



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-04-79-PT
Date: 12 September 2007
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: Mr. Hans Holthuis

Decision: 12 September 2007

PROSECUTOR

v.

MIĆO STANIŠIĆ

PUBLIC

**DECISION ON ACCESS TO CONFIDENTIAL MATERIAL IN
THE STAKIĆ CASE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Anna Richterova

Counsel for the Accused:

Mr. Stevo Bezbradica

TRIAL CHAMBER II 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 (“Trial Chamber”),

NOTING the “Motion by Mićo Stanišić for Access to all Confidential Materials in the Milomir Stakić Case” filed on 13 August 2007 (“Motion”) pursuant to Rule 75(G)(ii) of the Rules of Procedure and Evidence (“Rules”), in which the Defence of the accused Mićo Stanišić (“Applicant”) requests access to confidential material in the case of *Prosecutor v. Milomir Stakić* (“Stakić case”), namely to all: (i) confidential transcripts of closed and private sessions from the trial and appellate proceedings, (ii) confidential filings made during the pre-trial, trial and appellate proceedings, and (iii) confidential exhibits from the trial relating to the indictment against Milomir Stakić,

NOTING Rule 75(F)(i) of the Rules which 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 effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented,

NOTING Rule 75(G)(ii) of the Rules which states 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,

NOTING that the proceedings in the case against Milomir Stakić are concluded, and that the Chamber which ordered the protective measures in relation to the material sought is no longer seised of the proceedings in that case, and that the Trial Chamber is properly seised of the motion,

NOTING the arguments of the Applicant in support of the Motion:

1. that the charges in the indictment against Mićo Stanišić are closely related to the charges against Milomir Stakić, and notably that: (i) Milomir Stakić was convicted for his participation in the extermination, murder and persecution of the Bosnian Muslim and Bosnian Croat population in the municipality of Prijedor, in Bosnia and Herzegovina (“BiH”) from the period of 30 April 1992 to 30 September 1992, and similarly Mićo Stanišić is charged, *inter alia*, for his participation in the extermination, murder and persecution of the Bosnian Muslim and Bosnian Croat population in Prijedor from the period of 1 April 1992 to 30 December 1992; (ii) at the relevant time, Milomir Stakić was President of the Prijedor Crisis Staff, and Mićo Stanišić was Minister of Internal Affairs in

the Serbian Republic of BiH; and (iii) the alleged offences in each case took place during the same armed conflict in BiH; and

2. that access to confidential material in the case against Biljana Plavšić will be of significant assistance for the preparation of the Defence case,

NOTING, further, the Response by the Prosecution, whereby the Prosecution submits that it does not object to the motion, but that it opposes disclosure of *ex parte* confidential material,¹

CONSIDERING that 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,²

CONSIDERING that 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, that is, “that it is likely to assist the applicant’s case materially, or that there is at least a good chance that it would”,³

CONSIDERING, further, 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),⁴

CONSIDERING that the indictments against Mićo Stanišić⁵ and Milomir Stakić,⁶ charge Mićo Stanišić and Milomir Stakić, respectively, for having (individually and in concert with others in a joint criminal enterprise) instigated or aided and abetted persecutions, extermination, murder, deportation and forcible transfer of the Bosnian Muslim and Bosnian Croat population in the municipality of Prijedor in BiH, from the period of 30 April 1992 to 30 September 1992,⁷

¹ Prosecution’s Response to Mićo Stanišić’s Motion for Access to all Confidential Material in the Mićo Stanišić Case, 23 August 2007.

² *Prosecutor v. Kvočka et al*, Case No.: IT-98-30/1-A, Decision on Momcilo Gruban’s Motion for Access to Material, 13 January 2003, para. 5, citing collected cases; *Prosecutor v. 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 Materials in the Limaj Case, 31 October 2006, para. 7.

³ *Prosecutor v. 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; *Prosecutor v. 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 Materials in the Limaj Case, 31 October 2006, para. 7.

⁴ *Prosecutor v. Kvočka et al*, Case No.: IT-98-30/1-A, Decision on Momcilo Gruban’s Motion for Access to Material, 13 January 2003, para. 5, citing collected cases.

⁵ *Prosecutor v. Stakić*, Case No.: IT-04-79-PT, Revised Amended Indictment, 22 September 2005.

⁶ *Prosecutor v. Stakić*, Case No.: IT-97-24-PT, Fourth Amended Indictment, 10 April 2002.

⁷ The temporal and geographic scope of the Indictment against Mićo Stanišić is wider with respect to these crimes, as it charges him with these crimes from the period of 1 April 1992 to 30 December 1992 in 18 municipalities of BiH. Mićo Stanišić is also charged with torture, cruel treatment and inhumane acts as violations of the laws or customs of war and crimes against humanity. Milomir Stakić, on the other hand, is also charged with genocide and complicity in genocide.

CONSIDERING that both Milomir Stakić and Mićo Stanišić are alleged to have participated in a joint criminal enterprise in their respective indictments, the objective of which being the permanent removal of Bosnian Muslims and Bosnian Croats from parts of BiH,

CONSIDERING that Milomir Stakić and Mićo Stanišić held positions of authority in the Serbian Republic of BiH during the relevant time of the crimes charged in the case against Milomir Stakić and the case against Mićo Stanišić,

CONSIDERING, further, that the significant similarities in the facts giving rise to the charges against Mićo Stanišić and Milomir Stakić, with regard to events in the municipality of Prijedor in BiH, during the period concerned in the respective indictments, also constitute a clear overlap between the two proceedings,

CONSIDERING, finally, that the Applicant has identified the material requested and demonstrated that the requested material may be of material assistance to the Applicant in the preparation of its case and that a nexus exists between the Applicant's case and the *Stakić* case,

FINDS that the standard for access to confidential material has been satisfied,

PURSUANT TO Rule 75(F)(i), and Rule 75(G)(ii) of the Rules, and **HEREBY GRANTS** the Motion and **ORDERS** as follows:

1. The protective measures ordered in relation to the *Stakić* case are hereby varied to the extent that the Applicant shall be granted access to:

(a) all closed and private session transcripts produced in the trial and appellate proceedings of *Prosecutor v. Milomir Stakić* (Case No: IT-97-24),

(b) all *inter partes* confidential and under seal filings produced by the parties in the pre-trial, trial and appellate proceedings of *Prosecutor v. Milomir Stakić* (Case No: IT-97-24),

(c) all confidential and under seal exhibits in the trial proceedings of *Prosecutor v. Milomir Stakić* (Case No: IT-97-24),

2. The Applicant shall not disclose to the public, as defined hereafter, any of the aforementioned confidential, 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 and the staff of the Registry, the Prosecutor, the accused Mićo Stanišić, members of the Defence team that the Applicant has instructed or authorized to have access to the confidential material. The term "public" specifically includes,

without limitation, family members and friends of the accused Mićo Stanišić, the accused in other cases or proceedings before the International Tribunal, the media and journalists. If the Applicant or any member of the Defence team, who is authorized 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 by the Trial Chamber in the first proceedings,

4. The Prosecution shall identify to the Trial chamber and the Registry, by 26 September 2007, the material in the *Stakić* case that has been provided subject to Rule 70, and subsequently, seek leave from the Rule 70 providers to disclose this material to the Applicant and by 10 October 2007, inform the Trial Chamber and Registry whether such consent has been obtained,

REQUESTS the Registry:

5. To provide the Applicant with all confidential material identified in paragraph 1, above, except material identified by the Prosecution on 26 September 2007, as provided pursuant to Rule 70,

6. Where the Rule 70 providers have consented to further disclosure, upon a request from the Prosecution under paragraph 4, above, to provide the Applicant with such material.

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

Dated this 12th day of September 2007,

At The Hague

The Netherlands



Kevin Parker
Presiding Judge

[Seal of the Tribunal]