

**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-04-74-A
 MICT-13-55-A

Date: 08 September 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
 Judge Liu Daqun
 Judge Fausto Pocar
 Judge Theodor Meron
 Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Order of: 08 September 2017

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC REDACTED

**ORDER ON MOTION FOR REDACTED VERSIONS OF RULE 75
ORDERS**

The Office of the Prosecutor:

Mr. Douglas Stringer
Ms. Barbara Goy
Ms. Laurel Baig
Ms. Katrina Gustafson

Counsel for Radovan Karadžić:

Mr. Peter Robinson
Ms. Kate Gibson

Counsel for the Appellants:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

THE APPEALS CHAMBER of the 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 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEISED OF the “Motion for Public Redacted Versions of Rule 75 Decisions”, filed by Mr. Radovan Karadžić (“Karadžić”) on 14 April 2017 (“Motion”), in which Karadžić requests the issuance of public redacted versions of two orders rendered, pursuant to Rule 75 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), by Trial Chamber III in the case of *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T (“*Prlić et al. Orders*”);¹

NOTING that Karadžić submits that: (1) he has a legitimate forensic purpose for access to the *Prlić et al. Orders* as he continues to litigate issues related to Rule 75 proceedings in his case;² and (2) the issuance of public redacted versions of the *Prlić et al. Orders* would give his Defence team (as well as the public) access to jurisprudence on which the Prosecution has relied and thereby put him on “somewhat equal footing with the Prosecution”;³

NOTING the response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on 24 April 2017, in which the Prosecution states that it does not oppose the Motion “as long as all information that potentially identifies the relevant domestic authorities, the subject matter of the proceedings and the witnesses involved, including witness pseudonyms and the nature of their evidence, is redacted”;⁴

NOTING that Karadžić did not file a reply;

NOTING the judgement rendered in French by Trial Chamber III of the Tribunal, on 29 May 2013,⁵ and that the Appeals Chamber is currently seized of the proceedings in this case;⁶

¹ Motion, para. 1, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-R75H.2, Order on Application from [REDACTED] of 25 February 2011 (Rule 75 (J) of the Rules of Procedure and Evidence), 7 March 2011 (confidential and *ex parte*) (French original filed on 2 March 2011); *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-R75H.3, Order on Application from [REDACTED] of 10 March 2011 (Rule 75 (H) of the Rules of Procedure and Evidence), 5 April 2011 (confidential and *ex parte*) (French original filed on 15 March 2011). See also Motion, paras 5, 7. The Appeals Chamber’s redactions are to prevent identification of the domestic authorities, subject matter of the proceedings, and the witnesses involved, including witness pseudonyms and the nature of their evidence.

² Motion, para. 6. Karadžić’s litigation also relates to the corresponding Rule 86 of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals. See Motion, para. 6.

³ Motion, paras 4-6.

⁴ Prosecution’s Response to Karadžić’s Motion for Redacted Versions of Rule 75 Decisions, 24 April 2017, para. 1.

⁵ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013).

⁶ Jadranko Prlić’s Notice of Appeal, 5 August 2014; Bruno Stojić’s Notice of Appeal, 4 August 2014; Slobodan Praljak’s Notice of Appeal, 28 June 2013; Milivoj Petković’s Notice of Appeal, 5 August 2014; Re-Filed Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 23 December 2014; Re-Filing of the Notice of Appeal on Behalf of Berislav Pušić, 13 March 2014; Prosecution’s Notice of Appeal, 27 August 2013.

RECALLING that, pursuant to Rule 75(F)(i) of the Rules, once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal or another jurisdiction unless and until they are rescinded, varied, or augmented;

RECALLING that “a party is always entitled to seek material from any source, including from another case before the Tribunal, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown”,⁷ and that “access to confidential material is granted whenever the party seeking access has demonstrated that such material may be of material assistance to [the party’s] case”;⁸

RECALLING FURTHER that, with regard to confidential material, the Tribunal must “find a balance between the right of a party to have access to material to prepare its case and the need to guarantee the protection of witnesses”⁹ and the protection and integrity of confidential information;¹⁰

CONSIDERING that Karadžić, in requesting public redacted versions of the *Prlić et al.* Orders, has sufficiently identified the material he seeks and has identified a legitimate forensic purpose for access in that these orders were relied upon by the Prosecution in litigating issues related to Rule 75 proceedings in his case;

NOTING that issuing public redacted versions of these orders will ensure that the interests of the parties who designated their filings as *ex parte* and the information pertaining to protected witnesses therein can be adequately safeguarded;

CONSIDERING that, before public redacted versions of the *Prlić et al.* Orders are issued, it would assist the Appeals Chamber if the Prosecution, in liaison with the Victims and Witnesses Section of the Tribunal (“VWS”), were to identify any portions of the *Prlić et al.* Orders requiring redaction to prevent identification of the domestic authorities, subject matter of the proceedings, and the witnesses involved, including witness pseudonyms and the nature of their evidence;

⁷ See, e.g., *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A & IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013 (“*Popović et al.* Decision”), p. 2; *Prosecutor v. Nikola Šainović et al.*, Case No IT-05-87-A, Decision on Vlastimir Đorđević’s Motion for Access to Transcripts, Exhibits and Documents, 16 February 2010 (“*Šainović et al.* Decision”), para. 9.

⁸ *Popović et al.* Decision, p. 2; *Šainović et al.* Decision, para. 10 (and references cited therein).

⁹ *Brđanin* Decision of 24 January 2007, para. 10 (and references cited therein).

¹⁰ *Šainović et al.* Decision of 16 February 2010, para. 19.

NOTING that Karadžić refers to the English versions of the *Prlić et al.* Orders, and that these orders were originally rendered in French;

NOTING that the Appeals Chamber will review the proposed redactions submitted by the Prosecution, in consultation with VWS, and issue public-redacted versions of the *Prlić et al.* Orders thereafter;

PURSUANT to Rules 54, 75, and 107 of the Rules;

HEREBY

GRANTS the Motion;

ORDERS the Prosecution, in consultation with VWS, to identify in a confidential and *ex parte* filing, within seven days of the issuance of the present order, any portions of the *Prlić et al.* Orders, in the French original and the English translation, that in its view should be redacted to prevent identification of the domestic authorities, subject matter of the proceedings, and the witnesses involved, including witness pseudonyms and the nature of their evidence; and

INFORMS Karadžić that, once the Appeals Chamber receives the proposed redactions from the Prosecution, it will review those redactions and then issue the public redacted versions of the *Prlić et al.* Orders in a subsequent order.

Done in English and French, the English text being authoritative.



Judge Carmel Agius
Presiding Judge

Dated this eighth day of September 2017,
At The Hague,
The Netherlands.

[Seal of the Tribunal]