duplicative filings, the Chamber reminds the parties that they are in fact encouraged to file public

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<sup>9</sup> Submission, para. 4.

<sup>10</sup> Response, para. 3.

<sup>11</sup> *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Transcript of 25 May 2010, T. 10759-10760, 10762.

redacted versions of confidential exhibits in the interest of a public trial, but are not to tender them to avoid duplicative evidence.<sup>12</sup>

## V. DISPOSITION

8. For the foregoing reasons, pursuant to Article 20(4) of the Statute, and Rules 75 and 78 of the Rules, the Chamber

**GRANTS** the Motion **IN PART**;

**FINDS** the Motion moot **IN PART**, with respect to the Prosecution request that the Decision be immediately reclassified as confidential pending consideration of the Submission;

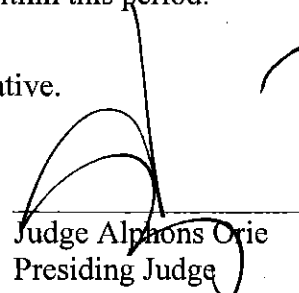
**ORDERS** that the Admitted Statement shall remain under seal;

**INSTRUCTS** the Registry that, for 45 days from the date of this decision, the Decision shall remain confidential and the Report shall remain under seal;

**INSTRUCTS** the Registry to change the status of the Decision to public after the lapse of the aforementioned 45-day period unless the Republic of Serbia files a request for protective measures pursuant to Rule 54 *bis* of the Rules in relation to the document bearing Rule 65 *ter* number 26215 within this period; and

**INSTRUCTS** the Registry to change the status of the Report to public after the lapse of the aforementioned 45-day period unless the Republic of Serbia files a request for protective measures pursuant to Rule 54 *bis* of the Rules in relation to this document within this period.

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

  
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Judge Alphons Orie  
Presiding Judge

Dated this Seventeenth day of January 2014  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>12</sup> T. 1285.