

MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-55-A

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prusse Joensen
Judge Jose Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. Olufemi Elias

Date: 14 April 2017

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

SECOND MOTION FOR PUBLIC REDACTED
VERSIONS OF RULE 86 (F) JURISPRUDENCE

The Office of the Prosecutor:

Laurel Baig
Barbara Goy
Katrina Gustafson

Counsel for Radovan Karadzic:

Peter Robinson
Kate Gibson

1. On 19 February 2017, President Karadzic moved for the issuance of public redacted versions of decisions cited by the Prosecution standing for the principle that the consent of a protected witness is not required when seeking modification of protective measures to disclose information to parties in national proceedings.¹

2. On 6 April 2017, the Pre-Appeal Judge ordered the Prosecution to file a lesser-redacted version of its submissions so as to enable President Karadzic to move for redacted versions of such decisions before the appropriate authorities.²

3. On 13 April 2017, the Prosecution filed its lesser-redacted versions.³ A review of its submission reveals that the decisions it relied upon in support of its position that the consent of a protected witness is not required when seeking modification of protective measures to disclose information to parties in national proceedings include:

Prosecutor v. Naletilic & Martinovic, No. MICT-15-86-R86F.1, *Decision on Application Pursuant to Rule 86* (21 January 2016)

Prosecutor v. Stakic, No. MICT-13-60-R86F.1, *Decision on an Application Pursuant to Rule 86* (16 March 2016)

Prosecutor v. Brdjanin, No. MICT-13-48-R86F.2, *Decision on an Application Pursuant to Rule 86(F)* (25 July 2016)

4. Each of these is a confidential and *ex parte* decision filed in a completed case. Therefore, as all proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential,⁴ President Karadzic respectfully requests that the Appeals Chamber order that public redacted versions of these decisions be filed so that this jurisprudence is available to the public and the defence, and not just

¹ *Motion for Public Redacted Versions of Rule 86(F) Jurisprudence* (19 February 2017)

² *Decision on a Motion for Public Redacted Versions of Rule 86(F) Jurisprudence* (6 April 2017)

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

⁴ *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

the Prosecution. An ICTY Trial Chamber has held that the Prosecution's citation to confidential decisions to which the accused does not have access violates the right to equality of arms.⁵

5. The issue of consent of protected witnesses in Rule 86 proceedings is of interest and relevance to the defence, and part of the on-going practice at the Mechanism.⁶ President Karadzic continues to litigate issues in relation to the Rule 86 proceedings in his case and has a legitimate forensic purpose for access to this jurisprudence so he can conduct this litigation on somewhat equal footing with the Prosecution.

6. President Karadzic and his counsel take this opportunity to once again urge the President and Appeals Chamber to improve the transparency of Rule 86 proceedings.

Word count: 678

Respectfully submitted,

A handwritten signature in dark ink, reading "Peter Robinson". The signature is written in a cursive, flowing style with large, connected letters.

PETER ROBINSON

Counsel for Radovan Karadzic

⁵ *Prosecutor v Prlic et al*, No. 04-74-T, *Decision on a Stojic Defence Request Regarding References to Confidential Decisions Rendered by Other Chambers* (23 March 2009)

⁶ See, i.e. *Prosecutor v Kamuhanda*, No. MICT 13-33, *Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness* (14 November 2016) at para. 11