

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 19 February 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge William H. Sekule
Judge Vagn Joensen
Judge José R. de Prada Solaesa
Judge Graciela S. Gatti Santana

Registrar: Mr. Olufemi Elias

Decision of: 19 February 2018

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A MOTION FOR DISCLOSURE
OF EXCULPATORY MATERIAL**

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

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

RECALLING that the Appeals Chamber granted, pursuant to Rule 86(G) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), an application filed by the Office of the Prosecutor of the Mechanism (“Prosecution”) to vary the protective measures of certain witnesses in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18 (“*Karadžić case*”) for the limited purpose of disclosing confidential materials to the relevant national authorities for use in their investigation of alleged crimes;²

BEING SEISED OF the “Motion for Disclosure of Exculpatory Material to National Authorities”, filed on 14 November 2017 (“Motion”) by Mr. Radovan Karadžić (“Karadžić”), in which Karadžić requests an order directing: (i) the Registry to disclose to the relevant national authorities all confidential exculpatory material in the *Karadžić case* relating to the events identified in the Rule 86(G) Decision; and (ii) the Prosecution to include exculpatory material in all future applications made pursuant to Rule 86(G) of the Rules;³

NOTING the “Prosecution Response to Motion for Disclosure of Exculpatory Material to National Authorities”, filed on 27 November 2017 (“Response”), in which the Prosecution submits that the Motion should be dismissed on the basis that Karadžić: (i) lacks standing to bring the Motion; (ii) requests relief that is beyond the scope of the Rules and impossible to implement; (iii) misconstrues the purpose of applications made pursuant to Rule 86(G) of the Rules; and (iv) ignores existing mechanisms that enable national authorities and defence counsel to request access to public and confidential evidence in proceedings before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the Mechanism;⁴

NOTING the “Reply Brief: Motion for Disclosure of Exculpatory Material to National Authorities”, filed on 2 December 2017 (“Reply”), in which Karadžić contends that: (i) he does not lack standing in the present matter as there is no authority that prevents the Defence from bringing its own motion under Rule 86(G) of the Rules to enable disclosure to national authorities;⁵ and (ii) he is unable to specify the exculpatory material that should be disclosed to the relevant national

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

² See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86G.1, Decision on a Motion for a Redacted Version of “Decision on an Application pursuant to Rule 86(G) and on a Motion to Exceed Word Limit”, 20 October 2017 (“Rule 86(G) Decision”), Annex, Registry Pagination (“RP.”) 54, 51.

³ Motion, paras. 3, 6, 8, 9.

⁴ Response, paras. 1-8.

⁵ Reply, paras. 4-7.

authorities as the public redacted version of the Rule 86(G) Decision redacted the pseudonyms of the witnesses who were the subject of the Prosecution's initial application;⁶

RECALLING that the Appeals Chamber has previously found that Karadžić lacked standing to participate in Rule 86 proceedings concerning the variation of protective measures granted by the ICTY to Prosecution witnesses as they concern the application of witness protection measures in domestic proceedings, not in Karadžić's appeal;⁷

NOTING Karadžić's submission that the Appeals Chamber has previously held that the Prosecution has standing to bring a motion under Rule 86(G) of the Rules where an external party lacks the requisite knowledge to do so and that, therefore, there is no reason why the Defence should not have standing to do the same;⁸

CONSIDERING that, in the cases to which Karadžić cites, the Prosecution acted on behalf of various national authorities pursuant to its statutory obligation to assist investigations and prosecutions by national authorities, and that the defence has no such corresponding statutory duty;⁹

CONSIDERING FURTHER that Karadžić has not identified the relevance of the Rule 86(G) Decision to any issue in his pending appeal;

FINDING, therefore, that Karadžić has no standing to bring the Motion;

PURSUANT to Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules,

HEREBY

DENIES the Motion in its entirety.

⁶ Reply, paras. 8, 9. Karadžić further requests that, if the Appeals Chamber finds that it is "too difficult for the Registry or the Prosecution to identify the exculpatory materials", the Appeals Chamber issue a confidential redacted version of the Rule 86(G) Decision and disclose the pseudonyms of the witnesses to the Defence so that it can file its own application pursuant to Rule 86(G) of the Rules. Reply, para. 10. *See also* Reply, paras. 11-14.

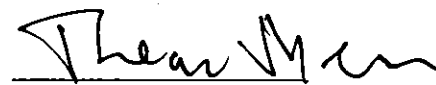
⁷ Decision on a Motion for *Inter Partes* Proceedings in Rule 86 Matters, 9 March 2017, para. 7.

⁸ Reply, para. 7 and references cited therein.

⁹ *See* UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, Annex 1 ("Statute of the Mechanism"), Article 4 ("The Mechanism shall consist of the following organs: (a) The Chambers [...]; (b) The Prosecutor [...]; (c) The Registry [...]."), Article 28(3) ("the Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda"); Rule 86(G) Decision, Annex, RP. 53; *Prosecutor v. Tihomir Blaškić*, Case No. MICT-14-69-R86G.1, Decision on Prosecution's Request for a Public Redacted Version of the 19 September 2014 Decision, 6 November 2017, Annex, RP. 58, 57; *Prosecutor v. Ramush Haradinaj et al.*, Case No. MICT-13-47-R86G.1, Decision on Prosecution's Request for a Public Redacted Version of the 19 December 2013 Decision, 25 October 2017, Annex, RP. 61-59.

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

Done this 19th day of February 2018,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding

[Seal of the Mechanism]



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
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Date Created/ Daté du :	19 February 2018	Date transmitted/ Transmis le :	19 February 2018	No. of Pages/ Nombre de pages :	4
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