

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-A
Date: 12 October 2018
Original: English

THE SENIOR JUDGE¹

Before: Judge Jean-Claude Antonetti, Senior Judge

Registrar: Olufemi Elias

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

SECOND MOTION TO DISQUALIFY JUDGE THEODOR MERON,
MOTION TO DISQUALIFY JUDGE WILLIAM SEKULE,
AND FOR RELATED ORDERS

The Office of the Prosecutor:

Laurel Baig
Barbara Goy
Katrina Gustafson

Counsel for Radovan Karadzic:

Peter Robinson
Kate Gibson

¹ pursuant to Rule 18(B)(iv)

1. Radovan Karadzic hereby moves, pursuant to Rule 18, that the Senior Judge disqualify Judge Theodor Meron from participating in any decisions related to President Karadzic's appeal. He also moves that the Senior Judge disqualify Judge William Sekule from his appeal bench, and from participating in any decisions related to his appeal.² He further requests the Senior Judge to appoint judges to replace Judge Meron and Judge Sekule, and to order the Appeals Chamber to begin its deliberations anew.

Procedural History

2. On 24 March 2016, an ICTY Trial Chamber convicted President Karadzic of genocide in Srebrenica in 1995, war crimes, and crimes against humanity. It acquitted him of genocide in the municipalities of Bosnia in 1992. President Karadzic was sentenced to 40 years imprisonment.³

3. Both President Karadzic and the Prosecution appealed.⁴ President Meron assigned himself to the appeal as Presiding Judge. Judges Sekule, Joensen, de Prada, and Gatti were also assigned to the appeal.⁵

4. President Karadzic filed his appeal brief on 5 December 2016,⁶ argued the appeal on 23-24 April 2018,⁷ and is awaiting his judgement.

5. On 25 September 2018, following a disqualification decision in the *Mladic* case,⁸ President Karadzic moved to disqualify Judge Meron from his appeal.⁹ Judge Meron withdrew from the case on 27 September 2018,¹⁰ and appointed Judge Ivo Nelson de Caires Batista Rosa to take his place that same day.¹¹

6. On 2 October 2018, the Senior Judge declared the *Motion to Disqualify Judge Meron* moot in light of Judge Meron's withdrawal from the case, but invited Judge

² As Duty Judge in Arusha, Judge Sekule is empowered to take decisions in place of the President under Rule 24(B): ("If the President's incapacity or inability is temporary, the President's functions shall be assumed by the duty Judge in Arusha.")

³ *Prosecutor v Karadzic*, No. IT-95/5-18-T, *Judgement* (24 March 2016)

⁴ *Radovan Karadzic's Notice of Appeal* (22 July 2016); *Prosecution's Notice of Appeal* (22 July 2016)

⁵ *Order Assigning Judges to a Case before the Appeals Chamber* (20 April 2016)

⁶ *Radovan Karadzic's Appeal Brief* (5 December 2016)

⁷ T84-316 (23-24 April 2018)

⁸ *Prosecutor v Mladic*, No. MICT-13-56-A, *Decision Relative aux Requetes de la Defense aux Fins du Dessaisissement des Juges Theodore Meron, Carmel Agius, et Liu Daqun* (3 September 2018) ("*Mladic Decision*")

⁹ *Motion to Disqualify Judge Theodor Meron* (25 September 2018)

¹⁰ *Decision* (27 September 2018)

¹¹ *Order Replacing a Judge in a Case Before the Appeals Chamber* (27 September 2018)

Meron to withdraw his appointment of Judge Rosa.¹² The next day, Judge Meron declined the invitation.¹³

7. On 5 October 2018, President Karadzic asked Judge Meron to reconsider his assignment of Judge Rosa to replace him and to let the Senior Judge make the assignment.¹⁴ The Prosecution opposed the motion.¹⁵ On 10 October 2018, Judge Meron denied the motion to reconsider.¹⁶

Argument

Judge Meron's Disqualification

8. President Karadzic appreciates Judge Meron's withdrawal from his appeal following the motion to disqualify him. But it appears that Judge Meron has not fully disqualified himself from the *Karadzic* case. He continues to participate in the case by appointing his replacement and insisting that it was proper that he do so.

9. President Karadzic contends that as a result, Judge Meron's withdrawal from the Appeals bench has not fully disposed of his motion that Judge Meron withdraw from his case for appearance of bias. President Karadzic therefore makes this second motion to disqualify Judge Meron as a result of Judge Meron's cumulative participation in judgements where he was extensively confronted with evidence and findings concerning disputed facts and issues that are the subject of President Karadzic's appeal, and by the conclusions that he drew in those cases in which he affirmed the convictions of President Karadzic's subordinates.¹⁷

10. It cannot be right that a judge who withdraws in the face of a disqualification motion can continue to influence the appeal by appointing his replacement and/or taking other decisions in his capacity as President. Both the Senior Judge and President Karadzic made these arguments to Judge Meron in asking him to reconsider his assignment of Judge Rosa, to no avail. Therefore, an order from the Senior Judge disqualifying Judge Meron from participating in any decisions related to President Karadzic's appeal is required.

¹² *Ordonnance Relative la Requete en Recusation du Juge Theodor Meron* (2 October 2018)

¹³ *Decision in Response to Order on Motion to Disqualify* (3 October 2018)

¹⁴ *Motion to Reconsider Order Replacing a Judge* (5 October 2018)

¹⁵ *Prosecution Response to Motion to Reconsider Order Replacing a Judge* (9 October 2018)

¹⁶ *Decision on Motion to Reconsider Order Replacing a Judge* (10 October 2018)

¹⁷ President Karadzic incorporates by reference the arguments made in his *Motion to Disqualify Judge Theodor Meron* (25 September 2018) and its annexes.

11. The ICTY Appeals Chamber decision in the *Lukic & Lukic* case, cited by the Prosecution,¹⁸ is inapposite. That decision held that an allegation of bias brought against the President in a case where he was not a member of the bench does not disqualify the President from assigning Judges to that bench. Here, Judge Meron was a member of the bench in the case in which his disqualification was sought. By withdrawing and hand-picking his replacement, Judge Meron has not made the clean break from the proceedings that is required when a judge is disqualified.

12. Similarly, the ICTY President's decision in the *Krajisnik* case, cited by Judge Meron,¹⁹ that a party "has no right to questions the decision I take with respect to the distribution of work amongst the Judges and Chambers" cannot apply to a decision where the President himself is the subject of a motion for disqualification. No Judge, President or otherwise, should enjoy immunity from a procedure which exists solely to safeguard the fairness of the proceedings.

13. For all of those reasons, the Senior Judge is respectfully requested to order the disqualification of Judge Theodor Meron, including from taking any decisions, in whatever capacity, related to the *Karadzic* appeal.

Judge Sekule's disqualification

14. President Karadzic also requests that Judge William Sekule be disqualified from his appeal for the appearance of bias as a result of Judge Sekule's participation in the *Popovic et al* and *Tolimir* judgements where Judge Sekule was extensively confronted with evidence and findings concerning disputed facts and issues that are the subject of President Karadzic's appeal, and by the conclusions that he drew in those cases in which he affirmed the convictions of President Karadzic's subordinates.

The Standard

15. The standard for appearance of bias is whether "the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias."²⁰

¹⁸ *Prosecution Response to Motion to Reconsider Order Replacing a Judge* (9 October 2018), para. 3 citing *Prosecutor v. Lukic & Lukic*, No.IT-98-32/1-AR11bis.1, *Decision on Motion to Disqualify President and Vice-President from Appointing Appeals Chamber and to Disqualify President Judge and Judge Meron from Sitting on Appeals Chamber* (4 May 2007)

¹⁹ *Decision on Motion to Reconsider Order Replacing a Judge* (10 October 2018), fn. 7, citing *Prosecutor v. Krajisnik*, No. IT-00-39-A, *Decision on Prosecution Request for Clarification of President's Order of 16 May 2007* (28 June 2007)

²⁰ *Prosecutor v Furundzija*, No. IT-95-17/1-A, *Judgement* (21 July 2000)(*"Furundzija AJ"*), para. 189

16. In the *Mladic Decision*, Judge Antonetti held that a reasonable observer would reasonably apprehend bias on the part of Judge Meron when hearing the *Mladic* appeal as a result of Judge Meron's participation in the *Krstic, Blagojevic & Jokic*, and *Tolimir* appeals.²¹

17. There were two components to this conclusion. First, Judge Meron had been extensively confronted with evidence related to General Mladic from the trial record in those cases and from findings he upheld on appeal.²² Second, Judge Meron had previously convicted General Mladic's subordinates on appeal.²³

18. Applying that standard to President Karadzic's case, a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Sekule.

Related Cases

19. Judge Sekule has decided two appeals relating to facts that were the subject of the *Karadzic* case in which he affirmed the convictions of seven of President Karadzic's subordinates.²⁴

(1) *Popovic*

20. Judge Sekule sat on the Appeals Chamber that affirmed the convictions of Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Ljubomir Borovcanin, Radivoje Miletic, and Milan Gvero. These men were subordinates of President Karadzic and members of the joint criminal enterprise to eliminate the Bosnian Muslims of Srebrenica.²⁵

21. Judge Sekule was confronted with evidence and findings from the trial record in the *Popovic et al* case concluding that President Karadzic had, through Directive 7, ordered the Drina Corps to create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and restricting humanitarian aid to the enclave.²⁶ He was also confronted with evidence of Prosecution Witness Momir Nikolic that President Karadzic had participated in the plan to move the prisoners

²¹ *Mladic Decision*, para. 52

²² *Id.*, para. 49

²³ *Id.*, para. 51

²⁴ *Prosecutor v Popovic*, No. IT-05-88-A, *Judgement* (30 January 2015) ("*Popovic AJ*"); *Prosecutor v Tolimir*, No. IT-05-88/2-A, *Judgement* (8 April 2015) ("*Tolimir AJ*")

²⁵ *Indictment*, paras. 20,22,33

²⁶ *Prosecutor v Popovic*, No. IT-05-88-T, *Judgement* (10 June 2010) ("*Popovic TJ*"), paras. 199, 1650, 1653, 1703, 1705. A list of relevant *Popovic TJ* references is Annex A

to Zvornik where they would be killed.²⁷

22. The Appeals Chamber upheld the Trial Chamber's conclusion that Directive 7, signed by President Karadzic, was a criminal plan to expel Bosnian Muslims from Srebrenica and that the actions taken in July 1995 were pursuant to Directive 7.²⁸ The Appeals Chamber further affirmed findings that Momir Nikolic had given credible testimony implicating President Karadzic in the Srebrenica killings.²⁹

(2) *Tolimir*

23. Judge Sekule sat on the Appeals Chamber that affirmed the conviction of General Zdravko Tolimir for, *inter alia*, forcible transfer of Bosnian Muslims after the fall of Srebrenica. General Tolimir was a subordinate of President Karadzic and a member of the joint criminal enterprise to eliminate the Bosnian Muslims of Srebrenica.³⁰

24. Judge Sekule was confronted with evidence and findings from the trial record in the *Tolimir* case that President Karadzic had, through Directive 7, ordered the Drina Corps to create an unbearable situation of total insecurity with no hope of further survival or life for Srebrenica's inhabitants and restricting humanitarian aid to the enclave.³¹

25. The Appeals Chamber affirmed General Tolimir's conviction for participating in a joint criminal enterprise with, *inter alia*, President Karadzic, to forcibly remove the Bosnian Muslims from Srebrenica, finding that the Trial Chamber did not err when it had "no doubt that at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove the Bosnian Muslim population from the Srebrenica and Zepa enclaves."³²

Grounds for Disqualification

26. The right to an impartial judge is a basic human right.³³ An impartial judge is one who is free from actual bias and the appearance of bias.³⁴ Judge Sekule's continued participation in this appeal presents the appearance of bias under the *Mladic Decision*. He has affirmed the convictions of seven of President Karadzic's subordinates, upholding

²⁷ *Popovic TJ*, paras. 1266, 1269.

²⁸ *Popovic AJ*, paras. 588-89, 1553, 1663. A list of relevant *Popovic AJ* references is Annex B.

²⁹ *Popovic AJ*, paras. 177, 181, 184-86, 822, 824

³⁰ *Indictment*, paras. 20,22,33

³¹ A list of relevant *Tolimir TJ* references is Annex C.

³² *Tolimir AJ*, paras. 311, 317-21

³³ *Mladic Decision*, para. 3, citing *Furundzija AJ*, para. 177

³⁴ *Furundzija AJ*, para. 179

findings that they were members of a joint criminal enterprise with him. In doing so, Judge Sekule has been exposed to, and affirmed, findings of President Karadzic's culpability as well as the existence of the joint criminal enterprise.

27. When deciding Ground 26 of President Karadzic's appeal, which contends that the Trial Chamber erred when refusing to hear the testimony of General Radivoje Miletic, Judge Sekule would have to put aside the *Popovic* case, in which he affirmed the conviction of General Miletic and uniformly found his contentions to be without merit.

28. When deciding Grounds 38 and 39 of President Karadzic's appeal, which contends that the Trial Chamber erred when finding that President Karadzic shared the common purpose of removing the Bosnian Muslims from Srebrenica, Judge Sekule would have to put aside his own decisions and the information to which he was exposed in the *Popovic* and *Tolimir* cases.

29. When deciding Ground 40 of President Karadzic's appeal, which contends that the Trial Chamber erred when concluding, based on the testimony of Momir Nikolic, that President Karadzic agreed to the killing of Bosnian Muslim males from Srebrenica and shared the common purpose of eliminating them, Judge Sekule would have to judge the credibility of Momir Nikolic, a Prosecution witness whose credibility he has already endorsed.

30. A reasonable observer, being properly informed of all the above, would reasonably apprehend bias on the part of Judge Sekule. It is respectfully requested that he be disqualified from the *Karadzic* appeal, including any decisions he may be empowered to take in place of the President under Rule 24.

Appointment of Replacement Judges

31. Should the motion to disqualify Judges Meron and/or Sekule be granted, the Senior Judge is respectfully requested, pursuant to Rule 18(B)(ii), to appoint their replacements.³⁵

³⁵ *Ordonnance Relative la Requete en Recusation du Juge Theodor Meron* (2 October 2018)

Restart of Deliberations

32. Should the motion to disqualify Judges Meron and/or Sekule be granted, the Senior Judge is also respectfully requested to order that the Appeals Chamber begin deliberations anew.

33. Rule 19(C), which applies to trial proceedings, provides that:

(C) If a Judge of a Trial Chamber is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration, the remaining Judges of the Chamber shall report to the President who may assign another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 100, or the beginning of the presentation of evidence pursuant to Rule 102, the continuation of the proceedings can only be ordered with the consent of the accused, except as provided for in paragraphs (D) and (G).

34. This Rule, which gives the President the responsibility of deciding whether the proceedings should be continued when a judge is replaced, should lead the Senior Judge, acting in place of the President, to order the newly constituted Appeals Chamber to begin their deliberations anew.

35. In the *Seselj* case, following the disqualification of Judge Harhoff during deliberations, the Trial Chamber decided to begin the deliberations anew.³⁶ The Appeals Chamber held this was “appropriate under the circumstances.”³⁷

36. In the *Pinochet* case, the House of Lords decided to begin the hearings anew after Lord Hoffman was disqualified for the appearance of bias as a result of his association with Amnesty International.³⁸

37. In *Ocalan v Turkey*, the European Court of Human Rights was faced with a situation where a military judge had been replaced by a civilian judge before the verdict had been delivered. The Court held that there was a violation of the rights of the accused where a replacement judge simply validated the decisions of a judge who was disqualified and continued on.³⁹

³⁶ *Prosecutor v Seselj*, No. IT-03-67-T, *Decision on Continuation of Proceedings* (13 December 2013), para. 61

³⁷ *Prosecutor v Seselj*, No. IT-03-67-AR15bis, *Decision on Appeal Against Decision on Continuation of Proceedings* (6 June 2014)

³⁸ *Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte* [2001] 1 AC 119, at 121, 134, 146

³⁹ *Ocalan v Turkey*, ECHR (Application no. 46221/99 - 12 March 2003), Judgment, Strasbourg, (5 May 2005), paras 112 -118

38. President Karadzic is not asking that the entire appeal be re-started. Rather, he requests that the replacement judges review the appeal, response, and reply briefs, the decisions made by the Appeals Chamber and Presiding Judge, and the video of the appeal hearing. They should then be free to request reconsideration of any decisions, and a further hearing if they have questions they would like answered by the parties. Following this process, the Appeals Chamber should begin its deliberations anew.

39. The alternative of having the replacement judges continue where Judges Meron and Sekule left off is untenable. Since the Appeals Chamber judgement was due to be delivered in just a few months time, were the replacement judges asked to simply sign off on what has been so far done, the appearance of bias that led to the disqualifications would not be dissipated.

40. Starting deliberations from the beginning is a reasonable compromise between re-starting the entire appeal and simply parachuting the replacement judges into a “done deal”. The damage to the integrity of the judgement ultimately issued by the Appeals Chamber if the deliberations were simply continued is far greater than the damage done by some additional delay resulting from restarting deliberations. President Karadzic wants an expeditious appeal, but not at the expense of a fair appeal.

Conclusion

41. President Karadzic regrets having to make this motion. It is never pleasant to have to seek disqualification of a judge. It is even less pleasant to have to insist on it. But in the absence of disqualification, the *Karadzic* appeal will stand for the proposition that a judge whose disqualification is sought for appearance of bias can select his own replacement. That would be an unfortunate precedent and one which President Karadzic and his counsel have a duty to oppose, despite their high regard for the judges in question.

42. Therefore, Judges Meron and Sekule should be disqualified from the *Karadzic* appeal and all decisions related thereto. The Senior Judge should appoint their replacements and order the Appeals Chamber deliberations to begin anew.

Word count: 2948

Respectfully submitted,

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

PETER ROBINSON

Counsel for Radovan Karadzic

ANNEX “A”

Relevant References in *Popovic* Trial Judgement:

#	Text
199	<p>In March 1995, Karadzic issued Supreme Command Directive 7, which was drafted by Miletic. Supreme Command directives were political policy documents for the VRS and set out the RS' long-term aspirations... The Drina Corps' assignment was:</p> <p>Enemy breakthroughs along selected operative-tactical lines should be prevented by extremely persistent and active defence in cooperation with part of the forces of the [Sarajevo-Romanija Corps] on the N/W part of the warfront and around the enclaves. As many enemy forces as possible should be tied down by diversionary and active combat operations on the N/W part of the front, using operational and tactical camouflage measures, while in the direction of Srebrenica and Zepa</p> <p>enclaves complete physical separation of Srebrenica from Zepa should be carried out as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Zepa.</p> <p>...It specifies that</p> <p>[t]he relevant State and military organs responsible for the work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.</p>
Fn 3440	<p>The Prosecution alleges that the officers within both the JCE to Forcibly Remove and the JCE to Murder include, but are not limited to, all seven accused plus the following people: Radovan Karadzic, President of the RS; General Ratko Mladic, the Commander of the VRS; General Milenko Zivanovic, Commander of the Drina Corps; General Radislav Krstic, Chief of Staff/Deputy Commander and Commander of the Drina Corps; General Zdravko Tolimir, Assistant Commander for Intelligence and Security, Main Staff; Colonel Petar Salapura, Chief of Intelligence of the Main Staff; Colonel Radoslav Jankovic, Intelligence Officer of the Main Staff; Major Dragomir Pecanac, Security Officer of the Main Staff; Lieutenant Colonel Rajko Krsmanovic, Drina Corps Chief of Transportation Services; Colonel Lazar Acamovic, Drina Corps Assistant Commander for Rear Services; Colonel Vidoje Blagojevic, Commander of the Bratunac Brigade; Captain Momir Nikolic, Chief of Security and Intelligence, Bratunac Brigade; Lieutenant Colonel Dragan Obrenovic, Deputy Commander and Chief of Staff of the Zvornik Brigade; and Captain Milorad Trbic, Security Officer, Zvornik Brigade. Indictment, paras. 96-97.</p>
1264	<p>At around 8 p.m. on 13 July, Deronjic received a call in his SDS office from Karadzic who instructed him to place the "goods inside warehouses before twelve tomorrow". Deronjic stated that he understood this to mean that the Bosnian Muslim prisoners should be transported outside Bratunac and placed in a military prison. Karadzic said that he would also inform Mladic of his instructions. Shortly after Deronjic's conversation with Karadzic, Beara came to his office. He said that he was in the Bratunac area to "kill all the Bosnian Muslims that were being warehoused in schools and buses in Bratunac", adding</p>

	that his orders were “from the top”. Beara was “very drunk”. Deronjic responded that he would not allow for the killings to be carried out in Bratunac in light of the orders he had received from Karadzic. He told Beara that he intended to see Karadzic the next morning to report their conversation. Beara then left the meeting angrily.
Fn 4119	Deronjic testified that he told Beara “you cannot do this” and characterised his reaction as a human gesture rather than an order. Deronjic thought that, by the end of the meeting, he had managed to secure an agreement with Beara to make sure that no killings would be perpetrated in Bratunac that night: “[e]ven though we had reached some kind of agreement about that, I got the impression that he would not do anything else with the prisoners anymore in Bratunac but would act upon orders of President Karadzic, in the way I conveyed them to him”.
1266	...Thereafter, Momir Nikolić was told to go to the SDS offices. At the time, Bratunac was crowded with Bosnian Muslim prisoners and there was insufficient transportation to move them to Zvornik. Momir Nikolić saw Beara, Deronjic, and Dragomir Vasic at the SDS offices. Deronjic and Beara were arguing and they were drunk during the meeting. Deronjic was concerned that the prisoners were posing a security threat and did not want them to be killed in or around Bratunac. Deronjic invoked instructions from Karadzic on how to handle the prisoners in Bratunac and those who would soon be arriving from Konjevic Polje, insisting that they should be transferred to Zvornik. Beara invoked different instructions he had received from “his boss” Momir Nikolić testified that the “killing operation was openly discussed”. Decisions were made and changed constantly, due to the chaotic situation in Bratunac at that time. It was ultimately decided that all the prisoners should be quickly transferred to Zvornik...
1269	The Trial Chamber has carefully considered the evidence of Momir Nikolic describing his actions and this series of meetings on 13 and 14 July. The Trial Chamber notes that again the core of this evidence was recounted by him in his original Statement of Facts and Acceptance of Responsibility of May 2003 and it remained consistent during his testimony. His evidence on these points, in particular that which highlights the role he played in conveying information about the killing operation to Drago Nikolić, is highly self-incriminatory, adding to its reliability. His account is also corroborated in different parts by other witnesses. On this basis, the Trial Chamber finds the evidence of Momir Nikolić reliable and accepts his description of the various events and meetings on 13 and 14 July as described above.
1270	The Trial Chamber has also carefully analysed the evidence of Deronjic as to his meeting with Beara on 13 July. Given the corroboration provided through the intercept, by all the witnesses as to the various meetings that evening and Borovčanin and Momir Nikolic, as to the subject matter discussed, the Trial Chamber accepts the evidence of Deronjic with respect to the discussion and argument he had with Beara as to where the prisoners should be killed.
Fn 4166	The Trial Chamber has considered the evidence of Deronjic, describing his discussion with Momir Nikolic at the UNDU about the meeting between Deronjic and Beara in which allegedly Nikolic stated that he was not at the

	meeting and that he learned the details of the meeting and the gist of conversation directly from Beara... However, having considered all the circumstances and evidence, the Trial Chamber accepts Momir Nikolic's version that he was present at the meeting
Fn. 4188	Deronjic later met with Karadzic in Pale and reported about the meeting with Beara...
1650	Directive 7 was signed by Karadzic and dated 8 March 1995. The Directive was forwarded to the corps by Milovanovic by letter dated 17 March 1995. The Trial Chamber takes note of the time gap between the date of Directive 7 and the date it was forwarded to the corps. It however also notes there is no conclusive evidence as to what happened during this period. On 16 March a meeting took place at Karadzic's office, attended by Milovanovic and Tolimir. There is no evidence Miletic was present during the meeting. Taking into consideration the persons attending the meeting, Directive 7 may well have been discussed. However, the Trial Chamber has no basis to draw any conclusion as to the substantive content of the discussion at the meeting. The Trial Chamber further finds that based on the available evidence the actual date of Directive 7 cannot be established. Nevertheless, the Trial Chamber is satisfied that at least on 17 March 1995, the Directive was finalised since on this date it was forwarded to the corps.
1653	The Trial Chamber finds that Miletic was well-acquainted with the final text of Directive 7, including the part setting out the criminal objective to forcibly remove the Bosnian Muslims from the enclaves. The Trial Chamber also finds that through the process of drafting the document and the final document itself, a copy of which Miletic kept in his strong box at the Main Staff, Miletic had in depth knowledge of the political leadership's vision on the role of the VRS in implementing its strategic objectives. Considering that Directive 7 was forwarded to the Corps on 17 March 1995, the Trial Chamber is convinced that at least from 17 March, Miletic was familiar with the final version of Directive 7.
1703	The Trial Chamber has already found there was a JCE with a common purpose to forcibly remove the civilian population from the Srebrenica and Zepa enclaves, and that in accordance with this plan thousands of Bosnian Muslim civilians were forcibly removed from the enclaves in July and August 1995. It further found that the plan to forcibly remove the civilian population from the Srebrenica and Zepa enclaves was set out in Directive 7.
1705	In Directive 7, Miletic elaborated the role of the VRS in implementing its strategic objectives. The Directive was addressed, and through the Main Staff sent, to all the Corps. Thus, regardless of whether he physically drafted the Directive or inserted the words in the criminal parts, by his central role in the drafting process, Miletic provided the addressees with an overview of the political leadership's broader vision, upon the authority of the Supreme Commander. This also included the goals for the Srebrenica and Zepa enclaves and how these were to be achieved. In other words, Miletic informed the addressees of the plan. The Trial Chamber is satisfied that in doing so, Miletic contributed to the JCE to Forcibly Remove.
1775	Gvero challenges the Prosecution's allegation that the other interlocutor in these two conversations was Karadzic. In support, he notes the poor relationship

	<p>between him and Karadzic at the time, which was inconsistent with the tone and content of the conversation, as well as the fact that there were various individuals whom Gvero might refer to as “President”. The Trial Chamber has carefully considered the two intercepts in terms of their content and in the context of the other relevant evidence. The Trial Chamber is satisfied that these two conversations were between Karadzic and Gvero. In so finding, the Trial Chamber notes its assessment that the conversations do not evidence a friendly exchange but rather a respectful one. Whatever the relationship issues may have been between Gvero and Karadzic at the time, such a respectful tone was appropriate for a conversation with the President; and Gvero evidenced a similar respect even when responding to Karadzic’s harsh criticism of him over the removal of the wounded and sick. While there is evidence as to a plurality of individuals whom, at the time, may properly have been addressed as “President”, the references in these intercepts cannot be read isolated from the content and context of the conversations. These calls follow almost directly after an important exchange between Gvero and General Nicolai, UNPROFOR Chief of Staff, regarding the situation in Srebrenica and the NATO air strikes. Gvero describes the essence of the conversation and the message conveyed to Nicolai regarding the cessation of air strikes. Given the timing of the calls, the content of the conversations and the fact that Karadzic is the only President directly implicated in the Srebrenica campaign so as to require information of this nature on an immediate basis, the Trial Chamber is satisfied that Gvero was talking to Karadzic about his conversation with UNPROFOR. Further, the Trial Chamber is satisfied that Gvero was referring to the plan to take-over the Srebrenica enclave and to forcibly remove the civilian population when he stated “[e]verything is going according to plan, don’t worry”. Again in the context of the conversations, the Trial Chamber is satisfied this is the only reasonable inference to draw in the circumstances.</p>
Fn 6043	<p>The Trial Chamber also notes that in March and April 1996, Karadzic ordered investigations to be carried out into crimes that may have been committed during the war. In March 1996, Karadzic ordered the VRS Main Staff and the Ministry of the Interior to “form a mixed expert commission of three members each to fully investigate and determine the facts regarding the alleged discovery of two decomposed bodies at the scene of earlier battles with the Muslim side in the Pilica area, Zvornik Municipality.” Ex. P00022, “Order from the Main Staff of the VRS signed by Radovan Karadzic, 23 March 1996” (the order further indicated that the commission should produce a written report on its findings to be sent to Karadzic). See also Richard Butler, T. 20959–20960 (1 Feb 2008) (testifying that Karadzic initiated an investigation involving the events of Srebrenica either late 1995 or early 1996 and that there was also an investigation initiated by the military prosecutor's office at approximately March or April of 1996. The two investigations may have been under the umbrella of the one investigation.) Additionally, in April 1996, Karadzic ordered a “detailed investigation to be carried out of the locations where victims of armed conflict in and around Srebrenica” were to be found with a view to determining “whether any intentional murder of civilians, of wounded or of prisoners of war occurred or</p>

whether any crime was committed representing breaches of The Hague or Geneva Conventions”. Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed Forces Dr. Radovan Karadzic, 1 April 1996” (the order further noted that “[t]he perpetrators of any such crime should be identified so that legal criminal proceedings against such perpetrators could be initiated without any delay”). The order was to be implemented by “the Main Staff of the Republika Srpska Army; the Ministers of Defence, of the Interior and of the Justice and Administration; the Supreme Court; the Supreme Military Court; the Public Prosecutor of the Republika Srpska and the Military Prosecutor of the Republika Srpska Army.” Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed forces Dr. Radovan Karadzic, 1 April 1996”. In September 1996, the MUP issued a report on the results of its investigation in response to Karadzic’s April 1996 order, and essentially concluded that, in “the period when Srebrenica was liberated”, it was the Muslim army that was responsible for murders of other Muslims and that other deaths were suicides. Ex. P00023, “Report from the Ministry of Interior with information concerning the period when Srebrenica was liberated signed by Minister Dragan Kijac, 23 September 1996”. See also Richard Butler, T. 20960 (1 Feb 2008). The Trial Chamber considers that this evidence tends to indicate that an investigation by the Military Prosecutor would not have produced a genuine result and thus that it is unlikely that an effort by Pandurevic to report to the Military Prosecutor would have led to the investigation or punishment of members of the Zvornik Brigade for their involvement in the murder operation.

ANNEX “B”

Relevant References in *Popovic* Appeals Judgement:

#	Text
588	As for Miletic's submission that Directive 7 is limited to the separation of the enclaves without envisaging their capture or disappearance, the Appeals Chamber observes that while Directive 7 does not include the objective to capture Srebrenica or Žepa, it does include the objectives of creating "an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa" and of "breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina valley region". The Appeals Chamber therefore dismisses Miletic's submission.
589	Regarding Miletic's argument that the Krivaja-95 military operation was based on the situation on the ground rather than on Directive 7, the Appeals Chamber considers that, although Miletic points to evidence strongly indicating that the situation on the ground was a factor affecting the decision to attack the enclaves, he has failed to demonstrate that this evidence excludes the possibility that the Krivaja-95 military operation was also linked to Directive 7. In this regard, the Appeals Chamber notes that the Trial Chamber considered that the Krivaja-95 orders explicitly invoked Directive 7. For this reason, the Appeals Chamber dismisses Miletic's argument that the Krivaja-95 military operation was not linked to Directive 7 but was instead the consequence of the situation on the ground as well as his contention that the Trial Chamber erred by neglecting to consider certain evidence in this regard.
1224	With respect to the Karadzic Intercept showing that Karadzic gave Deronjic instructions about what to do with the thousands of prisoners in Bratunac, just before a series of meetings where the fate of those same prisoners was discussed, the Appeals Chamber finds that, although when viewed in isolation the Karadzic Intercept may be insufficient to corroborate Deronjic's evidence, Beara has failed to demonstrate that a reasonable trier of fact could not have relied on it as one among several pieces of corroborating evidence.
1553	Bearing in mind the Trial Chamber's findings as to Miletic's firsthand knowledge of the criminal purpose of Directive 7 and his direct role in the convoy approval and notification procedure, the Appeals Chamber considers that Miletic has not demonstrated how, had these facts been established, they would have undermined the Trial Chamber's finding that Miletic knowingly implemented the instructions of Directive 7. The Appeals Chamber therefore dismisses these arguments.
1663	The Appeals Chamber reiterates that Directive 7 had the objectives of creating "an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa" and of "breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina valley region". On this basis, the Appeals Chamber considers Miletic's awareness of Karadzic's 9 July Order irrelevant to establishing his knowledge of the common purpose.
	Momir Nikolic credibility
177	Popovic's arguments regarding M. Nikolic's untruthfulness do not establish any

	<p>error in the Trial Chamber's discretionary finding that the self-incriminating nature of certain parts of M. Nikolic's evidence added to the credibility of those parts. The Appeals Chamber further notes that the Trial Chamber considered a number of factors relevant to M. Nikolic's credibility as a witness. The Appeals Chamber finds no indication that the Trial Chamber gave excessive weight to M. Nikolic's demeanour as a witness, whether in favour of or against his credibility. In any event, Popovic's assertions as to the reasons behind M. Nikolic's demeanour in court are not supported by references to the trial record and are therefore dismissed. For the same reason, the Appeals Chamber dismisses the submission that the Trial Chamber accepted without corroboration only M. Nikolic's most incriminating evidence</p>
181	<p>The Appeals Chamber notes that the Trial Chamber took into consideration M. Nikolic's guilty plea and sentence for his involvement in the Srebrenica events as well as his provision of false information to the Prosecution during his plea negotiations. The Trial Judgement further indicates that the Trial Chamber carefully scrutinised M. Nikolic's evidence⁵⁰⁰ and Beara has failed to establish otherwise. The references to the trial record Beara provides in support of his allegations of M. Nikolic's prior untruths are insufficient to show that the Trial Chamber abused its discretion in evaluating the credibility and reliability of M. Nikolic's evidence. Consequently, the Appeals Chamber dismisses Beara's arguments with regard to the overall credibility of M. Nikolic. The Appeals Chamber further dismisses Beara's contention that the Trial Chamber should not have allowed or admitted M. Nikolic's testimony, as Beara advances no relevant arguments.</p>
184	<p>Upon reviewing the evidence, the Trial Chamber found that M. Nikolic's evidence was, in some parts, as incriminatory of himself as it was of others, which added to the credibility of those parts of his evidence. The fact that self-incrimination is inherent in the Tribunal's plea agreement procedure does not show any error in this finding. Nikolic's submissions concerning M. Nikolic's lies and the Prosecution's and previous trial chambers' negative assessments of his credibility do not suffice to show that the Trial Chamber committed a discernible error in its assessment of M. Nikolic's credibility. In particular, the Appeals Chamber observes that the Trial Chamber was not bound by the views of the Prosecution or of other trial chambers. It would not be an error per se for the Trial Chamber to accept and rely on any evidence of M. Nikolic that deviated from other evidence adduced at trial. In these circumstances, the Appeals Chamber considers that it was not unreasonable for the Trial Chamber to rely on M. Nikolic's testimony.</p>
185-86	<p>Concerning Nikolic's arguments on the plausibility and clarity of M. Nikolic's testimony regarding his visiting Nikolic at the Kitovnice IKM on 13 July 1995, the Appeals Chamber considers that Nikolic overstates the relevance of the references to the trial record he provides. The Appeals Chamber also recalls that it is within a trial chamber's discretion to evaluate and rely on evidence containing inconsistencies. Accordingly, Nikolic has failed to demonstrate an error in the Trial Chamber's nuanced assessment of M. Nikolic's overall credibility. Regarding the alleged inconsistencies between the testimony of M.</p>

	<p>Nikolic and that of PW-168, the Appeals Chamber considers that Nikolic's selective reliance on parts of the evidence and questionable interpretations thereof fail to show that the Trial Chamber erred in finding that the core of the evidence of M. Nikolic and PW-168 was substantially similar. Considering the above, the Appeals Chamber finds that Nikolic has failed to show that the Trial Chamber committed any error with regard to M. Nikolic's overall credibility. The Appeals Chamber therefore dismisses Nikolic's ground of appeal 20 in relevant part.</p>
822	<p>Popovic submits that the evidence underpinning the Trial Chamber's finding on the 12 July Conversation does not corroborate M. Nikolic's evidence about the subject matter of that conversation. The Trial Chamber found that M. Nikolic's account in this respect was corroborated by the evidence which places Popovic at Hotel Fontana with M. Nikolic before the Third Hotel Fontana Meeting, and Popovic, Kosoric, and M. Nikolic at the Hotel Fontana after it, as well as subsequent events. The Appeals Chamber finds that no reasonable trier of fact could have found that this evidence corroborates the subject matter of the 12 July Conversation, namely the plan to murder. However, the Appeals Chamber recalls that there is no legal requirement that the testimony of a single witness on a material fact, even an accomplice, be corroborated before it can be accepted as evidence. What matters is the reliability and credibility accorded to the testimony. In this regard, the Appeals Chamber notes that the Trial Chamber explicitly considered M. Nikolic's evidence about the 12 July Conversation and concluded that it was reliable. The Appeals Chamber also recalls that it has dismissed Popovic's challenges to M. Nikolic's credibility as it related to the 12 July Conversation. The Appeals Chamber thus finds that Popovic has failed to demonstrate that a reasonable trier of fact could not have concluded that the plan to murder existed before the Third Hotel Fontana Meeting took place, even if based solely on M. Nikolic's evidence. Accordingly, Popovic's argument is dismissed.</p>
824	<p>The Appeals Chamber notes that the Trial Chamber considered M. Nikolic's credibility and concluded that "having assessed his evidence on this point carefully and in totality, the Trial Chamber accepts it as reliable". In accepting M. Nikolic's evidence, the Trial Chamber rejected the evidence of Kosoric, finding him to be a reluctant witness and his evidence unreliable. The Appeals Chamber finds that Beara has failed to demonstrate how the Trial Chamber erred in its evaluation of M. Nikolic's evidence and dismisses this aspect of his ground of appeal 6 accordingly</p>

ANNEX “C”

Relevant References in *Tolimir* Trial Judgement:

#	Text
188	<p>The Srebrenica and Žepa enclaves were specifically considered in Directive 7, calling on the Drina Corps to carry out “complete physical separation of Srebrenica from Zepa “... as soon as possible, preventing even communication between individuals in the two enclaves”. It further directed the Drina Corps ““by planned and well-thought-out combat operations [to] create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”. This included limiting supplies to the enclaves, instructing:</p> <p>The relevant state and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our goodwill, while at the same time avoiding condemnation by the international community and international public opinion.</p> <p>Directive 7 further called for plans for “an operation named Jadar with the task of breaking up and destroying the Muslims forces” in the Srebrenica and Žepa enclaves and “definitively liberating the Drina valley region” if UNPROFOR forces should abandon the enclaves.</p>
705	<p>In fact, Directive 7 specifically targeted these protected civilian populations with a call to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”.. Given the VRS’s detailed knowledge about the situation in the enclaves, the Majority finds that this specific language of Directive 7—“the inhabitants of Srebrenica and Zepa”—would necessarily refer to a predominantly civilian Bosnian Muslim population, the large part of whom had been driven further into the narrowing enclaves by previous military actions of the VRS. In the months that followed the issuance of Directive 7, VRS military actions were directed at the Srebrenica and Zepa enclaves. VRS retaliations—against ABiH actions and NATO bombing—targeted Bosnian Muslim civilians. The VRS additionally targeted UNPROFOR units stationed in the enclaves—the peacekeeping units that were intended to assist the civilian population. Convoys of humanitarian aid and UNPROFOR supplies were heavily restricted with the eventual and expected result of a beleaguered population and an ineffective peacekeeping force.</p>
813	<p>The Majority also finds that the evidence establishes beyond reasonable doubt that the Bosnian Serb Forces possessed the intent to forcibly displace the Bosnian Muslims from the Srebrenica enclave to ABiH-held territory within the BiH. As established in the findings on the elements of Article 5, the intent to separate the ethnic groups of BiH existed from as early as 1992. By March 1995, there was a clear RS directive to target the Bosnian Muslim population to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Zepa”. Following months of restrictions in 1995 and calculated attacks on the civilian population in early July, the Bosnian</p>

	Muslims of Srebrenica had clustered into a small area of the enclave; it was at that time that the Bosnian Serb Forces seized the opportunity to move the entirety of the vulnerable population to other areas of BiH in accordance with their plan.
1012	The Accused further submits that Directive 7 was never implemented and instead replaced by Directive 7/1 issued on 31 March 1995, which did not include a reference to the creation of unbearable living conditions. The Majority, notes, firstly, that already on 20 March 1995, the Drina Corps Command issued an order for combat operations forwarding, verbatim, the goal set out in Directive 7 to create an unbearable situation of total insecurity for the inhabitants of the enclaves to its subordinate brigades. Second, the evidence demonstrates that contrary to the Accused's position, Directive 7/1 did not replace Directive 7, but served as the military translation of the political goals set out in the text of Directive 7. Military orders issued after Directive 7/1 set out tasks pursuant to Directive 7 and Directive 7/1. ³⁹⁹² The Majority in this regard specifically notes the order for active combat operations issued by Živanović on 2 July 1995, which in particular ordered that the task of improving the VRS's tactical position “in the depth of the area” with a view of “creat[ing] conditions for the elimination of the enclaves”, shall be done “pursuant to Operations Directive 7 and 7/1” of the VRS Main Staff. The Majority, Judge Nyambe dissenting, is therefore satisfied that the political goals set out in Directive 7—which, the Majority emphasises, were endorsed by Karadžić as the Supreme Commander of the armed forces of the RS by his signing of the Directive—were implemented through military orders.
1015	The Chamber has already found elsewhere in this Judgement that the VRS did engage in restrictions on convoys delivering humanitarian aid and UNPROFOR re-supply convoys to both enclaves. Through and by these restrictions which steadily increased from March 1995 up until July, the Majority finds that the enclaves were, as envisaged by Directive 7, “squeezed” to the point where the living circumstances for the Bosnian Muslim population became unbearable. They also resulted in the reduced operational readiness of UNPROFOR and its inability, as a result, to carry out its mandate. As a consequence, a devastating humanitarian situation engulfed the enclaves by early July, leaving an estimated 42,000 persons inside Srebrenica and the approximately 6,500 to 10,000 people in Zepa without sufficient food, water or medical supplies, aware of the inability of DutchBat to protect them, and in fear of what was to come
1038	The Majority, Judge Nyambe dissenting, finds that the restrictions of convoys and military actions against the enclaves as detailed above and elsewhere in this Judgement were carried out pursuant to the strategic goals set out in Directive 7. These military actions were connected, and occurred almost in unison. They demonstrate the planned and coordinated efforts by the VRS, laying the groundwork for the realisation of the ultimate aim of Directive 7: the physical removal of the Bosnian Muslim population, including both the ABiH and its civilian inhabitants, from the enclaves of Srebrenica and Zepa. Within a very short period of time, the plan of ethnic separation that had been devised by the RS leadership in the previous years had been implemented, and it was done so successfully. The VRS managed to transport approximately 25,000-30,000 Bosnian Muslim civilians—with the exception of at least 1,000 men whose fate is

	discussed elsewhere in this Judgement —from Potocari to Kladanj—with the assistance of the MUP—in a matter of days. Less than two weeks later, nearly 4,400 Bosnian Muslims were transported out of Zepa over a period of only three days.
1040	The Majority, Judge Nyambe dissenting, has no doubt that at the latest by early March 1995 a common plan existed in the Bosnian Serb leadership to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves. The acts that were taken to implement this plan, as discussed above, were carried out in furtherance of the JCE to Forcibly Remove. The plan was carried out by a plurality of persons, including numerous high-ranking VRS officers and their subordinates, and members of the MUP. The participation of the Accused in this plan, and the extent to which he contributed to it, will be discussed separately.



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Case Name/ Affaire :	Prosecutor v Karadzic	Case Number/ Affaire n° :	MICT-13-55-A
Date Created/ Daté du :	12 October 2018	Date transmitted/ Transmis le :	12 October 2018
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S
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