



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-09-92-T
Date: 20 July 2016
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 20 July 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON MOTION BY STANISLAV GALIĆ FOR
ACCESS TO CONFIDENTIAL MATERIALS IN THE *MLADIĆ*
CASE**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

Counsel for Stanislav Galić

Mr Stéphane Piletta-Zanin
Ms Anna Oehmichen
Ms Delphine Hottelier

I. PROCEDURAL HISTORY

1. On 19 April 2016, Stanislav Galić (“Applicant”) filed a motion seeking access to confidential and *inter partes* materials (“Materials”) from the *Mladić* case (“Motion”).¹ The Prosecution responded on 29 April 2016 (“Response”).² The Defence did not respond.

II. SUBMISSIONS OF THE PARTIES

2. The Applicant requests that the Chamber grants access to the Materials from the *Mladić* case, namely: (i) transcripts; (ii) exhibits; and (iii) filings.³ The request is further limited to Materials relevant to the events that took place in Sarajevo in the period between 1992 and 1994.⁴
3. The Applicant submits that there is a geographical, temporal, and material overlap between his case and the *Mladić* case.⁵ The alleged crimes of terror, sniping, and shelling in Sarajevo that are included in the *Mladić* Indictment were also included in the *Galić* Indictment and are alleged to have been committed during a time frame that overlaps with the temporal scope of the *Mladić* Indictment.⁶ The Applicant further submits that according to the *Mladić* Indictment, Galić was also a member of and participated in a joint criminal enterprise (“JCE”) with the objective of designing and executing a campaign of sniping and shelling against the civilian population of Sarajevo, the primary purpose of which was to spread terror among the civilian population.⁷ The Applicant asserts that it is vital for him to have access to the Materials in order to enable him to identify new facts that were not known to him at the time of his trial in order to support a motion for review.⁸
4. The Prosecution submits that the Applicant has demonstrated a legitimate forensic purpose that justifies access to certain *inter partes* confidential transcripts and exhibits from the *Mladić* case.⁹ However, it also submits that the temporal scope of the request is overly broad and argues that Galić’s access to confidential transcripts and exhibits should be limited to those related to events in Sarajevo between 10 September 1992 and 10 August 1994, which

¹ Requête du Général Stanislav Galić aux Fins D’Accès à des Documents Confidentiels Dans L’Affaire Ratko Mladić, 19 April 2016. On 19 May 2016, an English translation of the Motion was filed. The Motion was cross-filed before the Mechanism for International Criminal Tribunals (“MICT”). On 9 May, a Single Judge of the MICT decided that the MICT lacks jurisdiction to decide the Motion.

² Prosecution Response to Requête du Général Stanislav Galić aux Fins D’Accès à des Documents Confidentiels Dans L’Affaire Ratko Mladić, 29 April 2016.

³ Motion, Chapter I, para. 1.

⁴ *Ibid.*

⁵ Motion, Chapter III, para. 1.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Motion, Chapter III, para. 2.

⁹ Response, para. 2.

is the temporal scope of the *Galić* case.¹⁰ The Prosecution further submits that the Applicant should only be granted access to confidential exhibits that were admitted into evidence and that Rule 70 material may not be provided absent the provider's consent.¹¹ With regard to the Applicant's request for access to filings, the Prosecution submits that Galić has not shown any legitimate forensic purpose justifying access to these materials as he failed to demonstrate that there is a good chance that such filings will lead to the establishment of a new fact capable of constituting the basis for a review of his conviction.¹² It further argues that once a case is closed, applicants may not engage in a 'fishing expedition' and that this is particularly important, where, as is the case here, complying with a decision to grant access would impose a considerable burden on both party and Registry resources.¹³

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing access to confidential material from other cases before the Tribunal, as set out in a previous decision.¹⁴ The Chamber further recalls and refers to a decision by the Appeals Chamber of the Tribunal wherein it found that in light of the "residual" nature of the International Residual Mechanism for Criminal Tribunals ("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.¹⁵

IV. DISCUSSION

a. Preliminary Considerations

6. Any access to the Materials that may be granted by this decision will be limited to confidential transcripts and filings, and confidential exhibits that have been admitted into evidence by this Chamber.

b. Request to Access Confidential Documents

7. The Chamber is satisfied that the Applicant has identified the material to which it seeks access with sufficient specificity. The Chamber also finds that there is a geographical and

¹⁰ Response, para. 3.

¹¹ Response, paras 5-6.

¹² Response, para. 9.

¹³ Response, para. 10.

¹⁴ Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012, paras 3-9.

¹⁵ *Prosecutor v. Mićo Stanišić & Stojan Župljanin*, Case No. IT-08-91-A, Decision on Karadžić's Motion for Access to Prosecution's Sixth Protective Measures Motion, 28 June 2016, p. 2.

temporal nexus between the *Galić* and the *Mladić* Indictments with regard to crimes alleged to have been committed in Sarajevo. The Chamber finds that by establishing a legitimate forensic purpose, the Applicant has demonstrated that access to the materials is likely to materially assist in the preparation of his request for review.

8. The Chamber notes, however, that with regard to the events in Sarajevo, the temporal scope of the *Mladić* Indictment is broader than that of the *Galić* Indictment.¹⁶ Therefore, the overlap has only been established in relation to the events taking place in Sarajevo between 10 September 1992 and 10 August 1994.
9. With regard to the Applicant's request for access to transcripts and exhibits, the Chamber notes that certain categories of material contain sensitive information of little or no value to the Applicant and therefore finds that they have no forensic purpose. These categories include: remuneration; provisional release; fitness to stand trial; 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; orders to redact public transcripts and public broadcasts of a hearing; witness scheduling; witness appearance; witness attendance; execution of arrest warrant; enforcement of sentences; the health of the Accused; and notices of compliance filed in respect of other access decisions.¹⁷ The Applicant will therefore be granted access to all closed and private session transcripts, as well as exhibits, as long as they do not fall within the aforementioned categories of issues. While several of the listed categories fall outside the scope of the Applicant's request by definition, the Chamber includes them here in the interests of clarity and consistency with past decisions.
10. With respect to the Applicant's request for access to filings, the Chamber holds a similar view and allows for disclosure to the Applicant of only those filings that do not concern the above mentioned categories of issues. The Chamber is not convinced by the Prosecution's argument that the Applicant's stated purpose – to find new facts in order to bring a potential request for review – only justifies access to evidence. The Prosecution argues that filings often contain information that is not related to the evidentiary basis of the case and is

¹⁶ The temporal scope of the *Galić* Indictment is limited to 10 September 1992 through 10 August 1994. See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-I, Indictment, para. 5. See also *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003, Chapter VIII, p. xx. The temporal scope of the *Mladić* Indictment with regard to crimes allegedly committed in Sarajevo is broader, namely from May 1992 to November 1995. See *Mladić* Indictment, paras 5-8, 14.

¹⁷ Decision on Motion by Vujadin Popović for Access to Confidential Information in the *Mladić* Case, 11 September 2012, para. 7; Decision on Motions by Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case, 5 July 2012, para. 10; Decision of Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012, para. 12; Addendum to Decision on Defence Request for Access to Confidential Materials from the *Krstić* Case, 24 May 2012; Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Mladić* Case, 18 October 2011, paras 16-17.

therefore not likely to assist the Applicant.¹⁸ The Chamber acknowledges this but finds that this is not always the case. By limiting the Applicant's access to filings that do not fall in the above mentioned categories, the Applicant's request automatically excludes material that contains sensitive information of little or no evidentiary value.

11. The Chamber recognizes the Prosecution's concern that complying with a decision to grant access imposes a burden on party and Registry resources. However, the Chamber notes that this burden is not significantly increased by granting access to filings. The Chamber further finds that the Applicant's right to have access to material to prepare his motion for review outweighs the additional burden imposed on party and Registry resources.
12. Due to the only partial temporal and geographical overlap between the present case and that of the Applicant, the Chamber urges the Parties in the present proceedings before it, to file a request with the Chamber to withhold specifically identified material¹⁹ or for additional protective measures or redactions,²⁰ showing that there is no basis to establish even a "good chance" that the specified material would materially assist the case of the Applicant, should they deem it necessary.
13. Finally, in relation to materials in the *Mladić* case provided pursuant to Rule 70 of the Tribunal's Rules of Procedure and Evidence ("Rules"), the Chamber considers that the Applicant may only be given access to such material once the provider has consented to its disclosure to the Applicant. It is the responsibility of the relevant party to identify to the Registry any such Rule 70 material and to seek the Rule 70 provider's consent.

V. DISPOSITION

14. For the foregoing reasons, pursuant to Articles 20 and 22 of the Tribunal's Statute, and Rules 54, 70, and 75 of the Rules, the Chamber

GRANTS the Motion in part;

ORDERS the Prosecution and the Defence, on an ongoing basis, to identify to the Registry the following confidential and *inter partes* material in this case, which are related to events having taken place in Sarajevo between 10 September 1992 and 10 August 1994, for disclosure to the Applicant:

¹⁸ Response, para. 8.

¹⁹ *Prosecutor v. Momčilo Perišić*, Trial Chamber, Decision on Motion by Radovan Karadžić for Access to Confidential Material in the Perišić Case, 26 May 2009, para. 20.

²⁰ *Prosecutor v. Dragomir Milošević*, Appeals Chamber, Decision on Momčilo Perišić's Request for Access to Confidential Material in the *Dragomir Milošević* Case, 27 April 2009, paras 15, 19.

- (i) transcripts;
- (ii) exhibits; and
- (iii) filings (including all Chamber decisions);

ORDERS that material including documents, audio and video files, and/or transcripts concerning the following issues should be excluded from the scope of the present decision: remuneration; provisional release; fitness to stand trial; 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; orders to redact public transcripts and public broadcasts of a hearing; witness scheduling; witness appearance, witness attendance; execution of arrest warrant; the enforcement of sentences; the health of the Accused; and notices of compliance filed in respect of other access decisions;

ORDERS the Prosecution and the Defence to determine without undue delay which of the above material is subject to the provisions of Rule 70 of the Rules, and to seek the consent of the material's providers for its disclosure to the Applicant, and, where such consent is given, to identify that material to the Registry;

REQUESTS the Registry to:

- (i) disclose to the Applicant, the following material:
 - a) the non-Rule 70 material once it has been identified by the Prosecution and Defence in accordance with this decision; and
 - b) the Rule 70 material once the Prosecution and Defence have identified such material upon receiving consent from the Rule 70 providers;
- (ii) withhold from disclosure to the Applicant, specified material, for which non-disclosure, additional protective measures, or redactions are requested, until the Chamber has issued a decision on the request;

ORDERS the Applicant, if disclosure to specified members of the public is directly and specifically necessary for the preparation and presentation of his motion for review, to file a motion to the Chamber seeking such disclosure. For the purpose of this decision, "the public" includes all

persons and entities, other than the Judges of the Tribunal and the MICT, the staff of the Registry, and the Prosecutor and his representatives;

ORDERS that if, for the purposes of the preparation of the Applicant's case, confidential material is disclosed to the public – pursuant to prior authorisation by the Chamber – any person to whom disclosure of the confidential material is made shall be informed that he or she is forbidden to copy, reproduce or publicise, in whole or in part, any confidential information or to disclose it to any other person, and further that, if any such person has been provided with such information, he or she must return it to the Applicant or their counsel as soon as the information is no longer needed for the preparation of the Applicant's case;

ORDERS that the Applicant, and any persons involved in the preparation of his case who have been instructed or authorised by the Applicant to have access to the confidential material from this case, shall not disclose to any members of the public confidential information that this decision gives access to;

ORDERS that the Applicant and any person who has been instructed or authorised by the Applicant to have access to the confidential material from this case shall return to the Registry the confidential material which remains in their possession as soon as it is no longer needed for the preparation of the Applicant's case; and

DENIES the remainder of the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this twentieth day of July 2016
At The Hague
The Netherlands

[Seal of the Tribunal]