

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 10 May 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Olufemi Elias
Decision of: 10 May 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A SECOND MOTION
FOR PUBLIC REDACTED VERSIONS
OF RULE 86(F) JURISPRUDENCE**

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 Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Pre-Appeal Judge in this case;¹

RECALLING the “Decision on a Motion for Redacted Versions of Rule 86(F) Filings” issued on 24 January 2017, partly granting the request of Mr. Radovan Karadžić (“Karadžić”) for redacted versions of orders and decisions filed in this case pursuant to Rule 86(F) of the Rules, issuing public redacted versions of decisions and orders filed in five proceedings in this case pursuant to Rule 86(F) of the Rules, and *inter alia* instructing the Office of the Prosecutor of the Mechanism (“Prosecution”) to file public redacted versions of its submissions made on 29 September 2016 in those proceedings (“Prosecution Submissions of 29 September 2016”);²

NOTING the filing of public redacted versions of the Prosecution Submissions of 29 September 2016 on 1 February 2017;³

RECALLING the “Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence” issued on 6 April 2017, partly granting Karadžić’s request for public redacted versions of the decisions referred to in the public redacted versions of the Prosecution Submissions of 29 September 2016, and instructing the Prosecution to file revised public redacted versions of its submissions so that they identify the decisions relied upon therein to enable Karadžić to move before appropriate authorities for the issuance of public redacted versions of such decisions;⁴

NOTING the filing of revised public redacted versions of the Prosecution Submissions of 29 September 2016 on 13 April 2017;⁵

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

² Decision on a Motion for Redacted Versions of Rule 86(F) Filings, 24 January 2017 (“Decision of 24 January 2017”), pp. 4, 5, n. 22, referring to *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.2, Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.3, Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*).

³ Notice of Filing of Public Redacted Version of Prosecution Request of 29 September 2016, 1 February 2017; Notice of Filing of Public Redacted Version of Prosecution Request of 29 September 2016, 1 February 2017.

⁴ Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence, 6 April 2017 (“Decision of 6 April 2017”), pp. 1, 3, n. 4, referring to *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.2, Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.3, Prosecution Request for Leave to File Further Submission in Response to Registrar’s Submission in Relation to the Order for Submissions of 20 September 2016, 29 September 2016 (confidential and *ex parte*).

⁵ Notice of Filing of Revised Public Redacted Version of Prosecution Request of 29 September 2016 (MICT-13-55-R86F.2), 13 April 2017; Notice of Filing of Revised Public Redacted Version of Prosecution Request of 29 September 2016 (MICT-13-55-R86F.3), 13 April 2017.

BEING SEISED OF the “Second Motion for Public Redacted Versions of Rule 86(F) Jurisprudence”, filed on 14 April 2017 (“Motion”), in which Karadžić requests the issuance of public redacted versions of three decisions referred to in the Prosecution Submissions of 29 September 2016, namely: (i) “Decision on an Application Pursuant to Rule 86” issued confidentially and *ex parte* on 21 January 2016 in *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. MICT-15-86-R86F.1; (ii) “Decision on an Application Pursuant to Rule 86”, issued confidentially and *ex parte* on 16 March 2016 in *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-R86F.1; (iii) “Decision on an Application Pursuant to Rule 86(F)”, issued confidentially and *ex parte* on 25 July 2016 in *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-R86F.2 (“Three Decisions”, collectively);⁶

NOTING Karadžić’s submission that the Three Decisions should be made available to the public for the benefit of transparency of the Mechanism’s evolving jurisprudence and to the defence, particularly as they concern issues of interest and relevance to his case and given that he has a legitimate forensic purpose to access them as he continues to litigate issues concerning Rule 86 proceedings;⁷

NOTING the Prosecution’s response filed on 24 April 2017, in which the Prosecution submits that Karadžić’s request should be dismissed as the Appeals Chamber is not the appropriate body to adjudicate it;⁸

CONSIDERING that no chamber or judge is currently seized of the relevant proceedings in the *Naletilić and Martinović*, *Stakić*, and *Brđanin* cases and that it is my responsibility as Pre-Appeal Judge in this case to ensure that the proceedings are not unduly delayed;

FINDING that, in the present circumstances, it is in the interests of judicial economy for me to dispose of this matter rather than dismiss it without prejudice so that it can be filed before the President for the assignment of a Single Judge;

RECALLING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;⁹

⁶ Motion, paras. 3, 4.

⁷ Motion, paras. 4-6.

⁸ Prosecution’s Response to Karadžić’s Second Motion for Redacted Versions of Rule 86(F) Jurisprudence, 24 April 2017 (“Response”), para. 1. In particular, the Prosecution argues that it would be the President’s role to consider a request for redacted versions and appoint a Single Judge or Chamber as necessary. *See* Response, n. 3.

⁹ *See, e.g.*, Decision of 6 April 2017, p. 2.

NOTING that the Three Decisions contain information conveyed to the Mechanism by national authorities on a confidential and *ex parte* basis concerning protected witnesses and/or investigations and proceedings before national authorities;

FINDING, therefore, that issuing public redacted versions of the Three Decisions, as requested by Karadžić, will ensure the public nature of proceedings to the extent possible, while the interests of the parties on whose behalf the confidential and *ex parte* status was granted can be adequately protected by appropriate redactions;

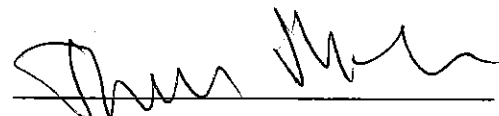
PURSUANT to Articles 19(2) and 20 of the Statute of the Mechanism and Rule 55 of the Rules,

HEREBY

GRANT the Motion, and **ISSUE**, as an annex to the present decision, public redacted versions of the Three Decisions.

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

Done this 10th day of May 2017,
At The Hague,
The Netherlands



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Mechanism]

ANNEX

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-15-86-R86F.1

Date: 21 January 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

Decision of: 21 January 2016

PROSECUTOR

v.

**MLADEN NALETILIĆ
VINKO MARTINOVIĆ**

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86

[REDACTED]:

[REDACTED]

[REDACTED]

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Mr. Mathias Marcussen

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

BEING SEISED OF a confidential and *ex parte* application filed on 15 December 2015, in which the Prosecutor’s Office of [REDACTED] (“Applicant”) requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34 (“*Naletilić and Martinović Case*”);¹⁰

RECALLING the “Order for Submissions on an Application pursuant to Rule 86(F)”, filed confidentially and *ex parte* on 11 January 2016 (“Order for Submissions”) in which I ordered that: (i) the *ex parte* status of the Application be lifted with respect to the Prosecution and that the Application be served on the Prosecution; (ii) the Registry’s Witness Support and Protection Unit (“WISP”) inform me whether any protective measures have been granted by the ICTY to the person identified in the Application, and, if so, whether these have been subsequently continued or varied; and (iii) the Prosecution file a submission, if any, on the Application;¹¹

NOTING the “Prosecution Submission on [an] Application pursuant to Rule 86(F)”, filed confidentially and *ex parte* with a confidential and *ex parte* annex on 18 January 2016 (“Prosecution Submissions”);

NOTING the “Registrar’s Submission in relation to the Order of 11 January 2016”, filed confidentially and *ex parte* with a confidential and *ex parte* annex on 19 January 2016 (“Registrar’s Submissions”);

NOTING that the Prosecution and the WISP confirm that the individual identified in the Application was accorded protective measures in the *Naletilić and Martinović Case*.¹²

¹⁰ Application of the Prosecutor’s Office of [REDACTED] for Information about the Type of Protective Measures Assigned to Witnesses in an ICTY Case in Order to Ensure that such Measures Continue to have Effect *Mutatis Mutandis* Pursuant to Rule 86(F)(i) of the MICT Rules of Procedure and Evidence, dated 2 December 2015 and filed on 15 December 2015 (confidential and *ex parte*) (“Application”), paras. 4-6, RP. 7. *See also* Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86, 17 December 2015 (confidential and *ex parte*).

¹¹ Order for Submissions, p. 1.

¹² Prosecution Submissions, Annex; Registrar’s Submissions, Annex.

NOTING that the WISP has confirmed that the protective measures have not been continued or varied;¹³

CONSIDERING that the Applicant knows the identity of the individual identified in the Application as a witness and seeks information about the nature of the protective measures accorded to him by the ICTY in order to request the assignment of identical protective measures before the Court of [REDACTED] in the case [REDACTED];¹⁴

CONSIDERING, therefore, that, for the purposes of rendering this Decision, it is not necessary to seek the concerned person's consent pursuant to Rule 86(I) of the Mechanism's Rules of Procedure and Evidence ("Rules");

PURSUANT TO Article 20 of the Mechanism's Statute and Rules 55 and 86 of the Rules;

HEREBY GRANT the Application; and

INFORM the Applicant, that based on the information received from submissions from the WISP and the Prosecution, the following protective measures apply to the person identified in the Application: [REDACTED];¹⁵

ORDER that the Applicant may not disclose the information that is released in this Decision to anyone, except to the judicial authorities in the [REDACTED] Case;

ORDER that the Applicant may not disclose the information that is released pursuant to this Decision to any other parties or persons, except in relation to the preparation or conduct of the proceedings in the [REDACTED] Case and provided the Applicant obtains assurances under the threat of criminal sanction that those parties or persons will strictly maintain the confidentiality of the information; and

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the individual named in the Application and shall provide that individual with the same level of protection as granted to the individual by the ICTY.

¹³ Registrar's Submissions, Annex.

¹⁴ Application, RP. 7-9.

¹⁵ See Prosecution Submissions, Annex; Registrar's Submissions, Annex.

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

Done this 21st day of January 2016,
At Arusha,
Tanzania

Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

**UNITED
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Mechanism for International Criminal Tribunals

Case No.: MICT-13-60-R86F.1

Date: 16 March 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Aydin Sefa Akay

Registrar: Mr. John Hocking

Decision of: 16 March 2016

PROSECUTOR

v.

MILOMIR STAKIĆ

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86

[REDACTED]:

[REDACTED]

[REDACTED]

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Mathias Marcussen

I, AYDIN SEFA AKAY, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹⁶

BEING SEISED OF a confidential and *ex parte* application filed on 17 February 2016, in which the Prosecutor’s Office of [REDACTED] (“Applicant”) requests information about the nature of protective measures granted to a witness by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Milomir Stakić*, Case No. IT-97-24 (“Stakić Case”);¹⁷

RECALLING the “Order for Submissions on an Application pursuant to Rule 86(F)”, filed confidentially and *ex parte* on 1 March 2016 (“Order for Submissions”), in which I ordered, *inter alia*, that the Registry’s Witness Support and Protection Unit (“WISP”) inform me whether the ICTY granted any protective measures to the person identified in the Application and, if so, whether any such measures were subsequently continued or varied;¹⁸

NOTING the “Registrar’s Submission in Relation to the Order of 1 March 2016”, filed confidentially and *ex parte* on 4 March 2016;

NOTING the “Prosecution’s Submission on Application Pursuant to Rule 86(F)”, filed confidentially and *ex parte* on 8 March 2016 (“Prosecution’s Submission”);

NOTING the “Further Order in Relation to an Application Pursuant to Rule 86”, filed confidentially and *ex parte* on 9 March 2016;

NOTING the “Registrar’s Submission in Compliance with the Further Order in Relation to an Application Pursuant to Rule 86”, filed confidentially and *ex parte* with a confidential and *ex parte* annex on 11 March 2016 (“Registrar’s 11 March 2016 Submission”);

NOTING that the WISP and the Prosecution confirm that the individual identified in the Application was accorded protective measures by the ICTY;¹⁹

¹⁶ Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86, 25 February 2016 (confidential and *ex parte*).

¹⁷ Application of the Prosecutor’s Office of [REDACTED] for Information about the Type of Protective Measures Assigned to Witnesses in an ICTY Case in Order to Ensure that Such Measures Continue to Have Effect *Mutatis Mutandis* Pursuant to Rule 86(F)(i) of the MICT Rules of Procedure and Evidence, 17 February 2016 (confidential and *ex parte*) (“Application”), paras. 6, 7, 12, 16. *See also* Annex to Application, 10 March 2016 (confidential and *ex parte*) (“Annex”), RP. 35.

¹⁸ Order for Submissions, p. 1.

¹⁹ Prosecution’s Submission, paras. 1-3; Registrar’s 11 March 2016 Submission, Annex, paras. 2-4.

CONSIDERING that the Applicant knows the identity of the individual identified in the Application as a witness and only seeks information about the nature of the protective measures accorded to him by the ICTY in order to request the assignment of identical protective measures before the court of [REDACTED] in the case [REDACTED];²⁰

CONSIDERING, therefore, that, for the purposes of rendering this Decision, it is not necessary to seek the concerned person's consent pursuant to Rule 86(I) of the Mechanism's Rules of Procedure and Evidence ("Rules");²¹

PURSUANT TO Article 20 of the Mechanism's Statute and Rules 55 and 86 of the Rules;

GRANT the Application; and

INFORM the Applicant that, based on the information received from the WISP and the Prosecution, the protective measures that apply to the person identified in the Application are [REDACTED];

ORDER that the Applicant may not disclose the information that is released in this Decision to anyone, except to the judicial authorities in the [REDACTED] Case;

ORDER that the Applicant may not disclose the information that is released pursuant to this Decision to any other parties or persons, except in relation to the preparation or conduct of the proceedings in the [REDACTED] Case and provided the Applicant obtains assurances under the threat of criminal sanction that those parties or persons will strictly maintain the confidentiality of the information; and

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the individual named in the Application and shall provide that individual with the same level of protection as that granted to the individual by the ICTY.

²⁰ Application, paras. 6, 7, 12, 16; Annex, RP. 35, 33.

²¹ See, e.g., *Prosecutor v. Rasim Delić*, Case No. MICT-14-74-R86F.2, Public Redacted Version of the 12 November 2015 Decision on an Application pursuant to Rule 86, 11 February 2016, p. 1.

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

Done this 16th day of March 2016,
At The Hague,
The Netherlands.

Judge Aydin Sefa Akay
Single Judge

[Seal of the Mechanism]

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-48-R86F.2

Date: 25 July 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Ben Emmerson

Registrar: Mr. John Hocking

Decision of: 25 July 2016

PROSECUTOR

v.

RADOSLAV BRĐANIN

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86(F)

[REDACTED]:

**[REDACTED]
[REDACTED]**

The Office of the Prosecutor:

Mr. Serge Brammertz

I, **BEN EMMERSON**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;²²

BEING SEISED OF a confidential and *ex parte* application filed on 16 June 2016, in which the [REDACTED] (“Applicant”) requests information about the nature of protective measures granted by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to a witness in the case of *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36;²³

RECALLING the “Order for Submissions on an Application Pursuant to Rule 86(F)”, filed confidentially and *ex parte* on 14 July 2016 (“Order for Submissions”), in which I ordered, *inter alia*, that the Witness Support and Protection Unit of the Mechanism (“WISP”) inform me whether the ICTY granted any protective measures to the person identified in the Application and, if so, whether any such measures were subsequently continued or varied;²⁴

NOTING the “Prosecution’s Submission on Application Pursuant to Rule 86(F)”, filed confidentially and *ex parte* on 18 July 2016 (“Prosecution Submission”);

NOTING the “Registrar’s Submission in Compliance with the Order for Submissions of 14 July 2016”, filed confidentially and *ex parte* with a confidential and *ex parte* annex on 21 July 2016 (“Registrar’s 21 July 2016 Submission”);

NOTING that the WISP confirms that the individual identified in the Application was accorded protective measures by the ICTY;²⁵

CONSIDERING that the Applicant knows the identity of the individual identified in the Application as a witness and only seeks information about the nature of protective measures accorded to him by the ICTY in order to request the assignment of identical protective measures before the court of [REDACTED] in the case [REDACTED];²⁶

²² Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86, 28 June 2016 (confidential and *ex parte*).

²³ Application of the Prosecutor’s Office of [REDACTED] for Information about the Type of Protective Measures Assigned to Witnesses in an ICTY Case in Order to Ensure that such Measures Continue to have Effect *Mutatis Mutandis* Pursuant to Rule 86(F)(i) of the MICT Rules of Procedure and Evidence, 16 June 2016 (confidential and *ex parte*) (“Application”), paras. 6, 7, 9, 11. I note that on 29 June 2016 the Applicant re-filed the Application, including the information identifying the witness concerned that was missing from the original filing. See Application of the Prosecutor’s Office of [REDACTED] for Information about the Type of Protective Measures Assigned to Witnesses in an ICTY Case in Order to Ensure that such Measures Continue to have Effect *Mutatis Mutandis* Pursuant to Rule 86(F)(i) of the MICT Rules of Procedure and Evidence, 29 June 2016 (confidential and *ex parte*) (“Application of 29 June 2016”), Registry pagination (“RP.”) 19.

²⁴ Order for Submissions, p. 1.

²⁵ Registrar’s 21 July 2016 Submission, Annex, paras. 2, 3.

²⁶ Application, paras. 7-9, 11; Application of 29 June 2016, RP. 19.

CONSIDERING, therefore, that, for the purposes of rendering this Decision, it is not necessary to seek the concerned person's consent pursuant to Rule 86(I) of the Rules of Procedure and Evidence of the Mechanism ("Rules");²⁷

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

GRANT the Application; and

INFORM the Applicant that, based on the information received from the WISP, the protective measures that apply to the person identified in the Application are [REDACTED];

ORDER that the Applicant may not disclose the information that is released in this Decision to anyone, except to the judicial authorities in the [REDACTED] Case;

ORDER that the Applicant may not disclose the information that is released pursuant to this Decision to any other parties or persons, except in relation to the preparation or conduct of the proceedings in the [REDACTED] Case and provided that the Applicant obtains assurances under the threat of criminal sanction that those parties or persons will strictly maintain the confidentiality of the information; and

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the individual named in the Application and shall provide that individual with the same level of protection as that granted to the individual by the ICTY.

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

Done this 25th day of July 2016,
At The Hague,
The Netherlands.

Judge Ben Emmerson
Single Judge

[Seal of the Mechanism]

²⁷ See, e.g., *Prosecutor v. Rasim Delić*, Case No. MICT-14-74-R86F.2, Public Redacted Version of the 12 November 2015 Decision on an Application pursuant to Rule 86, 11 February 2016, p. 1.