

**UNITED
NATIONS**



Mechanism for International Criminal
Tribunals

Case No: MICT-13-55-A

Date: 28 November 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

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO KARADŽIĆ'S MOTION
FOR REDACTED VERSIONS OF RULE 86(F) FILINGS**

The Office of the Prosecutor:

Laurel Baig
Barbara Goy
Katrina Gustafson

Counsel for Radovan Karadžić:

Peter Robinson
Kate Gibson

1. The Prosecution does not oppose¹ the issuance of public redacted versions of any Rule 86(F) decisions that may have been filed in this case,² as long as: (i) all information that potentially identifies the relevant domestic authorities and witnesses involved, including witness pseudonyms,³ is redacted; and (ii) the Appeals Chamber first seeks the input of the relevant domestic authorities, the Witness Support and Protection Unit, and the Office of the Prosecutor on redactions to address the risks of exposing confidential information. This procedure will ensure the protection of witnesses, and the confidentiality and integrity of the domestic proceedings. It will also serve the interests of transparency in relation to proceedings before the MICT.⁴

2. In relation to submissions or other non-decision filings that may have been filed pursuant to Rule 86(F), the Prosecution opposes the request for public redacted versions. These filings generally contain extensive information about the identity of the applicant and the proceedings at issue. Given the extent of sensitive information that would need to be redacted from these filings, especially in relation to applications from national prosecution services, the redacted versions would not provide meaningful information. They would serve no purpose. Moreover, there is no proper basis for Karadžić's suggestion that the President should routinely order public redacted versions of Rule 86(F) applications.⁵ Any such orders would have to be made on a case by case basis bearing in mind the particular sensitivities of any such application and the applicant's "protected degree of trust" that *ex parte* material will not be disclosed.⁶

3. Should the Appeals Chamber be inclined to grant Karadžić's request for redacted versions of any Rule 86(F) filings that reveal witness pseudonyms, the Prosecution urges the Appeals Chamber to issue confidential redacted versions, rather than public redacted versions. This will reduce the risk of disclosing sensitive information about domestic investigations and

¹ *Prosecutor v. Radovan Karadžić*, Case No.MICT-13-55-A, Motion for Redacted Versions of Rule 86(F) Filings ("Motion"), 17 November 2016, paras.1, 10.

² The Prosecution neither confirms nor denies the existence of any such decisions. The observations herein express the Prosecution's view on the general approach that should be taken.

³ Public redacted versions that disclose witness pseudonyms would allow members of the public—including potential suspects—to glean substantial information about the subject matter of the domestic proceedings when read in conjunction with the public judgement and public transcripts. The judgement and transcripts often include extensive information about the protected witnesses' evidence.

⁴ *Prosecutor v. Radovan Karadžić*, Case 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.

⁵ Motion, para.9.

⁶ *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Defence Motion by Franko Simatović for Access to Transcripts, Exhibits, Documentary Evidence and Motions Filed by the Parties in the *Simić et al.* Case, 13 April 2005 ("*Simić* Decision"), p.4.

proceedings, and the risk that members of the public could link protected witnesses to such proceedings.

4. Lastly Karadžić's suggestion that if he were provided with more information about Rule 86(F) applications he could provide information to the applicants relevant to their proceedings,⁷ ignores one of the well-founded rationales for the *ex parte* status of such applications and the corresponding high degree of confidentiality they enjoy.⁸ Such applications routinely contain sensitive, detailed information about domestic proceedings,⁹ and may relate to Karadžić's own former subordinates or associates.

Word Count: 588



Katrina Gustafson
Senior Appeals Counsel

Dated this 28th day of November 2016
At The Hague, The Netherlands

⁷ Motion, para.8.

⁸ *Simić* Decision, p.4.

⁹ See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Motion for Disclosure of Information on Variation of Protective Measures, 18 February 2016, p.3.