

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-03-69-A &
IT-04-75-T
Date: 28 August 2014
Original: English

IT-04-75-T
D17719-D17716
28 August 2014

~~IT-03-69-A~~
~~A1624-A1621~~
~~28 AUGUST 2014~~

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IN THE APPEALS CHAMBER

Before:

**Judge Fausto Pocar, Presiding
Judge Carmel Agius
Judge Liu Daqun
Judge Khalida Rachid Khan
Judge Koffi Kumelio A. Afandé**

Registrar:

Mr. John Hocking

Decision of:

28 August 2014

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON GORAN HADŽIĆ'S URGENT MOTION FOR
ACCESS TO AUDIO RECORDINGS IN THE STANIŠIĆ AND
SIMATOVIĆ CASE**

The Office of the Prosecutor:

Ms. Michelle Jarvis
Mr. Douglas Stringer

Counsel for the Defence:

Mr. Wayne Jordash and Mr. Scott Martin for Mr. Jovica Stanišić
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Mr. Franko Simatović

Counsel for Goran Hadžić:

Mr. Zoran Živanović and Mr. Christopher Gosnell



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THE APPEALS CHAMBER of the 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 ("Appeals Chamber" and "Tribunal", respectively);

RECALLING the decision rendered by Trial Chamber I of the Tribunal ("Trial Chamber") on 5 April 2012, in which the Trial Chamber, *inter alia*, granted Goran Hadžić ("Hadžić") access to the confidential transcripts of the testimony of Witnesses Dušan Knežević¹ and DFS-014² in the *Stanišić and Simatović* case subject to minor redactions;³

RECALLING the decision issued by the Appeals Chamber on 1 November 2013, in which the Appeals Chamber further granted Hadžić access to certain confidential material in the *Stanišić and Simatović* case;⁴

BEING SEISED OF "Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case" filed by Hadžić on 4 August 2014 ("Motion"), in which Hadžić requests access to the English and BCS audio recordings of the testimony of Witnesses Dušan Knežević and DFS-014 in the *Stanišić and Simatović* case pursuant to Rule 75(G)(i) of the Rules of Procedure and Evidence of the Tribunal ("Rules");⁵

NOTING that Hadžić submits that both witnesses are scheduled to testify for the defence in his trial⁶ and that, although the Trial Chamber and the Appeals Chamber had previously ordered the

¹ Witness Dušan Knežević testified in the *Stanišić and Simatović* case on 18, 22 and 23 August 2011. On 17 April 2012, the Trial Chamber lifted the protective measures ordered provisionally with regard to the protection of the identity of Dušan Knežević, who was previously referred to as DST-044. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on the Republic of Serbia's Motion for Protective Measures Concerning Three Witnesses, 17 April 2012, para. 26.

² Witness DFS-014 testified in the *Stanišić and Simatović* case on 14 and 15 December 2011 and on 10 and 11 January 2012.

³ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Motion by Goran Hadžić for Access to Confidential Material in the *Stanišić and Simatović* Case, 5 April 2012 ("5 April 2012 Decision"), para. 10. See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-T and IT-04-75-PT, CMSS Internal Memorandum in Compliance with the Trial Chamber's Public "Decision on Motion by Goran Hadžić for Access to Confidential Material in the *Stanišić and Simatović* Case" dated 5 April 2012, and the Prosecution's Notice Filed on 23 July 2012, 27 August 2012; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution's First Notification of Compliance with Decision on Motion by Goran Hadžić for Access to Confidential Material in the *Stanišić and Simatović* Case, 23 July 2012 (public with confidential Annexes A-B and confidential and *ex parte* Annexes C-D) ("Prosecution's Notice"). Annex A to the Prosecution's Notice lists items to be disclosed in full, including the transcripts of 22 and 23 August 2011 containing Dušan Knežević's testimony and the transcripts of 15 December 2011 and 10 and 11 January 2012 containing DFS-014's testimony (see Prosecution's Notice, Annex A, pp. 97, 104). Annex B to the Prosecution's Notice lists items to be disclosed subject to redaction, including the transcript of 18 August 2011 containing Dušan Knežević's testimony and the transcript of 14 December 2011 containing DFS-014's testimony (see Prosecution's Notice, Annex B, p. 1).

⁴ Decision on Goran Hadžić's Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013 ("1 November 2013 Decision"), para. 15.

⁵ Motion, para. 1.

⁶ Motion, para. 2. Hadžić further submits that the access to the audio recordings will allow the witnesses to familiarise themselves with their prior testimonies and enable his Defence team to verify the accuracy of the English transcripts of the testimonies prior to tendering them pursuant to Rule 92ter of the Rules.

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Registry to disclose confidential material in the *Stanišić and Simatović* case to Hadžić, the Registry has taken the view that this does not include audio recordings of the testimony of witnesses;⁷

NOTING the "Response to Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case" filed by the Office of the Prosecutor ("Prosecution") on 7 August 2014, in which it does not object to the Motion;⁸

NOTING that neither Jovica Stanišić nor Franko Simatović responded to the Motion and that Hadžić did not file a reply;

NOTING that neither the Trial Chamber nor the Appeals Chamber granted Hadžić access to audio recordings of the testimony of Witnesses Dušan Knežević and DFS-014 in the *Stanišić and Simatović* case;⁹

RECALLING that a party is entitled to seek material from any source, including from another case before the Tribunal, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown;¹⁰

RECALLING FURTHER that the Appeals Chamber may grant access to confidential material wherever the party seeking access has demonstrated that such material may be of material assistance to its case; and that the requesting party may demonstrate the relevance of the material sought by showing the existence of a nexus between the applicant's case and the cases from which such material is sought;¹¹

CONSIDERING that, in its 5 April 2012 Decision, the Trial Chamber was satisfied that the confidential material sought, which includes the transcripts of the testimony of Witnesses Dušan Knežević and DFS-014 save minor redacted portions, would be of material assistance to Hadžić in the preparation of his case due to the existence of a sufficient factual nexus between the *Stanišić*

⁷ Motion, para. 2, referring, *inter alia*, to 5 April 2012 Decision, 1 November 2013 Decision.

⁸ See also Corrigendum to Response to Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case, 8 August 2014.

⁹ 5 April 2012 Decision, para. 10; 1 November 2013 Decision, para. 15.

¹⁰ See, e.g., 1 November 2013 Decision, para. 6; *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-A and IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013 ("*Popović et al.* 20 February 2013 Decision"), p. 2 and reference cited therein.

¹¹ See, e.g., 1 November 2013 Decision, para. 6; *Popović et al.* 20 February 2013 Decision, p. 2 and reference cited therein.

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and *Simatović* case and the *Hadžić* case and that a legitimate forensic purpose for gaining access to it has been established;¹²

CONSIDERING that, in its 1 November 2013 Decision, the Appeals Chamber endorsed the Trial Chamber's assessment;¹³

FINDING therefore that Hadžić has identified the requested audio recordings with sufficient specificity and that a legitimate forensic purpose for him to gain access to these audio recordings has been established to the extent that their contents correspond to the transcripts of the testimony of Witnesses Dušan Knežević and DFS-014 which have already been disclosed to Hadžić pursuant to the 5 April 2012 Decision;

PURSUANT TO Rules 54, 75, and 107 of the Rules,

HEREBY GRANTS the Motion;

ALLOWS Hadžić access to the portions of the English and BCS audio recordings of the testimony of Witnesses Dušan Knežević and DFS-014 in the *Stanišić and Simatović* case, corresponding to the transcripts of their testimony disclosed to Hadžić;

INSTRUCTS the Registry to make the relevant portions of the audio recordings available to Hadžić;

ORDERS, unless otherwise required by this decision, that the audio recordings provided by the Registry shall remain subject to any protective measures in effect; and

ORDERS that the terms and conditions with respect to Hadžić's access to the *inter partes* confidential material in the *Stanišić and Simatović* case as set out in the 1 November 2013 Decision shall also apply to the audio recordings concerned.¹⁴

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

Dated this twenty-eighth day of August 2014,
at The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

¹² 5 April 2012 Decision, para. 4.

¹³ 1 November 2013 Decision, paras 9-10, referring to Decision of 5 April 2012, para. 4.

¹⁴ 1 November 2013 Decision, pp. 5-7.

