

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 2 March 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:** 2 March 2018

**PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON A MOTION TO ADMIT ADDITIONAL  
EVIDENCE ON APPEAL**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katarina Gustafson

**Counsel for Mr. Radovan Karadžić:**

Mr. Peter Robinson  
Ms. Kate Gibson

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of the “Motion to Admit Additional Evidence” filed on 24 April 2017 by Mr. Radovan Karadžić (“Motion” and “Karadžić”, respectively).<sup>1</sup> The Office of the Prosecutor of the Mechanism (“Prosecution”) responded to the Motion on 24 May 2017 (“Response”),<sup>2</sup> and Karadžić filed a reply on 30 May 2017 (“Reply”).<sup>3</sup> Karadžić filed a supplement to the Motion on 2 December 2017 (“Supplement”),<sup>4</sup> and the Prosecution filed a response to the Supplement on 8 December 2017 (“Response to Supplement”).<sup>5</sup>

### A. Background

2. In its Judgement of 24 March 2016, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Karadžić, former President of the *Republika Srpska* (“RS”) and Supreme Commander of its armed forces (“VRS”), of genocide, crimes against humanity, and violations of the laws or customs of war, and sentenced him to 40 years of imprisonment.<sup>6</sup> The Trial Chamber found, *inter alia*, that Karadžić participated in a joint criminal enterprise to eliminate the Bosnian Muslims of Srebrenica in 1995 (“Srebrenica JCE”),<sup>7</sup> and, in particular, that, by the evening of 13 July 1995, Karadžić had agreed to the expansion of the objective of the common criminal purpose to encompass the killing of able-bodied Bosnian Muslim men and boys.<sup>8</sup>

3. In concluding that Karadžić agreed to the Srebrenica JCE’s expanded common criminal purpose of killing Bosnian Muslim men and boys, the Trial Chamber relied, *inter alia*, on an intercepted conversation between Karadžić and Miroslav Deronjić (“Deronjić”), which occurred around 8.00 p.m. on 13 July 1995.<sup>9</sup> The Trial Chamber found that, during this conversation, Karadžić, through coded language that contained no express mention of “prisoners” or “Zvornik”, directed Deronjić to transfer Bosnian Muslim male detainees, then held in Bratunac, to Zvornik.<sup>10</sup> This interpretation of the coded language as an instruction to transfer the prisoners to Zvornik was

<sup>1</sup> Motion to Admit Additional Evidence, 24 April 2017 (public with public Annexes A-E).

<sup>2</sup> Prosecution’s Response to Karadžić’s Motion to Admit Additional Evidence, 24 May 2017 (public with public Annexes A-E and confidential Annex F).

<sup>3</sup> Reply Brief: Motion to Admit Additional Evidence, 30 May 2017.

<sup>4</sup> Supplement to Motion to Admit Additional Evidence, 2 December 2017.

<sup>5</sup> Prosecution Response to Supplement to Motion to Admit Additional Evidence, 8 December 2017.

<sup>6</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016 (“Trial Judgement”), paras. 2, 3524, 4937-4939, 5849, 5850, 6001-6010, 6022, 6070-6072.

<sup>7</sup> Trial Judgement, paras. 5724, 5731, 5739-5745, 5814, 5821, 5822, 5831, 5849, 5998. The Trial Chamber convicted Karadžić of the crimes of genocide, persecution, extermination, murder, and other inhumane acts (forcible transfer) as crimes against humanity and murder as a violation of the laws or customs of war based on his participation in the Srebrenica JCE. Trial Judgement, paras. 5849, 5850, 5998, 6002-6005, 6007.

<sup>8</sup> Trial Judgement, paras. 5805, 5814, 5816, 5818-5821, 5830.

<sup>9</sup> Trial Judgement, para. 5805.

<sup>10</sup> Trial Judgement, paras. 5311, 5710, 5772, 5773, 5805, 5814.

based substantially on evidence from Momir Nikolić (“Nikolić”) indicating that, just after midnight on 14 July 1995, he overheard a conversation between Deronjić and Ljubiša Beara (“Beara”), wherein the two “argued about where the Bosnian Muslim men were to be executed”.<sup>11</sup> Nikolić provided further evidence that Beara insisted that he had instructions from his “boss” that the detainees were to remain in Bratunac, which Deronjić countered by asserting that Karadžić had instructed him that all detainees in Bratunac should be transferred to Zvornik, and that the two eventually agreed that the detainees would be transferred to Zvornik.<sup>12</sup> The Trial Chamber emphasised that this conversation reflected that Deronjić and Beara “discussed *where* – not whether – the detainees were to be killed” and, in light of this, found that “a decision had already been made to kill the detainees” and that “Deronjić invoked [Karadžić’s] authority to convince Beara to accede to their movement to Zvornik”.<sup>13</sup>

4. The Trial Chamber found that, following the meeting between Deronjić and Beara, detainees being held in Bratunac began to be transferred to the first of four detention sites in Zvornik,<sup>14</sup> and that, over the course of 14 through 16 July 1995, Bosnian Muslim males were executed by Bosnian Serb forces.<sup>15</sup> It further found that Karadžić’s order to Deronjić in the intercepted conversation of 13 July 1995 “enabled” the transfer of the detainees to Zvornik, where they were ultimately killed.<sup>16</sup>

5. Karadžić filed his notice of appeal of the Trial Judgement on 22 July 2016 and the briefing of his appeal concluded with the filing of his reply brief on 6 April 2017.<sup>17</sup> Ground 40 of Karadžić’s

<sup>11</sup> Trial Judgement, para. 5312. The Appeals Chamber notes that the Trial Chamber also relied on the evidence of Milenko Katanić (“Katanić”) in this respect; however, having reviewed the excerpts relied upon by the Trial Chamber, none reflect direct knowledge of the meeting or the contents of its conversation. See Trial Judgement, n. 18022, referring, *inter alia*, to Exhibit P4374, paras. 84, 93. See also Exhibit P4374, para. 95.

<sup>12</sup> Trial Judgement, paras. 5312, 5712, 5773, 5805, 5818. The Appeals Chamber notes that the Trial Chamber also relied on the evidence of Katanić and Srbslav Davidović (“Davidović”) as it concerns the meeting between Deronjić and Beara in the early hours of 14 July 1995; however, having reviewed the excerpts relied upon by the Trial Chamber, none reflect direct knowledge of the meeting or the contents of its conversation. See Trial Judgement, nn. 18022, 18024, referring, *inter alia*, to Srbslav Davidović, T. 9 February 2012 pp. 24415, 24416, 24452, 24453; T. 10 February 2012 p. 24496; Exhibit P4374, paras. 91-93.

<sup>13</sup> Trial Judgement, paras. 5312, 5712, 5805 (emphasis in original).

<sup>14</sup> Trial Judgement, para. 5712, n. 19409, referring to Trial Judgement, paras. 5313, 5319, 5320.

<sup>15</sup> Trial Judgement, para. 5714.

<sup>16</sup> Trial Judgement, para. 5818.

<sup>17</sup> Radovan Karadžić’s Notice of Appeal, 22 July 2016 (public with confidential annex) (“Notice of Appeal”); Radovan Karadžić’s Appeal Brief, 5 December 2016 (confidential) (“Appeal Brief”); Radovan Karadžić’s Reply Brief, 6 April 2017 (confidential) (“Reply Brief”). Karadžić filed public redacted versions of his appeal and reply briefs on 23 December 2016 and 19 April 2017, respectively. The Prosecution has also appealed the Trial Judgement. See Prosecution’s Notice of Appeal, 22 July 2016; Prosecution Appeal Brief, 5 December 2016 (confidential); Prosecution Reply Brief, 6 April 2017 (confidential). The Prosecution filed public redacted versions of its appeal and reply briefs on 11 January 2017 and 16 May 2017, respectively.

appeal alleges that the Trial Chamber erred in finding that he knew of and shared the Srebrenica JCE's expanded common criminal purpose of killing the Bosnian Muslim males of Srebrenica.<sup>18</sup>

6. In the Motion, Karadžić seeks to admit as additional evidence on appeal excerpts of transcripts of testimony provided by Dragomir Vasić ("Vasić") in the trial of *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T ("*Perišić* trial") before a trial chamber of the ICTY or, alternatively, to call Vasić to testify before the Appeals Chamber.<sup>19</sup> Karadžić submits that Vasić's testimony reflects that Deronjić never told Beara that Karadžić had instructed him that the prisoners should be transferred to Zvornik but rather that Karadžić had ordered the prisoners to be taken to a prison facility,<sup>20</sup> and, furthermore, that Nikolić was not present during the conversation between Deronjić and Beara.<sup>21</sup> Karadžić contends that the proposed additional evidence directly contradicts Nikolić's evidence concerning the conversation between Deronjić and Beara in the early hours of 14 July 1995 and, consequently, undermines the Trial Chamber's conclusion that Karadžić shared the expanded common criminal purpose of killing the Bosnian Muslim males of Srebrenica.<sup>22</sup> Although Karadžić concedes that the evidence was available at trial, he argues that not admitting it on appeal would result in a miscarriage of justice.<sup>23</sup>

### B. Applicable Law

7. Rule 142 of the Rules of Procedure and Evidence of the Mechanism ("Rules") provides for the admission of additional evidence on appeal. For additional evidence to be admissible under Rule 142(C) of the Rules, the applicant must demonstrate that the additional evidence was not available at trial in any form, or discoverable through the exercise of due diligence.<sup>24</sup> The applicant must also show that the additional evidence is relevant to a material issue at trial and is credible.<sup>25</sup> Once it has been determined that the additional evidence meets these conditions, the Appeals Chamber will determine, in accordance with Rule 142(C) of the Rules, whether it *could* have been a

<sup>18</sup> Notice of Appeal, p. 14; Appeal Brief, paras. 690-745; Reply Brief, paras. 203-220.

<sup>19</sup> Motion, paras. 4, 5, 17, referring to Motion, Annex A (*Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Dragomir Vasić, Transcripts ("T.") 25 May 2009 pp. 6481-6486, 6499-6501) ("Annex A").

<sup>20</sup> Motion, paras. 4, 5, referring to Motion, Annex A, T. 25 May 2009 pp. 6481, 6482, 6500.

<sup>21</sup> Motion, paras. 4, 5, referring to Motion, Annex A, T. 25 May 2009 pp. 6481, 6482, 6500.

<sup>22</sup> Motion, paras. 8, 14, 16. See also Reply, para. 10; Supplement, para. 7.

<sup>23</sup> Motion, paras. 8, 9. See also Reply, para. 11; Supplement, para. 7.

<sup>24</sup> *Augustin Ngirabatware v. Prosecutor*, Case No. MICT-12-29-A, Decision on Ngirabatware's Motions for Relief for Rule 73 Violations and Admission of Additional Evidence on Appeal, 21 November 2014 ("*Ngirabatware* Decision of 21 November 2014"), para. 24. See also *Prosecutor v. Jean Uwinkindi*, MICT-12-24-AR14.1, Decision on Requests for Admission of Additional Evidence on Appeal, 22 September 2016 ("*Uwinkindi* Decision of 22 September 2016"), para. 5.

<sup>25</sup> *Ngirabatware* Decision of 21 November 2014, para. 25. See also *Uwinkindi* Decision of 22 September 2016, para. 5. Evidence is relevant if it relates to findings material to the conviction or sentence, in the sense that those findings were crucial or instrumental to the conviction or sentence, and is credible if it appears to be reasonably capable of belief or reliance. *Ngirabatware* Decision of 21 November 2014, para. 25.

decisive factor in reaching the verdict.<sup>26</sup> Where the Appeals Chamber finds that the evidence was available at trial, it may still be admissible pursuant to Rule 142(C) of the Rules. However, in such a case, the applicant must demonstrate that the exclusion of the additional evidence *would* lead to a miscarriage of justice, in that, if it had been admitted at trial, it *would* have had an impact on the verdict.<sup>27</sup>

8. In both cases, the applicant bears the burden of identifying with precision the specific finding of fact made by the trial chamber to which the additional evidence pertains, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon the trial chamber's verdict.<sup>28</sup> An applicant who fails to do so runs the risk that the tendered material will be rejected without detailed consideration.<sup>29</sup>

### C. Discussion

9. Karadžić submits that Vasić's testimony in the *Perišić* trial is relevant and credible.<sup>30</sup> He further argues that, although it was available at trial, not admitting the proposed additional evidence would result in a miscarriage of justice.<sup>31</sup> In particular, Karadžić contends that Vasić's testimony undermines the Trial Chamber's findings about the content of the conversation between Deronjić and Beara in the early hours of 14 July 1995, which the Trial Chamber relied upon to find that Karadžić ordered the prisoners to be taken to Zvornik to be killed.<sup>32</sup> Karadžić emphasises that Vasić's testimony reflects that Deronjić never said that Karadžić had instructed him that the prisoners should be transferred to Zvornik but rather that Karadžić had ordered the prisoners to be taken to a military prison.<sup>33</sup> Furthermore, Karadžić asserts that Vasić's testimony reflects that Nikolić was not present during the conversation between Deronjić and Beara, undermining the Trial Chamber's reliance on Nikolić's uncorroborated evidence about this conversation.<sup>34</sup> Karadžić also argues that the other "subsequent acts" relied upon by the Trial Chamber cannot support the conclusion that Karadžić agreed to the expanded common criminal purpose of killing Bosnian Muslim males without Nikolić's uncorroborated testimony about this conversation, which Vasić's

<sup>26</sup> *Ngirabatware* Decision of 21 November 2014, para. 26. Cf. *Uwinkindi* Decision of 22 September 2016, para. 5.

<sup>27</sup> *Ngirabatware* Decision of 21 November 2014, para. 27. Cf. *Uwinkindi* Decision of 22 September 2016, para. 6.

<sup>28</sup> *Ngirabatware* Decision of 21 November 2014, para. 28. Cf. *Uwinkindi* Decision of 22 September 2016, para. 7.

<sup>29</sup> *Ngirabatware* Decision of 21 November 2014, para. 28. See also *Uwinkindi* Decision of 22 September 2016, para. 7.

<sup>30</sup> Motion, paras. 6, 7. See also Reply, para. 7.

<sup>31</sup> Motion, paras. 8-14, 16, 17; Reply, paras. 4-6, 11, 14. Karadžić points to the admission of evidence during review proceedings before the ICTY and the admission of additional evidence on appeal in an ICTR case as analogous to his situation. See Motion, paras. 15, 16.

<sup>32</sup> Motion, paras. 3, 4, 6, 11, 12. See also Reply, paras. 9-11.

<sup>33</sup> Motion, paras. 4, 5, referring to Motion, Annex A, T. 25 May 2009 pp. 6481, 6482, 6500.

<sup>34</sup> Motion, para. 4.

evidence undermines.<sup>35</sup> Consequently, he seeks to have Vasić's testimony from the *Perišić* trial admitted or, alternatively, have him testify before the Appeals Chamber.<sup>36</sup>

10. The Prosecution responds that, in view of the availability of Vasić's evidence and Karadžić's clear intention to call him as a witness at trial, admitting his testimony on appeal is contrary to the purpose of Rule 142 of the Rules, subverts the trial process and undermines the interests of justice.<sup>37</sup> Alternatively, it contends that the exclusion of the proposed additional evidence would not result in a miscarriage of justice as it lacks credibility on the key issues for which Karadžić seeks to admit it and would not impact the verdict.<sup>38</sup> Finally, the Prosecution submits that, in view of Rule 110(A) of the Rules, Vasić's testimony in the *Perišić* trial, which goes to the acts and conduct of Karadžić, could not be admitted as additional evidence on appeal without cross-examination.<sup>39</sup>

11. The Appeals Chamber finds that the proposed additional evidence is relevant to material issues at trial, namely the conversations between Karadžić and Deronjić around 8.00 p.m. on 13 July 1995 and between Deronjić and Beara in the early hours of 14 July 1995, which the Trial Chamber relied upon, in part, to find that Karadžić agreed to the expanded common criminal purpose of killing Bosnian Muslim males.<sup>40</sup> The Appeals Chamber also finds that Vasić's sworn testimony in a proceeding before the ICTY is sufficiently credible for admission as additional evidence on appeal.

12. Karadžić concedes that Vasić's testimony was available at trial and submits that, in hindsight, it was a mistake not to call him to testify. The Prosecution suggests that Karadžić is simply trying to rectify tactical errors at trial and that admitting the evidence under Rule 142 of the Rules in this context is contrary to the interests of justice. While there may be situations where a party may attempt to use Rule 142 of the Rules for the purpose of remedying tactical errors or oversights at trial, the Appeals Chamber considers that, in this instance, the heightened standard for

<sup>35</sup> Motion, para. 13.

<sup>36</sup> Motion, paras. 17. In the Supplement, Karadžić submits that the trial chamber in the *Mladić* case before the ICTY would not consider Nikolić's evidence on a particular matter in view of the absence of corroboration and suggests that this authority offers further support to the Motion. Supplement, paras. 4, 5, referring to *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017, para. 5127.

<sup>37</sup> Response, paras. 3-9, 22.

<sup>38</sup> Response, paras. 14-20, 22. See also Response, paras. 3, 12, 13. The Prosecution suggests that Karadžić's reliance on the admission of evidence in an ICTY review proceeding and ICTR appeal are inapposite as neither party sought to admit the evidence at trial. Response, para. 9.

<sup>39</sup> Response, para. 21. The Prosecution submits that Karadžić's Supplement should be disregarded because the relevant finding of the *Mladić* trial chamber is not "supplementary authority" but a different trial chamber's factual determination, expressly contingent on and limited to the *Mladić* trial record. Response to Supplement, paras. 1, 2.

<sup>40</sup> See, e.g., Trial Judgement, paras. 5805, 5814.

admission sufficiently protects the interests of justice.<sup>41</sup> Therefore, the Appeals Chamber will determine whether excluding the proposed additional evidence *would* result in a miscarriage of justice.<sup>42</sup>

13. The Appeals Chamber observes that Vasić's testimony differs from the evidence relied upon by the Trial Chamber as to the nature of Karadžić's instructions to Deronjić on the night of 13 July 1995. Specifically, the Trial Chamber relied upon evidence from Nikolić that Deronjić told Beara in the early hours of 14 July 1995 that Karadžić ordered the Bratunac prisoners to be transferred to Zvornik,<sup>43</sup> whereas Vasić's testimony in the *Perišić* trial reflects that Deronjić told Beara that he had received instructions from Karadžić to move the prisoners from Bratunac to "a prison facility."<sup>44</sup> Furthermore, the Appeals Chamber observes that Vasić testified in the *Perišić* trial that he was "certain" that Nikolić was not at Deronjić's office on the night of the meeting between Deronjić and Beara when Vasić arrived there.<sup>45</sup>

14. However, the Appeals Chamber considers that Vasić's testimony in the *Perišić* trial does not contradict key evidence as to the nature of the conversation between Deronjić and Beara in the early hours of 14 July 1995, which the Trial Chamber relied upon to find that Karadžić agreed to the expanded common criminal purpose of killing the Bosnian Muslim males of Srebrenica. Specifically, Vasić's testimony does not directly refute Nikolić's evidence, as relied upon by the Trial Chamber, that Karadžić ordered the detainees transferred to Zvornik.<sup>46</sup> Rather, it reflects that Deronjić stated that he had received an order from Karadžić to move the prisoners from Bratunac to "a prison facility".<sup>47</sup> Similarly, Vasić's testimony does not expressly refute Nikolić's evidence that, during this meeting, it was already openly agreed that detainees would be executed.<sup>48</sup> To the

<sup>41</sup> Specifically, the Appeals Chamber recalls that the heightened standard for admitting additional evidence on appeal that was available at trial "seeks to ensure the finality of judgements and the application of maximum effort by counsel at trial to obtain and present the relevant evidence, while at the same time, it does not permit a factually erroneous conviction to stand, thereby safeguarding an equally important interest of accuracy in judgements." *Galić* Decision of 30 June 2005, para. 15 (internal quotations omitted).

<sup>42</sup> As concerns the Supplement filed by Karadžić, the Appeals Chamber recalls that a party is to seek leave to file supplemental authorities. See *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's "Notice of Supplemental Authority", 14 May 2007, p. 2. Furthermore, the Appeals Chamber finds that the Supplement, which concerns factual determinations based on a separate record reviewed by a separate trial chamber of the ICTY, does not present supplemental legal authority that would assist in the adjudication of the Motion. The Appeals Chamber therefore dismisses the Supplement without further consideration.

<sup>43</sup> See Trial Judgement, paras. 5312, 5712.

<sup>44</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481, 6482.

<sup>45</sup> See Motion, Annex A, T. 25 May 2009 p. 6500. See also Motion, Annex A, T. 25 May 2009 p. 6501.

<sup>46</sup> See Trial Judgement, paras. 5312, 5712 and references contained therein.

<sup>47</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481, 6482.

<sup>48</sup> See Trial Chamber, para. 5312, n. 18022. Vasić's testimony does not clearly reflect that Deronjić invoked Karadžić's order to transfer prisoners from Bratunac to "a prison facility" in ignorance of plans to kill the detainees or for the purpose of preventing such killings. See *generally* Motion, Annex A. Further, while Vasić makes reference to an "argument" or a "quarrel" between Deronjić and Beara, his testimony is not clear that there was disagreement as to whether the detainees were to be killed. See *generally* Motion, Annex A. Rather, the proposed additional evidence reflects Beara acknowledging to Vasić, at a moment when Deronjić had left the room, that Mladić had ordered that all

contrary, Vasić's testimony corroborates Nikolić's evidence and the Trial Chamber's findings that: (i) Deronjić, Beara, and Vasić met sometime around midnight on 13 July 1995 or in the early hours of 14 July 1995;<sup>49</sup> (ii) Deronjić and Beara argued during the meeting;<sup>50</sup> (iii) Deronjić had earlier, liaised with Karadžić in relation to the detainees then held in Bratunac;<sup>51</sup> (iv) Deronjić had received coded instructions from Karadžić to move the detainees out of Bratunac, which he communicated to Beara;<sup>52</sup> and (v) Beara ceded to Deronjić as to the location to which the prisoners would be transferred.<sup>53</sup>

15. In addition, Vasić's testimony does not undermine Nikolić's evidence as to his ability to overhear this conversation. While Vasić's evidence suggests Nikolić was not present during the conversation between Deronjić and Beara, he also testified that there "were many people in the corridor, quite a crowd" when he arrived and that he could not recall if there was an office "that leads to Deronjić's office".<sup>54</sup> Nikolić, on the other hand, gave evidence that he was not in Deronjić's office when the conversation between Deronjić and Beara took place but waited in the reception area next to the office from where he could hear the entire meeting.<sup>55</sup> Moreover, in support of its finding that Nikolić drove Beara to the SDS offices to meet with Deronjić and Vasić, the Trial Chamber also referred to evidence from Witness KDZ480, who stated that he saw Nikolić at the offices sometime after midnight.<sup>56</sup> Consequently, Vasić's testimony in the *Perišić* trial would not cast doubt on evidence of Nikolić's presence outside Deronjić's office or Nikolić's ability to hear this conversation which was accepted by the Trial Chamber.<sup>57</sup>

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prisoners be killed. See Motion, Annex A, T. 25 May 2009 pp. 6481, 6482 ("[Vasić]: I noticed that the two were arguing and there was a row between them. [...] Deronjić left his office for a short while because somebody wanted to see him, and then I asked Mr. Beara about what was going on, what the problem was. He told me that he had come there on a mission and that he was entrusted with the prisoners, and that he had received an order for all the prisoners to be killed. I asked him whose order it was, and he just replied, 'it came from the boss.' When I asked him which boss are you referring to, his answer was, 'General Mladić.' When Deronjić returned to the office, their argument and quarrel continued. That was the first time I heard Deronjić establish a telephone line with President Karadžić. The president conveyed to him an encrypted order which read 'Miroslav, the commodity must be in the warehouse.' Deronjić claimed that he had understood the message as an order to move the prisoners from Bratunac to a prison facility. And he insisted several times with Mr. Beara for that to be done pursuant to the order. Eventually, Mr. Beara unwillingly said he would comply."). The Appeals Chamber notes that Vasić's testimony in the *Perišić* trial reflects that, in a subsequent conversation with Beara on 14 July 1995, Beara repeated that Mladić had ordered that Bratunac detainees be killed and requested that Vasić provide personnel to assist in carrying out this order, to which Vasić responded that, as far as he understood it, "the order was not such". See Motion, Annex A, T. 25 May 2009 pp. 6485, 6486.

<sup>49</sup> See Motion, Annex A, T. 25 May 2009 p. 6481.

<sup>50</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481, 6482.

<sup>51</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481-6483.

<sup>52</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481-6483.

<sup>53</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481, 6482.

<sup>54</sup> See Motion, Annex A, T. 25 May 2009 pp. 6481, 6500.

<sup>55</sup> See Trial Judgement, n. 18022, referring to Momir Nikolić, T. 14 February 2012 pp. 24676, 24677.

<sup>56</sup> See Trial Judgement, n. 18021, referring, *inter alia*, to Exhibit P4355.

<sup>57</sup> Vasić's prior statements as to Nikolić's presence are similarly equivocal. See Motion, Annex B (excerpts of ICTY Prosecution interview with Vasić from 10 and 11 June 2003), p. 31 ("[Interviewer]: Is it possible that [Nikolić] was there and that you don't remember it? Or do you think [Nikolić] is just /inaudible/ lying? [Vasić]: I think he wasn't



16. The Appeals Chamber also observes that the Trial Chamber did not rely solely on Karadžić's order to move prisoners from Bratunac to Zvornik to conclude that he agreed to the Srebrenica JCE's expanded common criminal purpose of killing Bosnian Muslim males; it also relied in this respect upon Karadžić's "subsequent acts", that is acts that took place after the conversation between Deronjić and Beara in the early hours of 14 July 1995.<sup>58</sup> As the proposed additional evidence from Vasić relates principally to that conversation and to Nikolić's presence during it,<sup>59</sup> the Appeals Chamber concludes that Vasić's evidence would not be capable of casting doubt on the Trial Chamber's findings concerning the "subsequent acts".

17. In view of all the above, Karadžić has not demonstrated that the proposed additional evidence *would* have impacted the verdict had it been adduced at trial and that its exclusion *would* amount to a miscarriage of justice.

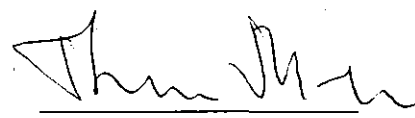
18. The Appeals Chamber emphasizes that its findings in this decision pertain strictly to the admissibility of the proposed additional evidence and are in no way indicative of its consideration of the merits of Karadžić's appeal.

#### **D. Disposition**

19. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion in its entirety:

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

Done this 2<sup>nd</sup> day of March 2018,  
At The Hague,  
The Netherlands

  
\_\_\_\_\_  
Judge Theodor Meron,  
Presiding Judge

[Seal of the Mechanism]

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there but, I cannot tell that with 100% certainty. [...] That day I was so tired, I went back and forth, there is a possibility that was a mistake.”)

<sup>58</sup> Trial Judgement, paras. 5805, 5814. In particular, the Trial Chamber found that, after his conversation with Deronjić, Karadžić continued to seek and was provided with information about developments on the ground from multiple sources. Trial Judgement, paras. 5806-5809. The Trial Chamber also found that Karadžić, together with Mladić, embarked on an effort to disseminate false information about the fate of the Bosnian Muslim males and that Karadžić denied international organisations access to Srebrenica and the Bratunac and Zvornik areas. Trial Judgement, para. 5812. The Trial Chamber also observed that, from the point he ordered the detainees' transfer to Zvornik until the spring of 1996, Karadžić took no action to initiate investigations or prosecutions of the direct perpetrators of the crimes committed following the fall of Srebrenica and, by contrast, he praised the units of the Bosnian Serb forces involved in the killing operation in Zvornik and even referred to Mladić as a "legend". Trial Judgement, para. 5813. The Trial Chamber also relied on evidence that, on 14 July 1995 at a briefing with officers of the VRS, Beara referred to an order emanating from "two presidents" in stating that: (i) the VRS had many detainees in custody in various locations in

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Zvornik; (ii) the VRS had “to get rid of them”; and (iii) he expected assistance from the municipality in this regard. Trial Judgement, n. 19740, *referring to* Trial Judgement, para. 5715.

<sup>59</sup> See Motion, Annex A.



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