

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: 2 December 2017

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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SUPPLEMENT TO  
MOTION TO ADMIT ADDITIONAL EVIDENCE

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The Office of the Prosecutor:

Laurel Baig  
Barbara Goy  
Katrina Gustafson

Counsel for Radovan Karadzic:

Peter Robinson  
Kate Gibson

1. On 24 April 2017 Radovan Karadzic moved to admit evidence from Dragomir Vasic as additional evidence in his appeal.<sup>1</sup> The Prosecution responded on 24 May 2017.<sup>2</sup> President Karadzic replied on 30 May 2017.<sup>3</sup> The Appeals Chamber has not yet issued a decision.

2. On 22 November 2017, the ICTY Trial Chamber hearing the *Mladic* case issued its final judgement.<sup>4</sup> A finding in that judgement is relevant to President Karadzic's pending *Motion*.

3. The ICTY Appeals Chamber has held that a party may file supplementary authorities provided that the issue has already been raised by the party and the supplemental authorities only became available after the filing of the briefs.<sup>5</sup>

4. The *Mladic* Trial Chamber stated:

The Trial Chamber received evidence from Nikolic concerning an encounter with Mladic in Konjevic Polje on 13 July 1995 and an alleged hand-gesture made by Mladic. The Trial Chamber further reviewed the evidence of Mladen Blagojevic and Mile Petrovic denying any encounter between Nikolic and Mladic on 13 July 1995 at the Konjevic Polje intersection. The Trial Chamber notes that Blagojevic's evidence on this event is internally inconsistent and will not consider it further in this regard. The Trial Chamber notes that Petrovic's evidence contradicts Nikolic's evidence in so far as it suggests that Nikolic did not meet Mladic in Konjevic Polje on the afternoon of 13 July 1995. Under these circumstances and **in the absence of corroboration on this potentially important event, the Trial Chamber finds that it is unable to establish beyond reasonable doubt that the encounter between Nikolic and Mladic took place and that Mladic made the alleged hand gesture.** The Trial Chamber will therefore not further consider Nikolic and Petrovic's evidence in this regard.<sup>6</sup> (emphasis added)

5. The situation in the *Motion* is very similar. Momir Nikolic's uncorroborated evidence of the meeting attended by Dragomir Vasic was accepted by our Trial Chamber and used as the basis of President Karadzic's genocide conviction. If Vasic is allowed to testify, he would directly contradict Momir Nikolic on this very important issue.

<sup>1</sup> *Motion to Admit Additional Evidence* (24 April 2017)(“*Motion*”)

<sup>2</sup> *Prosecution's Response to Karadzic's Motion to Admit Additional Evidence* (24 May 2017)(“*Response*”)

<sup>3</sup> *Reply Brief: Motion to Admit Additional Evidence* (30 May 2017)

<sup>4</sup> *Prosecutor v Mladic*, No. IT-09-92-T, *Judgement* (22 November 2017)

<sup>5</sup> *Prosecutor v Oric*, No. IT-03-68-A, *Decision on Prosecution's Notice of Supplemental Authority* (14 May 2007); *Prosecutor v Stanisic & Simatovic*, No. IT-03-69-A, *Decision on Prosecution's Request for Leave to File Supplemental Authority* (15 November 2013)

<sup>6</sup> *Prosecutor v Mladic*, No. IT-09-92-T, *Judgement* (22 November 2017), para. 5127

6. The *Mladic* Trial Chamber's unwillingness to accept the uncorroborated evidence of Momir Nikolic on an important issue going directly to the responsibility of the accused re-enforces President Karadzic's contention that his Trial Chamber erred in relying on Nikolic's uncorroborated evidence on a crucial issue going directly to his responsibility for genocide.

7, Dragomir Vasic, like Mile Petrovic in *Mladic*, can contradict Nikolic's evidence. Admission of Vasic' additional evidence is therefore necessary to prevent a miscarriage of justice.

Word count: 588

Respectfully submitted,

A handwritten signature in cursive script, reading "Peter Robinson". The signature is written in a dark ink and is centered on the page.

PETER ROBINSON

Counsel for Radovan Karadzic



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Rev: April 2014/Rév. : Avril 2014