

**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-95-5/18-T
Date: 2 May 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Carmel Agius
Judge Liu Daqun
Judge Khalida Rachid Khan
Judge Koffi Kumelio A. Afande

Registrar: Mr. John Hocking

Decision of: 2 May 2014

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION REGARDING
THE TERMS OF ACCESS BY RADOVAN KARADŽIĆ TO
CONFIDENTIAL MATERIALS**

The Office of the Prosecutor:

Stanišić and Simatović Appeal
Mr. Peter Kremer QC
Mr. Mathias Marcussen

Karadžić Trial
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

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

The Accused in the *Karadžić* Trial:

Mr. Radovan Karadžić

Standby Counsel in the *Karadžić* Trial:

Mr. Richard Harvey

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 issued by Trial Chamber I of the Tribunal (“Trial Chamber”) on 17 July 2009, in which the Trial Chamber, *inter alia*, granted access to Radovan Karadžić (“Karadžić”) to certain confidential material in this case and invited the Office of the Prosecutor (“Prosecution”) as well as the Defence to request non-disclosure of specified material if deemed necessary and without undue delay before identifying the above material to the Registry of the Tribunal (“Registry”);¹

NOTING the “Judgement” rendered by the Trial Chamber on 30 May 2013;²

NOTING the notice of appeal filed by the Prosecution on 28 June 2013;³

BEING SEISED OF the “Prosecution Fifth Notification of Compliance with Access Decision and Motion to Amend Terms of Access Decision”, filed publicly with confidential annexes by the Prosecution on 6 March 2014 (“Motion”), in which the Prosecution provides notification of materials in confidential Annexes A, B, C, and D, which can be immediately disclosed to Karadžić, and requests the Appeals Chamber to “amend” the Decision of 17 July 2009 in order to exclude access to confidential materials concerning “remuneration, provisional release, fitness to stand trial, weekly 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, and orders to redact the public transcript and the public broadcast of a hearing”;⁴

NOTING that the Prosecution submits that the confidential materials for which it is seeking to exclude access “do not meet the standard for access because there is not a ‘good chance’ that such materials would materially assist Karadžić in his case”, and that the Trial Chamber and Appeals Chamber have consistently ordered that access be denied for materials concerning these issues in their decisions on motions for access to confidential materials filed by other accused in this case;⁵

¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Stanišić and Simatović Case, 17 July 2009 (“Decision of 17 July 2009”), pp. 6-7.

² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement, 30 May 2013 (with confidential Appendix C).

³ Prosecution’s Notice of Appeal, 28 June 2013.

⁴ Motion, paras 1-2.

⁵ Motion, para. 3, referring to *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-T & IT-08-91-T, Decision on Motions of Mićo Stanišić and Stojan Župljanin for Access to all Confidential Materials in the Stanišić

NOTING that no response to the Motion was filed;

RECALLING that a party is always 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;⁶

RECALLING that access to confidential material is granted wherever the party seeking access has demonstrated that such material may be of material assistance to the party's case;⁷

RECALLING FURTHER that the Appeals Chamber has held that "unless a legitimate forensic purpose can be demonstrated, no access should be granted to confidential filings or transcripts concerning remuneration, provisional release, fitness to stand trial, weekly reports of the reporting medical officer, expert reports on health issues submitted by the Registry, notices of non-attendance in court, modalities of trial, protective measures, subpoenas, video-conference links, and orders to redact the public transcript and the public broadcast of a hearing";⁸

CONSIDERING that such confidential materials are not of material assistance to Karadžić and that no legitimate forensic purpose has been demonstrated for access to them;

FINDING, therefore, that Karadžić should be denied access to such materials;

PURSUANT to Rules 54 and 107 of the Rules of Procedure and Evidence of the Tribunal,

HEREBY GRANTS the Motion; and

ORDERS that the confidential materials that the parties are to identify to the Registry for disclosure and that the Registry is to disclose to Karadžić pursuant to the Decision of 17 April 2009 shall not include confidential materials containing sensitive information, which have no legitimate forensic purpose and concern remuneration, provisional release, fitness to stand trial, weekly reports of the reporting medical officer, expert reports on health issues submitted by the Registry, notices of non-attendance in court, modalities of trial, protective measures, subpoenas, video-conference links, and orders to redact the public transcript and the public broadcast of a hearing.

and Simatović Case, 10 March 2011, para. 46; Decision on Goran Hadžić's Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013 ("Decision of 1 November 2013"), para. 12.

⁶ See, e.g., Decision of 1 November 2013, para. 6 and references cited therein.

⁷ See, e.g., Decision of 1 November 2013, para. 6 and references cited therein.

⁸ Decision of 1 November 2013, para. 12. The Appeals Chamber notes that this list of issues is only indicative. See also *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-A & IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013, p. 3, which also encompasses issues that are not listed in the Decision of 1 November 2013, para. 12.

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

Dated this second day of May 2014,
at The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the Tribunal]