

**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 Nos. IT-09-92-T  
IT-05-88-A  
Date: 28 August 2012

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**THE PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

**PROSECUTION RESPONSE TO MOTION OF VUJADIN  
POPOVIĆ FOR ACCESS TO CONFIDENTIAL INFORMATION  
IN THE *MLADIĆ* CASE**

***The Prosecutor v. Ratko Mladić (IT-09-92-T)***

**The Office of the Prosecutor:**

Dermot Groome  
Peter McCloskey

**Counsel for Ratko Mladić:**

Mr. Branko Lukić  
Mr. Miodrag Stojanović

***The Prosecutor v. Vujadin Popović et al. (IT-05-88-A)***

**The Office of the Prosecutor:**

Peter Kremer QC

**Counsel for the Applicant:**

Mr. Zoran Živanović and Ms. Mira Tapušković for  
Vujadin Popović  
Mr. John Ostojić and Mr. Theodor Scudder for  
Ljubiša Beara  
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for  
Drago Nikolić  
Ms. Natacha Favreau Ivanović and Mr. Nenad  
Petrušić for Radivoje Miletić  
Mr. Dragan Krgović and Mr. David Josse QC for  
Milan Gvero  
Mr. Peter Haynes QC and Mr. Simon Davis for  
Vinko Pandurević

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case Nos. IT-09-92-T  
IT-05-88-A**

**THE PROSECUTOR**

**v.**

**RATKO MLADIĆ**

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**PROSECUTION RESPONSE TO MOTION OF VUJADIN  
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**I. INTRODUCTION**

1. The Prosecution does not object to the motion<sup>1</sup> of Vujadin Popović (the “Applicant”) seeking access to specific confidential *inter partes* material in *Mladić* on the same conditions that the Chamber established in its Decision on Motions by Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case.<sup>2</sup>

2. The access that Popović receives should be limited to material that is relevant to the topics he has specified,<sup>3</sup> namely:

- a. Events that occurred in Srebrenica in 1995;
- b. The organisation, structure and hierarchy of the Army of Republika Srpska; and
- c. The drafting of Directives and in particular, Directives no. 7 and no. 7/1.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T.Ch., Motion of Vujadin Popović for Access to Confidential Information in the *Mladić* Case, 14 August 2012 (“*Popović* Motion”).

<sup>2</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T.Ch., Decision on Motions By Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case, 5 July 2012 (public) (“Decision Granting the Miletić and Nikolić Motions”), para.12; *see* Popović Motion, paras.2, 4.

<sup>3</sup> *See* Decision Granting the Miletić and Nikolić Motions, para.12 (limiting access to material relevant to the topics identified by the applicants).

<sup>4</sup> Like Drago Nikolić, Popović has not sought access to material relating to convoys and transport of humanitarian aid. *See and compare* Popović Motion, para.2 (omitting reference to this material) *with*

### III. APPLICABLE LAW

3. The Chamber's previous decisions set out the applicable law governing requests for access to confidential materials in a case by parties in other cases before the Tribunal.<sup>5</sup>

### III. DISCUSSION

#### a) Popović has a legitimate forensic purpose in accessing confidential *inter partes* material from the *Mladić* case

4. The Prosecution agrees that there is a geographical, temporal and substantial overlap between the *Popović et al.* and *Mladić* cases in respect of the Srebrenica component of the *Mladić* case.<sup>6</sup> *Mladić* and *Popović* are alleged to have been members of the same joint criminal enterprise, through which they have been charged with many of the same crimes concerning the elimination of Bosnia Muslims in Srebrenica.<sup>7</sup> As such, there will be significant overlap in some of the evidence (including witness statements and testimony) adduced in *Mladić* that is likely to assist *Popović* in the preparation of his case. Accordingly, *Popović* has a legitimate forensic purpose in having access to the evidence in the *Mladić* case that he has specified.

5. Because the geographic and temporal scope of the *Mladić* case is broader than the *Popović et al.* case, *Popović* should not be granted access to confidential *inter partes* material that lies outside the scope of the crimes alleged in *Popović*. Access

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*Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T.Ch., Motion of Radivoje Miletić for Access to Confidential Information in the *Mladić* Case, 18 May 2012 ("*Miletić* Motion"), para.2(d) (seeking access to this material); and with *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, T.Ch., Motion on Behalf of Dargo Nikolić Joining the Miletić Motion for Access to Confidential Information in the *Mladić* Case, 23 May 2012, ("*Nikolić* Motion"), para.8 (excluding this material from request).

<sup>5</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T.Ch., Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the *Mladić* Case, 18 October 2011 ("Decision Granting Karadžić Access to *Mladić*"), para.9 (quoting *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, App.Ch., Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case, 19 May 2009, para.7); see *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T.Ch., Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012 ("Decision Granting *Mladić* Access to *Krstić*"), para.5; see also Decision Granting the Miletić and Nikolić Motions, para.5 (recalling and referring to the applicable law set out in prior decisions).

<sup>6</sup> Decision Granting the Miletić and Nikolić Motions, para.6; see *Popović* Motion, para.3.

<sup>7</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T.Ch., Prosecution Submission of the Fourth Amended Indictment and Schedules of Incidents, 16 December 2011 ("*Mladić* Indictment"), paras.5-7 (describing the joint criminal enterprises); 19-23 (the elimination of Bosnian Muslims in Srebrenica); *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Indictment, 4 August 2006 ("*Popović* Indictment"), paras.27 *et seq.* (joint criminal enterprise to murder the able-bodied men from Srebrenica) (Vujadin Popović, Ratko Mladić *et al.*); *Popović* Indictment Attachment A, para.97 (members of the joint criminal enterprise include, *inter alia*, Ratko Mladić and Vujadin Popović); *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010, para.2104 (disposition of charges against Vujadin Popović).

should be limited to material relevant to the topics that Popović has specifically requested,<sup>8</sup> namely:

- a. Events that occurred in Srebrenica in 1995;
- b. The organisation, structure and hierarchy of the Army of Republika Srpska; and
- c. The drafting of Directives and in particular, Directives no. 7 and no. 7/1.<sup>9</sup>

6. Should the Chamber grant the Popović Motion, access should be granted on an on-going basis out of consideration for judicial economy.<sup>10</sup>

**b) Rule 70 material must be withheld until the provider's consent is obtained**

7. Access to material provided to the Prosecution under Rule 70(B) is subject to authorisation by the provider.<sup>11</sup> A Rule 70 provider's consent for use of material in a specific case does not automatically allow access by accused in other cases. Should the Chamber grant the Motion, the Prosecution will identify to the Registrar on an ongoing basis any Rule 70 material to which the Applicant should not be given access and seek the necessary consent from the provider.<sup>12</sup>

**d) Material with little or no forensic value should be excluded from the scope of the access order**

8. The Prosecution agrees that Popović should receive the same scope of access to confidential *inter partes* material in the *Mladić* case as Nikolić<sup>13</sup> and should be subject to the same conditions established in the Chamber's Decision Granting the Miletić and Nikolić Motions.<sup>14</sup> This decision identifies the categories of material that have little or no forensic value to the Applicant and excludes them from the grant of access. These are material related to remuneration of counsel, 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 transcripts

<sup>8</sup> See Decision Granting the Miletić and Nikolić Motions, para.12 (limiting access to material relevant to specific subjects).

<sup>9</sup> See Popović Motion, paras.2, 4. Popović has not sought access to material relating to convoys or transports of humanitarian aid.

<sup>10</sup> See Decision Granting the Miletić and Nikolić Motions, para.11.

<sup>11</sup> See Decision Granting the Miletić and Nikolić Motions, para.8.

<sup>12</sup> See Decision Granting the Miletić and Nikolić Motions, paras.8, 12.

<sup>13</sup> Popović Motion, para.4.

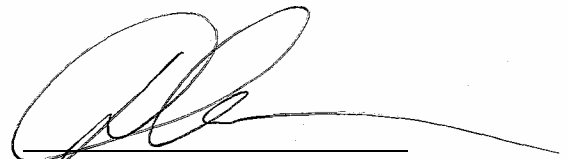
<sup>14</sup> See Decision Granting the Miletić and Nikolić Motions, para.12.

and 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.<sup>15</sup>

#### IV. CONCLUSION

9. The Prosecution requests the Chamber to grant Popović access to the confidential *inter partes* evidentiary material that is relevant to (a) events that occurred in Srebrenica in 1995; (b) the organisation, structure and hierarchy of the Army of Republika Srpska; and (c) the drafting of Directives and in particular, Directives no. 7 and no. 7/1; and to condition any grant of access to the confidential *inter partes* material in the *Mladić* case on the same terms and conditions established in its prior access decisions.<sup>16</sup>

Word Count: 1,291



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Senior Trial Attorney



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Dated this 28th day of August 2012  
At The Hague  
The Netherlands

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<sup>15</sup> See Decision Granting the Miletić and Nikolić Motions, para.10.

<sup>16</sup> See Decision Granting the Miletić and Nikolić Motions, para.12; Decision Granting Karadžić Access to *Mladić*, para.21; Decision Granting *Mladić* Access to *Krstić*, para.15.