

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 10 May 2016

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Vagn Prüsse Joensen  
Judge José Ricardo de Prada Solaesa  
Judge Graciela Susana Gatti Santana

**Registrar:** Mr. John Hocking

**Decision of:** 10 May 2016

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

**DECISION ON A MOTION TO ORDER THE PROSECUTION  
TO OBTAIN AND DISCLOSE SUBSEQUENT STATEMENTS**

**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katrina Gustafson

**Counsel for Mr. Radovan Karadžić:**

Mr. Peter Robinson

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);<sup>1</sup>

**NOTING** the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber”), on 24 March 2016 (“Trial Judgement”);<sup>2</sup>

**BEING SEISED OF** a motion filed on 30 March 2016 by Mr. Radovan Karadžić, in which he requests an order directing the Office of the Prosecutor of the Mechanism (“Prosecution”) to obtain and disclose statements and testimony provided in subsequent national proceedings by Prosecution witnesses who testified in his case, as these “are material to the preparation of the defence on appeal” because “they may contain new or contradictory information of an exculpatory nature” and “may be the subject of a motion to admit additional evidence on appeal”;<sup>3</sup>

**NOTING** that the Prosecution responded on 11 April 2016 opposing the Motion and that Karadžić filed a reply on 14 April 2016;<sup>4</sup>

**NOTING** Karadžić’s submissions that the Prosecution informed him that it is not willing to make enquiries with national authorities with a view to obtain and disclose to him the requested materials and that, because of the *ex parte* nature of certain proceedings concerning protected witnesses, he is unable to contact the national authorities himself;<sup>5</sup>

**NOTING FURTHER** Karadžić’s reliance on case law pertaining to the need to facilitate defence investigations by, *inter alia*, ordering the prosecution to obtain material from national authorities and disclose it to the defence;<sup>6</sup>

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

<sup>2</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016.

<sup>3</sup> Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements, 30 March 2016 (“Motion”), paras. 1, 3, 6, 8, 11.

<sup>4</sup> Prosecution’s Response to Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements, 11 April 2016, paras. 1-6; Reply Brief: Motion for Order to Prosecution to Obtain and Disclose Subsequent Statements, 14 April 2016, paras. 1-20.

<sup>5</sup> Motion, paras. 7, 8, 9; Reply, para. 1.

<sup>6</sup> Motion, para. 10, referring to *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on Matters Related to Witness KDD’s Judicial Dossier, 1 November 2004, para. 15; *The Prosecutor v. Joseph Nzirorera et al.*, Case No. ICTR-98-44-I, Decision on Defence Motion for an Order to the Prosecution Witnesses to Produce, at their Appearance, their Diaries, and Other Written Materials from 1992 to 1994 and their Statements Made Before the Rwandan Judicial Authorities, 8 March 2004 (original French version filed on 24 November 2003), para. 11 [sic]; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Request for Documents Arising From Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses, 17 December 2003, para. 7; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Defence Motion Seeking Documents Relating to Detained Witnesses or Leave of the Chamber to Contact Protected Detained Witnesses, 15 November 2001, para. 25; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Decision on Juvénal Kajelijeli’s Motion Requesting the Recalling of Prosecution Witness GAO, 2 November 2001, para. 20; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 52.

**NOTING** the Prosecution submissions, that Karadžić's request is "overly broad and wholly speculative" as it fails to provide any basis for believing that, should such material exist, it may contain information of an exculpatory nature that would assist him on appeal, that the Prosecution has no obligation to obtain material from national authorities in the absence of any basis for belief that such hypothetical material could, if it existed, contain exculpatory information, and that, in any event, Karadžić remains free to direct specific requests for assistance to national authorities;<sup>7</sup>

**CONSIDERING** that the jurisprudence relied on by Karadžić is inapposite as it pertains to requests to facilitate the presentation of the defence case during trial proceedings due to the inability of the defence to obtain cooperation from the national authorities;<sup>8</sup>

**RECALLING** that the Appeals Chamber may, in exceptional circumstances, facilitate investigations at the appeal stage if the moving party demonstrates, for instance, that it is in possession of specific information that needs to be further investigated in order to avoid a miscarriage of justice and that this specific information was not available at trial and could not have been discovered at trial through the exercise of due diligence;<sup>9</sup>

**CONSIDERING** that the Motion does not identify any specific information that needs to be investigated to avoid a miscarriage of justice and that Karadžić merely argues that subsequent statements or testimony "may contain new or contradictory information of an exculpatory nature";

**FINDING**, therefore, that Karadžić has failed to demonstrate the existence of exceptional circumstances that would justify the intervention of the Appeals Chamber to assist investigations at the appeal stage;

**REITERATING** the Prosecution's positive and continuous obligation under Rule 73(A) of the Rules of Procedure and Evidence of the Mechanism to disclose to the Defence as soon as

<sup>7</sup> Response, paras. 1, 2, 4, 5. The Prosecution also highlights that "the Trial Chamber has already effectively ruled on this issue" finding, *inter alia*, that Karadžić's motion was "overly broad and speculative" and that the Trial Chamber's reasoning should be applied by the Appeals Chamber in disposing of the Motion. See Response, para. 3, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused Motion for Disclosure of Information on Variation of Protective Measures, 18 February 2016.

<sup>8</sup> See *supra*, n. 6.

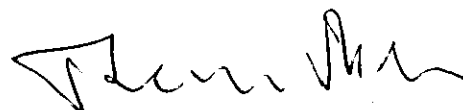
<sup>9</sup> *Ildphonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildphonse Hategekimana's Motion for Cooperation and Judicial Assistance, 5 May 2011, para. 4; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Extremely Urgent Motion for Leave to Appoint an Investigator, 4 October 2005, p. 4. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, para. 3.

practicable any material which “in its actual knowledge” may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence,<sup>10</sup>

**HEREBY DENY** the Motion in its entirety.

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

Done this 10th day of May 2016,  
At The Hague,  
The Netherlands



Judge Theodor Meron  
Presiding

[Seal of the Mechanism]

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<sup>10</sup> *Augustin Ngirabatware v. Prosecutor*, Case No. MICT-12-29-A, Decision on Augustin Ngirabatware’s Motion for Sanctions for the Prosecution and for an Order for Disclosure, 15 April 2014, para. 12.