

**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-09-92-AR73.2  
Date: 28 November 2013  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge Patrick Robinson  
Judge Arlette Ramaroson  
Judge Khalida Rachid Khan  
Judge Bakhtiyar Tuzmukhamedov

**Registrar:** Mr. John Hocking

**Decision:** 28 November 2013

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

---

**DECISION ON DEFENCE INTERLOCUTORY APPEAL  
AGAINST THE TRIAL CHAMBER'S DECISION ON EDS  
DISCLOSURE METHODS**

---

**The Office of the Prosecutor:**

Mr. Dermot Groome  
Mr. Peter McCloskey

**Counsel for Ratko Mladić:**

Mr. Branko Lukić  
Mr. Miodrag Stojanović

1. 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) is seised of the “Defense Interlocutory Appeal Brief Against the Trial Chamber Decision on Submissions Relative to the Proposed ‘EDS’ Method of Disclosure”, filed on 21 August 2012 (“Motion”) by Ratko Mladić (“Mladić”), in which he submits that the Trial Chamber erred in its 26 June 2012 “Decision on Submissions Relative to the Proposed ‘EDS’ Method of Disclosure” (“Impugned Decision”). The Office of the Prosecutor (“Prosecution”) filed its response to the Motion on 31 August 2012.<sup>1</sup> Mladić did not file a reply.

## I. BACKGROUND

2. On 17 November 2011, Mladić filed a motion objecting to the Prosecution’s Electronic Disclosure Suite (“EDS”) procedures as not conforming to the Tribunal’s jurisprudence.<sup>2</sup> The Prosecution responded on 2 December 2011, citing improvements in its disclosure process and requesting that the Trial Chamber declare its procedures compliant with the Tribunal’s jurisprudence.<sup>3</sup> Subsequent to an invitation by the Trial Chamber, Mladić filed a reply on 22 December 2011, submitting that the Prosecution’s improvements had not alleviated all the problems.<sup>4</sup> The Prosecution filed a sur-reply on 6 January 2012 submitting, *inter alia*, that it was continuing to address Mladić’s concerns where possible.<sup>5</sup> On 9 February 2012, Mladić filed an amended motion objecting to the lack of disclosure of meta-data and requesting that the Trial Chamber order the Prosecution to re-disclose all previously disclosed materials with meta-data included and postpone the start of the trial until the alleged disclosure deficiencies had been remedied.<sup>6</sup> On 10 February 2012, the Prosecution requested that this relief be denied, submitting

---

<sup>1</sup> Prosecution Response to Interlocutory Appeal Regarding EDS Disclosure, 31 August 2012 (“Response”).

<sup>2</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Defence Submission Relative to Proposed “EDS” Method of Disclosure, public with confidential Annex A, 17 November 2011 (“Defence Submission of 17 November 2011”), para. 21.

<sup>3</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Prosecution Response to Defence Submission Relative to Proposed EDS Method of Disclosure (confidential), 2 December 2011, paras 11-22.

<sup>4</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Defence Reply as to Submission on EDS Disclosure Method, confidential, 22 December 2011, paras 4-8.

<sup>5</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Fourth Prosecution Report on Pre-Trial Preparations, confidential, 6 January 2012, paras 17-26.

<sup>6</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Amended Defence Submission Pursuant to Instruction from Chambers, and Motion Relative to Problems with Disclosure that Prevent Trial Preparations, public with confidential annexes, 9 February 2012 (“Defence Submission of 9 February 2012”), p. 5. *See* Defence Submission of 9 February 2012, paras 4-14.

that it had met its disclosure obligations and was providing additional assistance to Mladić, and further requested an oral hearing on his submissions.<sup>7</sup>

3. At a Status Conference held on 23 February 2012, the parties agreed that a decision on the matter should be delayed as they were still negotiating the disclosure issues.<sup>8</sup> The Trial Chamber instructed the parties to report by the following week if a decision on the matter was still needed and, if so, to indicate to the Trial Chamber which issues remained unresolved.<sup>9</sup>

4. On 2 March 2012, Mladić filed a report in which, *inter alia*, he noted issues that had since been resolved, indicated that the meta-data issue had only been partially resolved, and reiterated his previous request for relief.<sup>10</sup> On 16 March 2012, the Prosecution submitted its positions with regard to the unresolved issues, stating that to the extent possible it was continuing to voluntarily provide Mladić with meta-data, and maintaining that the relief requested by Mladić ought to be denied.<sup>11</sup> The disclosure issues were again discussed at the Status Conference of 29 March 2012, during which both parties renewed their respective requests: Mladić seeking re-disclosure of certain documents and postponement of the trial until the meta-data issues were resolved,<sup>12</sup> and the Prosecution seeking affirmation by the Trial Chamber that its disclosure procedures were in compliance with the Tribunal's jurisprudence.<sup>13</sup>

5. The Impugned Decision denied the requests of both parties.<sup>14</sup> In its analysis, the Trial Chamber noted that neither the Tribunal's Rules of Procedure and Evidence ("Rules") nor the jurisprudence of the Tribunal required the Prosecution to provide the specific information or file formats requested by Mladić.<sup>15</sup> The Trial Chamber nonetheless proceeded to analyse whether, in the interest of justice, it should order the Prosecution to provide the requested meta-data and file formats, or grant additional time to the Defence as an alternative form of relief.<sup>16</sup>

<sup>7</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Prosecution Response to Defence Submission and Motion Relative to Problems with Disclosure Trial Preparations, public with confidential annex, 10 February 2012, paras 4-13.

<sup>8</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 200-202 (23 February 2012).

<sup>9</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 202 (23 February 2012).

<sup>10</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Defense Report on Progress on Disclosure Issues, Pursuant to Chamber Instruction Issued at Status Hearing of 23 February 2012, public with confidential annex, 2 March 2012, paras 6-31.

<sup>11</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, Prosecution Response to Defence Report on Progress on Disclosure Issues, Pursuant to the Chamber's Instruction Issued at the Status Hearing of 23 February 2012, 16 March 2012, paras 2-9.

<sup>12</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 263-266 (29 March 2012).

<sup>13</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 277-279 (29 March 2012).

<sup>14</sup> Impugned Decision, para. 14.

<sup>15</sup> Impugned Decision, para. 10.

<sup>16</sup> Impugned Decision, para. 11.

6. In its analysis, the Trial Chamber noted the Prosecution's efforts to provide Mladić with meta-data through means other than the EDS, to update the meta-data in the EDS itself, and to augment the short file descriptions as requested by Mladić.<sup>17</sup> With regard to Mladić's request for searchable file formats, the Trial Chamber noted that all of the documents at issue were already available in searchable form in the EDS, but that the Prosecution had nevertheless stated its willingness to re-disclose certain materials in alternative formats upon Mladić's request.<sup>18</sup> For these reasons, the Trial Chamber found no need to grant the relief requested by Mladić.<sup>19</sup> The Trial Chamber concluded by noting the Prosecution's ongoing disclosure obligations, encouraging the Prosecution to continue to assist Mladić with accessing and searching materials in the EDS, and stating that the allocation of resources to complete these tasks was within the Prosecution's discretion.<sup>20</sup>

7. On 3 July 2012, Mladić filed his Motion for Certification to appeal the Impugned Decision.<sup>21</sup> On 17 July 2012, the Prosecution filed its response opposing the Motion for Certification.<sup>22</sup> In its 13 August 2012 decision, the Trial Chamber granted the Motion for Certification, holding that the meta-data issue significantly affected the fair and expeditious conduct of the trial and that an immediate resolution of the matter by the Appeals Chamber would materially advance the proceedings.<sup>23</sup> The Trial Chamber granted certification to appeal on the following issues: (i) the re-disclosure of EDS documents with full meta-data; and (ii) additional time to process documents provided through the EDS without meta-data.<sup>24</sup>

## II. SUBMISSIONS

### 1. Motion

8. In his Motion, Mladić submits that the Trial Chamber erred by not ordering that meta-data be included with all materials disclosed through the EDS, and by not granting additional time to his

<sup>17</sup> Impugned Decision, para. 12.

<sup>18</sup> Impugned Decision, para. 12.

<sup>19</sup> Impugned Decision, para. 12.

<sup>20</sup> Impugned Decision, para. 13.

<sup>21</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Defence Motion for Certification to Appeal the Decision on Submissions Relative to the Proposed "EDS" Method of Disclosure, 3 July 2012 ("Motion for Certification").

<sup>22</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Prosecution Response to Defence Motion for Certification to Appeal the Decision on the Submissions Relative to the Proposed "EDS" Method of Disclosure, 17 July 2012.

<sup>23</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on the Defence Motion for Certification to Appeal the Decision on Submissions Relative to the Proposed "EDS" Method of Disclosure, 13 August 2012 ("Decision on Certification"), paras 6-7.

<sup>24</sup> Decision on Certification, para. 8.

Defence team to review material disclosed without meta-data, thus impairing his ability to prepare for trial.<sup>25</sup>

9. Mladić submits that the meta-data at issue is comprised of basic information used to identify disclosed material, such as the title, date, author, and language of a document, and that this meta-data must accompany materials disclosed through the EDS because it is a critical element in performing research in preparation for trial and cross-examination, and is the only means of excluding irrelevant documents returned by an EDS search.<sup>26</sup> He further submits that the meta-data he seeks is already available to the Prosecution in its version of the EDS.<sup>27</sup>

10. Mladić contends that the Trial Chamber erred by focusing on the parallel hard-disk disclosure regime rather than the EDS, and by finding that the provision of meta-data in electronic spreadsheet indices on hard disk “resolves” the problems caused by the lack of meta-data in the EDS.<sup>28</sup> He asserts that the EDS method of disclosure is the “official disclosure method” and that the “unofficial” parallel disclosure on hard disks with corresponding meta-data in spreadsheets is insufficient because the spreadsheet meta-data cannot be imported into the EDS, and the spreadsheets must be manually searched for every document returned by an EDS search that does not already contain meta-data.<sup>29</sup> Mladić further asserts that, considering the time given by the Trial Chamber for trial preparation, conducting a second search using the spreadsheets or opening each document that does not have meta-data in the EDS is an impossible task which threatens his Defence team’s ability to adequately prepare for trial with due diligence.<sup>30</sup>

11. In addition, Mladić submits that the Trial Chamber erred in holding that the meta-data in the spreadsheet indices “cure” the alleged deficiencies of the EDS, because in some instances meta-data cannot be located in the spreadsheets due to missing Evidence Registration Number (“ERN”) identifiers.<sup>31</sup> He contends that the Trial Chamber should have known that not all documents on the EDS have ERNs.<sup>32</sup> Mladić argues that the Trial Chamber also erred in its understanding of how spreadsheet meta-data is used, submitting that because such data must be entered manually into a search database on a single specific computer in a “time-consuming and laborious process” it does not remedy the lack of meta-data on the EDS.<sup>33</sup> Mladić further submits that the Trial Chamber erred

---

<sup>25</sup> Motion, para. 22.

<sup>26</sup> Motion, para. 23.

<sup>27</sup> Motion, para. 24.

<sup>28</sup> Motion, para. 25.

<sup>29</sup> Motion, para. 25.

<sup>30</sup> Motion, para. 25.

<sup>31</sup> Motion, para. 26.

<sup>32</sup> Motion, para. 27.

<sup>33</sup> Motion, para. 29.

in its understanding of the file formats being used, when it determined that materials in the parallel disclosure were searchable.<sup>34</sup>

12. Mladić asserts that his Defence team has had to prepare for trial and work under “impossible conditions” as a result of missing EDS meta-data “due to the Trial Chamber’s error in not dealing with this issue and in constantly delaying and failing to act on the repeated complaints of the Defense”, and that these circumstances have adversely affected his ability to prepare for trial.<sup>35</sup> In support of his allegation that the Trial Chamber unreasonably delayed its decision, Mladić submits that during a Status Conference on 19 January 2012, the Presiding Judge “promised a decision was forthcoming on the EDS issues ‘in several weeks’” but that “[u]nfortunately no such decision was ever issued.”<sup>36</sup> Similarly, Mladić asserts that at a Status Conference on 23 February 2012, the Presiding Judge stated that a decision on Mladić’s requests for relief was expected to be made “within the next week”, but that “[n]o decision was issued due to the Prosecution counsel’s desire to delay the same for the purpose of more meetings between the parties.”<sup>37</sup> Mladić also notes in this regard that he filed a motion on 11 May 2012 seeking the disqualification of the Presiding Judge, highlighting the “unresolved objections to the EDS disclosure methods [...] and the list of filings on the topic that were without any ruling from the Chamber, despite repeated assurances that a decision would be forthcoming”.<sup>38</sup>

13. Mladić submits that he “has been forced to an early start of trial, in the face of repeated discovery violations and non-disclosures” that only began to be resolved after the trial commenced, with a large quantity of material only then becoming available and requiring a significant amount of time and effort to review due to the lack of meta-data.<sup>39</sup> Mladić further submits that a recommendation by the Presiding/Pre-Trial Judge that his Defence team limit its review to only the most important documents was impossible to follow because of the lack of meta-data.<sup>40</sup>

14. Finally, Mladić submits that the Trial Chamber’s decision not to provide him with additional time was based on a misunderstanding of the EDS meta-data issue, that his Defence team has not been able to make full use of disclosed material in an efficient or appropriate manner, and that for most of the last eight to ten months it did not have access to the materials even with partial meta-data.<sup>41</sup> He contends that the failure of the Trial Chamber to understand and address these

---

<sup>34</sup> Motion, para. 30.

<sup>35</sup> Motion, para. 31.

<sup>36</sup> Motion, para. 7.

<sup>37</sup> Motion, para. 10.

<sup>38</sup> Motion, para. 17.

<sup>39</sup> Motion, para. 33.

<sup>40</sup> Motion, paras 34-35.

<sup>41</sup> Motion, para. 36.

issues in the Impugned Decision constitutes a discernible error and that, for these reasons, additional time is warranted.<sup>42</sup> Mladić submits that unless the Prosecution is ordered to disclose all materials with full meta-data, it will take his Defence team a long time to review the material, which “cannot be accomplished while actively participating in the trial”.<sup>43</sup>

## 2. Response

15. The Prosecution responds that it has not only met its disclosure obligations, but has gone well beyond them, and that the Motion should be dismissed for failing to show any error in the Impugned Decision resulting in prejudice to Mladić.<sup>44</sup>

16. The Prosecution submits that the Trial Chamber conducted a careful examination of the Prosecution’s disclosure regime and, drawing on its familiarity with the conduct of the parties and the issues in the case, correctly found that neither Rule 68 of the Rules nor the jurisprudence require the Prosecution to provide meta-data with its disclosures, and that any inconvenience caused to Mladić by lack of meta-data was considerably reduced by the provision of spreadsheet indices.<sup>45</sup> It further submits that the Trial Chamber’s decision was discretionary and that the Trial Chamber reasonably concluded that Mladić’s concerns had been adequately addressed by the Prosecution.<sup>46</sup>

17. The Prosecution further asserts that Mladić has access to the general EDS collection and a searchable, case-specific EDS collection which continues to be populated as disclosure is ongoing.<sup>47</sup> It submits that as materials are added to the case-specific EDS collection, Mladić’s Defence team is provided with notice of the existence and location of the materials and with spreadsheet indices containing the same meta-data available in the EDS, as well as supplementary information such as the type of document and the rule under which it was disclosed.<sup>48</sup> Further, as new batches of material are disclosed through the case-specific EDS, new spreadsheets with relevant meta-data are provided to Mladić’s Defence team.<sup>49</sup>

18. The Prosecution also submits that Mladić’s Defence team can find missing meta-data by cross-checking spreadsheets with a particular document’s EDS identifier.<sup>50</sup> It states that “in almost all instances” the identifier used in the spreadsheet matches that used in the EDS, but where

---

<sup>42</sup> Motion, paras 36-37.

<sup>43</sup> Motion, para. 32.

<sup>44</sup> Response, paras 1-2, 20.

<sup>45</sup> Response, para. 21.

<sup>46</sup> Response, paras 21-22.

<sup>47</sup> Response, paras 4, 7.

<sup>48</sup> Response, para. 10.

<sup>49</sup> Response, para. 10. The Response includes example screenshots of the general and case-specific EDS collections, EDS meta-data, and spreadsheets showing the relevant meta-data. *See* Response, paras 4-7.

<sup>50</sup> Response, paras 11, 13.

Mladić's Defence team has brought discrepancies between the identifying numbers to the attention of the Prosecution, such instances have been corrected.<sup>51</sup>

19. According to the Prosecution, both it and Mladić's Defence team have identical access to the case-specific collection and the Prosecution does not possess any additional software with the functionality requested.<sup>52</sup> The Prosecution also asserts that, contrary to Mladić's contention, there is no distinction between official disclosure using the EDS and unofficial disclosure using spreadsheets and hard drives, because disclosure may occur by EDS, hard drive, or other electronic means like email.<sup>53</sup> As such, the spreadsheets are an additional tool provided to assist Mladić's Defence team.<sup>54</sup> The Prosecution further submits that no prejudice or unfairness is caused to Mladić's Defence team by having to occasionally consult spreadsheet indices for meta-data.<sup>55</sup>

20. Finally, the Prosecution submits that in addition to providing the general and case-specific EDS collections, it has tried to assist Mladić's Defence team in its search of disclosed materials by providing copies of all disclosures on hard drive as requested by Mladić, and by offering the services of its staff to help him develop effective searches.<sup>56</sup> The Prosecution notes that it has consistently made good-faith efforts to work with Mladić's Defence team to facilitate its search and review of disclosed materials and to resolve issues as they arise.<sup>57</sup>

### III. STANDARD OF REVIEW

21. It is well established that matters of practice, procedure, and the general conduct of the proceedings are within a trial chamber's discretion, including decisions on the form of disclosed materials and the time needed to prepare for trial.<sup>58</sup> The Appeals Chamber must therefore give due deference to such decisions of a trial chamber.<sup>59</sup>

<sup>51</sup> Response, para. 13.

<sup>52</sup> Response, paras 14-15.

<sup>53</sup> Response, fn. 27.

<sup>54</sup> Response, fn. 27.

<sup>55</sup> Response, para. 15.

<sup>56</sup> Response, para. 16-17. The Prosecution notes that the Mladić Defence team has not availed itself of what the Prosecution refers to as "this standing offer of assistance" (Response, para. 17).

<sup>57</sup> Response, para. 20.

<sup>58</sup> See, e.g., *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 39; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Adequate Facilities, 7 May 2009 ("Karadžić 7 May 2009 Decision"), para. 11; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.1, Decision on Appellant Radovan Karadžić's Appeal Concerning Holbrooke Agreement Disclosure, 6 April 2009 ("Karadžić 6 April 2009 Decision"), para. 14; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.5, Decision on Vojislav Šešelj's Interlocutory Appeal against the Trial Chamber's Decision on Form of Disclosure, 17 April 2007 ("Šešelj 17 April 2007 Decision"), para. 14. See also, e.g., *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006,

22. In reviewing discretionary decisions, the question before the Appeals Chamber is not whether it agrees with an impugned decision, but whether or not the trial chamber properly exercised its discretion in reaching that decision.<sup>60</sup> To successfully challenge a discretionary decision, the moving party must show that the trial chamber committed a discernible error which resulted in prejudice to that party.<sup>61</sup> The Appeals Chamber will only overturn a discretionary decision of the trial chamber when it has found the decision to be based on an incorrect interpretation of law or a patently incorrect conclusion of fact, or so unfair or unreasonable as to constitute an abuse of discretion.<sup>62</sup> The Appeals Chamber will also consider whether the trial chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations.<sup>63</sup>

## IV. DISCUSSION

### A. Disclosure of EDS Materials with Meta-Data

23. The primary issue before the Appeals Chamber concerns modalities of disclosure under the obligations imposed by Rule 68 of the Rules. In his first ground of appeal, Mladić submits that the Trial Chamber committed a discernible error by not ordering that meta-data be included with all materials disclosed through the EDS, leaving him and his defence team unable to effectively or properly prepare for trial.<sup>64</sup> The Appeals Chamber understands Mladić to assert that the decision of

---

para. 12; *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal, 28 April 2006, paras 7-8.

<sup>59</sup> *Karadžić* 6 April 2009 Decision, para. 14; *Šešelj* 17 April 2007 Decision, para. 14; *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal against the Trial Chamber's Decision of Joinder of Accused, 27 January 2006, para. 4.

<sup>60</sup> *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73 and IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002 ("*Milošević* 18 April 2002 Decision"), para. 4; *Šešelj* 17 April 2007 Decision, para. 14; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005 ("*Stanišić* 17 October 2005 Decision"), para. 6; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 November 2004 ("*Milošević* 1 November 2004 Decision"), para. 10.

<sup>61</sup> *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.3, Decision on Joint Defence Interlocutory Appeal against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009 ("*Gotovina* 26 January 2009 Decision"), para. 5; *Karadžić* 7 May 2009 Decision, para. 11; *Karadžić* 6 April 2009 Decision, para. 14; *Šešelj* 17 April 2007 Decision, para. 14. See *Milošević* 18 April 2002 Decision, para. 5; *Stanišić* 17 October 2005 Decision, para. 6.

<sup>62</sup> *Milošević* 1 November 2004 Decision, para. 10; *Milošević* 18 April 2002 Decision, paras. 5–6. See, e.g., *Karadžić* 7 May 2009 Decision, para. 11; *Karadžić* 6 April 2009 Decision, para. 14; *Gotovina* 26 January 2009 Decision, para. 5. See *Šešelj* 17 April 2007 Decision, para. 14, fn. 25; *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decisions Granting Provisional Release, 19 October 2005 ("*Tolimir* 19 October 2005 Decision"), para. 4.

<sup>63</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.10, Decision on Appeal from Decision on Duration of Defence Case, 29 January 2013 ("*Karadžić* 29 January 2013 Decision"), para. 7; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.7, Decision on Defendants Appeal Against "Décision Portant Attribution du Temps à La Défense Pour la Présentation des Moyens à Décharge", 1 July 2008, para. 15. See *Šešelj* 17 April 2007 Decision, para. fn. 25; *Tolimir* 19 October Decision 2005, para. 4.

<sup>64</sup> Motion, paras. 22, 31. See *supra*, para. 8.

the Trial Chamber was so unfair or unreasonable as to constitute an abuse of discretion. Mladić advances a number of arguments in support of this ground of appeal, which the Appeals Chamber will address in turn.

24. The Appeals Chamber recalls that the Prosecutor has a positive and continuous duty to fulfil its Rule 68 disclosure obligations and that this duty continues throughout the proceedings.<sup>65</sup> The determination of what materials meet the disclosure requirements under Rule 68 of the Rules rests within the Prosecutor's discretion and must be made in good faith.<sup>66</sup> As a result, there exists a rebuttable presumption that the Prosecution is operating in good faith in the fulfilment of its disclosure obligations.<sup>67</sup>

25. As a preliminary matter, the Appeals Chamber observes that there is no express requirement in the Rules for meta-data or other features such as indices to accompany disclosure, as correctly noted by the Trial Chamber.<sup>68</sup> However, while Rule 68(ii) of the Rules allows the Prosecutor to make disclosure materials available on the EDS, it is well established that the EDS cannot be used as a substitute for positive disclosure.<sup>69</sup> In this regard, the Prosecution may satisfy its disclosure obligations by creating a case-specific file, providing an index of disclosed materials, or providing some notice to the Defence when materials are added to the file.<sup>70</sup>

<sup>65</sup> *Prosecutor v. Tihomir Blaškić*, Case No IT-95-14-A, Decision on Prosecution's Application to Seek Guidance from the Appeals Chamber Regarding Redaction of the Statement of "Witness Two" for the Purposes of Disclosure to Dario Kordić under Rule 68, 4 March 2004 (confidential) ("*Blaškić* 4 March 2004 Decision"), para. 45; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000 ("*Blaškić* 26 September 2000 Decision"), paras 31-32; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006 ("*Bralo* 30 August 2006 Decision"), para. 29; *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations, 30 June 2006 ("*Karemera* 30 June 2006 Decision"), paras 8-9; *Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 and ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 44.

<sup>66</sup> *Prosecutor v. Tihomir Blaškić*, Case No IT-95-14-A, Judgement, 29 July 2004, para. 264; *Bralo* 30 August 2006 Decision, para. 30. See *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials, 7 December 2004, p. 3; *Blaškić* 4 March 2004 Decision, para. 44.

<sup>67</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 183; *Bralo* 30 August 2006 Decision, para. 31; *Blaškić* 26 September 2000 Decision, paras 32, 45.

<sup>68</sup> Impugned Decision, para. 10; Rule 68(ii) of the Rules.

<sup>69</sup> *Bralo* 30 August 2006 Decision, para. 35; *Karemera* 30 June 2006 Decision, paras 10, 15.

<sup>70</sup> See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Nikola Šainović's Second Motion for Admission of Additional Evidence on Appeal, 8 September 2010, para. 21 (finding materials to be "reasonably available and accessible" where the Defence was notified of documents placed in a case-specific EDS folder and provided with an index containing descriptions of those documents); *Prosecutor v. Radovan Karadžić*, IT-95-5/18-PT, Decision on Motions for Disclosure of Rule 68 Material and Reconsideration of Decision on Adequate Facilities, 10 March 2009, para. 20 (noting that the Prosecution had "respected the suggestions set out in the *Karemera* Appeals Decision" when it placed disclosure materials in a case-specific folder and informed the Defence through written notice or the provision of an electronic index of the added documents); *Karemera* 30 June 2006 Decision, paras 15-16, fn. 46 (referring to *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, Decision on Motion for Enforcement of Court Order re Electronic Disclosure Suite, 27 July 2005, as an example of adequate EDS

(a) The Trial Chamber's Consideration of Non-EDS Forms of Disclosure

26. In support of this ground of appeal, Mladić asserts that the Trial Chamber erred by considering the utility of parallel disclosures on hard disk.<sup>71</sup> The Appeals Chamber notes that Rule 68(ii) of the Rules is the only rule that prescribes a certain form of disclosure, in that it requires the Prosecution to make collections of relevant material available to the Defence in *electronic* form together with the software necessary for *electronic* searches.<sup>72</sup> However, while Rule 68(ii) of the Rules clearly requires disclosure in electronic form, it neither designates a particular electronic form as an official disclosure method, nor does it or any other provision in the Rules stipulate that the Prosecutor must use a particular type of electronic disclosure to the exclusion of other electronic forms.

27. Similarly, the jurisprudence does not designate the EDS or any other form of electronic disclosure as the official method, nor does it support a conclusion that one method of electronic disclosure is to be used to the exclusion of other methods. On the contrary, the Appeals Chambers of the Tribunal and the International Criminal Tribunal for Rwanda as well as various trial chambers have found that the provision of non-EDS resources, such as descriptive indices and written notices of disclosed material, are precisely the types of assistance that make EDS materials reasonably available and accessible to the Defence, thereby helping to meet the Prosecution's disclosure obligations.<sup>73</sup>

28. In the Impugned Decision, the Trial Chamber considered the assistance offered by the Prosecution to Mladić, both in terms of the meta-data being entered into the EDS and the provision of meta-data in spreadsheet indices, and held that the provision of meta-data in the spreadsheets "considerably reduced" the difficulties encountered by Mladić due to missing EDS meta-data.<sup>74</sup> The Appeals Chamber is of the view that the Trial Chamber's consideration of non-EDS disclosure materials in assisting Mladić and meeting the Prosecution's disclosure obligations was in

---

disclosure practice wherein the Prosecution had provided notice of materials placed in a case-specific EDS folder, indicated a willingness to cooperate with the Defence on disclosure issues, and although not required by the Rules had provided an index for approximately half of the documents in the EDS); *Bralo* 30 August 2006 Decision, para. 35, fn. 102 (noting as examples of providing adequate notice to the Defence of EDS disclosures: *Prosecutor v. Vujadin Popović*, Case No IT-02-57-PT, Partly Confidential Prosecution's Notice of Filing Witness List, Exhibit List and Disclosure of Witness Statements and Exhibits, 19 August 2005, and *Prosecutor v. Ljubiša Beara*, Case No. IT-02-58-PT, Partly Confidential Prosecution's Notice of Filing Witness List, Exhibit List and Disclosure of Witness Statements and Exhibits, 15 July 2005).

<sup>71</sup> Motion, para. 25. *See supra*, para. 10.

<sup>72</sup> *See supra*, para. 25. Rule 68(ii) of the Rules reads as follows:

without prejudice to paragraph (i), the Prosecutor shall make available to the defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the defence can search such collections electronically.

<sup>73</sup> *See supra*, para. 25, fn. 69.

<sup>74</sup> Impugned Decision, para. 12.

accordance with the Rules and the case law on disclosure.<sup>75</sup> Therefore, the Appeals Chamber finds that Mladić has not shown a discernible error in the Trial Chamber's consideration of non-EDS forms of disclosure.

(b) The Trial Chamber's Consideration of Previous Submissions

29. To the extent that Mladić asserts that the Trial Chamber erred by ignoring the parties' previous submissions on the EDS disclosure,<sup>76</sup> the Appeals Chamber notes that Mladić makes no showing of a specific omission on the part of the Trial Chamber or how such an omission resulted in a discernible error. On its face, the Impugned Decision shows that the Trial Chamber considered the parties' previous submissions on the EDS method of disclosure, summarising in some detail the parties' respective positions as expressed in Rule 65 *ter* meetings, Status Conferences, and a variety of filings.<sup>77</sup> There is no indication that the Trial Chamber ignored any submissions on the EDS meta-data issue. Considering the absence of a specific allegation by Mladić and the Impugned Decision's discussion of the parties' previous submissions, the Appeals Chamber finds that Mladić has not shown a discernible error in the Trial Chamber's consideration of the parties' previous submissions.

(c) The Trial Chamber's Consideration of Spreadsheets

30. As for Mladić's contention that the Trial Chamber erred in finding that the spreadsheet indices resolved the issue of missing EDS meta-data,<sup>78</sup> the Appeals Chamber notes that Mladić misstates the Trial Chamber's conclusion about the utility of the spreadsheet indices.<sup>79</sup> The Impugned Decision does not state that the spreadsheets resolve or cure the issue of missing meta-data, but clearly states that the spreadsheets meta-data "considerably reduced" the difficulty complained of by Mladić in having to open some documents to discover their content.<sup>80</sup> In this respect, the Trial Chamber also took into account the Prosecution's entry of requested EDS meta-data and noted that incomplete EDS meta-data was an ongoing issue, encouraging the Prosecution to continue assisting the Mladić Defence team in accessing and searching the EDS.<sup>81</sup> Similarly, there is nothing in the Impugned Decision or Mladić's submissions to suggest that the Trial Chamber was not aware of the fact that the spreadsheet meta-data was distinct from EDS meta-data and required manual inputting and searching. In fact, the Trial Chamber acknowledged these

<sup>75</sup> See *supra*, paras 26-27.

<sup>76</sup> Motion, para. 25.

<sup>77</sup> See Impugned Decision, paras 1-5.

<sup>78</sup> Motion, paras 25-26. See *supra*, paras 10-11.

<sup>79</sup> Impugned Decision, para. 12.

<sup>80</sup> Impugned Decision, para. 12.

<sup>81</sup> Impugned Decision, paras 12-13.

different forms of meta-data when considering the Prosecution's efforts to enter the requested meta-data into the EDS.<sup>82</sup>

31. Furthermore, there is no indication in the Impugned Decision or submissions that the Trial Chamber did not know of or appreciate the implications of some EDS materials not being identified by ERN. The Impugned Decision refers to the use of ERN numbers only inasmuch as the Prosecution described their use in its disclosure procedures,<sup>83</sup> and there is nothing to suggest that the Trial Chamber relied on a mistaken belief that all materials were identified by ERN in its finding that the spreadsheets substantially assisted Mladić. Given the Trial Chamber's intimate knowledge of the proceedings and the numerous submissions and discussions about the issues surrounding the EDS method of disclosure,<sup>84</sup> the Appeals Chamber finds that the Trial Chamber was aware that some materials were not identified by ERN, but were nonetheless searchable by other commonly used identifiers,<sup>85</sup> and that it took this into consideration when reaching its finding. Therefore, the Appeals Chamber finds that Mladić has not shown a discernible error in the Trial Chamber's findings regarding the electronic spreadsheet indices.

(d) The Trial Chamber's Consideration of Hard Disk Materials

32. The Appeals Chamber notes that Mladić again misstates the Trial Chamber's finding, when he claims that it erred in considering that the parallel hard disk materials were "searchable".<sup>86</sup> In its analysis of his request for re-disclosure of all previously disclosed materials on a hard drive, the Trial Chamber considered that the request related to Mladić being provided with electronically searchable versions of the disclosure materials pursuant to Rule 68(ii) of the Rules.<sup>87</sup> In this respect, the Trial Chamber held that these materials were already available in a searchable format, as they had also been provided through the EDS.<sup>88</sup> While the Trial Chamber did consider the spreadsheet indices to be searchable,<sup>89</sup> nowhere in the Impugned Decision did the Trial Chamber state that the parallel disclosure materials are searchable. Therefore, the Appeals Chamber finds that Mladić has not shown a discernible error in the Trial Chamber's consideration of the hard disk materials.

<sup>82</sup> Impugned Decision, para. 12.

<sup>83</sup> Impugned Decision, para. 1.

<sup>84</sup> Impugned Decision, paras 1-5, 13.

<sup>85</sup> See, e.g., Response, paras 12-13.

<sup>86</sup> Motion, para. 30. See *supra*, paras 10-11.

<sup>87</sup> Impugned Decision, para. 12.

<sup>88</sup> Impugned Decision, para. 12.

<sup>89</sup> Impugned Decision, para. 1.

(e) Alleged Trial Chamber's Delay in Issuing a Decision on Disclosure

33. With regard to the Trial Chamber's alleged delay or failure to act, Mladić again misrepresents the facts. Contrary to his claim that the Presiding Judge "promised" that a decision would be delivered within weeks, the transcript of the relevant proceeding shows that the Presiding Judge gave no such assurance.<sup>90</sup> Instead, the Presiding Judge encouraged the parties to resolve the outstanding disclosure issues among themselves and to come to an agreement where possible, informing the parties that the Trial Chamber was in the process of reviewing the requests for relief and that "the Chamber *aims to issue a decision, to the extent still needed, of course, on the requested relief within the next several weeks*".<sup>91</sup> It is clear, therefore, that the Trial Chamber gave only a broad indication of a possible date for its decision, the content and timing of which were plainly dependent on the ongoing discussions between the parties.

34. Moreover, the transcript of the 23 February 2012 Status Conference shows that the Trial Chamber was preparing to deliver its decision on Mladić's requests for relief within the timeframe it had previously indicated.<sup>92</sup> However, contrary to Mladić's claim that this decision was not issued because of the Prosecution's desire for delay, the transcript clearly shows that both parties agreed that a decision was premature at that stage:

JUDGE ORIE: [...] The Chamber informs the parties that it considers that submissions on this matter are now closed and aims to issue a decision on the requests for relief contained in these motions within the next week. The Chamber reiterates that to the extent possible the parties are encouraged to try to resolve these issues and come to an agreement. [...]

MR. GROOME: Your Honour, if I might return to the last issue. The Chamber has just announced that it intends to issue a decision with respect to disclosure in the coming week. Some of the issues raised in the motion by the Defence are issues that I believe many have been resolved, some have not. The Chamber's instructed us to file a report on that after the date it intends to issue a decision. So I wonder whether it would be prudent or helpful to the Chamber to inquire of Mr. Lukic at this stage – I know there was some productive meetings this week – at what stage he sees as the problems that have been solved and what problems he sees as still pending.

JUDGE ORIE: Of course the Chamber would seriously consider to postpone the dead-line if the parties – and I'm now addressing you as well, Mr. Lukic – if the parties would feel that the progress made and the outstanding matters still to be resolved are such in numbers that it would be more efficient to grant you a little bit more time before issuing a decision.

MR. LUKIC: *Yes, Your Honour. I think that the Defence is working hard together with the Prosecutor's office to solve the problems. And at least we need [the] meeting which is scheduled for tomorrow afternoon to see, actually, which point we reached by this moment. So probably tomorrow afternoon we will be able to inform you further on this matter.*

MR. GROOME: There are some problems that are – technical problems that are still being worked on, but if I could ask Mr. Lukic to address – I believe some technical problems have been solved over the course of this week. And if he's in a position to do so now, I think it might be helpful for

<sup>90</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 166 (19 January 2012). *Contra Motion*, para. 7.

<sup>91</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 166 (19 January 2012) (emphasis added).

<sup>92</sup> *See Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 200 (23 February 2012).

the Chamber to hear his point of view with respect to what has been solved. My staff inform me that it has been quite significant progress.

MR. LUKIC: [...] I think that Ms. Stewart promised that everything should be cured in the near future, but that's why *we need tomorrow afternoon's meeting to understand the point where we are at this moment.*

JUDGE ORIE: *If I understand the parties well, they are so confident that the progress made until now is of such significance that you would not urge us to immediately come with this decision next week and that you would rather report to the Chamber somewhere in the course of next week whether you still need a decision to resolve the matter; and if so, on what outstanding issues. Is that a kind of an understanding which you could agree with?*

MR. LUKIC: *Yes, Your Honour.* And we will definitely inform Your Honours about the progress that we made at the beginning of the next week. Thank you.<sup>93</sup>

35. These transcript excerpts demonstrate that the Trial Chamber and parties were actively working together over the course of several months to resolve many ongoing disclosure issues. The Appeals Chamber is satisfied that the Trial Chamber's decisions to await the outcome of the parties' discussions before ruling on these issues and to postpone its decision at the request of both parties were well within the scope of its discretion.<sup>94</sup> In this regard alone, Mladić's allegations of an unreasonable delay are plainly unsubstantiated.

36. Mladić first filed a motion objecting to the Prosecution's disclosure procedures on 17 November 2011,<sup>95</sup> but did not make his requests for re-disclosure with full meta-data and additional time until 9 February 2012.<sup>96</sup> The Impugned Decision was issued on 26 June 2012, approximately four and a half months after Mladić's initial request for relief. Despite Mladić's assertion that the Trial Chamber failed to act on the issues during this time, the record shows otherwise. It is evident from the discussions during Status Conferences and Rule 65 *ter* meetings, as well as the updates on the development of the issues often filed at the request of the Trial Chamber, that the parties and Trial Chamber were actively working to resolve the disclosure issues from the moment of Mladić's first objection.

37. The Appeals Chamber therefore finds that Mladić has not shown a discernible error amounting to an abuse of discretion in the Trial Chamber's management of his complaints.

(f) Conclusion

38. In light of the above, the Appeals Chamber finds that Mladić has failed to show that the Trial Chamber's decision in relation the meta-data of materials disclosed through the EDS was so

<sup>93</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-PT, T. 200–201 (23 February 2012) (emphasis added).

<sup>94</sup> *See supra*, paras 4, 22.

<sup>95</sup> Defence Submission of 17 November 2011, para. 21.

<sup>96</sup> Defence Submission of 9 February 2012, para. 14.

unfair or unreasonable as to constitute an abuse of discretion warranting the intervention of the Appeals Chamber. Mladić's first ground of appeal is therefore dismissed.

### B. Additional Time

39. Under his second ground of appeal, Mladić submits that the Trial Chamber erred because its decision not to grant additional time was based on a mistaken understanding of the meta-data issues.<sup>97</sup>

40. The Appeals Chamber recalls that the time granted to the parties for trial preparation and presentation of evidence is well within the trial chamber's discretion since decisions on such issues depend on a number of factors specific to each case.<sup>98</sup> A trial chamber has the authority to limit the length of time allocated to the parties, but must balance the need for adequate time with the need for an expeditious trial, taking all relevant factors into consideration.<sup>99</sup> In so doing, the trial chamber must consider whether the amount of time allocated is objectively adequate to permit the relevant party to fairly set forth its case in light of the complexity and number of issues to be litigated.<sup>100</sup> When a party alleges that a trial chamber erred in its decision with regard to the amount of time allocated, the question before the Appeals Chamber is whether the trial chamber took into account the relevant factors and determined that the time given to the party was sufficient for allowing a fair opportunity to present its case and, if so, whether the trial chamber's analysis of these factors was so deficient or unreasonable as to constitute an error in the exercise of its discretion.<sup>101</sup>

41. The Impugned Decision shows that the Trial Chamber was intimately familiar with the disclosure issues raised and discussed by the parties.<sup>102</sup> In deciding whether an extension of time was warranted to process missing meta-data, the Trial Chamber analysed what, if any, burden was faced by Mladić as a result of the lack of meta-data. The Trial Chamber considered numerous

<sup>97</sup> Motion, paras 22, 36-37. *See supra*, para. 14.

<sup>98</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.7, Decision on Appeal from Decision on Motion for Further Postponement of Trial, 31 March 2010, paras 19, 23. *See Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009, para. 19; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 ("*Milošević* 20 January 2004 Decision"), para. 16.

<sup>99</sup> *See Karadžić* 29 January 2013 Decision, para. 16; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, 6 February 2007 ("*Prlić* 6 February 2007 Decision"), para. 14; *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005 ("*Orić* 20 July 2005 Decision"), para. 8; *Milošević* 20 January 2004 Decision paras 15-16.

<sup>100</sup> *See Karadžić* 29 January 2013 Decision, para. 16; *Prlić* 6 February 2007 Decision, para. 14; *Orić* Decision 20 July 2005, paras 8-9; *Milošević* 20 January 2004 Decision, paras 15-16.

<sup>101</sup> *Prlić* 6 February 2007 Decision, para. 14; *Orić* Decision 20 July 2005, para. 9; *Milošević* 20 January 2004 Decision, paras 15-16.

<sup>102</sup> Impugned Decision, para. 4. *See supra*, paras 33-37.

factors such as: the Prosecution's disclosure procedures;<sup>103</sup> the concerns expressed by Mladić;<sup>104</sup> the reports, submissions, and negotiations of the parties on the details of the evolving disclosure issues;<sup>105</sup> the existing and increasing provision of meta-data within the EDS and spreadsheet indices;<sup>106</sup> the effectiveness of searching spreadsheets for missing EDS meta-data;<sup>107</sup> the Prosecution's past assistance to the Mladić Defence team;<sup>108</sup> and the Prosecution's willingness to continue such assistance.<sup>109</sup>

42. Insofar as Mladić's submissions about the trial date, discovery violations, and issues of non-disclosure<sup>110</sup> relate to whether the Trial Chamber considered all relevant factors in its decision to deny the request for additional time, it must be noted that the Impugned Decision focuses on the difficulties caused by missing meta-data<sup>111</sup> and does not discuss these other issues. However, once the Trial Chamber found that the unresolved meta-data issue amounted only to an "inconvenience"<sup>112</sup> which itself had been substantially lessened, and that no additional time was warranted, the question of what other burdens Mladić might have been facing was no longer relevant. Indeed, in the Appeals Chamber's view, these matters would be relevant only to the extent that they could exacerbate an existing burden caused by missing meta-data. Therefore, having found no error in the Trial Chamber's conclusion that there was no significant burden on Mladić caused by the lack of meta-data, the Appeals Chamber considers that these other matters were irrelevant to the decision of whether or not to grant additional time for the purpose of processing such materials. The Trial Chamber, therefore, took into account all relevant factors in reaching its decision on whether or not to grant Mladić's request for additional time to process documents without meta-data.

43. As discussed previously, Mladić has not shown that the Trial Chamber made a discernible error in its understanding and analysis of either the EDS meta-data issue, or his ability to effectively access the disclosed material.<sup>113</sup> Similarly, Mladić has not shown, nor does the Appeals Chamber find, that the Trial Chamber's consideration of any of the other relevant factors was so deficient or unreasonable as to constitute an error.

---

<sup>103</sup> Impugned Decision, para. 1.

<sup>104</sup> Impugned Decision, paras 2-4.

<sup>105</sup> Impugned Decision, paras 2-4, 12-13.

<sup>106</sup> Impugned Decision, para. 12.

<sup>107</sup> Impugned Decision, para. 12.

<sup>108</sup> Impugned Decision, paras 12-13.

<sup>109</sup> Impugned Decision, paras 12-13.

<sup>110</sup> Motion, paras 33-36. *See supra*, paras 13-14.

<sup>111</sup> *See supra*, para. 41.

<sup>112</sup> Impugned Decision, para. 12.

<sup>113</sup> *See supra*, paras 26-38.

44. The Appeals Chamber therefore finds that Mladić has not shown a discernible error in the Trial Chamber's denial of his request for additional time.

## V. CONCLUSION

45. In light of the above, the Appeals Chamber considers that Mladić has failed to show that the Trial Chamber's discretionary decisions on meta-data and additional time were based on an incorrect interpretation of law or on a patently incorrect conclusion of fact, or so unreasonable or unfair as to constitute an abuse of discretion. Because no discernible error has been shown, there is no prejudice to Mladić and, therefore, no remedy need be discussed.

## VI. DISPOSITION

46. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion.

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

Dated this twenty eighth day of November 2013,  
At The Hague,  
The Netherlands.



---

Judge Carmel Agius  
Presiding

[Seal of the Tribunal]