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IT-04-79-PT  
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14 November 2007

**UNITED  
NATIONS**



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: 14 November 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:** 14 November 2007

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ**

***PARTLY CONFIDENTIAL AND EX PARTE***

**DECISION ON ACCESS TO CONFIDENTIAL MATERIAL IN  
THE MRĐA CASE WITH CONFIDENTIAL AND *EX PARTE*  
ANNEX**

**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 (“Chamber”),

**NOTING** the “Motion by Mićo Stanišić for Access to all Confidential Materials in the Darko Mrđa Case” filed on 24 November 2006 (“Motion”) pursuant to Rule 75(G)(ii) of the Rules of Procedure and Evidence (“Rules”), in which the accused Mićo Stanišić (“Applicant”) requests access to confidential material in the case of *Prosecutor v. Darko Mrđa* (“Mrđa case”), namely to all: (i) confidential transcripts of closed and private sessions from the pre-trial and trial proceedings, (ii) confidential filings made during the pre-trial and trial proceedings, and (iii) confidential exhibits from the pre-trial and trial relating to the indictment against Darko Mrđa, including all materials concerning a plea agreement with the Prosecution,

**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*mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented,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 seized of the first proceedings, to the Chamber seized of the second proceedings,

**NOTING** that the proceedings in the case against Darko Mrđa are concluded, and that the Trial Chamber which ordered the protective measures in relation to the material sought is no longer seized of the proceedings in that case,

**NOTING** therefore that the Chamber is properly seized 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 Darko Mrđa, notably that: (i) Darko Mrđa pleaded guilty for his participation in the killing of over 200 men at Koriscanske Stijene, “on the road over Vlasić Mountain in the municipality of Skender Vakuf,” on 21 August 1992, and similarly Mićo Stanišić is charged, *inter alia* for his participation in the killing of men at Koriscanske Stijene, on the Vlasić Mountain in the

municipality of Skender Vakuf on 21 August 1992;<sup>1</sup> (ii) at the relevant time, Darko Mrđa was a member of the Prijedor Police “Intervention Squad”, and Mićo Stanišić was Minister of Internal Affairs in the Serbian Republic of BiH;<sup>2</sup> and (iii) the alleged offences in each case took place during the same armed conflict in BiH;<sup>3</sup> and

2. that access to confidential material in the case against Darko Mrđa will be of significant assistance for the preparation of the Defence case,<sup>4</sup>

**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 listed in the *ex parte* confidential annex attached to the response,<sup>5</sup>

**NOTING**, also, that the Prosecution submits that the motion is misconceived insofar as it seeks access to confidential material from the “pre-trial and trial proceedings” in the Mrđa case, instead of seeking access to confidential material relating to the “pre-trial and sentencing proceedings” in the *Mrđa* case, and that it does not oppose access to confidential material relating to the pre-trial and sentencing proceeding in the Mrđa case,

**NOTING** that the Applicant did not file a reply to the Prosecution’s suggestion that the Applicant is only seeking access to confidential material relating to the pre-trial and sentencing proceedings in the *Mrđa* case,

**NOTING**, further, that there were no trial proceedings in the *Mrđa* case, as the accused Darko Mrđa pleaded guilty, and a sentencing judgment was rendered on 31 March 2004,

**NOTING**, therefore, that the Chamber can only assess whether to grant access to confidential transcripts, filings and exhibits relating to the *Mrđa* pre-trial and sentencing proceedings,

**NOTING** further, that, in the response, the Prosecution requests that, should access be granted, the Chamber orders (i) protective measures to maintain the confidentiality of the material in question,<sup>6</sup>

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<sup>1</sup> Motion by Mico Stanišić for Access to all Confidential Materials in the Darko Mrđa Case, 24 November 2006, paras 8, 10.

<sup>2</sup> *Ibid*, paras 9, 11.

<sup>3</sup> *Ibid*, para. 14.

<sup>4</sup> *Ibid*, para. 15.

<sup>5</sup> *Partly Ex Parte and Partly Confidential* Prosecution’s Response to Mićo Stanišić’s Motion for Access to all Confidential Material in the Darko Mrđa Case, 8 December 2006, para. 5.

<sup>6</sup> *Ibid*, para. 6.

and (ii) that access to material acquired pursuant to Rule 70 of the Rules will only be granted where consent of the provider has been obtained,<sup>7</sup>

**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,<sup>8</sup>

**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, *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”,<sup>9</sup>

**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),<sup>10</sup>

**CONSIDERING** that the indictment against Mićo Stanišić<sup>11</sup> and Darko Mrđa,<sup>12</sup> charged Mićo Stanišić and Darko Mrđa, respectively, for the murder of non-Serb men at Koriscanske Stijene on Vlasić Mountain on 21 August 1992,<sup>13</sup>

**CONSIDERING**, further, that the significant similarities in the facts giving rise to the charges against Mićo Stanišić and Darko Mrđa, with regard to events in the municipality of Skender Vakuf in BiH during the period concerned in the respective indictment, 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 *Mrđa* case, consequentially

<sup>7</sup> *Ibid*, para. 7.

<sup>8</sup> *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.

<sup>9</sup> *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.

<sup>10</sup> *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.

<sup>11</sup> *Prosecutor v. Stanišić*, Case No.: IT-04-79-PT, Revised Amended Indictment, 22 September 2005.

<sup>12</sup> *Prosecutor v. Mrđa*, Case No.: IT-02-59-S, Amended Indictment, 4 August 2003.

<sup>13</sup> The temporal and geographic scope of the Indictment against Mićo Stanišić is wider with respect to this crime, as it charges him with murder, as a violation of the laws or customs of war and inhumane acts and a crime against humanity, from the period of 1 April 1992 to 30 December 1992 in 18 municipalities of BiH. Darko Mrđa, on the other hand, was charged with murder, as a violation of the laws or customs of war and inhumane acts, and as a crime against humanity stemming from the 21 August 1992 incident on the Vlasić Mountain in the municipality of Skender Vakuf.

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

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

1. The protective measures ordered in relation to the *Mrda* case are hereby varied to the extent that the Applicant shall, with the exception of all the material identified in the confidential and *ex parte* annex attached to this decision, be granted access to:

(a) all closed and private session transcripts produced in the pre-trial and sentencing proceedings of *Prosecutor v. Darko Mrda* (Case No: IT-02-59),

(b) all confidential and under seal filings produced by the parties in the pre-trial and sentencing proceedings of *Prosecutor v. Darko Mrda* (Case No: IT-02-59), and

(c) all confidential and under seal exhibits in the sentencing proceedings of *Prosecutor v. Darko Mrda* (Case No: IT-02-59).

2. The Applicant shall not disclose to the public, as further defined hereafter, any of the aforementioned confidential materials, 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, 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. Counsel for the Applicant and other members of the Defence team shall not disclose any of the aforementioned material to the public, as defined in paragraph 2,

4. 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,

5. The Prosecution shall identify to the Chamber and the Registry, by 28 November 2007, any material in the *Mrda* 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 9 January 2008, inform the Chamber and Registry whether such consent has been obtained,

**REQUESTS** the Registry:

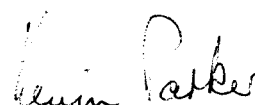
6. To provide the Applicant with the confidential material to which access is granted in accordance with paragraph 1, above, except material identified by the Prosecution pursuant to Rule 70, in paragraph 5 above,
7. Where the Rule 70 providers have consented to further disclosure, upon a request from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

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

Dated this 14<sup>th</sup> day of November 2007,

At The Hague

The Netherlands



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**Kevin Parker**  
**Presiding Judge**

**[Seal of the Tribunal]**