

**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-08-91-A &
MICT-13-55
Date: 27 June 2016
Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Christoph Flügge
Judge Fausto Pocar
Judge Koffi Kumelio A. Afandé

Registrar: Mr. John Hocking

Decision of: 27 June 2016

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**DECISION ON KARADŽIĆ'S MOTION FOR ACCESS TO
PROSECUTION'S SIXTH PROTECTIVE MEASURES
MOTION**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mićo Stanišić

Mr. Slobodan Zečević and Mr. Stéphane Bourgon

Counsel for Stojan Župljanin

Mr. Dragan Krgović, Ms. Tatjana Čmerić, and Mr. Christopher Gosnell

Counsel for Radovan Karadžić

Mr. Peter Robinson

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);

NOTING the Prosecution’s Sixth Motion for Protective Measures for Victims and Witnesses with Annex A, filed confidentially on 28 September 2009 by the Office of the Prosecutor (“Prosecution”) in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T (“Prosecution’s Sixth Motion” and “*Stanišić and Župljanin case*”, respectively);

BEING SEISED of the “Motion for Access to Prosecution’s Sixth Protective Measures Motion”, filed on 31 March 2016 by Radovan Karadžić (“Motion” and “Karadžić”, respectively), whereby Karadžić requests that he be given access to the Prosecution’s Sixth Motion in full or at least to the part referring to Witness KDZ603;¹

NOTING Karadžić’s submissions that Witness KDZ603 was granted protective measures by the Trial Chamber in the *Stanišić and Župljanin case* (“*Stanišić and Župljanin Trial Chamber*”), that the relevant decision provided no information about the factual basis upon which the protective measures were granted,² and that this factual basis was “presumably” set forth in the Prosecution’s Sixth Motion;³

NOTING FURTHER Karadžić’s assertion that he has a legitimate forensic purpose to access the Prosecution’s Sixth Motion, as he may wish to challenge: (i) the denial of the Trial Chamber in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T (“*Karadžić Trial Chamber*” and “*Karadžić case*”, respectively) of protective measures for his defence witnesses and its application of potentially different standards to defence and prosecution witnesses in relation to protective measures;⁴ and (ii) the factual findings in the trial judgement in the *Karadžić case* based upon the evidence of Witness KDZ603;⁵

NOTING the “Prosecution’s Response to Motion by Radovan Karadžić for Access to Prosecution’s Sixth Protective Measures Motion” filed publicly, with a confidential annex, on 11 April 2016 (“Response”) wherein the Prosecution responds that Karadžić has failed to show that there is “at

¹ Motion, paras 1, 7.

² Motion, para. 3 referring to *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting in Part and Denying in Part the Prosecution’s Sixth Motion for Protective Measures for Victims and Witnesses, 21 October 2009 (“Decision of 21 October 2009”).

³ Motion, para. 4.

⁴ Motion, para. 5.

⁵ Motion, para. 6.

least a good chance” that access to the Prosecution’s Sixth Motion will materially assist him in the preparation of his case,⁶ and therefore opposes the Motion;⁷

NOTING the “Reply Brief: Motion for Access to Prosecution’s Sixth Protective Measures Motion” filed publicly by Karadžić on 14 April 2016 (“Reply”);⁸

NOTING that the judgement in the *Karadžić* case was rendered by the *Karadžić* Trial Chamber of this Tribunal on 24 March 2016 and that thereafter, the *Karadžić* case fell under the jurisdiction of the International Residual Mechanism for Criminal Tribunals (“MICT”);⁹

NOTING United Nations Security Council Resolution 1966 establishing the MICT and Article 1 of the Statute of the MICT which declares the principle of continuity between the Tribunal and the MICT;¹⁰

CONSIDERING therefore that Karadžić is not a party in another case before the Tribunal but is a party to proceedings before another jurisdiction, the MICT;

FINDING however, that in light of the “residual” nature of the 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;

CONSIDERING therefore 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;¹¹

⁶ Response, para. 2. The Prosecution submits that: (i) since the protective measures were merely continued in the *Karadžić* case by automatic application of Rule 75(F)(i) of the Rules of Procedure and Evidence (“Rules”), there is no basis to argue that the *Karadžić* Trial Chamber applied a different standard with respect to prosecution and defence witnesses (Response, para. 3); and (ii) Karadžić fails to show how access to the Prosecution’s Sixth Motion will allow him to challenge the *Karadžić* Trial Chamber’s factual findings on Witness KDZ603’s evidence (Response, para. 4). The Prosecution emphasises that the requested material contains sensitive personal information concerning Witness KDZ603, including information about his/her safety and security concerns (Response, para. 5).

⁷ Response, paras 1, 6.

⁸ Karadžić argues, *inter alia*, that: (i) the *Karadžić* Trial Chamber’s continuation of protective measures granted to a witness in another case may support his argument on the double standard with respect to prosecution and defence witnesses (Reply, paras 4-9); and (ii) the Prosecution fails to show any prejudice to the Prosecution or to Witness KDZ603 should the Motion be granted since he already has access to the full identity and all prior statements and testimony of Witness KDZ603 (Reply, para. 10).

⁹ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Judgement, 24 March 2016; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Order Assigning Judges to a Case before the Appeals Chamber, 20 April 2016.

¹⁰ United Nations Security Council Resolution 1966 (2010), 22 December 2010; MICT Statute, Article 1(1).

¹¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos IT-03-69-A & IT-95-5/18-T, Decision on Motion by Radovan Karadžić for Reconsideration of Decision on Motion for Access to Confidential Materials in the *Stanišić and Simatović* Case, 16 February 2015 (“*Stanišić and Simatović* Decision of 16 February 2015”), p. 3; *Prosecutor v.*

CONSIDERING 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;¹²

CONSIDERING 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;¹³

CONSIDERING that Karadžić has specifically identified the confidential material he seeks access to, namely, the Prosecution's Sixth Motion, or "at least that part of the motion dealing with Witness KDZ603";¹⁴

RECALLING that the *Stanišić and Župljanin* Trial Chamber was satisfied that "the significant nexus between the cases justifie[d] granting *Karadžić* access" to several categories of documents,¹⁵ but that it was not satisfied that he should be granted access to, *inter alia*, "confidential *inter partes* filings and submissions"¹⁶ without an additional reasoned application;¹⁷

CONSIDERING that while the Prosecution's Sixth Motion was filed confidentially before the *Stanišić and Župljanin* Trial Chamber,¹⁸ the Decision of 21 October 2009 adjudicating this motion was filed publicly and that Karadžić therefore has access to it;¹⁹

CONSIDERING that Karadžić has access to all decisions relating to protected witnesses in the *Karadžić* case;

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 ("Popović et al. Decision of 20 February 2013"), p. 2.

¹² *Stanišić and Simatović* Decision of 16 February 2015, p. 3; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos IT-03-69-A & IT-04-75-T, Decision on Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case, 28 August 2014, p. 2. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos IT-03-69-A & IT-04-75-T, Decision on Goran Hadžić's Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013 ("*Stanišić and Simatović* Decision of 1 November 2013"), para. 6; *Popović et al.* Decision of 20 February 2013, p. 2.

¹³ *Stanišić and Simatović* Decision of 16 February 2015, p. 3; *Stanišić and Simatović* Decision of 1 November 2013, para. 6; *Popović et al.* Decision of 20 February 2013, p. 2.

¹⁴ Motion, para. 7.

¹⁵ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Partially Granting Radovan Karadžić's Request for Access to Confidential Material, 30 June 2010 ("Decision of 30 June 2010"), para. 15 (granting Karadžić access to "the *inter partes* material listed in category (a), all confidential closed and private sessions testimony transcripts, and in category (c), all confidential trial exhibits [...] subject to the specific provisions set out in the disposition"). See Decision of 30 June 2010, p. 9.

¹⁶ Decision of 30 June 2010, para. 16. See Decision of 30 June 2010, para. 17, p. 10.

¹⁷ Decision of 30 June 2010, para. 18. The *Stanišić and Župljanin* Chamber further explained that Karadžić "may only have access to any [...] confidential *inter partes* filings and submissions [...] which aid Karadžić to 'better understand and make use of [the] confidential evidentiary material'" from the documents to which he was granted access (Decision of 30 June 2010, para. 18). See Decision of 30 June 2010, p. 10.

¹⁸ Prosecution's Sixth Motion, p. 1.

¹⁹ Decision of 21 October 2009, p. 1.

CONSIDERING further that pursuant to the Decision of 30 June 2010 Karadžić has access to all closed and private session testimony transcripts and all confidential trial exhibits in the *Stanišić and Župljanin* case,²⁰ including the evidence of Witness KDZ603;

FINDING that in the circumstances, Karadžić has failed to establish how access to the Prosecution's Sixth Motion will assist him in challenging the denial of protective measures for defence witnesses in the *Karadžić* case or the factual findings in the trial judgement based on the evidence of Witness KDZ603;²¹

FINDING that Karadžić therefore has not demonstrated that access to the Prosecution's Sixth Motion may be of material assistance to his case;

FOR THE FOREGOING REASONS,

PURSUANT TO Article 22 of the Statute of the Tribunal, and Rules 54, and 107 of the Rules;

HEREBY DENIES the Motion.

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

Dated this twenty-seventh day of June 2016,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding

[Seal of the Tribunal]

²⁰ The Appeals Chamber notes that Karadžić only has access to such information provided that it is not subject to Rule 70 of the Rules or provided that consent to disclosure has been obtained (Decision of 30 June 2010, p. 9).

²¹ Motion, para. 5.