

**UNITED
NATIONS**

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: 7 September 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 7 September 2012

PROSECUTOR**v.****RATKO MLADIĆ*****PUBLIC***

**DECISION ON MLADIĆ MOTION FOR ACCESS TO
COMPLETED CASES**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović



I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 1 March 2012, the Mladić Defence (“Applicant”) filed its Motion for Access to Completed Cases (“Motion”) in which it requests that the Chamber grant access to all confidential *inter partes* material from 33 completed cases.¹ The material sought by the Applicant includes a) all confidential closed and private session trial transcripts (“category (a) materials”); b) all audio recordings of all closed and private session trial sessions (“category (b) materials”); c) all confidential exhibits (“category (c) materials”); d) all confidential filings and submissions, including all confidential Trial Chamber decisions (“category (d) materials”); and e) all documentary evidence submitted by the parties (“category (e) materials”).² The Applicant states that all the cases listed in the Motion are inter-related with the *Mladić* case and the charges against Ratko Mladić (“Accused”).³ Further, the Applicant asserts that due to the substantial overlap between the completed cases and the *Mladić* case, such material is likely to assist, or at least there is a good chance that it may assist, in the full and adequate preparation of its defence case.⁴

2. On 15 March 2012, the Prosecution filed a response to the Motion (“Response”). The Prosecution does not object to the Applicant’s request for access to confidential *inter partes* material from 24 of the 33 cases contained in the Motion, in relation to which the Prosecution concurs that the Applicant has demonstrated a legitimate forensic “interest”.⁵ In relation to five of these 24 cases, the Prosecution submits that access should be limited to those municipalities or

¹ Motion, paras 1-3. In paragraph 1 of the Motion, the Applicant requests access “to all *inter partes* confidential material” from these cases. Whilst in paragraph 2 of the Motion the Applicant appears to limit his request to “all confidential material for the duration of the pre-trial and trial proceedings” from these cases, the Chamber sees no reason to exclude, from the scope of the request, confidential *inter partes* material from the appeals proceedings related to those cases, in so far as access is granted by this decision.

² Motion, paras 2, 10.

³ Motion, para. 1.

⁴ Motion, para. 8.

⁵ Response paras 1, 6 and Annex A. *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1; *Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36; *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61; *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25; *Prosecutor v. Milan Kovačević*, Case No. IT-97-24; *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & 23/1; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1; *Prosecutor v. Željko Meakić et al.*, Case No. IT-02-65; *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54; *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24; *Prosecutor v. Duško Tadić*, Case No. IT-94-1; *Prosecutor v. Momir Talić*, Case No. IT-99-36/1; and *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2.

locations which are in common with the *Mladić* Indictment.⁶ The Prosecution further submits that with respect to four other cases, the Chamber should grant limited access to relevant witness-related material because the overlapping crime base has been removed from the *Mladić* Indictment pursuant to Rule 73 *bis* and, as such, the Applicant has not established a legitimate forensic “interest” in these cases “except to the extent that there remain any witnesses in common”.⁷ Further, the Prosecution objects to the Applicant’s request for access in relation to the five remaining cases, stating that the Applicant’s justifications do not establish a legitimate forensic purpose.⁸ Finally, the Prosecution drew attention to certain categorical considerations which, if the Chamber grants access, should be taken into account.⁹

3. On 22 March 2012, the defence counsel who acted for Predrag Banović and Drazen Erdemović in their respective proceedings before this Tribunal informed the Chamber that he is no longer in contact with his former clients and is, therefore, not in a position to provide submissions on the Motion or the Response.¹⁰

4. On 23 March 2012, the defence counsel who acted for Naser Orić and Rasim Delić in their respective proceedings before this Tribunal responded to the Motion, submitting that the prerequisites for access to confidential *inter partes* material from these cases have not been satisfied, given that there is no nexus between either of these cases and the *Mladić* case.¹¹

5. On 27 March 2012, the defence counsel who acted for Duško Sikirica during proceedings before this Tribunal informed the Chamber that he is no longer in contact with Sikirica and is, therefore, not in a position to provide submissions on the Motion or the Response.¹²

⁶ Response, para. 6. The Prosecution list only four cases in para. 6, namely: *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54; and *Prosecutor v. Momir Talić*, Case No. IT-99-36/1. The Chamber notes, however, that in its further discussion of these cases in Annex A, the Prosecution requests the same limitation for access to materials from the *Prosecutor v. Brđanin*, Case No. IT-99-36. See Annex A, paras 4, 9, 15 and 20.

⁷ Response, paras 2, 6-8 and Annex B. These cases are: *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1; *Prosecutor v. Goran Jelisić*, Case No. IT-95-10; *Prosecutor v. Darko Mrđa*, Case No. IT-02-59; *Prosecutor v. Milan Martić*, Case No. IT-95-11.

⁸ Response, paras 2, 9-16. These cases are: *Prosecutor v. Rasim Delić*, Case No. IT-04-83; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48; *Prosecutor v. Mucić et al.*, Case No. IT-96-21; and *Prosecutor v. Naser Orić*, Case No. IT-03-68.

⁹ Response, paras 3-5, 17-25.

¹⁰ Information about case Predrag Banović IT-02-65/1-S, 22 March 2012; Information about case Drazen Erdemović IT-96-22-Tbis, 22 March 2012.

¹¹ Defence Response on Behalf of Naser Orić to Ratko Mladić’s Motion for Access to Completed Cases, 23 March 2012, paras 4, 11, 22-24; Defence Response on Behalf of Rasim Delić to Ratko Mladić’s Motion for Access to Completed Cases, 23 March 2012, paras 4, 11, 22-24.

¹² Information about case Duško Sikirica IT-95-8-T, 27 March 2012.

6. On 13 April 2012, the defence counsel who acted for Duško Knežević, a co-accused in the *Prosecutor v. Meakić et al.* case, filed a response to the Motion, not opposing access to any confidential material related to Knežević.¹³

7. No further responses were received in relation to the remaining cases outlined in the Motion.

II. APPLICABLE LAW

8. The Chamber recalls and refers to the applicable law governing requests for access to confidential *inter partes* material from other cases before the Tribunal, as set out in its previous decision.¹⁴

III. DISCUSSION

A. Preliminary Issues

9. The Motion purports to concern a request for access to materials from 33 cases. However, the Chamber observes that there are instances in the Motion whereby the cases against the separate accused were joined, resulting in identical disclosure in respect of each accused. For the purposes of establishing a nexus with the *Mladić* case, these cases will be discussed together, as the geographic, temporal, and material scope underlying the crimes charged in these respective indictments is the same.

10. In light of paragraph two of the Motion, and despite the Prosecution's submission to the contrary, the Chamber interprets the Motion to be limited to all *inter partes* confidential material.¹⁵ The Chamber will therefore not consider the Motion under the higher threshold that must be met in order to establish a legitimate forensic purpose in the context of requests for access to confidential *ex parte* material.¹⁶

11. Further, the Chamber notes that Counsel for Predrag Banović, Drazen Erdemović, Naser Orić, Rasim Delić, Duško Sikirica, and Duško Knežević filed submissions. However, the Chamber received no reactions from Counsel in relation to the other completed cases, despite its efforts to obtain such information.

¹³ Duško Knežević's Response to Mladić's Motion for Access to Completed Cases, 13 April 2012, para. 4.

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

¹⁵ Motion, para. 2, Response, footnote 2.

¹⁶ *Krstić* Access Decision, para. 6.

B. Identification of the Materials Sought

12. The Chamber is satisfied that the Applicant has identified with sufficient specificity the material sought, having requested access to “all *inter partes* confidential material” from the cases listed in the Motion.¹⁷

C. Access to Confidential *Inter Partes* Material

a) Cases for which Access to Confidential *Inter Partes* Material is Granted

13. The Chamber considers that there is a geographical, temporal or otherwise material overlap, between the below-listed completed cases and the *Mladić* case and, therefore, grants access to confidential *inter partes* material from the following:

- i) *Prosecutor v. Zeljko Meakić et al.*, Case No. IT-02-65, and *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1 (Omarska Camp and Keraterm Camp):¹⁸ The *Meakić et al.* Indictment charged crimes allegedly committed between May and August 1992 in the Omarska and Keraterm detention camps in Prijedor Municipality, amounting to persecutions of Bosnian Muslims, Bosnian Croats, and other non-Serbs on political, racial or religious grounds.¹⁹ Such persecutions, which included murder, are crimes also charged in the *Mladić* Indictment in relation to the same municipality and timeframe.²⁰ Further, the *Meakić et al.* Indictment alleges membership of a Joint Criminal Enterprise (“JCE”) with a similar objective to the overarching JCE contained in the *Mladić* Indictment; to “permanently remove Bosnian Muslim and Bosnian Croat inhabitants from the territories of BiH claimed as Bosnian Serb territory” (“overarching JCE”).²¹

Pursuant to Rule 11 *bis* of the Rules, the case against the accused in *Meakić et al.* was referred to the State Court of Bosnia and Herzegovina (“BiH”) on 20 July 2005.²² Thus, any

¹⁷ Motion, para. 1.

¹⁸ Whilst the Applicant has listed *Meakić et al.* and *Banović* as two separate cases, the respective accused are charged under the same Indictment and the Chamber will therefore discuss these cases together.

¹⁹ *Prosecutor v. Zeljko Meakić et al.*, Case No. IT-02-65/1, Consolidated Indictment, 5 July 2002 (“*Meakić et al.* Indictment”), Counts 1-5.

²⁰ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Fourth Amended Indictment, 16 December 2011 (“*Mladić* Indictment”), Counts 3, 5-6.

²¹ *Meakić et al.* Indictment, para. 19; *Mladić* Indictment, para 8.

²² *Prosecutor v. Zeljko Meakić et al.*, Case No. IT-02-65-PT, Decision on Prosecutor’s Motion for Referral of Case Pursuant to Rule 11 *bis*, 20 July 2005; *Prosecutor v. Zeljko Meakić et al.*, Case No. IT-02-65-AR11 *bis*.1, Decision on Joint Defence Appeal Against Decision on Referral Under Rule 11 *bis*, 7 April 2006.

access granted by this decision in relation to *Meakić et al.*, will necessarily be limited to those materials, in so far as they exist, that formed part of the trial record before the referral.

- ii) *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2; and *Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86.²³ The *Blagojević and Jokić*, *Obrenović*, and *Nikolić*, and *Pandurević and Trbić* Indictments charged crimes allegedly committed in and around Bratunac, Potočari, Srebrenica, Žepa and Zvornik in the period between July and December 1995.²⁴ The crimes charged in these Indictments include genocide, extermination, murder, persecutions and forcible transfer, crimes which the Accused is also charged with in relation to the same location and timeframe.²⁵ Further, the *Blagojević and Jokić* and *Obrenović and Nikolić* Indictments contain reference to a JCE with similar objectives to the JCE in the *Mladić* Indictment in respect of Srebrenica.²⁶

Pursuant to Rule 11 *bis* of the Rules, the case against Milorad Trbić was referred to the State Court of BiH on 27 April 2007.²⁷ Thus, any access granted by this decision in relation to Milorad Trbić will necessarily be limited to those materials, in so far as they exist, that formed part of the trial record before his referral. Further, the Chamber reiterates that pursuant to Rule 75 (G) (ii) of the Rules, it is only seised of the Motion in relation to those cases where no chamber remains seised of the first proceedings. Given that Vinko Pandurević, as a co-accused in the case of *Prosecutor v. Vujadin Popović et al.*,²⁸ has appealed against his conviction, and his case is currently before the Appeals Chamber, the request for access in relation to that accused should be addressed to the Appeals Chamber. For the foregoing reasons the Chamber lacks competence to take any decision on granting access to confidential *inter partes* materials in relation to Vinko Pandurević's case.

²³ The Chamber notes that the Defence made no submissions with respect to Vinko Pandurević and Milorad Trbić. However, for purposes of the Chamber's analysis of whether the criteria for access have been met, and given that the temporal, geographic, and material scope of the Indictment in that case is the same as the other cases that will be discussed in this paragraph, the Chamber does not require specific submissions on Pandurević and Trbić.

²⁴ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-T, Amended Joinder Indictment, 26 May 2003 ("*Blagojević and Jokić* Indictment"), Counts 1B-6; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002 ("*Nikolić and Obrenović* Indictment"), Counts 1A-6; *Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86-I, Indictment, 3 March 2005 ("*Pandurević and Trbić* Indictment"), Counts 1-7.

²⁵ *Mladić* Indictment, Counts 2-6, 8.

²⁶ *Mladić* Indictment, para. 19; *Blagojević and Jokić* Indictment, paras 30-33; *Obrenović and Nikolić* Indictment, paras 30-33.

²⁷ *Prosecutor v. Milorad Trbić*, Case No. IT-05-88/1-PT, Decision on Referral of Case Under Rule 11 *bis* With Confidential Annex, 27 April 2007.

²⁸ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88.

- iii) *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36 and *Prosecutor v. Momir Talić*, Case No. IT-99-36/I:²⁹ The *Brđanin* and *Talić* Indictments charged crimes allegedly committed in several municipalities in BiH, in the period between April and December 1992.³⁰ Such crimes included genocide, persecutions, extermination, deportation and forcible transfers, which are also charged in the *Mladić* Indictment in relation to the same municipalities and timeframe.³¹ The *Brđanin* and *Talić* Indictments also alleged participation in a JCE, the purpose of which was similar to the overarching JCE contained in the *Mladić* Indictment.³² However, the *Brđanin* and *Talić* Indictments encompass a wider range of municipalities than those contained in the *Mladić* Indictment, as well as municipalities that have been removed from the *Mladić* Indictment as dealt with in section III (C) (b) below.³³ Therefore, the following municipalities should be excluded from any access granted by this decision: Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Prnjavor, Šipovo, Skender Vakuf, and Teslić.
- iv) *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61: The *Deronjić* Indictment charged persecutions allegedly committed in Bratunac Municipality in the period between April and May 1992.³⁴ Such crimes are also charged in the *Mladić* Indictment in relation to the same municipality and timeframe.³⁵ Further, Miroslav Deronjić was alleged to have been a member of a JCE with a similar objective to the overarching JCE of which the Accused was allegedly a member.³⁶
- v) *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22: The *Erdemović* Indictment charged murder as a crime against humanity or, in the alternative, a violation of the laws or customs of war, in relation to the alleged shooting and killing of unarmed Bosnian Muslim men at

²⁹ The Chamber also notes that Brđanin and Talić were charged under the same indictment on 14 March 1999 and, subsequently, three further indictments were filed against them as co-accused: *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-I, Amended Indictment, 16 December 1999; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Third Amended Indictment, 16 July 2001; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Corrected Version of Fourth Amended Indictment, 10 December 2001. The Talić proceedings were separated from those against Brđanin on 20 September 2002: *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Decision on Prosecution's Oral Request for the Separation of Trials, 20 September 2002. Subsequently a fifth amended indictment was filed against Brđanin on 7 October 2002, and Talić passed away on 28 May 2003.

³⁰ *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Corrected Version of Fourth Amended Indictment, 10 December 2001 ("Talić Indictment"), Counts 1-12; *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Sixth Amended Indictment, 9 December 2003 ("Brđanin Indictment"), Counts 1-12;

³¹ *Mladić* Indictment, Counts 1, 3-4, 7-8.

³² *Mladić* Indictment, paras 8-13; *Talić* Indictment, paras 27.1-27.2; *Brđanin* Indictment, paras 27.1-27.4.

³³ It should be noted that whilst there is an overlap between the *Brđanin* and *Talić* Indictments with regards to municipalities, the *Talić* Indictment contains the following municipalities, which are not contained in the *Brđanin* Indictment: Bosanska Dubica; Skender Vakuf; Bihać-Ripač; Bosanska Dubica; and Bosanska Gradiška.

³⁴ *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-PT, Second Amended Indictment, 30 September 2003 ("*Deronjić* Indictment"), paras 27-40.

³⁵ *Mladić* Indictment, Count 3.

the Pilica collective farm, Zvornik municipality, on 16 July 1995.³⁷ This crime is also charged in the *Mladić* Indictment in Schedule E 9.2 in relation to the same municipality and timeframe.³⁸

- vi) *Prosecutor v. Stanislav Galić*, Case No. IT-98-29 and *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1: The *Galić* and *D. Milošević* Indictments charged crimes alleged to have occurred in Sarajevo in the period between September 1992 and November 1995.³⁹ The crimes charged included the crime of terror, sniping and shelling; crimes which are also alleged in relation to the same municipality and timeframe in the *Mladić* Indictment, pursuant to the Accused's alleged membership of the JCE to "establish and carry out 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".⁴⁰ Further, Dragomir Milošević is noted as an alleged member of this JCE in the *Mladić* Indictment.⁴¹
- vii) *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39 and *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1:⁴² The common indictment against Krajišnik and Plavšić charged crimes which allegedly occurred in several municipalities in the period between July 1991 and December 1992.⁴³ Such crimes included genocide, persecutions, murder, deportation and inhumane acts, charges which are also charged in the *Mladić* Indictment in relation to overlapping municipalities and timeframe.⁴⁴ Further, the common indictment against Krajišnik and Plavšić and the *Mladić* Indictment allege participation of the respective accused in the overarching JCE.⁴⁵ The common indictment against Krajišnik and Plavšić does, however, encompass a wider range of municipalities than those contained in the *Mladić* Indictment, as well as municipalities that have been removed from the *Mladić* Indictment, as dealt with in section III (C) (b) below. Therefore, the following municipalities should be excluded from any access granted by this decision: Bileća,

³⁶ *Deronjić* Indictment, para. 3; *Mladić* Indictment, para. 8.

³⁷ *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-PT, Indictment, 22 May 1996 ("Erdemović Indictment"), para. 12.

³⁸ *Mladić* Indictment, Counts 5 and 6.

³⁹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-I, Indictment, 26 March 1999 ("Galić Indictment"), Counts 1-7; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Amended Indictment, 18 December 2006 ("D. Milošević Indictment"), Counts 1-7.

⁴⁰ *Mladić* Indictment, paras 14-18; Counts 4-6, 9-10.

⁴¹ *Mladić* Indictment, para. 15.

⁴² Biljana Plavšić entered into a plea agreement on 30 September 2002. *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, Case No. IT-00-39&40-PT, Plea Agreement, 30 September 2002; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39&40/1-S, Decision Granting Prosecution's Motion to Dismiss Counts 1, 2, 4, 5, 6, 7 and 8 of the Amended Consolidate Indictment.

⁴³ *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, Case No. IT-00-39&40-PT, Amended Consolidated Indictment, 7 March 2002 ("Krajišnik and Plavšić Indictment"), Counts 1-8.

⁴⁴ *Krajišnik and Plavšić* Indictment, Counts 1-8, *Mladić* Indictment, Counts 1-8.

Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Gacko, Hadžići, Ilijaš, Nevesinje, Novo Sarajevo, Prnjavor, Rudo, Šipovo, Teslić, Višegrad, Vogošća, and Zvornik.

- viii) *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25: The *Krnojelac* Indictment charged crimes which allegedly occurred in Foča municipality, in particular at the KP Dom facility, in the period between April 1992 and August 1993.⁴⁶ Such crimes included persecutions and murders, which are also alleged in the *Mladić* Indictment.⁴⁷
- ix) *Prosecutor v. Milan Kovačević*, Case No. IT-97-24 and *Prosecutor v. Milomir Stakić*, Case No. IT-97-24: The *Kovačević* and *Stakić* Indictments charged crimes which allegedly took place in Prijedor municipality between April and December 1992.⁴⁸ Such crimes included genocide, persecutions, extermination, murder, deportation and inhumane acts, crimes which are also charged in the *Mladić* Indictment in relation to the same municipality and timeframe.⁴⁹ Further, Milomir Stakić was allegedly a member of a JCE that shared a similar objective to that of the overarching JCE contained in the *Mladić* Indictment.⁵⁰
- x) *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & 23/1: The *Kunarac et al.* Indictment charged crimes alleged to have occurred in Foča municipality between July 1992 and February 1993.⁵¹ Such crimes, which included torture and rape, are underlying offences which form part of the persecutions charged in the *Mladić* Indictment, in relation to the overlapping municipality and timeframe.⁵²
- xi) *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2:⁵³ The *Zelenović* Indictment charged crimes alleged to have occurred between July and October 1992 in Foča municipality.⁵⁴

⁴⁵ *Krajišnik and Plavšić* Indictment, paras 4, 7; *Mladić* Indictment, paras 8, 10.

⁴⁶ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-I, Third Amended Indictment, 25 June 2001 (“*Krnojelac* Indictment”), Counts 1-18.

⁴⁷ *Krnojelac* Indictment, Counts 1, 8-10; *Mladić* Indictment, Counts 3, 5-6.

⁴⁸ *Prosecutor v. Milan Kovačević*, Case No. IT-97-24-I, Amended Indictment, 15 June 1998 (“*Kovačević* Indictment”), Counts 1-15; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-PT, Fourth Amended Indictment, 11 April 2002 (“*Stakić* Indictment”), Counts 1-8.

⁴⁹ *Kovačević* Indictment, Counts 1-6, 12-13; *Stakić* Indictment, Counts 1-8; *Mladić* Indictment, Counts 1, 3-8.

⁵⁰ *Stakić* Indictment, paras 26-27; *Mladić* Indictment, para. 8.

⁵¹ *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-PT, Amended Indictment, 8 November 1999 (“*Kunarac et al.* Indictment”), Counts 1-25; *Prosecutor v. Zoran Vuković*, Case No. IT-96-23/1-PT, Amended Indictment, 5 October 1999 (“*Vuković* Indictment”), Counts 1-50.

⁵² *Mladić* Indictment, Count 3.

⁵³ For sake of clarity, the Chamber notes that Dragan Zelenović was initially indicted along with seven other accused on 26 June 1996. Due to the filing of various amended indictments, as a result of the separation and joinder of cases, the relevant indictment against Zelenović was filed on 20 April 2001. This Amended Indictment also indicted Gojko Janković and Radovan Stanković whose cases were referred to to the State Court of BiH pursuant to Rule 11 bis of the Rules, on 8 December 2005 and 29 September 2005, respectively.

⁵⁴ *Prosecutor v. Gojko Janković, Dragan Zelenović and Radovan Stanković*, Case No. IT-96-23/2-I, Amended Indictment, 20 April 2001 (“*Zelenović* Indictment”), Counts 1-50.

Such crimes included torture and rape, underlying offences which form part of the persecutions charged in relation to the same municipality and timeframe in the *Mladić* Indictment.⁵⁵

xii) *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1 and *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8: The *Kvočka* and *Sikirica* Indictments charged crimes which allegedly took place in the Omarska, Keraterm, and Trnopolje camps in Prijedor Municipality in the period between May and August 1992.⁵⁶ Such alleged crimes included persecutions and murder and, additionally, in the *Sikirica* Indictment, the crime of genocide - crimes also charged in the *Mladić* Indictment in relation to the same municipality and timeframe.⁵⁷ Further, Miroslav Kvočka and Duško Sikirica have been identified as alleged participants in a JCE with an objective that corresponds with that of the overarching JCE contained in the *Mladić* Indictment.⁵⁸

xiii) *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54: The *Slobodan Milošević* Indictment charged crimes that allegedly occurred in various municipalities in BiH in the period between 1 March 1992 and 31 December 1995.⁵⁹ Such alleged crimes included genocide, persecutions, extermination, murder, deportation, and inhumane acts, crimes also alleged in the *Mladić* Indictment.⁶⁰ The *Slobodan Milošević* Indictment also charged crimes alleged to have occurred in Sarajevo between April 1992 and November 1995, including murder and attacks on civilians, crimes which are also alleged in the *Mladić* Indictment.⁶¹ Further, the *Slobodan Milošević* Indictment and *Mladić* Indictment allege that the respective accused participated in the same overarching JCE.⁶² The *Slobodan Milošević* Indictment does, however, encompass a wider range of municipalities than those contained in the *Mladić* Indictment, as well as municipalities that have been removed from the *Mladić* Indictment, as dealt with in section III (C) (b) below. Therefore, the following municipalities should be excluded from any access granted by this decision: Bihać, Bileća, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bosanski Šamac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Gacko, Goražda, Hadžići, Ilidža,

⁵⁵ *Zelenović* Indictment, Counts 5-8, 13-14, 16, 49-50; *Mladić* Indictment, paras 59 (b)-(c).

⁵⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1/T, Amended Indictment, 26 October 2000 ("*Kvočka* Indictment"), Counts 1-3, 8-10; *Prosecutor v. Zeljko Meakić et al.*, Case No. IT-02-65, Consolidated Indictment (Omarska and Keraterm Camps), 5 July 2002 ("*Meakić* Indictment"), Counts 1-5; *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-PT, Second Amended Indictment, 3 January 2001 ("*Sikirica* Indictment"), Counts 1-11.

⁵⁷ *Mladić* Indictment, Counts 1, 3, 5-6.

⁵⁸ *Meakić* Indictment, paras 19-21; *Mladić* Indictment, para. 8.

⁵⁹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Prosecution Motion to Amend the Bosnia Indictment with Confidential Annex B, 22 November 2002 ("*Slobodan Milošević* Indictment"), Counts 1-29.

⁶⁰ *Slobodan Milošević* Indictment, Counts 1-18; *Mladić* Indictment, Counts 1, 3-8.

⁶¹ *Slobodan Milošević* Indictment, Counts 23, 27, 29; *Mladić* Indictment, Counts 5-6, 10.

Ilijaš, Nevesinje, Novo Sarajevo, Prnjavor, Rudo, Šekovići, Šipovo, Teslić, Trebinje, Višegrad, Vogošća, and Zvornik.

xiv) *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2: The *Nikolić* Indictment charged crimes alleged to have occurred at the Sušica camp in Vlasenica municipality between June and September 1992.⁶³ Such alleged crimes included persecutions and murder, crimes which are also alleged in the *Mladić* Indictment in relation to the same municipality and timeframe.⁶⁴

xv) *Prosecutor v. Duško Tadić*, Case No. IT-94-1: The *Tadić* Indictment charged crimes alleged to have occurred in Prijedor municipality between May and December 1992.⁶⁵ Such alleged crimes included persecutions and murder, which are also alleged in the *Mladić* Indictment in relation to the same municipality and timeframe.⁶⁶

b) Cases for which Access to Confidential *Inter Partes* Material is Granted to a Limited Extent

14. The Chamber considers that, due to the removal of various locations from the *Mladić* Indictment, the Applicant has not demonstrated a legitimate forensic purpose in the four cases listed below:

i) *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1 and *Prosecutor v. Goran Jelisić*, Case No. IT-95-10: The *Češić* and *Jelisić* Indictments charged crimes alleged to have occurred in Brčko municipality between May and June 1992.⁶⁷ Such alleged crimes included genocide and murder.⁶⁸ However, the related charges under counts one, five and six of the *Mladić* Indictment, in relation to the same municipality and timeframe, were removed from the *Mladić* Indictment.⁶⁹

⁶² *Slobodan Milošević* Indictment, paras 6-7; *Mladić* Indictment, paras 8-10.

⁶³ *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-PT, Second Amended Indictment, 7 January 2002 ("*Nikolić* Indictment"), Counts 1-5.

⁶⁴ *Mladić* Indictment, Counts 3, 5, 6.

⁶⁵ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Indictment (Amended), 14 December 1995 ("*Tadić* Indictment"), Counts 1-34.

⁶⁶ *Tadić* Indictment, Counts 1, 5-11, 24-28, 29-34; *Mladić* Indictment, Counts 3, 5-6.

⁶⁷ *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1-PT, Third Amended Indictment, 26 November 2002 ("*Češić* Indictment"), Counts 1-12; *Prosecutor v. Goran Jelisić and Ranko Češić*, Case No. IT-95-10-PT, Second Amended Indictment, 20 October 1998 ("*Jelisić* Indictment"), Counts 1-44.

⁶⁸ *Češić* Indictment, Counts 1-6, 9-12; *Jelisić* Indictment, Counts 1, 4-23, 32-33, 38-39.

⁶⁹ *Mladić* Indictment, para. 47 and Schedule B, Incident 4.1; Schedule C, Incident 5.1; Schedule D, Incident 4.

- ii) *Prosecutor v. Darko Mrđa*, Case No. IT-02-59: The *Mrđa* Indictment charged crimes alleged to have occurred on a road over the Vlašić Mountain in Skender Vakuf municipality, BiH, on 21 August 1992.⁷⁰ This incident was removed from the *Mladić* Indictment.⁷¹
- iii) *Prosecutor v. Milan Martić*, Case No. IT-95-11: The *Martić* Indictment charged crimes alleged to have occurred in several municipalities, including Bosanski Novi, between August 1991 and December 1995.⁷² Such alleged crimes included persecutions, extermination and murder, and deportation.⁷³ The Accused is named together with *Martić* as a participant in the overarching JCE.⁷⁴ The charges for which there was an overlap related solely to Bosanski Novi municipality and were removed from the *Mladić* Indictment.⁷⁵

15. The Chamber accepts, as submitted by the Prosecution, that there may remain witnesses in common between the above discussed completed cases and the current case, for example those who testified about activities in several municipalities, including one or more covered by the *Mladić* Indictment. Therefore, while access to confidential *inter partes* material granted by this decision will not encompass those municipalities removed from the *Mladić* Indictment, it will include confidential *inter partes* material relating to witnesses that each of these cases respectively has in common with the *Mladić* case. However, any transcript of testimony from witnesses in common with the completed case and this case will fall under the Prosecution's disclosure obligations under Rule 66 (A) (ii) of the Rules. Thus, any access granted by this decision will relate only to transcript of testimony from witnesses which are in common with the completed cases and this case but which the Prosecution has decided not to call in this case; filings; and exhibits.

c) Cases for which Access to Confidential *Inter Partes* Material is Denied

16. Whilst the Chamber notes the Applicant's argument that access to confidential *inter partes* materials may help in its preparation of the Defence case, the Chamber considers that the Applicant has not established a sufficient forensic purpose, in order to justify access to confidential *inter partes* materials in the following cases:

⁷⁰ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-S, Amended Indictment, 4 August 2003 ("*Mrđa* Indictment"), paras 16-17, Counts 2-3.

⁷¹ *Mladić* Indictment, Schedule B, Incident 13.6.

⁷² *Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, Amended Indictment, 9 December 2005 ("*Martić* Indictment"), Counts 1-19.

⁷³ *Martić* Indictment, Counts 1-3, 10.

⁷⁴ *Martić* Indictment, para. 6.

⁷⁵ *Mladić* Indictment, para. 47.

- i) *Prosecutor v. Rasim Delić*, Case No. IT-04-83: The *Delić* Indictment charged crimes alleged to have occurred in various municipalities in BiH in the period between June 1993 and September 1995.⁷⁶ Various units of the Army of BiH, including the “El Mujahed Detachment”, were allegedly responsible for committing these crimes, including murder, cruel treatment, and rape.⁷⁷ The Accused is not charged with crimes in the municipalities stipulated in the *Delić* Indictment. Thus, the Applicant has failed to demonstrate a sufficient forensic purpose in order to justify access to confidential *inter partes* materials.
- ii) *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47: The *Hadžihasanović* Indictment charged crimes alleged to have occurred in various municipalities in BiH between January 1993 and March 1994.⁷⁸ Such alleged crimes included murder and cruel treatment.⁷⁹ The *Mladić* Indictment does not charge crimes in the municipalities stipulated in the *Hadžihasanović* Indictment. Thus, the Applicant has failed to demonstrate a sufficient forensic purpose in order to justify access to confidential *inter partes* materials.
- iii) *Prosecutor v. Sefer Halilović*, Case No. IT-01-48: The *Halilović* Indictment charged the crime of murder in relation to crimes alleged to have occurred in the villages of Grabovica and Uzdol, BiH, in September 1993.⁸⁰ The alleged crimes took place in municipalities not stipulated in the *Mladić* Indictment. Thus, the Applicant has failed to demonstrate a sufficient forensic purpose in order to justify access to confidential *inter partes* materials.
- iv) *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21: The *Mucić* Indictment charged crimes alleged to have occurred in the Čelebići camp in Konjić municipality between May and December 1992.⁸¹ The Accused is not charged with crimes in the municipality stipulated in the *Mucić* Indictment. Thus, the Applicant has failed to demonstrate a sufficient forensic purpose in order to justify access to confidential *inter partes* materials.
- v) *Prosecutor v. Naser Orić*, Case No. IT-03-68: The *Orić* Indictment charged crimes which included murder and cruel treatment in Srebrenica in the period between September 1992

⁷⁶ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Amended Indictment, 14 July 2006 (“*Delić* Indictment”), Counts 1-4.

⁷⁷ *Delić* Indictment, Counts 1-4.

⁷⁸ *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-PT, Third Amended Indictment, 26 September 2003 (“*Hadžihasanović* Indictment”), Counts 1-7.

⁷⁹ *Hadžihasanović* Indictment, Counts 1-4.

⁸⁰ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-I, Indictment, 10 September 2001 (“*Halilović* Indictment”), Count 1.

⁸¹ *Prosecutor v. Zdravko Mucić*, Case No. IT-96-21-T, Amended Indictment, 30 October 1996 (“*Mucić* Indictment”), Counts 1-50.

and March 1993.⁸² In contrast, the Accused is charged with crimes allegedly committed between July and November 1995.⁸³ Thus, the Applicant has failed to demonstrate a sufficient forensic purpose in order to justify access to confidential *inter partes* materials.

D. Category Considerations

17. Notwithstanding the discussion above concerning the cases in relation to which access has been granted, either fully or to a limited extent, the Chamber will here discuss a number of general considerations with respect to information from specific categories of materials.

(a) Category (a), (c) and (d) Materials

18. The Chamber considers that the Applicant has shown a legitimate forensic purpose for access to category (a), (c), and (d) materials, in accordance with this decision and its disposition. The Chamber notes, however, that these specific categories may contain evidentiary material that contains sensitive information which would be of little or no value to the Applicant. The Chamber is of the opinion that a limitation should be placed on access to such material, and that information from the following categories has no forensic purpose: 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 the public transcript and public broadcast of a hearing; witness scheduling, witness appearance, witness attendance; execution of arrest warrant enforcement of sentences; internal memoranda assessing state cooperation; health of the accused; and notices of compliance filed in respect of other access decisions.⁸⁴ Therefore, information from the aforementioned categories will be excluded from any access granted by this decision.

⁸² *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Third Amended Indictment, 30 June 2005 (“*Orić* Indictment”), Counts 1-2.

⁸³ *Mladić* Indictment, para 19.

⁸⁴ Decision on Motions By Radivoje Miletić and Drago Nikolić for Access to Confidential Materials in the *Mladić* Case, 5 July 2012; *Krstić* Access Decision, para. 12 and p. 6; 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.

(b) Category (b) Materials

19. The Motion requests access to all audio recordings of all closed and private session trial sessions.⁸⁵ The Registry expressed practical concerns as to the provision of category (b) materials, namely in relation to the time and resources needed to provide the audio material requested.⁸⁶ At the request of the Chamber, the Applicant clarified that its request for access to category (b) materials only relates to the B/C/S audio for those sessions for which no B/C/S transcription is available.⁸⁷ The Applicant further explained that the need for such audio recordings stems from the fact that not all of Defence staff can speak English.⁸⁸

20. According to the Rules, only material disclosed pursuant to Rule 66 (A) of the Rules shall be made available to the defence in a language which the accused understands. This Rule does not extend to any other type of disclosure. Indeed, in relation to Rule 66 (A) disclosure, the Tribunal's jurisprudence holds that the guarantees provided by Article 21 (4) of the Tribunal's Statute do not extend to all documents, but extend only to evidence forming the basis of the Trial Chamber's determination of the charges against an accused.⁸⁹ Whilst the Chamber recognises that access to category (b) materials may be of benefit to the Applicant, the Chamber finds that the burden such a grant of access would place on the Prosecution and Registry is not outweighed by the interests of justice. Thus, category (b) materials will be excluded from any access granted by this decision.

(c) Category (e) Materials

21. In relation to this category, the Chamber refers to its approach taken in the *Krstić* Access Decision and excludes this category of material from the access granted by this decision on the basis that such material, not having been admitted into evidence, is not part of the body of evidence

⁸⁵ Motion, paras 2, 10.

⁸⁶ Rule 65 *ter* Meeting, 26 March 2012, T.335-336.

⁸⁷ Rule 65 *ter* Meeting, 26 March 2012, T. 335-336.

⁸⁸ Rule 65 *ter* Meeting, 26 March 2012, T. 336.

⁸⁹ *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Decision on Defence's Motion Concerning Translation of All Documents, 19 October 2001. It should be noted that further clarification on this decision was provided by the Chamber in an oral order on 13 November 2001 where it was stated that: "as to which exhibits shall be translated before submission to the Chamber ... First, all documents that refer directly to facts that constitute the grounds of the charges in the indictment; Secondly, all documents that refer directly to one of the accused persons; Thirdly, all documents that concern the specific area where the crimes were allegedly committed in the time frame set out in the indictment. Documents that do not have to be translated ... First, official United Nations documents and reports; Secondly, excerpts from books and other publications that are publicly available; Thirdly, documents that contained really background evidence, for instance, information that does not relate specifically and directly to the incidents, charges, or to the accused as set out above.", *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, 13 November 2001, T. 5575-5577.

and thus remains in the domain of the tendering party.⁹⁰ Thus, the Chamber lacks competence to take any decision on granting access, given that such material has been removed from the case file.

(d) Material Provided to the Prosecution Pursuant to Rule 70 of the Rules

22. In relation to materials in the cases contained in the Motion which have been provided pursuant to Rule 70 of the Rules, the Chamber considers that they must be excluded from any access granted through this decision, unless the provider of this material has consented to the disclosure of this material to the Applicant. In this respect, it will be for the relevant party to seek any Rule 70 provider's consent to disclosure to such material in this case, and identify to the Registry any such Rule 70 material once such consent has been obtained.

(e) Material Subject to Delayed Disclosure Orders

23. An exception to the otherwise generally liberal regime for access to confidential materials from other cases concerns material relating to protected witnesses for whom orders of delayed disclosure have been issued.⁹¹ Although it is possible that such material may have forensic value to the Applicant, the Chamber must weigh this against the safety and protection of victims and witnesses, pursuant to Articles 20 (1) and 22 of the Tribunal's Statute and Rule 75 (A) of the Rules. The Chamber is of the opinion that given the current stage of the proceedings, any such potential forensic value to the Applicant does not outweigh the aforementioned considerations and, therefore, this material will be excluded from any access granted by this decision.

IV. DISPOSITION

24. For the foregoing reasons and pursuant to Article 20 (1) and 22 of the Tribunal's Statute, and Rules 54, 66 (A), 70, 75 and 126 *bis* of the Rules, the Chamber hereby **GRANTS** the Motion **in part** thereby granting the Applicant access, subject to limitations, exclusions and considerations set out above and below, to all confidential *inter partes* material, including all confidential closed and

⁹⁰ *Krstić* Access Decision, para. 12; *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, IT-95-5/18-T, 18 January 2012, p. 3.

⁹¹ *Karadžić* Access Request Decision, para. 15.

private session transcripts, all confidential exhibits, and all confidential filings and submissions, including all confidential Chamber decisions, in the following cases:

- viii) *Prosecutor v. Predrag Banović;*
Prosecutor v. Vidoje Blagojević and Dragan Jokić;
Prosecutor v. Momir Nikolić;
Prosecutor v. Dragan Obrenović;
Prosecutor v. Miroslav Deronjić;
Prosecutor v. Dražen Erdemović;
Prosecutor v. Stanislav Galić;
Prosecutor v. Dragomir Milošević;
Prosecutor v. Milorad Krnojelac;
Prosecutor v. Milan Kovačević;
Prosecutor v. Milomir Stakić;
Prosecutor v. Dragoljub Kunarac et al.;
Prosecutor v. Dragan Zelenović;
Prosecutor v. Miroslav Kvočka et al.;
Prosecutor v. Duško Sikirica et al.;
Prosecutor v. Dragan Nikolić;
Prosecutor v. Duško Tadić;
- (ii) *Prosecutor v. Željko Meakić et al. and Prosecutor v. Milorad Trbić*, in so far as the requested materials formed part of the trial record before the referral;
- (iii) *Prosecutor v. Radoslav Brđanin and Prosecutor v. Momir Talić*, in so far as the requested materials do not relate to the municipalities of Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Prnjavor, Šipovo, Skender Vakuf and Teslić;
- (iv) *Prosecutor v. Momčilo Krajišnik and Prosecutor v. Biljana Plavšić*, in so far as the requested materials do not relate to the municipalities of Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Gacko, Hadžići, Ilijaš, Nevesinje, Novo Sarajevo, Prnjavor, Rudo, Šipovo, Teslić, Višegrad, Vogošća, and Zvornik;

(v) *Prosecutor v. Slobodan Milošević*, in so far as the requested materials do not relate to the municipalities of Bihać, Bileća, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bosanski Šamac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Gacko, Goražda, Hadžići, Ilidža, Sarajevo (Ilijaš), Nevesinje, Srebrenica (Novo Sarajevo), Prnjavor, Rudo, Šekovići, Šipovo, Teslić, Trebinje, Višegrad, Vogošća, and Zvornik;

25. (vi) *Prosecutor v. Ranko Češić, Prosecutor v. Goran Jelisić, Prosecutor v. Darko Mrđa, Prosecutor v. Milan Martić*, in so far as access to confidential *inter partes* materials granted by this decision will not encompass those municipalities removed from the *Mladić* Indictment, but including confidential *inter partes* material related to witnesses that each of these cases respectively has in common with the *Mladić* case. Further, access will be limited to the transcript of testimony from witnesses which are in common with the completed cases and this case but which the Prosecution has decided not to call in this case; filings; and exhibits;

ORDERS the Prosecution and the relevant Defence to identify to the Registry all *inter partes* confidential material set out in paragraph 25;

ORDERS that the material, including audio and video files and/or transcripts which fall into the following list of categories, 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 the public transcript and public broadcast of a hearing; witness scheduling, witness appearance, witness attendance; execution of arrest warrant enforcement of sentences; internal memoranda assessing state cooperation; health of the accused; and notices of compliance filed in respect of other access decisions;

ORDERS that the material, covered by delayed disclosure orders, be excluded from the scope of this decision;

ORDERS the Prosecution and the relevant Defence to determine without undue delay which of the requested material used as evidence in the cases identified in paragraphs 13-14 is subject to the provisions of Rule 70 of the Rules, and seek the requisite consent from the relevant providers for disclosure to the Applicant, and where such consent is given, to identify that material to the Registry;

REQUESTS the Registry;

- (i) to disclose to the Applicant, the following material:
 - (a) the *inter partes* confidential, non-Rule 70 material from the cases identified in paragraphs 13-14, once it has been identified by the Prosecution and the relevant Defence in accordance with this decision;
 - (b) the Rule 70 material, once the Prosecution and the relevant Defence have identified such material upon receiving consent from the relevant Rule 70 provider;

ORDERS the Applicant, if disclosure to specified members of the public is directly and specifically necessary for the preparation and presentation of his case, to file a motion to the Chamber seeking such disclosure. For the purpose of this decision, “the public” means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Tribunal, the staff of the Registry, the Prosecutor and his representatives, and the Applicant, including counsel, and any persons involved in the preparation of the case, who have been instructed or authorised by the Applicant to have access to the confidential material from the cases identified in paragraphs 13-14. The “public” also includes, without limitation, family members, and friends of the Applicant and defence counsel in other cases or proceedings before the Tribunal; the media; and journalists;

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 such person has been provided with such information, he or she must return it to the Applicant 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 the case who have been instructed or authorised by the Applicant to have access to confidential material from the cases identified in paragraphs 13-14, and any other persons for whom prior authorisation by the Chamber has been granted by a separate decision, shall not disclose to any members of the public: the names of witnesses; their whereabouts; transcripts of witness testimonies; exhibits; or any information which would enable witnesses to be identified and would breach the confidentiality of the protective measures already in place;

ORDERS that the Applicant, and any persons who have been instructed or authorised by the Applicant to have access to the confidential material from the cases identified in paragraphs 13-14,

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;


ORDERS that nothing in this decision shall affect the disclosure obligations of the Prosecution under Rules 66 and 68 of the Rules;

AFFIRMS that, pursuant to Rule 75 (F) (i) of the Rules, any protective measures that have been ordered in respect of any witness in the cases identified in paragraphs 13-14, shall continue to have effect *mutatis mutandis* in the case against the Applicant;

INSTRUCTS the Registry to serve this Decision on the relevant Defence of those cases listed in the Motion, 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 seventh day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

