

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-12-20  
MICT-13-55-A

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. Olufemi Elias

Date: 12 April 2017

THE PROSECUTOR

THE PROSECUTOR

v.

v.

BERNARD MUNYAGISHARI

RADOVAN KARADZIC

*Public*

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MOTION TO RECLASSIFY DECISION

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The Office of the Prosecutor:

Laurel Baig  
Barbara Goy  
Katrina Gustafson

Bernard Munyagishari

Counsel for Radovan Karadzic:

Peter Robinson  
Kate Gibson

1. Dr Radovan Karadzic hereby moves for the assignment of a Single Judge to consider the reclassification of the *Decision on Application for Access to Confidential Information* rendered by Single Judge Gustav Kam in the *Munyagishari* case on 5 January 2017 from confidential to public, or if necessary, for the issuance of a public redacted version of that decision.

2. Dr. Karadzic is currently litigating the issue of disclosure of *ex parte* applications filed under Rule 86 by national authorities and parties to national proceedings<sup>1</sup> and intends to file further motions on this issue. Among the contentious issues in those proceedings is the practice of routinely excluding the defence from proceedings under Rules 86(F) and (H).

3. In reviewing the *Monitoring Report for February 2017* (22 March 2017) filed publicly in the *Munyagishari* case, Dr. Karadzic's counsel learned that there had been a decision issued by Judge Kam, in his capacity as a Single Judge, on 5 January 2017, in which he had ruled on an application by Munyagishari's assigned counsel in Rwandan national proceedings for access to material from ICTR cases.<sup>2</sup>

4. This decision had been discussed extensively during public court sessions in Rwanda and it appears that there is no good reason why the decision should remain confidential. Therefore, Dr. Karadzic requests that it be reclassified from confidential to public.

5. The decision, which is part of the jurisprudence of the Mechanism, is of interest to Dr. Karadzic as it may provide precedent in support of his arguments that the defence is unfairly excluded from Rule 86 proceedings at the Mechanism. While the Prosecution claims that it participates in such applications because they concern protected prosecution witnesses,<sup>3</sup> the *Munyagishari* case appears to involve an application to obtain information

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<sup>1</sup> *i.e. Prosecutor v Karadzic*, No. MICT-13-55-A, *Motion for Redacted Versions of Rule 86(H) Filings* (28 January 2017); *Motion for Public Versions of Rule 86(H) Jurisprudence* (19 February 2017).

<sup>2</sup> *Prosecutor v Munyagishari*, No. MICT-12-20, *Monitoring Report for February 2017* (22 March 2017) at paras. 7-8, 13, 24, 30, 38, 41. The MICT Registry advised that the decision is confidential and only available upon a judicial order.

<sup>3</sup> *Prosecutor v Karadzic*, No. MICT-13-55-A, *Prosecution's Response to Karadzic Motion for Inter Partes Proceedings* (9 February 2017) at para. 7

about defence witnesses.<sup>4</sup> Dr. Karadzic would be interested to read the decision and determine the extent to which the Prosecution participated in an application that may have concerned protected defence witnesses.

6. The decision also appears to be unique to the jurisprudence of the Mechanism in that it is indicated that the accused opposed the motion filed by assigned counsel in national proceedings. All proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.<sup>5</sup> There appears to be a public interest in making the decision public and part of the accessible jurisprudence of the Mechanism.

7. For all of these reasons, it is respectfully requested that the *Decision on Application for Access to Confidential Information* (5 January 2017) be reclassified from confidential to public. Alternatively, if there is material in the decision that needs to remain confidential, it is respectfully requested that a public redacted version be issued.

Word count: 693

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is fluid and cursive, with the first and last names being the most prominent.

PETER ROBINSON

Counsel for Radovan Karadzic

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<sup>4</sup> *Id.*, para. 24

<sup>5</sup> *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 8; *Prosecutor v Kamuhanda*, No. MICT-12-33-R86.1, *Decision on a Motion to Reclassify a Submission by the Registry* (5 February 2016), p. 2; *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 8; *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules* (18 July 2016) at p. 3