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Prosecution response to "Requete du General Stanislav Galic aux fins d'accès à des documents confidentiels dans l'affaire Ratko Mladic", submitted by Prosecution on 29 April 2016			
COMMENTS			
Also filed in Case IT-09-92-T			

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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 Nos. IT-09-92-T
MICT-14-83
Date: 29 April 2016
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**PROSECUTION RESPONSE TO « REQUÊTE DU
GÉNÉRAL STANISLAV GALIĆ AUX FINS D'ACCÈS À
DES DOCUMENTS CONFIDENTIELS DANS
L'AFFAIRE RATKO MLADIĆ »**

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

The Office of the Prosecutor:

Peter McCloskey
Alan Tieger

The Prosecutor v. Stanislav Galić (MICT-14-83)

The Office of the Prosecutor:

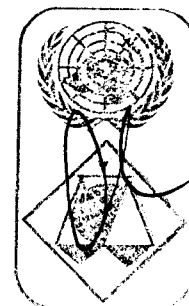
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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

**Case Nos. IT-09-92-T
MICT-14-83**

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**PROSECUTION RESPONSE TO « REQUÊTE DU GÉNÉRAL STANISLAV
GALIĆ AUX FINS D'ACCÈS À DES DOCUMENTS CONFIDENTIELS DANS
L'AFFAIRE RATKO MLADIĆ »**

I. OVERVIEW

1. In his Request,¹ Galić seeks access to *inter partes* confidential transcripts, exhibits, filings and decisions in the *Mladić* case.² As Galić has generally demonstrated a legitimate forensic purpose justifying access to relevant evidentiary materials, the Prosecution does not oppose access to confidential transcripts and exhibits, subject to the limitations outlined below.³ However, Galić has shown no legitimate forensic purpose justifying access to confidential filings and decisions, and his Request should be denied in this regard.

¹ *Prosecutor v. Galić*, Case No.MICT-14-83, Requête du Général Stanislav Galić aux Fins D'Accès à des Documents Confidentiels Dans L'Affaire Ratko Mladić, 15 April 2016 ("Request").

² Request, p.2, para.1(a)-(d). While Galić also seeks access to public transcripts, these are now publicly available through the ICTY website, rendering this portion of his request moot.

³ See below paras.3-6.

II. GALIĆ SHOULD ONLY BE GRANTED ACCESS TO MATERIAL FOR WHICH HE HAS SHOWN A LEGITIMATE FORENSIC PURPOSE

A. The Prosecution does not oppose Galić's request for access to confidential evidence, subject to certain limitations

2. Galić has generally demonstrated a legitimate forensic purpose⁴ justifying access to *inter partes* confidential transcripts and exhibits from the *Mladić* case.⁵ As Galić's case is closed, "the only legitimate forensic purpose" potentially justifying access to confidential materials is "to establish a 'new fact' capable of constituting the basis for a review" of his convictions.⁶ Given the nexus between the two cases, the Prosecution does not oppose his request for these two categories of evidence, subject to the following limitations.

3. First, the temporal scope of his Request⁷ is overbroad. Based on Galić's conviction, his access to confidential transcripts and exhibits should be limited to those that relate to events in Sarajevo between 10 September 1992 and 10 August 1994.⁸

⁴ A party seeking access to material in another case must show a legitimate forensic purpose for such access by demonstrating it is both relevant and essential. The relevance of such material may be demonstrated by showing a nexus between the two proceedings consisting of a geographical, temporal or otherwise material overlap. To show the material is essential, the party seeking it must demonstrate a good chance that access to this evidence will materially assist the applicant in preparing his case. *Prosecutor v. Delić*, Case No.IT-04-83-A, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Rasim Delić Case, 19 May 2009, para.7; *Prosecutor v. Karadzic*, Case No.IT-95-5/18-T ("*Karadžić*"), Decision on Defence Request for Access to Confidential Materials from Karadžić Case, 8 November 2012 ("*Karadžić* 8 November 2012 Decision"), paras.5, 7 (citing *Prosecutor v. Đorđević*, Case No.IT-05-87/1-PT, Decision on Vladimir Đorđević's Motion for Access to All Material in *Prosecutor v. Limaj et al.*, 6 February 2008 ("*Đorđević* Decision"), para.7). The Prosecution notes that for ease of reference, the citations herein to cross-filed Decisions use only one case name and number.

⁵ Request, pp.4-5, paras.1-4.

⁶ *Niyitegeka v. Prosecutor*, Case No.MICT-12-16, Decision on Niyitegeka's Urgent Request for Orders Relating to Prosecution Witnesses, 29 January 2016 ("*Niyitegeka* Decision"), para.9 (citing *Rutaganda v. Prosecutor*, Case No.ICTR-96-3-R ("*Rutaganda*"), Decision on Georges A. N. Rutaganda's Appeal against Decision on Request for Closed Session Testimony and Sealed Exhibits, 22 April 2009 ("*Rutaganda* 22 April 2009 Decision"), para.16; *Prosecutor v. Kamuhanda*, Case No.MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the *Nshogoza* Case, 9 November 2015 ("*Kamuhanda* Decision"), para.5). See also *Rutaganda*, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karempera et al.* Case, 10 July 2009 ("*Rutaganda* 10 July 2009 Decision"), paras.21-22.

⁷ Request, p.2, para.2 ("*aux événements de Sarajevo de 1992 à 1994*").

⁸ See generally *Galić* TJ, paras.595-602 (using "Indictment Period", defined at p.333 as 10 September 1992 through 10 August 1994), 604, 607, 751.

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4. Second, and consistent with the substantive scope of his request, Galić's access to confidential transcripts should be limited to witness testimony and should exclude non-evidentiary and procedural matters.⁹

5. Third, Galić should only be granted access to confidential exhibits that were admitted into evidence.¹⁰

6. Finally, ICTY Rule 70 material may not be provided absent the provider's consent.¹¹ Accordingly, the Prosecution and Defence will need a reasonable opportunity to seek such consent and notify the Registry thereof.¹²

B. Galić's request for access to confidential filings and decisions should be denied because he has demonstrated no legitimate forensic purpose for such access

7. Galić has failed to show any legitimate forensic purpose justifying access to confidential filings and decisions, and his Request in relation to these materials should be denied.

8. His stated purpose—to find new facts in order to bring a potential request for review¹³—only justifies access to evidence. Confidential filings and decisions “often contain information wholly unrelated to the evidentiary basis of the case” and thus are unlikely to assist an applicant with his defence.¹⁴

9. Here, Galić has failed to make any showing that there is a “good chance”¹⁵ that the confidential filings and decisions to which he seeks access will lead to the establishment of a “new fact capable of constituting the basis for a review” of his

⁹ *Prosecutor v. Stanišić and Župljanin*, Decision Partially Granting Motion by Franko Simatović for Access to Confidential Materials in the Stanišić Case, 19 July 2011 (“*Stanišić and Župljanin* Decision”), paras.19-20 (denying access to confidential transcripts other than testimony because “hearings which are held in closed session concern mostly trial management and procedural issues and rarely invoke confidential evidence which could be of assistance to the Applicant”).

¹⁰ See *Prosecutor v. Tolimir*, Case No.IT-05-88/2-T, Decision on Motion for Access to MFI and MNA Documents, 18 January 2012, p.2; *Karadžić* 8 November 2012 Decision, para.14 (“The Chamber sees no reason to burden the parties in the *Karadžić* Case and the Registry with providing Mladić with documentary material which is not in evidence or has been marked for identification pending admission.”).

¹¹ ICTY Rules of Procedure and Evidence, Rule 70(B).

¹² See e.g. *Karadžić* 8 November 2012 Decision, paras.16, 20(b) (ordering the parties to identify and seek consent to disclose Rule 70(B) material “without delay”).

¹³ Request, p.5, paras.2-3.

¹⁴ *Stanišić and Župljanin* Decision, paras.19-20 (denying access to confidential decisions and filings).

¹⁵ To demonstrate a legitimate forensic purpose, an applicant must demonstrate “a good chance that access to this evidence will materially assist the applicant in preparing his case.” *Karadžić* 8 November 2012 Decision, para.7 (citing *Dorđević* Decision, para.7).

conviction.¹⁶ As Tribunal jurisprudence shows, “cursory submissions, absent *any* explanation or clarification, fail to demonstrate a legitimate forensic purpose justifying access”.¹⁷ An applicant whose case is closed may not simply engage in a “fishing expedition”.¹⁸

10. This is particularly important where, as here, complying with any decision granting access would impose a considerable burden on both party and Registry resources, particularly in light of the size of the record in this case. Accordingly, Galić should not be granted such access absent a “reasoned application” identifying “with reasonable scope and clarity, items or categories of items which may relate to specific evidentiary matters” and “show[ing] a legitimate forensic purpose” for such access.¹⁹

III. CONCLUSION

11. Subject to the above limitations, the Prosecution does not oppose Galić’s Request to the extent it seeks access to *inter partes* confidential transcripts and exhibits from the *Mladić* case regarding events in Sarajevo between 10 September 1992 and 10 August 1994. He should not be granted access to confidential filings and decisions because he has shown no legitimate forensic purpose justifying such access.

¹⁶ See *Niyitegeka* Decision, para.9 (citing *Rutaganda* 22 April 2009 Decision, para.16; *Kamuhanda* Decision, para.5). See also *Rutaganda* 10 July 2009 Decision, paras.21-22.

¹⁷ *Kamuhanda* Decision, para.5 (denying an applicant’s request for access to confidential material where he failed to provide any explanation as to why there was a legitimate forensic purpose justifying access) (emphasis in original). See also *Karadžić*, Decision on Motion for Access to Confidential Filings and Decisions in Enforcement Proceedings, 17 April 2012, p.3 (denying access to confidential decisions and filings in enforcement proceedings where the applicant failed to set out sufficient argument or evidence to demonstrate they could provide material assistance to his case).


¹⁸ *Niyitegeka* Decision, para.9 (citing *Prosecutor v. Dragomir Milošević*, Case No.IT-98-29/1-A, Decision on Radovan Karadžić’s Motion for Access to Confidential Material in the *Dragomir Milošević* Case, 19 May 2009, para.11).


¹⁹ *Stanišić and Župljanin* Decision, para.22 (denying an applicant access to confidential filings and decisions because they are often wholly unrelated to the evidentiary basis of the case, but noting it would consider ordering disclosure of relevant material in response to a more targeted request). See also paras.19-20. Should the Chamber grant Galić access to any portion of the requested confidential filings and decisions, at a minimum materials related to the following issues should be excluded because they contain sensitive information of little or no evidentiary value: remuneration of counsel, provisional release, fitness to stand trial, Mladić’s health or personal information, conditions of detention, internal memoranda assessing state cooperation, notices of non-attendance in court, modalities of trial, subpoenas, video-conference links, orders to redact the public transcript and the public broadcast of a hearing, witness protective measures, witness protection, witness scheduling, witness appearance and attendance, execution of arrest warrant, and notices of compliance regarding other access decisions. See e.g. *Prosecutor v. Mladić*, Case No.IT-09-92-T, Decision on Mladić Motion for Access to Completed Cases, 7 September 2012, para.18; *Karadžić* 8 November 2012 Decision, para.15; *Prosecutor v. Stanišić and Simatović*, Case No.IT-03-69-T (“*Stanišić and Simatović*”), Decision on Motions of Mićo Stanišić and Stojan Župljanin for Access to all Confidential Materials in the *Stanišić and Simatović* Case, 10 March 2011, p.14; *Stanišić and Simatović*, Decision on Requests of Jovica Stanišić for Access to Confidential Materials in the *Krajišnik and Simić et al.* Cases, 24 March 2011, p.6.

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Respectfully submitted,


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Dated this 29th day of April 2016
At The Hague, The Netherlands

