



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-95-5/18-T
Date: 17 April 2012
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 17 April 2012

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR ACCESS
TO CONFIDENTIAL FILINGS AND
DECISIONS IN ENFORCEMENT PROCEEDINGS**

Office of the Prosecutor

Mr. Alan Tieger and Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

I, THEODOR MERON, President 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”);

BEING SEISED of the “Motion for Access to Confidential Filings and Decisions in Enforcement Proceedings [*sic*]”, filed by Radovan Karadžić (“Karadžić”) on 1 March 2012 (“Motion”), in which Karadžić requests an order granting him access to all confidential *inter partes* filings and decisions in a number of completed enforcement proceedings;¹

NOTING the “Prosecution’s Response to Motion for Access to Confidential Filings and Decisions in Enforcement Proceedings”, filed by the Office of the Prosecutor (“Prosecution”) on 14 March 2012 (“Response”), in which the Prosecution asserts that Karadžić has neither sufficiently identified the material sought, nor identified a legitimate forensic purpose for access to the materials;²

NOTING the “Decision on Motion for Access to Confidential Materials in Completed Cases”, filed on 5 June 2009 in the case *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, by Trial Chamber III of the Tribunal (“Pre-Trial Chamber Decision”), which granted Karadžić “access to all *inter partes* confidential material, including all confidential closed and private session testimony transcripts, all closed session hearing transcripts, all confidential exhibits, all confidential *inter partes* filings and submissions, and all confidential Trial Chamber and Appeals Chamber decisions” in a number of completed cases, subject to certain conditions;³

NOTING that Karadžić asserts that I should adopt the Pre-Trial Chamber Decision’s finding that, based upon the overlap between the specified completed cases and the charges in his indictment, he has a legitimate forensic purpose for accessing material from the cases;⁴

NOTING that Karadžić further submits that “[a]ccess to the confidential filings in enforcement proceedings is necessary to obtain representations made by the accused and the prosecution concerning the cooperation of the accused with the [P]rosecution in those cases”, and that this information is relevant to assessing the credibility of “the accused” if called as a witness by the Prosecution, as well as the assessment of whether he should call “the accused” as a witness in his case;⁵

¹ Motion, para. 4. *See also* Motion, para. 1.

² Response, para. 1. *See also* Response, paras 5, 9.

³ Pre-Trial Chamber Decision, para. 32.

⁴ Motion, para. 2.

⁵ Motion, para. 3.

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 whenever the party seeking access has demonstrated that such material may be of material assistance to [the party’s] case”;⁷

RECALLING 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, *i.e.*, if the cases stem from events alleged to have occurred in the same geographical area and at the same time”;⁸

NOTING that in the course of enforcement proceedings, which take place after an accused has been convicted and solely address matters related to the enforcement of that convicted person’s sentence, the Prosecution may provide information regarding the cooperation of the convicted person with the Prosecution;⁹

CONSIDERING that Karadžić has identified the materials he seeks with sufficient specificity;

CONSIDERING, however, that Karadžić does not specifically explain how and why the information requested from each listed enforcement proceeding could materially assist his defence;

CONSIDERING that the nexus identified in the Pre-Trial Chamber Decision between Karadžić’s case and the specified cases does not demonstrate that Karadžić has a legitimate forensic purpose for accessing decisions and filings in related enforcement of sentencing proceedings;

⁶ *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-A & IT-95-5/18-T, Decision on Motion by Radovan Karadžić for Access to Confidential Filings, 15 February 2012 (“*Popović* 15 February 2012 Decision”), p. 2; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case Nos. IT-98-32/1-A & IT-98-32/1-R77.2, Decision on Jelena Rašić’s Motion for Access to Confidential *Inter Partes* and *Ex Parte* Material from the *Lukić and Lukić* Case, 6 September 2011 (confidential) (“*Lukić* 6 September 2011 Decision”), p. 2; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Request for Access to Confidential Information in the *Prosecutor v. Popović et al.* Case, 5 October 2010 (confidential) (“*Popović* 5 October 2010 Decision”), para. 7.

⁷ *Popović* 15 February 2012 Decision, p. 2; *Lukić* 6 September 2011 Decision, p. 2; *Popović* 5 October 2010 Decision, para. 7.

⁸ *Popović* 15 February 2012 Decision, p. 2; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić’s Motion for Access to All Confidential Materials in the *Zuhdija Tabaković* Case, 6 May 2010 (confidential), para. 8.

⁹ See Rule 125 of the Rules of Procedure and Evidence of the Tribunal; Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the International Tribunal, IT/146/Rev.3, 16 September 2010, para. 3(c). I note that any Prosecution submissions in this respect are not filings on the case record. See Response, para. 6.

CONSIDERING that parties should strive to ensure that their requests for access to confidential materials avoid speculative rationales, and that Karadžić has not set out sufficient argument or evidence to demonstrate that the decisions and filings from the enforcement proceedings of the specified cases could provide material assistance to his case;¹⁰

CONSIDERING, therefore, that Karadžić fails to demonstrate that he has a legitimate forensic purpose for accessing decisions and filings from the enforcement proceedings of the specified cases;

HEREBY DENY the Motion.

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



Judge Theodor Meron
President

Dated this 17th day of April 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

¹⁰ Cf. *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR73, Decision on Appeal from Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002, p. 3 (“Considering that a party may not engage in a fishing expedition, but that, provided it does not do so, it may seek access to confidential material in another case if it is able to describe the documents sought by their general nature as clearly as possible even though it cannot describe them in detail, and if it can show that such access is likely to assist his case materially”). I note that for a number of the convicted persons in the cases listed in the Motion, there have been no enforcement proceedings related to applications for early release. See Motion, para. 4; Response, para. 8.