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Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 9 June 2016

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge

Registrar: Mr. John Hocking

Decision of: 9 June 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON STANISLAV GALIĆ'S MOTION FOR ACCESS
TO CONFIDENTIAL MATERIALS IN THE *KARADŽIĆ* CASE**

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1. I, **Theodor Meron**, Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case,¹ am seized of a motion filed by Mr. Stanislav Galić on 21 April 2016, in which he requests access to *inter partes* confidential materials in the case of *Prosecutor v. Radovan Karadžić*.² The Prosecution and Radovan Karadžić filed their respective responses on 22 April 2016.³

I. BACKGROUND

2. On 5 December 2003, Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), by majority, convicted Galić pursuant to Article 7(1) of the ICTY Statute of murder and inhumane acts as crimes against humanity, and acts of violence the primary purpose of which was to spread terror among the civilian population as violations of the laws or customs of war, and sentenced him to 20 years of imprisonment.⁴ It found that Galić, who was the Commander of the Sarajevo Romanija Corps, directly participated in the commission of the crimes by ordering the campaign of sniping and shelling at civilians in Sarajevo, Bosnia and Herzegovina, between 10 September 1992 and 10 August 1994.⁵ On 30 November 2006, the ICTY Appeals Chamber dismissed Galić's appeal and, by majority, increased his sentence to life imprisonment.⁶ Galić is currently serving his sentence in the Federal Republic of Germany.⁷

3. On 24 March 2016, Trial Chamber III of the ICTY issued its trial judgement in the *Karadžić* case.⁸ With respect to events in Sarajevo between late May 1992 and October 1995, it found Radovan Karadžić guilty, pursuant to Article 7(1) of the ICTY Statute, of murder as a crime against

¹ Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 21 April 2016, p. 1. In accordance with Rule 86(K) of the Rules of Procedure and Evidence of the Mechanism ("Rules"), an application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber.

² *Requête du Général Stanislav Galić aux fins d'accès à des documents confidentiels dans l'affaire Radovan Karadžić*, 21 April 2016 ("Motion"), paras. I.1, I.2, IV.5. The Motion was originally filed under the case of the *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83 on 12 April 2016.

³ Prosecution Response to « *Requête du Général Stanislav Galić aux fins d'accès à des documents confidentiels dans l'affaire Radovan Karadžić* », 22 April 2016 ("Prosecution Response"); Response to General Galić's Motion for Access, 22 April 2016 ("Karadžić Response").

⁴ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003 ("Galić Trial Judgement"), para. 769.

⁵ *Galić Trial Judgement*, paras. 3, 606, 607, 751, 752, 769. See also generally *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-I, Indictment, 26 March 1999.

⁶ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, p. 185.

⁷ *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President's Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted version), para. 3.

⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016 ("Karadžić Trial Judgement").

humanity as well as murder, terror, and unlawful attacks on civilians as violations of the laws and customs of war.⁹

II. SUBMISSIONS

4. Galić seeks access to all *inter partes* confidential materials in the *Karadžić* case that relate to events in Sarajevo between 1992 and 1994, namely: (i) closed and partially closed session testimony transcripts; (ii) hearing transcripts; (iii) confidential exhibits; and (iv) confidential filings, submissions, and trial chamber decisions.¹⁰ He argues that there are geographic, temporal, and material overlaps between his case and the *Karadžić* case.¹¹ Galić submits that the indictments in both cases relate, *inter alia*, to crimes involving the infliction of terror, sniping, and shelling that were committed in Sarajevo between April 1992 and November 1995, although, as Galić notes, the crimes charged in his indictment covered a shorter period than that in the *Karadžić* case.¹² He further contends that the indictment in the *Karadžić* case alleged that Karadžić and Galić were part of a joint criminal enterprise with a common criminal purpose to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo, the primary purpose of which was to spread terror.¹³

5. Galić submits that the findings in his case differ from the findings in the *Karadžić* trial in relation to three incidents related to Sarajevo.¹⁴ Therefore, he argues, it is necessary to obtain the requested materials in order to discover new facts for the preparation of a review application.¹⁵ Galić adds that a request for access to confidential materials for the purpose of a review application could justify the existence of a legitimate forensic purpose.¹⁶

6. The Prosecution does not oppose Galić's request to have access to *inter partes* confidential transcripts and exhibits, subject to certain limitations.¹⁷ The Prosecution argues, however, that Galić

⁹ *Karadžić* Trial Judgement, paras. 4937-4939.

¹⁰ Motion, paras. I.1, I.2, IV.5.

¹¹ Motion, paras. III.1, III.2.

¹² Motion, para. III.1.

¹³ Motion, para. III.1.

¹⁴ Motion, para. III.2.a. Additionally, Galić appears to argue that, based on the indictment in the case of *Prosecutor v. Ratko Mladić* (see *Prosecutor v. Ratko Mladić*, Case No. IT-95-5/18-I, Amended Indictment, 11 October 2002), it has been alleged that he had committed acts of genocide in Sarajevo through participating in a joint criminal enterprise. See Motion, para. III.2.b. As Galić was not convicted of the crime of genocide (see *supra* para. 2), his argument in this regard will not be considered further.

¹⁵ Motion, para. III.3.

¹⁶ Motion, para. III.4, referring to *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karemera et al.* Case, 10 July 2009, para. 25.

¹⁷ Prosecution Response, paras. 1-6, 11.

should not be granted access to confidential filings and decisions on the ground that he has failed to show a legitimate forensic purpose justifying access to these materials.¹⁸

7. Karadžić responds that he supports the Motion.¹⁹

III. DISCUSSION

8. Pursuant to Rule 86(F)(i) of the Rules, protective measures ordered in proceedings before the ICTY continue to have effect *mutatis mutandis* in any other proceedings before the Mechanism unless and until they are rescinded, varied or augmented. In accordance with the settled jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda, a party is entitled to seek material from any source, including from another case before the ICTY, to assist in the preparation of its case.²⁰ Where a party requests access to confidential material from another case, such material must be identified or described by its general nature and a legitimate forensic purpose must be demonstrated.²¹ Consideration must be given to the relevance of the material sought, which may be demonstrated by showing the existence of a nexus between the requesting party's case and the case from which such material is sought.²² Further, the requesting party must establish that this material is likely to assist its case materially, or that there is at least a good chance that it would.²³

9. Galić has sufficiently identified the *inter partes* confidential materials to which he seeks access from the *Karadžić* case, namely material related to the events in Sarajevo between 1992 and 1994.²⁴ Moreover, Galić has also highlighted the overlap between the two cases in relation to these

¹⁸ Prosecution Response, paras. 1, 7-11.

¹⁹ Karadžić Response, para. 1.

²⁰ See, e.g., *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-A & IT-95-5/18-T, Decision on Motion by Radovan Karadžić for Reconsideration of Decision on Motion for Access to Confidential Materials in the *Stanišić and Simatović* Case, 16 February 2015 ("*Stanišić and Simatović* Decision of 16 February 2015"), p. 3; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-A & IT-04-75-T, Decision on Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case, 28 August 2014 ("*Stanišić and Simatović* Decision of 28 August 2014"), p. 2; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-A, Decision on Georges A. N. Rutaganda's Motion for Access to Confidential Material of Witness CSH from the *Rukundo* Case, 18 February 2010 ("*Rukundo* Decision of 18 February 2010"), para. 11; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case, 19 May 2009 ("*Milošević* Decision of 19 May 2009"), para. 7; *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Georges A.N. Rutaganda's Appeal Against Decision on Request for Closed Session Testimony and Sealed Exhibits, 22 April 2009 ("*Rutaganda* Decision of 22 April 2009"), para. 7.

²¹ See, e.g., Decision on a Motion for Access to *Ex Parte* Filings in Completed Cases, 10 May 2016 ("*Karadžić* Decision of 10 May 2016"), p. 2; *Stanišić and Simatović* Decision of 16 February 2015, p. 3; *Stanišić and Simatović* Decision of 28 August 2014, p. 2; *Rukundo* Decision of 18 February 2010, para. 11; *Milošević* Decision of 19 May 2009, para. 7; *Rutaganda* Decision of 22 April 2009, para. 10.

²² See, e.g., *Karadžić*, Decision of 10 May 2016, p. 3; *Rukundo* Decision of 18 February 2010, para. 11; *Rutaganda* Decision of 22 April 2009, para. 10.

²³ See, e.g., *Karadžić*, Decision of 10 May 2016, p. 3; *Rukundo* Decision of 18 February 2010, para. 12; *Milošević* Decision of 19 May 2009, para. 8; *Rutaganda* Decision of 22 April 2009, para. 10.

²⁴ See Motion, para. I.1. See also *supra* para. 4.

events.²⁵ Based on these submissions, a nexus clearly exists between his case and certain aspects of the *Karadžić* case.

10. With respect to accessing confidential evidentiary material, Galić primarily makes only general submissions noting that the trial chamber's findings in the *Karadžić* case differ from the findings made in his case with regard to three specific incidents, which formed part of his convictions.²⁶ Although the Prosecution does not oppose Galić's request to confidential evidentiary material, I am mindful that Galić's case has concluded. Although access to confidential material in another case may still be requested in such circumstances, the only legitimate forensic purpose for obtaining access to these materials is to establish a "new fact" capable of constituting the basis for a review application of Galić's convictions.²⁷ In the context of review proceedings, findings made by a separate trial chamber on the criminal liability of another accused that are based on a different evidentiary record do not in and of themselves amount to a new fact.²⁸ Bearing this in mind, it is unclear – in the absence of more particularized submissions based on publicly available material, such as the trial judgement and public transcripts – how the difference in findings in the *Karadžić* case or access to the material underpinning them could constitute a new fact and impact Galić's convictions.

11. Furthermore, as to the request for confidential filings, submissions, or trial chamber decisions in the *Karadžić* case, beyond making a simple request, Galić's bare submissions fail to substantiate any legitimate forensic purpose for access. At this stage, there is no basis for providing Galić access to this material.

12. Accordingly, I find that Galić has not demonstrated a legitimate forensic purpose for gaining access to *inter partes* confidential materials in the *Karadžić* case relating to events in Sarajevo between 1992 and 1994.

IV. DISPOSITION

13. For the foregoing reasons, the Motion is **DISMISSED** without prejudice.

²⁵ See Motion, paras. III.1, III.2.a. See also *supra* para. 4.

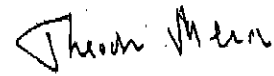
²⁶ See Motion, para. III.2.a. See also *supra* para. 5.

²⁷ Cf. *Rutaganda* Decision of 22 April 2009, para. 16. See also *Eliézer Niyitegeka v. Prosecutor*, Case No. MICT-12-16, Decision on Niyitegeka's Urgent Request for Orders Relating to Prosecution Witnesses, 29 January 2016, para. 9; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the *Nshogoza* Case, 9 November 2015, para. 5.

²⁸ See *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-R, Decision on Request for Variation of Protective Measures and Request for Review, 28 September 2012, para. 24. Cf. *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-R.1, Decision on Sreten Lukić's Application for Review, 8 July 2015, para. 22; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 6 March 2007, para. 7.

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

Done this 9th day of June 2016,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

