

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 24 January 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge

Registrar: Mr. Olufemi Elias

Decision of: 24 January 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A REQUEST FOR RECLASSIFICATION OF FILINGS
RELATED TO GROUND 26 OF KARADŽIĆ'S APPEAL BRIEF**

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
Ms. Kate Gibson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Pre-Appeal Judge in this case;¹

NOTING the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) on 24 March 2016;²

BEING SEISED OF the “Request for Reclassification of Pleadings and Decisions Related to Ground 26” filed confidentially on 26 December 2016 (“Motion”) in which Mr. Radovan Karadžić (“Karadžić”) requests that the following confidential filings be reclassified as public: (i) “Motion to Re-open Defence Case No. Six *bis*: General Miletić Testimony”, filed confidentially by Karadžić on 14 April 2015; (ii) “Prosecution Response to Motion to Re-open Defence Case No. Six *bis*: General Miletić Testimony”, filed confidentially by the Office of the ICTY Prosecutor on 28 April 2015; and (iii) “Decision on Accused’s Sixth *bis* Motion to Re-open Defence Case”, issued confidentially by the Trial Chamber on 7 May 2015 (“Relevant Filings”, collectively);³

NOTING Karadžić’s submission that, although the Relevant Filings were filed confidentially because the Trial Chamber had found that previous filings which referred to the health condition of Mr. Radivoje Miletić (“Miletić”) had been filed confidentially, there is no reason to maintain the confidential status of the Relevant Filings as they do not specify the nature of Miletić’s illness and the fact he was ill is not such an invasion of his privacy as to warrant continuing confidential status of the filings;⁴

NOTING FURTHER Karadžić’s submission that the Relevant Filings relate to ground 26 of his appeal brief and that “[i]t will be difficult for the parties to discuss this ground of appeal at the appeals hearing without going into private session, and for the Appeals Chamber to discuss this issue in its public judgement if those filings remain confidential”;⁵

NOTING that the Prosecution opposes the Motion and states that information relating to Miletić’s health has consistently been treated as confidential and therefore should be redacted from any

¹ Order Assigning a Pre-Appeal Judge, 21 April 2016; Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

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

³ Motion, para. 1.

⁴ Motion, para. 2, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused’s Sixth Motion to Re-Open Defence Case, 3 March 2015 (confidential) (“Decision of 3 March 2015”), para. 12.

⁵ Motion, para. 3.

public versions of the Relevant Filings, and that the Appeals Chamber should hear from Miletić if it intends to reclassify the Relevant Filings;⁶

RECALLING the right of an accused to a fair and public hearing and that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;⁷

CONSIDERING the need to guarantee the confidential status of information to protect the privacy interests of persons involved in proceedings before the ICTY or the Mechanism;⁸

CONSIDERING that Miletić's health condition was addressed at trial in confidential filings;⁹

CONSIDERING, however, that during a status conference held in the case of *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Miletić publicly disclosed the fact that he had been ill;¹⁰

CONSIDERING FURTHER that the Relevant Filings do not contain any medical information other than that Miletić had been ill;

FINDING, therefore, that no reason exists for the Relevant Filings to remain confidential;

HEREBY GRANT the Motion; and

INSTRUCT the Registry to reclassify the Relevant Filings as public.

⁶ Prosecution's Response to Karadžić's Request for Reclassification of Pleadings and Decisions Related to Ground 26, 29 December 2016 (confidential), paras. 1, 2.

⁷ See Articles 18 and 19 of the Statute of the Mechanism; Decision on a Request for Reclassification of Filings, 9 June 2016, p. 2; *Prosecutor v. Naser Orić*, Case No. MICT-14-79, Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015, 17 February 2016, para. 8.

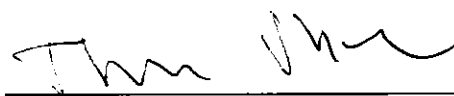
⁸ Cf., e.g., Decision on Motion for Access to *Ex Parte* Filings in Completed Cases, 10 May 2016, p. 2; *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on Defence Request for Reclassification of Filings Related to Hadžić's Health Condition as Public and Prosecution Motion for Reclassification of Testimony as Public, 13 March 2015 (public with confidential annexes), para. 6; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Urgent Defence Request for Further Submissions of Psychiatric Medical Expert and Decision on Defence Motion to Redact Medical Reports, 6 August 2009, para. 18; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Lifting Confidentiality of Relevant Materials for Investigation Purposes, 16 March 2006, pp. 2, 3. See also Rule 86(A) of the Rules of Procedure and Evidence of the Mechanism.

⁹ See Decision of 3 March 2015, para. 12, n. 24; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of "Decision on Request by Radivoje Miletić to Postpone Date of Testimony" Issued on 13 February 2014, 14 February 2014; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request by Radivoje Miletić to Postpone Date of Testimony, 13 February 2014 (confidential); *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Request of Radivoje Miletić to Postpone His Court Appearance, 7 February 2014 (confidential).

¹⁰ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, T. 3 April 2014 p. 612.

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

Done this 24th day of January 2017,
At The Hague,
The Netherlands



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Mechanism]