



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-08-91-PT
Date: 24 April 2009
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Ole Bjørn Støle
Judge Frederik Harhoff

Registrar: Mr John Hocking, Acting Registrar

Decision: 24 April 2009

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**DECISION ON STOJAN ŽUPLJANIN'S ACCESS TO
CONFIDENTIAL MATERIAL IN THE *KRAJIŠNIK, MRĐA,
STAKIĆ AND BRĐANIN* CASES**

The Office of the Prosecutor:

Mr Thomas Hannis
Ms Joanna Korner

Counsel for the Accused:

Mr Slobodan Zečević and Mr Slobodan Cvijetić for Mićo Stanišić
Mr Tomislav Višnjić and Mr Igor Pantelić for Stojan Župljanin



1. Background

1. Trial Chamber III (“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 (“Tribunal”) is seized of the Prosecution’s motion seeking clarification in relation to Stojan Župljanin’s access to confidential material in cases other than the case of *Prosecutor v. Mićo Stanišić*, filed on 15 December 2008 (“Prosecution Motion for Clarification”),¹ as well as four motions filed by the Defence for Stojan Župljanin (“Župljanin Defence”) on 3 February 2009 for access to confidential material in the *Krajišnik*, *Mrda*, *Stakić*, and *Brdanin* cases (together “Motions”).² Three of the Motions were filed before Trial Chamber II and one was filed before the Appeals Chamber, which subsequently referred it to Trial Chamber II. On 24 March 2009, the President of the Tribunal reassigned the present case to the Chamber.³

2. On 6 February 2009, the Prosecution filed a consolidated response to the Motions for access to the *Mrda*, *Stakić*, and *Brdanin* material, as well as a separate response to the Motion for access to the *Krajišnik* material.⁴ Momčilo Krajišnik also filed a “Notification in Relation to Motion by Stojan Župljanin for Access to All Confidential Material in the *Krajišnik* Case” on 5 February 2009.

3. Prior to the joinder of the *Župljanin* case to the *Stanišić* case on 23 September 2008,⁵ the Defence for Mićo Stanišić (“Stanišić Defence”) filed substantially analogous motions for access to confidential material in the same four cases as those referred to in the Motions.⁶ The Chamber

¹ “Prosecution’s Motion Seeking Clarification in Relation to Stojan Župljanin’s Access to Confidential Material in Other Cases”, 15 December 2008.

² “Motion by Stojan Župljanin for Access to All Confidential Material in the *Krajišnik* Case” (“Motion for access to the *Krajišnik* material”); “Motion by Stojan Župljanin for Access to All Confidential Material in *Darko Mrda* Case” (“Motion for access to the *Mrda* material”); “Motion by Stojan Župljanin for Access to All Confidential Material in *Milomir Stakić* Case” (“Motion for access to the *Stakić* material”); “Motion by Stojan Župljanin for Access to All Confidential Material in *Radoslav Brdanin* Case” (“Motion for access to the *Brdanin* material”).

³ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, “Order Re-Assigning Case to a Trial Chamber and Assigning *Ad Litem* Judges for the Purposes of Pre-Trial Work”, 24 March 2009. The President assigned *ad litem* Judge Ole Bjørn Støle and *ad litem* Judge Frederik Harhoff to the Chamber for the purposes of pre-trial work. See also “Order on Composition of Pre-Trial Bench”, 3 April 2009.

⁴ “Prosecution’s Consolidated Response to Stojan Župljanin Motions for Access to Confidential Material in the *Darko Mrda*, *Milomir Stakić*, and *Radoslav Brdanin* Cases”, 6 February 2009 (“Consolidated Response”); “Prosecution’s Response to Motion by Stojan Župljanin for Access to All Confidential Material in the *Krajišnik* Case”, 6 February 2009 (“Response regarding the *Krajišnik* material”).

⁵ *Prosecutor v. Mićo Stanišić and Prosecutor v. Stojan Župljanin*, “Decision on Prosecution’s Motion for Joinder and for Leave to Consolidate and Amend Indictments”, 23 September 2008 (“Joinder Decision”).

⁶ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, “Motion by Mićo Stanišić for Access to All Confidential Material in the *Krajišnik* Case”, 14 November 2006; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, “Motion by Mićo Stanišić for Access to All Confidential Material in the *Brdanin* Case”, 22 November 2006; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, “Motion by Mićo Stanišić for Access to All Confidential Material in the *Milomir Stakić* Case”, 3 August 2007; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, “Motion by Mićo Stanišić for Access to All Confidential Material in the *Darko Mrda* Case”, 24 November 2006.

partially granted the motions for access to the *Stakić* and *Mrda* material.⁷ Similarly, the Appeals Chamber partially granted the motions for access to the *Brđanin* and the *Krajišnik* material.⁸ All four decisions imposed certain restrictions on the disclosure to, and use by, the Stanišić Defence of the confidential material from the other cases.

4. On 29 September 2008, as ordered by the Chamber, the Prosecution filed a consolidated indictment against Mićo Stanišić and Stojan Župljanin, which is the operative indictment in this case (“Indictment”). On 26 November 2008, the Chamber issued an order granting the Župljanin Defence access to all documents filed by the Prosecution on a confidential basis in the *Stanišić* case.⁹

2. Submissions

5. In its Motion for Clarification, the Prosecution submits that, following the Joinder Decision, it disclosed to the Župljanin Defence material previously disclosed to the Stanišić Defence, including witness statements and transcripts of evidence given in private or closed sessions in other cases.¹⁰ The Prosecution further refers to the Chamber’s order of 26 November 2008, granting the Župljanin Defence access to confidential documents filed in the *Stanišić* case, and notes that that order did not concern material from other cases. The Prosecution thus acknowledges that the Župljanin Defence received such material without authorisation.¹¹

6. In the Motions, the Župljanin Defence seeks disclosure of the following material from the *Krajišnik*, *Mrda*, *Stakić*, and *Brđanin* cases: (a) confidential transcripts of all closed and private sessions from the trial and appellate proceedings; (b) all confidential filings made during the trial and appellate proceedings; and (c) all confidential exhibits from the four trials. He also requests access to the confidential exhibits from the appellate proceedings in *Krajišnik*, and the confidential filings made during the pre-trial proceedings in *Stakić* and *Mrda* cases.¹² The Župljanin Defence seeks access to *ex parte* material in the *Stakić* case, and submits that because of the number of

⁷ *Prosecutor v Mićo Stanišić*, Case No. IT-04-79-PT, “Decision on Access to Confidential Material in the *Stakić* Case”, 12 September 2007; *Prosecutor v Mićo Stanišić*, Case No. IT-04-79-PT, “Decision on Access to Confidential Material in the *Mrda* Case With Confidential and *Ex Parte* Annex”, 14 November 2007.

⁸ *Prosecutor v Radoslav Brđanin*, Case No. IT-99-36-A, “Decision on Motion by Mićo Stanišić for Access to All Confidential Material in the *Brđanin* Case”, 24 January 2007 (“Decision on Stanišić’s access to *Brđanin* material”); *Prosecutor v Momčilo Krajišnik*, Case No. IT-00-39-A, “Decision on Motion by Mićo Stanišić for Access to All Confidential Material in the *Krajišnik* Case”, 21 February 2007 (“Decision on Stanišić’s access to *Krajišnik* material”).

⁹ “Order Regarding Access to Confidential Filing”, 26 November 2008.

¹⁰ Prosecution Motion for Clarification, para. 5.

¹¹ Prosecution Motion for Clarification, para. 6.

¹² Motion for access to the *Krajišnik* material, para. 3; Motion for access to the *Mrda* material, para. 3; Motion for access to the *Stakić* material, para. 3; Motion for access to the *Brđanin* material, para. 3. The Župljanin Defence specifically requests “all materials concerning a plea agreement with the Prosecution”. Motion for access to the *Mrda* material, para. 3.

issues common to the case against him and the *Stakić* case, this material will assist him in the preparation of his defence.¹³

7. The Župljanin Defence contends that there is a “substantive, geographical and temporal overlap” between the case against him, and the *Krajišnik*, *Mrđa*, *Stakić*, and *Brdanin* cases. According to him, a “sufficient nexus” therefore exists between his case and these four cases.¹⁴ He submits that the fairness of the proceedings requires that he be given access to all material relevant to his case.¹⁵ The Župljanin Defence undertakes to comply with all protective measures which the Trial Chamber may order with respect to the material he seeks.¹⁶

8. The Prosecution does not object to the Motions to the extent that the Župljanin Defence seeks access to *inter partes* confidential material in the *Krajišnik*, *Mrđa*, *Stakić*, and *Brdanin* cases. However, the Prosecution requests that the Trial Chamber impose the same restrictions and conditions on the disclosure to, and use by, the Župljanin Defence of the confidential material from the prior cases as have been imposed on the Stanišić Defence.¹⁷ As regards Stojan Župljanin’s request to obtain access to *ex parte* material from the *Stakić* case, the Prosecution argues that the Župljanin Defence “offers no particular reason why he has a legitimate forensic purpose for accessing [such material]”, and therefore submits that the request should be denied.¹⁸

9. In his Notification of 5 February 2009, Momčilo Krajišnik informed the parties that he does not object to Stojan Župljanin’s Motion for access to the *Krajišnik* material.

3. Standard for access to confidential material

10. Rule 75(F)(i) of the Rules of Procedure and Evidence (“Rules”) provides that once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented. Rule 75(G)(ii) of the Rules provides that a party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply, if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.

¹³ Motion for access to the *Stakić* material, para. 16.

¹⁴ Motion for access to the *Krajišnik* material, paras 7-11; Motion for access to the *Mrđa* material, paras 7-14; Motion for access to the *Stakić* material, paras 7-13; Motion for access to the *Brdanin* material, paras 7-11.

¹⁵ Motion for access to the *Krajišnik* material, para. 12; Motion for access to the *Mrđa* material, para. 16; Motion for access to the *Stakić* material, para. 15; Motion for access to the *Brdanin* material, para. 13.

¹⁶ Motion for access to the *Krajišnik* material, para. 13; Motion for access to the *Mrđa* material, para. 17; Motion for access to the *Stakić* material, para. 17; Motion for access to the *Brdanin* material, para. 14.

11. A party is always entitled to seek material from any source 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 has been shown.¹⁹ Access to confidential material from another case shall be granted, if the party seeking it can establish that it may be of material assistance to its case, *i.e.*, “that it is likely to assist the applicant’s case materially, or that there is at least a good chance that it would”.²⁰ That material may be considered relevant where a nexus exists between the applicant’s case and the case from which such material is sought (e.g. where the charges arise out of events with geographic and temporal identity).²¹ In light of special considerations of confidentiality relating to *ex parte* material, the Appeals Chamber has required applicants to meet a higher standard in order to establish a legitimate forensic purpose.²²

4. Discussion

12. The proceedings in the cases against Darko Mrđa, Milomir Stakić and Radoslav Brđanin are concluded. The Trial Chambers which ordered the protective measures in relation to the material sought by the Župljanin Defence in the Motions are therefore no longer seised of the proceedings in these cases. The Chamber is thus properly seised of the motions filed by the Župljanin Defence for access to the *Mrđa*, *Stakić*, and *Brđanin* material.

13. The Motion for access to the *Krajišnik* material was initially filed before the Appeals Chamber, as the Appeals Chamber remained at that time seised of “the first proceedings”. However, in an order issued on 25 February 2009, the Appeals Chamber declined to examine this motion and referred it to Trial Chamber II.²³ As indicated earlier, the present case was then assigned to this Chamber.

¹⁷ Consolidated Response, para. 3; Response regarding the *Krajišnik* material, para. 3.

¹⁸ Consolidated Response, para. 4.

¹⁹ *Prosecutor v Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, “Decision on Momčilo Gruban’s Motion for Access to Material”, 13 January 2003 (“*Kvočka et al.* Decision”), para. 5; *Prosecutor v Fatmir Limaj et al.*, Case No. IT-03-66-A, “Decision on Haradinaj Motion for Access, Balaj Motion for Joinder, and Balaj Motion for Access to Confidential Material in the *Limaj* Case”, 31 October 2006 (“*Limaj* Decision”), para. 7.

²⁰ *Prosecutor v Vidoje Blagojević and Jokić*, Case No. IT-02-60-A, “Decision on Momčilo Perišić’s Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case”, 18 January 2006, para. 4; *Limaj* Decision, para. 7.

²¹ *Kvočka et al.* Decision, para. 5.

²² Decision on Stanišić’s access to *Brđanin* material, para. 14; *Prosecutor v Blagoje Simić*, Case No. IT-95-09-A, “Decision on Defence Motion by Franko Simatović for Access to Transcripts, Exhibits, Documentary Evidence and Motions Filed by the Parties in the *Simić et al.* Case”, 13 April 2005, p. 4. The Appeals Chamber held that “*ex parte* material, being of a higher degree of confidentiality, by nature contains information which has not been disclosed *inter partes* because of security interests of a state, other public interests, or privacy interests of a person or institution”, and that “[c]onsequently, the party on whose behalf *ex parte* status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed”. See also Decision on Stanišić’s access to *Krajišnik* material, p. 5; *Prosecutor v Miroslav Bralo*, Case No. IT-95-17-A, “Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material”, 30 August 2006, para. 17.

²³ *Prosecutor v Momčilo Krajišnik*, Case No. IT-00-39-A, “Order Regarding Rule 75 Motion by Stojan Župljanin”, 25 February 2009, pp. 1-2.

14. The Chamber notes the following similarities between the case against Stojan Župljanin on the one hand, and the *Krajišnik*, *Mrđa*, *Stakić*, and *Brđanin* cases on the other:

(1) Župljanin and Krajišnik cases: the Indictment charges Stojan Župljanin with crimes similar to those listed in the *Krajišnik* indictment. Seven municipalities are common to both cases. Both indictments refer to the same period of time, namely from 1 April 1992 to 30 December 1992. Both Stojan Župljanin and Momčilo Krajišnik allegedly participated in the same joint criminal enterprise, the purpose of which was the permanent removal, by force or other means, of Bosnian Muslims and Bosnian Croats from large portions of Bosnia and Herzegovina (“BiH”) through the commission of crimes.²⁴

(2) Župljanin and Mrđa cases: the indictment against Darko Mrđa contained one count of murder as a violation of the laws or customs of war, and one count of attempted murder as a crime against humanity charges. He was alleged to have participated in the killing non-Serb men at Koriscanske Stijene on 21 August 1992. The Indictment charges Stojan Župljanin with this same killing. Stojan Župljanin is alleged to have been Darko Mrđa’s superior. Further, there are significant similarities in the facts giving rise to the charges against Stojan Župljanin and Darko Mrđa, with regard to events in the municipality of Skender Vakuf in BiH in the spring of 1992.²⁵

(3) Župljanin and Stakić cases: the Indictment charges Stojan Župljanin with crimes similar to those listed in the *Stakić* indictment, namely, crimes committed in the municipality of Prijedor in the period from April 1992 to December 1992, including killings at the Keraterm and Omarska camps. At the time of the alleged events, both Stojan Župljanin and Milomir Stakić held positions of authority in the Serbian Republic of BiH.²⁶

(4) Župljanin and Brđanin cases: the Indictment charges Stojan Župljanin with crimes similar to those listed in the *Brđanin* indictment, and both indictments refer to the same period of time, namely, from April 1992 to December 1992. Stojan Župljanin is alleged to have participated in a joint criminal enterprise involving Radoslav Brđanin, the purpose of which is similar to that alleged in the case against Brđanin.²⁷

15. In the Chamber’s view, the required nexus exists between the case against Stojan Župljanin on the one hand, and the *Krajišnik*, *Mrđa*, *Stakić*, and *Brđanin* cases on the other. There is a clear

²⁴ *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, Case Nos. IT-00-39, IT-00-40, Amended Consolidated Indictment, 7 March 2002.

²⁵ *Prosecutor v Darko Mrđa*, Case No. IT-02-59, Amended Indictment, 4 August 2003.

²⁶ *Prosecutor v Milomir Stakić*, Case No. IT-97-24, Fourth Amended Indictment, 11 April 2002.

²⁷ *Prosecutor v Radoslav Brđanin*, Case No. IT-99-36, Sixth Amended Indictment, 9 December 2003.

temporal and geographical overlap between these cases. The Župljanin Defence has demonstrated that the material requested in the Motions may be of material assistance during the preparation of his case.

16. The Chamber also recalls that in the decisions on the motions filed by the Stanišić Defence for access to confidential material in these same four cases, a nexus was found to exist between the case against Mićo Stanišić and these cases. This is of significance as the cases against Stojan Župljanin and Mićo Stanišić are closely related.²⁸ In addition, the Chamber notes that the Župljanin Defence may already be in possession of some of the requested confidential material, as the Prosecution disclosed to the Župljanin Defence the material previously disclosed to the Stanišić Defence.²⁹

17. The Chamber is satisfied that the required conditions for access are met with respect to *inter partes* confidential material in the *Krajišnik*, *Mrđa*, *Stakić*, and *Brđanin* cases. As indicated earlier, a higher standard is required to establish a legitimate forensic purpose with respect to access to *ex parte* material.³⁰ The Župljanin Defence has failed to provide any specific reasons why it seeks access to the *ex parte* material in *Stakić*. The Chamber is not satisfied that a legitimate forensic purpose has been demonstrated and it will deny the Župljanin Defence's request for access to this material.

18. The Chamber further observes that there were no trial proceedings in the *Mrđa* case, as Darko Mrđa pleaded guilty, and a sentencing judgment was rendered on 31 March 2004. The Župljanin Defence's access to confidential material in that case will thus be limited to documents relating to the pre-trial and sentencing proceedings.

19. Finally, the Chamber recalls that the *Krajišnik*, *Mrđa*, *Stakić*, and *Brđanin* material shall remain subject to any protective measures previously imposed in the "first proceedings", including delayed disclosure.³¹

5. Disposition

20. Pursuant to Rule 75(F)(i), and Rule 75(G)(ii) of the Rules, the Chamber hereby:

- **GRANTS** the Motions **IN PART** and **ORDERS** as follows:

²⁸ Joinder Decision, paras 28-29.

²⁹ See Prosecution Motion for Clarification, para. 6.

³⁰ See *supra* para. 11.

³¹ The Appeals Chamber held that Rule 75(F) of the Rules includes "delayed disclosure" as a form of protective measures which continues to have effect *mutatis mutandis* in subsequent proceedings before the Tribunal. Decision on Stanišić's access to *Brđanin* material, para. 17. See also Decision on Stanišić's access to *Krajišnik* material, p. 6.

1. The protective measures ordered in relation to the *Krajišnik, Mrda, Stakić, and Brđanin* cases are hereby varied to the extent that the Župljanin Defence shall be granted access to:

(a) all closed and private session transcripts produced in the pre-trial and sentencing proceedings of *Prosecutor v. Darko Mrđa*; and in the trial and appellate proceedings of *Prosecutor v. Milomir Stakić, Prosecutor v. Momčilo Krajišnik, and Prosecutor v. Radoslav Brđanin*;

(b) all *inter partes* confidential and under seal filings produced by the parties in the pre-trial and sentencing proceedings of *Prosecutor v. Darko Mrđa*; in the pre-trial, trial and appellate proceedings of *Prosecutor v. Milomir Stakić*; and in the trial and appellate proceedings of *Prosecutor v. Momčilo Krajišnik, and Prosecutor v. Radoslav Brđanin*;

(c) all confidential and under seal exhibits in the sentencing proceedings of *Prosecutor v. Darko Mrđa*; in the trial proceedings of *Prosecutor v. Milomir Stakić, Prosecutor v. Momčilo Krajišnik, and Prosecutor v. Radoslav Brđanin*; and in the appellate proceedings of *Prosecutor v. Momčilo Krajišnik*;

2. Stojan Župljanin, his Counsel, and other members of the Defence team who are authorised to have access to confidential material, shall not disclose to the public, as further defined hereafter, any of the aforementioned confidential material, or any information contained therein. For the purpose of this decision, the term “public” includes all persons, governments, organisations, entities, associations and groups other than the Judges of the International Tribunal, the staff of the Registry, and the Prosecutor. The term “public” specifically includes, without limitation, family members and friends of Stojan Župljanin, the accused in other cases or proceedings before the International Tribunal, the media and journalists. If Stojan Župljanin or any member of the Defence team, who is authorised to have access to confidential material, should withdraw from the case, any confidential material to which access is granted in this decision and that remains in their possession shall be returned to the Registry,

3. The aforementioned confidential material, save as otherwise required by this decision, shall remain subject to any protective measures previously imposed in the first proceedings,

4. The Prosecution shall identify to the Chamber and the Registry, by 15 May 2009, any material in the *Krajišnik, Mrđa, Stakić, and Brđanin* cases that has been provided subject to Rule 70, and subsequently, seek leave from the Rule 70 providers to disclose this material to Stojan Župljanin and by 5 June 2009, inform the Chamber and Registry whether such consent has been obtained,

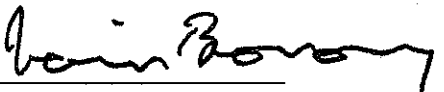
- **REQUESTS** the Registry:

5. To provide the Župljanin Defence with the confidential material to which access is granted in accordance with paragraph 1 above, except the material identified by the Prosecution pursuant to Rule 70, in paragraph 5 above;
6. Where the Rule 70 providers have consented to further disclosure, upon a request from the Prosecution under paragraph 5 above, to provide the Župljanin Defence with such material; and

- **DENIES** the Motion in all other respects.

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

Dated this twenty-fourth day of April 2009
At The Hague
The Netherlands


Judge Iain Bony
Presiding

[Seal of the Tribunal]

