



UNITED
NATIONS

Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-PT
 MICT-14-82

Date: 29 November 2016

Original: English

IN THE TRIAL CHAMBER

Before: Judge Burton Hall, Presiding
 Judge Seon Ki Park
 Judge Solomy Balungi Bossa

Registrar: Mr. John Hocking

Date: 29 November 2016

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**STANIŠIĆ DEFENCE REQUEST FOR ACCESS TO CONFIDENTIAL
MATERIALS IN THE *PROSECUTOR V. MARTIĆ* CASE**

The Office of the Prosecutor
Mr. Douglas Stringer

Counsel for Mr. Stanišić
Mr. Wayne Jordash QC
Mr. Scott Martin

Counsel for Mr. Simatović
Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

Counsel for Milan Martić
Mr. Predrag Milovančević
Mr. Nikola Perović

I. INTRODUCTION

1. The Stanišić Defence respectfully requests access to all confidential *inter partes* material from the *Prosecutor v. Martić* case.¹ This information is likely to be of material assistance to the defence of Mr. Stanišić as the allegations against him are substantially related with those in the *Martić* case.

II. APPLICABLE LAW

2. A party may request confidential material in another case, to assist in the preparation of its case, if the party has identified or described the material sought by its general nature and if the party has shown a legitimate forensic purpose for such access.² Further, the requesting party “must establish that such material is likely to assist its case materially, or that there is at least a good chance that it would”.³ In order to meet this standard, the applicant may show a factual nexus between the cases,⁴ such as a “geographical, temporal or otherwise material overlap”.⁵

3. Pursuant to Rule 86(G) of the Rules of Procedure and Evidence of the MICT:⁶

A Party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings; or

¹ *Prosecutor v. Martić*, Case No. IT-95-11.

² *Prosecutor v. Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Access to *Ex Parte* Filings in Completed Cases, 10 May 2016 (“*Karadžić* Decision”), p. 2; see also *Prosecutor v. Popović et al.*, Case Nos. IT-05-88-A & IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013, p. 2; *Prosecutor v. Stanišić & Župljanin*, Case No. IT-08-91-T, Decision Partially Granting Radovan Karadžić’s Request for Access to Confidential Material, 30 June 2010 (“*Stanišić & Župljanin* Decision”), para. 10.

³ *Karadžić* Decision, p. 3; *Stanišić & Župljanin* Decision, para. 10; *Prosecutor v. Naletilić & Matinović*, Case No. IT-98-24-A, Decision on “Slobodan Praljak’s Motion for Access to Confidential Testimony and Documents in Prosecutor v. Naletilić and Martinović and Jadranko Prlić’s Notice of Joinder to Slobodan Praljak’s Motion for Access”, 13 June 2005, p. 6.

⁴ *Karadžić* Decision, p. 3.

⁵ *Stanišić & Župljanin* Decision, para. 10; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision on Haradinaj Motion for Access, Balaj Motion for Joinder, and Balaj Motion for Access to Confidential Materials in the Limaj Case, 31 October 2006, para. 7.

⁶ MICT-1/Rev.1, 18 April 2016.

- (ii) if no Chamber remains of the first proceedings, to the Chamber seized of the second proceedings.

4. As the trial and appeal proceedings in the *Martić* case have concluded, the present application is made to this Chamber under Rule 86(G)(ii) of the Rules.

III. DISCUSSION

5. Mr. Martić was indicted for crimes against humanity and violation of the laws and customs of war committed as a member of a joint criminal enterprise, between 1991 and 1995.⁷ It is submitted that the case against Mr. Martić is substantially related to that against Mr. Stanišić.

6. Firstly, both Indictments allege that Mr. Martić and Mr. Stanišić were members of the same joint criminal enterprise in the period of 1 August 1991 until 31 December 1995.⁸ In the Stanišić Indictment, Mr. Martić is named as a co-perpetrator, along with Mr. Stanišić, in a joint criminal enterprise to forcibly and permanently remove “the majority of non-Serbs, principally Croats, Bosnian Muslims and Bosnian Croats, from large areas of Croatia and BIH”, through the commission of crimes.⁹

7. Secondly, Mr. Martić was indicted for participation in the joint criminal enterprise, *inter alia*, in the creation, financing, supply, training and direction of Martić’s Police and by commanding, controlling, directing and exercising effective control over these special police forces.¹⁰ Additionally, he was accused of participation in the creation, financing, supply, training and direction of territorial defence forces of the SAO Krajina and the RSK.¹¹ In relation to these alleged facts, Mr. Stanišić is charged with training volunteers at special centres and deploying them to locations in Croatia where they were allegedly subordinated to the TO of the SAO SBWS or Martić’s Police.¹²

8. Thirdly, Mr. Martić was indicted for participation in the creation, training and direction of special police forces of the Serbian State Security Service, which

⁷ *Prosecutor v. Martić*, Case No. IT-95-11-PT, Amended Indictment, 9 September 2004 (“*Martić* Amended Indictment”), para. 4.

⁸ *Ibid.*, para. 6; *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Third Amended Indictment, 10 July 2008 (“*Stanišić* Third Amended Indictment”), para. 12.

⁹ *Stanišić* Third Amended Indictment, paras 12-13.

¹⁰ *Martić* Amended Indictment, para. 7.

¹¹ *Ibid.*, para. 7.

¹² *Stanišić* Third Amended Indictment, paras 3, 5, 6.

allegedly participated in several crimes in the Indictment. Mr. Stanišić, as former head of the DB, is accused of establishing these Special Forces, for the purpose of military action in the Republic of Croatia.¹³

9. Fourthly, in both Indictments it is alleged that between 1 August 1991 and 31 December 1995, Serb Forces together with Serbian MUP police units, Martić's Police and paramilitary forces, attacked and took control of towns, villages and settlements in the SAO Krajina, including the villages Dubica, Cerovljani, Baćin,¹⁴ Saborsko, Poljanak, Lipovača,¹⁵ Škabrnja¹⁶ and Bruška.¹⁷ Mr. Martić and Mr. Stanišić are both accused of involvement in the crimes in the events in these villages.

10. Finally, it is submitted that the Trial Judgment in the *Martić* case¹⁸ is further demonstrative of the alleged close cooperation and coordination between Mr. Stanišić and Mr. Martić. For example, the Trial Chamber considered that, *inter alia*: “[t]he police of SAO Krajina were mainly financed with funds and material from the MUP and SDB Serbia”.¹⁹ Further, it noted that “[a]s early as August 1990 and through the summer of 1991, officials of the MUP of Serbia, including the Chief of the SDB, Jovica Stanišić, and an official thereof, Franko ‘Frenki’ Simatović, met with the SAO Krajina leadership, in particular with Milan Martić, concerning the provision of financial, logistical and military assistance”.²⁰ It also noted that “[t]he training camp [in Golubić where Martić's Police were allegedly trained] was run and funded by the MUP of the SAO Krajina and by the MUP and SDB of Serbia”.²¹

11. In light of the above, it is clearly established that confidential material from the *Martić* case is likely to be highly relevant to the factual allegations and evidence presented against Mr. Stanišić. As such, the material is likely to materially assist the Stanišić Defence due to the substantial geographical and material overlap between the cases.

¹³ *Martić* Amended Indictment para. 7; *Stanišić* Third Amended Indictment, para. 4.

¹⁴ *Martić* Amended Indictment, para. 23a, 26; *Stanišić* Third Amended Indictment, para. 27.

¹⁵ *Martić* Amended Indictment, para. 23a; *Stanišić* Third Amended Indictment, paras 28.

¹⁶ *Martić* Amended Indictment; para. 23a; *Stanišić* Third Amended Indictment, para. 32.

¹⁷ *Martić* Amended Indictment, para. 23a; *Stanišić* Third Amended Indictment, para. 35.

¹⁸ *Prosecutor v. Martić*, Case No. IT-95-11-T, Trial Judgement, 12 June 2007.

¹⁹ *Ibid*, para. 141.

²⁰ *Ibid*, para.140.

²¹ *Ibid*, para. 144.

12. The Defence does not object to Rule 76 material, if any, being temporarily withheld, pending a request by the Prosecution to the providers for permission to disclose the material.²² The Defence leaves to the Chamber's discretion whether to order disclosure of material pertaining to provisional release.²³ In that event, the Defence will undertake to keep all such material confidential and, as a matter of administrative convenience and efficiency, this may be a more practical solution than requiring the Prosecutor or the Registry to identify and remove such material from the disclosure.

13. The Defence requests that the confidential material be disclosed in a form that may be efficiently searched.²⁴ In addition to the usual electronic disclosure, the Defence requests that transcripts of the *Martić* proceedings be disclosed through Livenote, and that exhibits be disclosed through e-court. Access in these formats will make the material more searchable. The volume of material disclosed is likely to be substantial and this format will be essential to its utility.

IV. RELIEF SOUGHT

14. The Stanišić Defence respectfully requests access to all confidential *inter partes* material from the case of the *Prosecutor v. Martić*. Access to this material is requested in the most searchable format available to the Registry.

Respectfully submitted,



²² *Prosecutor v. Šainović et al.*, Case No. IT-05-87-A, Decision on Vlastimir Dordjević's Motion for Access to Transcripts, Exhibits and Documents, 16 February 2010, para. 18.

²³ *Ibid.*, para. 16.

²⁴ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Tolimir Case, 9 September 2009, para. 21 ("the principle of equality of arms also demands that the Chamber give Karadžić a chance to understand the proceedings and evidence and evaluate their relevance to his own case, in *common with the Prosecution*").

Wayne Jordash QC

29 November 2016

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