

**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 Nos. IT-09-92-T
MICT-15-96-PT
Date: 1 November 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 1 November 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON JOVICA STANIŠIĆ REQUEST FOR ACCESS
TO CONFIDENTIAL MATERIAL IN THE *MLADIĆ* CASE**

The Prosecutor v. Ratko Mladić

Office of the Prosecutor
Mr Peter McCloskey
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Mr Branko Lukić
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The Prosecutor v. Jovica Stanišić and Franko Simatović

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Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 15 September 2016, Jovica Stanišić (“Applicant”) filed a motion seeking access to all confidential *inter partes* material from the *Mladić* case (“Motion”).¹ The Defence responded on 21 September 2016 (“Defence Response”).² The Prosecution responded on 28 September 2016 (“Prosecution Response”).³

II. SUBMISSIONS OF THE PARTIES

2. The Applicant requests that the Chamber grants access to the confidential *inter partes* material from the *Mladić* case.⁴ The Applicant submits that the case against him is substantially related to the case against Ratko Mladić.⁵ Both the *Mladić* and *Stanišić* Indictments list Mladić and the Applicant as members of the same joint criminal enterprise (“JCE”) which, according to the *Stanišić* Indictment, had the objective to forcibly and permanently remove the majority of non-Serbs, principally Croats, Bosnian Muslims and Bosnian Croats, from large areas of Croatia and Bosnia-Herzegovina (“BiH”), through the commission of crimes.⁶ The Applicant further submits that both he and Mladić are alleged to have been involved in crimes in Srebrenica, Trnovo, Bijeljina, Sanski Most, and Zvornik between March 1992 and July 1995.⁷ As such, the Applicant asserts that the confidential *inter partes* material from the *Mladić* case is likely to be highly relevant to the factual allegations and evidence presented against him and will therefore materially assist him in the preparation of his case.⁸ The Applicant does not object to material provided pursuant to Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) being temporarily withheld pending a request by the Prosecution to the providers for permission to disclose the material.⁹ The Applicant defers to the Chamber’s discretion on whether to order disclosure of material pertaining to provisional release.¹⁰ Due to the volume of material in question, the Applicant requests that, in

¹ Stanišić Defence Request for Access to Confidential Materials in the *Prosecutor v. Mladić* Case, 15 September 2016. The Chamber notes that the cover page of the Motion incorrectly refers to the Mechanism for International Criminal Tribunals instead of the Tribunal.

² Defence Response on Behalf of Ratko Mladić to Jovica Stanišić’s Motion for Access to Confidential Materials in the *Prosecutor v. Ratko Mladić* Case, 21 September 2016.

³ Prosecution Response to Jovica Stanišić Request for Access to Confidential Materials in the *Mladić* Case, 28 September 2016.

⁴ Motion, para. 1.

⁵ Motion, para. 5.

⁶ Motion, para. 6.

⁷ Motion, para. 8.

⁸ Motion, para. 9.

⁹ Motion, para. 10.

¹⁰ *Ibid.*

addition to the usual electronic disclosure, transcripts of the *Mladić* proceedings be disclosed through Livenote and exhibits be disclosed through eCourt.¹¹

3. The Defence does not oppose the Applicant's request, except with respect to the disclosure of all filings relating to the health of Mladić and material provided pursuant to Rule 70 of the Rules.¹²

4. The Prosecution submits that the Applicant has demonstrated a legitimate forensic purpose that justifies access to certain confidential *inter partes* material from the *Mladić* case, specifically material related to the charged JCEs to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in BiH ("Overarching JCE"), to eliminate Bosnian Muslims in Srebrenica ("Srebrenica JCE"), and to take UN Military Observers and peacekeepers hostage ("Hostages JCE").¹³ The Prosecution asserts that the implementation of the Overarching JCE's common criminal purpose in municipalities throughout the BiH involves overlapping evidence from multiple municipalities in regions of the self-proclaimed Bosnian-Serb Republic, not just evidence from the municipalities specified by the Applicant.¹⁴

that the Applicant's access to the confidential *inter partes* material related to the Overarching JCE should not be limited to the municipalities listed by the Applicant.¹⁵ In addition, it submits that evidence exclusively related to the sniping and shelling campaign in Sarajevo has limited relevance to the *Stanišić* case and should therefore be excluded from any grant of access to confidential *inter partes* material.¹⁶ The Prosecution further submits that the Applicant should be given access to confidential *inter partes* material in the *Mladić* case subject to the same conditions as set out in the Chamber's most recent decision concerning access to confidential *inter partes* material.¹⁷

the Prosecution submits that access to material provided pursuant to Rule 70 of the Rules should not be provided absent the provider's consent.¹⁸

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing access to confidential material from other cases before the Tribunal, as set out in a previous decision.¹⁹ The Chamber

¹¹ Motion, para. 11.

¹² Defence Response, para. 2.

¹³ Prosecution Response, paras 1, 4-6.

¹⁴ Prosecution Response, paras 4-5. The Prosecution also points out that the Motion lists Zvornik as an overlapping municipality but recalls that all charges specifically relating to Zvornik Municipality were removed from the *Mladić* Indictment. Prosecution Response, ¶ 5.

¹⁵ Prosecution Response, para 5.

¹⁶ Prosecution Response, paras 6, 10.

¹⁷ Prosecution Response, paras 2, 8.

¹⁸ Prosecution Response, para. 7.

¹⁹ Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012, paras 3-9.

further recalls and refers to a decision in which the Appeals Chamber of the Tribunal found that in light of the “residual” nature of the International Residual Mechanism for Criminal Tribunals (“MICT”) and for concerns of judicial economy and practicality, parties before the MICT shall be considered parties before the Tribunal for the purposes of requesting access to confidential material.²⁰

IV. DISCUSSION

6. The Chamber is satisfied that the Applicant has identified the material to which it seeks access with sufficient specificity. The Chamber also finds that there is a geographical and temporal nexus between the *Stanišić* and the *Mladić* Indictments with regard to crimes alleged to have been committed in relation to the Overarching, Srebrenica, and Hostages JCEs. With respect to the Overarching JCE, the Chamber is of the view that evidence of the JCE’s common criminal purpose involves overlapping evidence among the multiple municipalities, such that any grant of access should not be limited to the specific municipalities in which both the Applicant and Mladić are alleged to have been involved in the commission of crimes. The Chamber finds that by establishing a legitimate forensic purpose, the Applicant has demonstrated that access to this material is likely to materially assist in the preparation of his case, and will grant the Applicant access to this material.

7. The Chamber finds that there is no temporal, geographical, or otherwise material overlap between the *Stanišić* and the *Mladić* Indictments with regard to the alleged sniping and shelling campaign in Sarajevo.²¹ Therefore, the Chamber finds that the Applicant has not established a legitimate forensic purpose and hence has not demonstrated that access to evidence exclusively related to the alleged sniping and shelling campaign in Sarajevo is likely to materially assist in the preparation of his case, and will not grant the Applicant access to this material.

8. With regard to the Applicant’s request for access to all confidential *inter partes* material, which the Chamber understands to include transcripts, exhibits, and filings, the Chamber notes that certain categories of material contain sensitive information of little or no value to the Applicant and therefore finds that they have no forensic purpose. These categories include material related to: remuneration; provisional release; fitness to stand trial; reports of the Reporting Medical Officer; Registry submissions of expert reports on health issues; notices of non-attendance in court;

²⁰ *Prosecutor v. Mićo Stanišić & Stojan Župljanin*, Case No. IT-08-91-A, Decision on Karadžić’s Motion for Access to Prosecution’s Sixth Protective Measures Motion, 28 June 2016, p. 2.

²¹ The *Stanišić* Indictment does not include allegations of crimes committed in Sarajevo or allegations that Stanišić participated in the JCE related to the sniping and shelling campaign in Sarajevo. See *Prosecutor v. Jovica Stanišić & Franko Simatović*, Case No. IT-03-69-T, Third Amended Indictment, 10 July 2008. The *Mladić* Indictment includes allegations of crimes related to the sniping and shelling campaign in Sarajevo. See Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011, paras 14, 18.

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; the health of the Accused; and notices of compliance filed in respect of other access decisions.²² The Chamber will therefore not grant the Applicant access to material falling within these categories.²³

9. In relation to material in the *Mladić* case provided pursuant to Rule 70 of the Rules, 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 the Rule 70 provider's consent.

10. In relation to the Applicant's request that material be disclosed in a form that may be efficiently searched, the Chamber encourages the Registry and the parties to work together to ensure that the material is disclosed in an efficiently searchable format.

V. DISPOSITION

11. 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 Motion in part;

ORDERS the Prosecution and the Defence, on an ongoing basis, to identify to the Registry the following confidential *inter partes* material in the *Mladić* case related to crimes alleged to have been committed as a part of the Overarching, Srebrenica, and Hostages JCEs between 12 May 1992 and 30 November 1995, for disclosure to the Applicant:

- (i) transcripts;
- (ii) exhibits; and
- (iii) filings (including all Chamber decisions);

²² 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.

²³ While several of the listed categories fall outside the scope of the Applicant's request, the Chamber includes them here in the interests of clarity and consistency with past decisions.

ORDERS that material including documents, audio and video files, and/or transcripts concerning the following issues should be excluded from the scope of the present decision: remuneration; provisional release; fitness to stand trial; reports of the Reporting Medical Officer; Registry submissions 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; the enforcement of sentences; the health of the Accused; and notices of compliance filed in respect of other access decisions;

ORDERS the Prosecution and the Defence to determine without undue delay which of the 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 Applicant, and, where such consent is given, to identify that material to the Registry;

REQUESTS the Registry to:

- (i) disclose to the Applicant, the following material:
 - a) material not subject to Rule 70 of the Rules, once it has been identified by the Prosecution and Defence in accordance with this decision; and
 - b) material subject to Rule 70 of the Rules, once the Prosecution and Defence have identified such material upon receiving consent from the Rule 70 providers;
- (ii) withhold from disclosure to the Applicant material for which non-disclosure, additional protective measures, or redactions have been requested, until the Chamber has issued decisions on the relevant requests;

ORDERS the Applicant, if disclosure to specified members of the public is directly and specifically necessary for the preparation and presentation of his case, to file a motion to the Chamber seeking authority for such disclosure. For the purpose of this decision, "the public" includes all persons and entities, other than the Judges of the Tribunal and the MICT, the staff of the Registry, and the Prosecutor and his representatives;

ORDERS that if, for the purposes of the preparation of the Applicant's case, confidential material is disclosed to members of 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 publicize, in whole or in part, any such confidential material or to

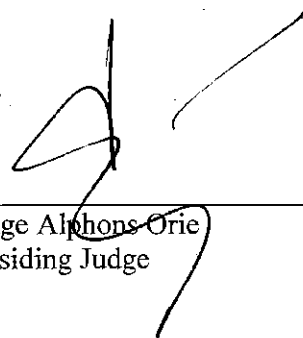
disclose it to any other person, and further, that if any such person has been provided with such confidential material, he or she must return it to the Applicant or their counsel as soon as the material is no longer needed for the preparation of the Applicant's case;

ORDERS 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 the *Mladić* case, not to disclose the confidential material to any members of the public;

ORDERS the Applicant, and any person who has been instructed or authorised by the Applicant to have access to the confidential material from the *Mladić* case, to return to the Registry all confidential material which remains in their possession as soon as it is no longer needed for the preparation of the Applicant's case; and

DENIES the remainder of the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this first day of November 2016
At The Hague
The Netherlands

[Seal of the Tribunal]