

THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-56-A
Case No. MICT-15-96-T

BEFORE THE APPEALS CHAMBER

Before the Honourable: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Liu Daqun
Judge Prisca Matimba Nyambe
Judge Seymour Panton

Registrar: Mr. Olufemi Elias

Date Filed: 19 June 2018

THE PROSECUTOR

v.

RATKO MLADIĆ

Public

**DEFENCE RESPONSE TO REQUEST OF FRANKO SIMATOVIĆ FOR ACCESS TO
CONFIDENTIAL MATERIAL IN THE *PROSECUTOR V. RATKO MLADIĆ***

The Office of the Prosecutor:

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Ms. Barbara Goy
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The Office of the Prosecutor:

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**Case No. MICT-13-56-A****Case No. MICT-15-96-T****PROSECUTOR****v.****RATKO MLADIĆ***Public*

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The Appellant, **RATKO MLADIĆ**, by and through his counsel of record, respectfully submits the instant **RESPONSE**, and in support thereof states as follows:

I Introduction

1. On 7 June 2018, Franko Simatović filed a Motion seeking access to all *inter partes* confidential material from *Prosecutor v. Ratko Mladić*, Case No. IT-09-92, and *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A (collectively, "*Mladić case*"), as listed below, which is interrelated to the charges against, and case of Mr. Simatović (hereinafter: "Motion").
2. Appellant does not oppose to such request, under the reservations and restrictions established in decisions on earlier motions for access by accused persons in other cases before the Tribunal and MICT, in particular as to disclosure of filings and documentation containing personal medical records of Mr. Mladić, as well as to the material provided pursuant to Rule 70, and other material without forensic value for referred case of Mr. Simatović.

II Applicable Law

3. The applicable law governing requests for access to confidential materials was set out by the Chamber's previous decisions before ICTY or MICT. Same standards from previous decisions¹ should be applied as to request from the Motion.

III Arguments & Submissions

4. The Defence of Franko Simatović seeks access to the confidential material from the pre-trial, trial, and, *on-going* appeal proceedings, including: (i) all the confidential trial transcripts; (ii) all their confidential exhibits; (iii) all the confidential filings and submissions as well as all the confidential Chamber decisions; and (iv) all the documentary evidence submitted by the parties (collectively, "Confidential Material").²

5. The Defence for Appellant agrees that there is a there exist (i) a significant geographical and temporal overlap between the *Mladić* case and the charges against, and case of Mr. Simatović, and (ii) an interrelation between the factual bases for the allegations against Mr. Mladić and Mr. Simatović.³ As such, significant overlap in some of the evidence (including witness statements and testimony) adduced in the *Mladić* case can be reasonably expected to be likely of material assistance to Franko Simatović. Defence for Mr. Mladić therefore does not dispute that Franko Simatović has a legitimate forensic purpose in having access to this evidence in the *Mladić* case.

6. The Defence for Mr. Mladić submits that some materials contain sensitive information of little or no value to the Applicant (Simatović), and which does not satisfy requirements of a disclosure, as set out in previous decisions related to the access to filings, transcripts and exhibits, which categories includes: remuneration; provisional release; fitness to stand trial; reports of the Reporting Medical Officer; Registry submission of expert reports on health

¹ Decision on Jovica Stanišić request for access to confidential material in the Mladić case, 1 Nov 2016; Decision on Motion by Stanislav Galić for Access to Confidential Materials in the Mladić case, 20 July 2016; Decision on motions on behalf of Mićo Stanišić and Stojan Župljanin for access to confidential materials from the Mladic case, 3 Sep 2013; Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Mladić Case, 18 October 2011; Decision on motion by Vujadin Popović for access to confidential information in the Mladić case; Decision on Defence Request for Access to Confidential Materials from *Krstić* Case, 21 March 2012.

² Motion, para. 2.

³ Motion, paras. 9-12.

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.⁴

7. The Defence also notes that to Rule 70. material access may only be given once the provider has consented to its disclosure to the Applicant (Simatović). If such material is to be sought by the Applicant (Simatović) then the same should be communicated to the Defence and Prosecution so that they may contact the relevant Rule 70. providers that gave each of them, respectively, access to such information.

IV Conclusion

8. The Defence for Mr. Mladić does not oppose access for Franko Simatović to the confidential *inter partes* material from *Mladić* case, however, requests that the Chamber exclude from any grant of access to confidential *inter partes* material that relates to categories enlisted in para. 6. of this Response.

10. The Defence requests the Chamber 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.

Word Count: 639

RESPECTFULLY SUBMITTED BY:



Branko Lukić
Lead Counsel for Ratko Mladić



Dragan Ivetić
Co-Counsel for Ratko Mladić

⁴ Decision on Motion by Stanislav Galić for Access to Confidential Materials in the Mladić case, 20 July 2016, para. 9.



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