

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-15-96-T

Date: 21 June 2018

Original: English

IN THE TRIAL CHAMBER

Before: Judge Burton Hall, Presiding
Judge Joseph E. Chiondo Masanche
Judge Seon Ki Park

Registrar: Mr. Olufemi Elias

THE PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PROSECUTION RESPONSE TO SIMATOVIĆ DEFENCE
REQUEST FOR ACCESS TO CONFIDENTIAL MATERIAL IN
THE *HADŽIĆ* CASE, THE *KRAJIŠNIK* CASE, THE *BRDANIN*
CASE, THE *ORIĆ* CASE, THE *JELISIĆ* CASE AND THE *SIMIĆ*
ET AL. CASE**

The Office of the Prosecutor:
Mr. Douglas Stringer

Counsel for Jovica Stanišić:
Mr. Wayne Jordash QC
Mr. Iain Edwards

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

I. INTRODUCTION

1. The Prosecution does not object to Simatović's Request for Access¹ to confidential *inter partes* material in the *Hadžić*, *Krajišnik*, *Brdanin*, *Orić*, *Jelisić* and *Simić* cases² being granted in part, on the basis of the recognised nexus between aspects of the case against Simatović and aspects of these six named cases.

II. ACCESS TO HADŽIĆ, KRAJIŠNIK AND SIMIĆ SHOULD BE GRANTED WITH THE SAME CONDITIONS AS THOSE IMPOSED UPON STANIŠIĆ

2. The Prosecution agrees that there is a geographical, temporal and material overlap between the present case and the *Hadžić*, *Krajišnik* and *Simić* cases in respect of the joint criminal enterprise to permanently remove non-Serbs from Serb-claimed territory in Bosnia and Croatia through the commission of crimes. Accordingly the Prosecution considers that there may be overlap in some of the evidence (including witness statements and testimony) adduced in these three cases that may be found to materially assist Simatović. Accordingly, the Prosecution does not dispute that Simatović has a legitimate forensic purpose in support of his request for access to this evidence in these three cases.

3. Stanišić was granted access to confidential material in *Krajišnik* and *Simić* in 2011,³ and in *Hadžić* in 2016⁴ subject to certain conditions.⁵ Simatović should be granted access to the same confidential *inter partes* materials in these three cases, upon the same conditions as his co-Accused.

¹ Simatović Defence Request for Access to Confidential Material in the *Hadžić* Case, the *Krajišnik* Case, the *Brdanin* Case, the *Orić* Case, the *Jelisić* Case and the *Simić et al* Case, 7 June 2018 ("Request for Access").

² *Prosecutor v. Hadžić*, Case No.IT-04-75 ("*Hadžić*"); *Prosecutor v. Krajišnik*, Case No.IT-00-39 ("*Krajišnik*"); *Prosecutor v. Brdanin*, Case No.IT-99-36; *Prosecutor v. Orić*, Case No.IT-03-68; *Prosecutor v. Jelisić*, Case No.IT-95-10 ("*Jelisić*"); *Prosecutor v. Simić et al.*, Case No.IT-95-09 ("*Simić*").

³ *Prosecutor v. Stanišić and Simatović*, Case No.IT-03-69 ("ICTY Trial"), Decision on Requests of Jovica Stanišić for Access to Confidential Materials in the *Krajišnik* and the *Simić et al.* Cases, 24 March 2011 ("*Krajišnik* and *Simić* Access Decision").

⁴ Decision on Stanišić's Request for Access to Confidential Materials in the *Hadžić* Case, 29 September 2016 ("*Hadžić* Access Decision").

⁵ See *Hadžić* Access Decision, p.3 and *Krajišnik and Simić* Access Decision, p.6.

III. ACCESS TO MATERIALS IN BRĐANIN, ORIĆ AND JELISIĆ SHOULD BE GRANTED ALSO SUBJECT TO CONDITIONS

4. In light of the charged crimes of murder, deportation, forcible transfer and persecution in the municipality of Sanski Most, the Prosecution agrees that there is a ‘geographical, temporal or otherwise material overlap’ between the present case⁶ and *Brdanin* in respect of crimes committed in Bosnian Krajina region between May and December 1992.⁷

5. In light of the Prosecution’s reliance on evidence of the Accused’s links to crimes in Eastern Bosnia from the start of 1993 to 1995 as pattern evidence, there also exists a very limited ‘geographical, temporal or otherwise material overlap’ between these proceedings⁸ and *Orić* which deals with allegations of crimes committed against Bosnian Serbs in Srebrenica municipality and its surroundings in the period June 1992 to March 1993.⁹

6. In light of the Prosecution’s reliance on evidence of the Accused’s links to crimes in Brčko as pattern evidence, there also exists a ‘geographical, temporal or otherwise material overlap’ between the instant case¹⁰ and *Jelisić*, which concerned crimes committed in Brčko in May and June 1992.¹¹

7. Accordingly, the Prosecution does not dispute that Simatović has a legitimate forensic purpose in having access to certain materials in *Brdanin*, *Orić* and *Jelisić*. Access should, however, be granted subject to the same conditions as applied to his co-Accused in the *Hadžić* decision¹² namely, with the exclusion of material:

- i) provided under Rule 76 of the Rules; ii) not forming part of the trial record; iii) related to health or personal information of the accused; and iv) having no forensic purpose, namely material related to: remuneration, provisional release, fitness to stand trial, conditions of detention, reports of the medical officer, Registrar’s submissions on expert

⁶ See Prosecution Notice of Rule 70(E) Filings Pursuant to the Trial Chamber’s Decision of 2 February 2017, 9 March 2017 (public with confidential Annexes A, B and D and confidential and *ex parte* Annexes C and E), Annex A (“Pre-Trial Brief”), para.120 (fn.491 refers to *Brdanin*) and also paras. 42, 51, 65, 87, and 152.

⁷ *Brdanin* Indictment, paras. 27.2

⁸ Pre-Trial Brief, paras. 78, 112.

⁹ *Orić*, Third Amended Indictment, para.19.

¹⁰ Pre-Trial Brief, paras. 78, 112.

¹¹ *Jelisić* Indictment, paras. 1-4, 12.

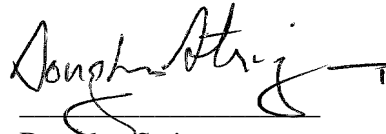
¹² *Hadžić* Access Decision, p.3.

reports on health issues, notices of nonattendance in court, modalities of trial, protective measures, subpoenas, applications for video-conference link, and orders to redact the public transcript and the public broadcast of a hearing, witness scheduling, witness appearance, witness attendance, execution of arrest warrants, internal memoranda assessing state cooperation, and notices of compliance filed in respect of other access decisions.¹³

IV. CONCLUSION

8. For the foregoing reasons, the Prosecution requests that the Chamber grant Simatović (1) access to the confidential *inter partes* material in *Hadžić, Brdanin, Jelisić, and Orić* upon the same conditions as Stanišić received access to confidential *inter partes* material in the *Hadžić* case; and (2) access to the confidential *inter partes* material in *Krajišnik* and *Simić* upon the same conditions imposed upon Stanišić for access to confidential *inter partes* material in those two cases.

Word Count: 877



Douglas Stringer
Senior Trial Attorney

Dated this 21st day of June 2018
At The Hague, The Netherlands

¹³ *Hadžić* Access Decision, p.3.



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