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Case Name/ *Affaire* :	**Prosecutor v. Radovan Karadžić**		**Case Number/ *Affaire n°* :**	**MICT-13-55-A**
Date Created/ *Daté du* :	**9 March 2017**	**Date transmitted/ *Transmis le* :**	**9 March 2017**	**No. of Pages/ *Nombre de pages* :** **27**
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UNITED NATIONS

Case No.: MICT-13-55-A

Mechanism for International Criminal Tribunals Date: 9 March 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge William Hussein Sekule
Judge Vagn Prüsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: **Mr. Olufemi Elias**

Decision of: **9 March 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON A MOTION FOR *INTER PARTES* PROCEEDINGS IN RULE 86 MATTERS

The Office of the Prosecutor

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

Counsel for Mr. Radovan Karadžić

Mr. Peter Robinson
Ms. Kate Gibson

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals ("Appeals Chamber" and "Mechanism", respectively) is seised of the "Motion for *Inter Partes* Proceedings", which was filed on 30 January 2017 ("Motion") by Mr. Radovan Karadžić ("Karadžić"). The Office of the Prosecutor of the Mechanism ("Prosecution") responded to the Motion on 9 February 2017,[1] and Karadžić filed his reply on 13 February 2017.[2]

I. SUBMISSIONS

2. In the Motion, Karadžić requests that the two proceedings in his case with numbers MICT-13-55-R86F.4 and MICT-13-55-R86F.5 proceed on an *inter partes* basis and that the applicant/s in these proceedings be ordered to file redacted versions of its/their applications lodged under Rule 86 of the Rules of Procedure and Evidence of the Mechanism ("Rule 86 Applications" and "Rules", respectively).[3] Karadžić submits that he has a legitimate forensic purpose for access and participation in these proceedings since by learning which witnesses the Rule 86 Applications concern he can request any subsequent statements and testimony obtained from them by national authorities in order to assess whether they give rise to an application for additional evidence on appeal.[4] In addition, Karadžić argues that his participation in the proceedings would serve the interests of justice as he may have useful information for the Rule 86 applicant/s and that excluding the Defence from these proceedings can render the underlying appeal unfair given the regular communication between the Appeals Chamber and the Prosecution on matters related to his case.[5]

3. The Prosecution opposes Karadžić's "renewed" request for participation in Rule 86 proceedings and access to and public redacted versions of *ex parte* Rule 86 applications, as Karadžić lacks standing to participate in Rule 86 proceedings, which concern protective measures for witnesses and not the witnesses' evidence, credibility, or the subject matter of Karadžić's case.[6] The Prosecution submits that Karadžić effectively requests reconsideration of the "Decision on a Motion for Redacted Versions of Rule 86(F) Filings" issued by the Appeals Chamber on 24 January 2017 ("Decision of 24 January 2017") without any attempt to show how the reconsideration test is met.[7] The Prosecution contends that Karadžić has not shown any legitimate forensic purpose justifying access to confidential *ex parte* material or public interest outweighing the high degree of confidentiality afforded to Rule 86 applications.[8] In addition, the Prosecution

[1] Prosecution's Response to Karadžić's Motion for *Inter Partes* Proceedings, 9 February 2017 ("Response").
[2] Reply Brief: Motion for *Inter Partes* Proceedings, 13 February 2017 ("Reply").
[3] Motion, paras. 1, 2, 13.
[4] Motion, para. 5. *See also* Motion, paras. 6-9.
[5] Motion, paras. 10-12.
[6] Response, paras. 1-9.
[7] Response, paras. 1, 4.
[8] Response, paras. 1-6, 8, 9.

argues that the Practice Direction on the Procedure for Variation of Protective Measures of the Mechanism expressly provides for Rule 86 proceedings to be conducted *ex parte* and that there is no inherent injustice in excluding a party from Rule 86 proceedings,[9] the *ex parte* nature of which is justified as they typically concern sensitive and confidential national investigations or proceedings the success of which may be jeopardized by unnecessary disclosures.[10]

4. In his reply, Karadžić submits that the Prosecution submissions are without merit as the Practice Direction on the Procedure for Variation of Protective Measures provides for Rule 86 applications to be provided to the parties in the proceedings, unless the applicant provides an explanation for the good cause of the *ex parte* classification.[11] Karadžić also argues that there is no justification for conducting the proceedings entirely *ex parte* and there is no reason for not filing public redacted versions of all the filings and decisions in the two proceedings.[12]

II. DISCUSSION

5. The Appeals Chamber notes that the two Rule 86 proceedings, which are the subject of the Motion, formed part of Karadžić's request for access to confidential *ex parte* filings which the Appeals Chamber denied in the Decision of 24 January 2017.[13] Therefore, Karadžić's request for access to the applications and filings referred to in the Motion is in effect a request for reconsideration of the Decision of 24 January 2017. A party requesting reconsideration of a decision must satisfy the chamber of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying reconsideration in order to avoid injustice.[14] In

[9] Response, paras. 6, 7 *referring to* Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material, MICT/8, 23 April 2013 ("Practice Direction on the Procedure for Variation of Protective Measures"), para. 6; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motion for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006, para. 15; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-I, Decision on Application by Dragoljub Odjanić for Disclosure of *Ex Parte* Submissions, 8 November 2002, paras. 21-23.

[10] Response, para. 7.

[11] Reply, paras. 1-9. In addition, Karadžić submits that the Appeals Chamber has already allowed disclosure of the identities of all the witnesses who were the subject of requests for variation of protective measures during his trial and that there is no good reason why the same information should not be available with regard to such requests introduced during the appeal. *See* Reply, para. 9, *referring to* Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules, 18 July 2016.

[12] Reply, paras. 7-9.

[13] Decision of 24 January 2017, pp. 4, 5.

[14] *Prosecutor v. Jean-Paul Akayesu*, Case No. MICT-13-30, Decision on a Motion for Reconsideration, 30 June 2016, p. 1 and reference cited therein. *See also Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Public Redacted Version of the "Decision on Valentin Ćorić's Request for Provisional Release" Issued on 15 August 2016, p. 3 and references cited therein.

this respect, the Appeals Chamber finds that Karadžić has failed to show that reconsideration of the Decision of 24 January 2017 is warranted.[15]

6. Nonetheless, the Appeals Chamber notes that, in order to ensure the public nature of the proceedings to the extent possible, it issued in its Decision of 24 January 2017 public redacted versions of two orders made in the proceedings that are the subject of the Motion,[16] and that, since that decision, additional orders and decisions have been issued in the two proceedings.[17] The Appeals Chamber finds that issuing public redacted versions of these orders and decisions will ensure the public nature of the proceedings to the extent possible and that the interests of the parties who designated their filings as *ex parte* can be adequately protected by appropriate redactions.

7. As to Karadžić's request for participation in the Rule 86 proceedings referred to in the Motion, the Appeals Chamber notes that the proceedings concern requests for variation of protective measures granted by the International Criminal Tribunal for the former Yugoslavia with regard to Prosecution witnesses. In these circumstances, when deciding whether to vary the existing protective measures, the Appeals Chamber considered it appropriate to seek information from the Prosecution. The Appeals Chamber did not consider it necessary to lift the *ex parte* status of the Rule 86 Applications in respect of Karadžić and invite him to make submissions because it did not consider that Karadžić would be in a position to supplement the witness protection information from the Witness Support and Protection Unit of the Mechanism or offer other information relevant to witness protection concerns of Prosecution witnesses. The Appeals Chamber emphasizes that the Rule 86 Applications concern the application of witness protection measures in domestic proceedings, not Karadžić's appeal.[18] For these reasons, the Appeals Chamber finds that Karadžić

[15] The Appeals Chamber notes that, in his Reply, Karadžić misconstrues the "Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules" issued by the Appeals Chamber on 18 July 2016. Contrary to Karadžić's submission, the Appeals Chamber found that he had failed to justify access to information identifying national investigations and proceedings, including access to certain witness pseudonyms. *See* Decision on a Motion for Redacted Versions of Decisions Issued Under Rule 75(H) of the ICTY Rules, 18 July 2016, pp. 4, 5. The Appeals Chamber notes that its decision of 18 July 2016 only allowed the non-redaction of particular witness pseudonyms from the public redacted versions of eleven Rule 75(H) decisions of the Trial Chamber in specific instances where the Witness Support and Protection Unit of the Mechanism advised that such disclosure would not undermine the effectiveness of the protective measures in force regarding those witnesses. *See* Registrar's Submission in Compliance with the Order on a Motion Related to Measures for Protection of Victims and Witnesses, 14 June 2016 (confidential with confidential annex A and confidential annex B), Annex A, Annex B.

[16] *See* Decision of 24 January 2017, Annex 1.

[17] *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86H.3, Decision on an Application Pursuant to Rule 86, 8 March 2017 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86H.4, Decision on an Application Pursuant to Rule 86, 21 February 2017 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86H.3, Order on an Application Pursuant to Rule 86, 16 February 2017 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.4, Order for Submissions on an Application Pursuant to Rule 86, 27 January 2017 (confidential and *ex parte*); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86F.5, Order for Submissions on an Application Pursuant to Rule 86, 27 January 2017 (confidential and *ex parte*).

[18] In addition, the Appeals Chamber observes that the Practice Direction on the Procedure for Variation of Protective Measures allows for applications pursuant to Rule 86 of the Rules to be filed *ex parte* with regard to one or more of the parties in the proceedings, provided that the applicant provides an explanation of the good cause for filing the

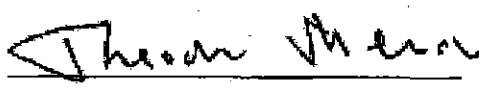
has failed to demonstrate that he has standing to participate in the Rule 86 proceedings identified in the Motion.

III. DISPOSITION

8. For the foregoing reasons, the Appeals Chamber **GRANTS** the Motion in part, **ISSUES**, as an annex to the present decision, public redacted versions of the decisions and orders issued in the two proceedings identified by Karadžić in the Motion, and **DENIES** the Motion in all other respects.

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

Done this 9th day of March 2017,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

application *ex parte*. *See* Practice Direction on the Procedure for Variation of Protective Measures, para. 6. The Appeals Chamber is satisfied that the Rule 86 Applications evince good cause for their *ex parte* status as they contain information identifying domestic investigations and pre-trial proceedings.

ANNEX

UNITED NATIONS

Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86F.4

Date: 27 January 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding Judge**

Registrar: **Mr. Olufemi Elias**

Order of: **27 January 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

ORDER FOR SUBMISSIONS ON AN APPLICATION PURSUANT TO RULE 86

The Office of the Prosecutor:

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

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case;[1]

BEING SEISED OF a confidential and *ex parte* application filed on 13 January 2017, in which the Prosecutor's Office of [REDACTED] ("Applicant") relies on Rule 86(F) of the Rules and requests the unredacted transcripts of a witness's testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18, heard before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the pseudonym under which the witness testified, and the statements given by the witness in the course of the investigation;[2]

NOTING that the Applicant is a party in a domestic jurisdiction and seeks information and access to material subject to protective measures ordered by the ICTY;[3]

CONSIDERING that, in effect, the Applicant is seeking variation of protective measures and that, therefore, the Application falls to be considered under Rule 86(H) of the Rules;[4]

CONSIDERING the Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, which provides that the case number assigned to "proceedings arising from a request for the rescission, variance or augmentation of protective measures made pursuant to Rule 86(H) of the Rules" shall include the "R86H" suffix to identify the type of proceedings concerned;[5]

FINDING, therefore, that the case number assigned to the Application is not consistent with the Practice Direction referred to above and should be revised;

CONSIDERING that it is appropriate to request the Witness Support and Protection Unit of the Mechanism ("WISP") to inform me of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism;

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[1] Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 January 2017 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. 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] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*) ("Application"), paras. 4-9, 12.

[3] Application, paras. 9, 10, 13.

[4] Rule 86(H) of the Rules. *See also* Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material, MICT/8, 23 April 2013.

[5] Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016, Articles 1, 6(2)(j).

CONSIDERING that, in accordance with Rule 86(I) and (J) of the Rules, it is necessary to ascertain through the WISP whether the witness consents to the requested variation of any protective measures in force after being properly advised of the consequences thereof;

CONSIDERING that, given that the witness was called by the Prosecution to testify in the *Karadžić* case, it is also appropriate to give notice of the Application to the Prosecution to afford it an opportunity to note any concern therewith;[6]

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

HEREBY ORDER:

1. The WISP to inform me within fourteen days after the issuance of the present order of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism;

2. The WISP to contact the witness identified in the Application to ascertain whether the witness consents to the requested variation of any protective measures after being advised of the consequences thereof, and to inform me of the witness's position by the same date;

3. The Registry to revise the case number assigned to the Application in accordance with Article 6(2)(j) of the Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals;[7]

4. The Registry to lift the *ex parte* status of the Application with respect to the Prosecution and serve a copy of the Application on the Prosecution; and

5. The Prosecution to file a submission, if any, on the Application by the same date.

[6] *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Protective Measures for Witnesses, 2 March 2012 (confidential), para. 1; RP. 60505; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Protective Measures for Witnesses, 30 October 2008, paras. 11, 34(e)(i).
[7] Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016, Article 6(2)(j).

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

Done this 27th day of January 2017,
At The Hague,
The Netherlands

Judge Theodor Méron
Presiding Judge

[Seal of the Mechanism]

UNITED NATIONS

Case No.: MICT-13-55-R86F.5

Mechanism for International Criminal Tribunals Date: 27 January 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding Judge**

Registrar: **Mr. Olufemi Elias**

Order of: **27 January 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

ORDER FOR SUBMISSIONS ON AN APPLICATION PURSUANT TO RULE 86

The Office of the Prosecutor:

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

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case;[1]

BEING SEISED OF a confidential and *ex parte* application filed on 13 January 2017, in which the Prosecutor's Office of [REDACTED] ("Applicant") relies on Rule 86(F) of the Rules and requests the unredacted transcripts of a witness's testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18, heard before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the pseudonym under which the witness testified, and the statements given by the witness in the course of the investigation;[2]

NOTING that the Applicant is a party in a domestic jurisdiction and seeks information and access to material subject to protective measures ordered by the ICTY;[3]

CONSIDERING that, in effect, the Applicant is seeking variation of protective measures and that, therefore, the Application falls to be considered under Rule 86(H) of the Rules;[4]

CONSIDERING the Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, which provides that the case number assigned to "proceedings arising from a request for the rescission, variance or augmentation of protective measures made pursuant to Rule 86(H) of the Rules" shall include the "R86H" suffix to identify the type of proceedings concerned;[5]

FINDING, therefore, that the case number assigned to the Application is not consistent with the Practice Direction referred to above and should be revised;

CONSIDERING that it is appropriate to request the Witness Support and Protection Unit of the Mechanism ("WISP") to inform me of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism;

---

[1] Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 January 2017 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. 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] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*) ("Application"), paras. 5-9, 12.

[3] Application, paras. 5, 8, 9, 12.

[4] Rule 86(H) of the Rules. *See also* Practice Direction on Procedure for the Variation of Protective Measures Pursuant to Rule 86(H) of the Mechanism's Rules of Procedure and Evidence for Access to Confidential ICTY, ICTR and Mechanism Material, MICT/8, 23 April 2013.

[5] Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016, Articles 1, 6(2)(j).

CONSIDERING that, in accordance with Rule 86(I) and (J) of the Rules, it is necessary to ascertain through the WISP whether the witness consents to the requested variation of any protective measures in force after being properly advised of the consequences thereof;

CONSIDERING that, given that the witness was called by the Prosecution to testify in the *Karadžić* case, it is also appropriate to give notice of the Application to the Prosecution to afford it an opportunity to note any concern therewith;[6]

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

HEREBY ORDER:

1. The WISP to inform me within fourteen days after the issuance of the present order of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism;

2. The WISP to contact the witness identified in the Application to ascertain whether the witness consents to the requested variation of any protective measures after being advised of the consequences thereof, and to inform me of the witness's position by the same date;

3. The Registry to revise the case number assigned to the Application in accordance with Article 6(2)(j) of the Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals;[7]

4. The Registry to lift the *ex parte* status of the Application with respect to the Prosecution and serve a copy of the Application on the Prosecution; and

5. The Prosecution to file a submission, if any, on the Application by the same date.

[6] *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Protective Measures for Witnesses, 2 March 2012 (confidential), RP. 60506; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Protective Measures for Witnesses, 30 October 2008, paras. 1, 34(a)(i).

[7] Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016, Article 6(2)(j).

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

Done this 27th day of January 2017,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

UNITED NATIONS

Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-R86H.3

Date: 16 February 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding Judge**

Registrar: **Mr. Olufemi Elias**

Order of: **16 February 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

ORDER ON AN APPLICATION PURSUANT TO RULE 86

The Office of the Prosecutor:

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

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case;[1]

BEING SEISED OF a confidential and *ex parte* application filed on 13 January 2017, in which the Prosecutor's Office of [REDACTED] ("Applicant") requests the unredacted transcripts of a witness's testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18 ("*Karadžić* case"), heard before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the pseudonym under which the witness testified, and the statements given by the witness in the course of the investigation;[2]

RECALLING that, on 27 January 2017, I ordered: (i) the Witness Support and Protection Unit of the Mechanism ("WISP") to inform me of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism and to contact the witness identified in the Application to ascertain whether the witness consented to the requested variation and to inform me of the witness's position in this regard; and (ii) the Office of the Prosecutor of the Mechanism ("Prosecution") to file any submission on the Application;[3]

NOTING the Prosecution's submission filed confidentially and *ex parte* on 1 February 2017, in which the Prosecution submits that the Application should be dismissed for lack of jurisdiction as a chamber of the ICTY is seised of the case of [REDACTED] ("[REDACTED] case"), which involves the witness;[4]

NOTING the Registrar's submission filed confidentially and *ex parte* on 2 February 2017, in which the Registrar notes that the witness testified in the *Karadžić* and [REDACTED] cases and seeks guidance from the Appeals Chamber as to whether the WISP should proceed with contacting the witness pursuant to the Order of 27 January 2017;[5]

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[1] Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 January 2017 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. 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] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*) ("Application"), paras. 9, 10, 13.

[3] Order for Submissions on an Application Pursuant to Rule 86, 27 January 2017 (confidential and *ex parte*) ("Order of 27 January 2017"), p. 2.

[4] Prosecution's Submission on Application Pursuant to Rule 86, 1 February 2017 (confidential and *ex parte*) ("Prosecution's Submission"), para. 1.

[5] Registrar's Submission Concerning the Order of 27 January 2017, 2 February 2017 (confidential and *ex parte*) ("Registrar's Submission"), para. 2.

CONSIDERING that, under the Transitional Arrangements, the Mechanism has competence over the appellate proceedings in the *Karadžić* case and the ICTY has competence over the [REDACTED] proceedings in the [REDACTED] case;[6]

CONSIDERING that, pursuant to Article 5(3) of the Transitional Arrangements, the Mechanism shall provide for the protection of witnesses, where a person is a witness in relation to two or more cases for which the Mechanism and the ICTY have competence;[7]

FINDING, therefore, that the Mechanism has jurisdiction over the Application;

PURSUANT TO Article 20 of the Statute of the Mechanism and Rules 55 and 86 of the Rules;

HEREBY

ORDER the WISP to comply with the Order of 27 January 2017 without delay.

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

Done this 16th day of February 2017,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

[6] *See* Articles 1(1) and 2(2) of the Transitional Arrangements, U.N. Doc. S/RES/1966, 22 December 2010, Annex 2.
[7] U.N. Doc. S/RES/1966, 22 December 2010, Annex 2.

UNITED NATIONS

Case No.: MICT-13-55-R86H.4

Mechanism for International Criminal Tribunals Date: 21 February 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding Judge**

Registrar: **Mr. Olufemi Elias**

Decision of: **21 February 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86

Prosecutor's Office of [REDACTED]
[REDACTED]
[REDACTED]

The Office of the Prosecutor
Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case;[1]

BEING SEISED OF a confidential and *ex parte* application filed on 13 January 2017, in which the Prosecutor's Office of [REDACTED] ("Applicant") requests the unredacted transcripts of a witness's testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18 ("*Karadžić* case"), heard before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the pseudonym under which the witness testified, and the statements given by the witness in the course of the investigation, in order to assist criminal proceedings in [REDACTED];[2]

RECALLING the "Order for Submissions on an Application Pursuant to Rule 86" filed on 27 January 2017, in which I ordered: (i) the Witness Support and Protection Unit of the Mechanism ("WISP") to inform me of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism and to inform me of the witness's position on the variation of protective measures requested; and (ii) the Office of the Prosecutor of the Mechanism ("Prosecution") to file any submission on the Application;[3]

NOTING the Registrar's submission filed confidentially and *ex parte* on 7 February 2017, in which the Registrar submits that the witness was granted protective measures in the case of [REDACTED], and that these were subsequently continued in the *Karadžić* case and the case of [REDACTED], and that the witness consented to the requested variation provided that the protective measures would remain in force;[4]

NOTING the Prosecution's submission filed confidentially and *ex parte* on 10 February 2017, in which the Prosecution argues that access to the requested material should be granted, including access to the witness's statements obtained in the course of the investigation that were admitted in

[1] Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 January 2017 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. 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] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*) ("Application"), paras. 5-9, 11, 12.

[3] Order for Submissions on an Application Pursuant to Rule 86, 27 January 2017 (confidential and *ex parte*), p. 2.

[4] Registrar's Submission in Compliance with the Order of 27 January 2017, 7 February 2017 (confidential and *ex parte* with confidential and *ex parte* Annex) ("Registrar's Submission"), Annex, paras. 2, 3.

the *Karadžić* case and other prior statements that do not form part of the trial record in ICTY proceedings and which can be provided to the Applicant by the Prosecution;[5]

NOTING ALSO the Prosecution submission that the Appeals Chamber should grant the requests concerning the same witness in [REDACTED] related applications concerning the witness's testimony in the [REDACTED] cases;[6]

CONSIDERING that the Appeals Chamber is not seized of the two applications referred to by the Prosecution;[7]

RECALLING that, pursuant to Rule 86(F)(i) of the Rules, once protective measures have been granted in any proceedings before the ICTY they continue to apply *mutatis mutandis* in any other proceedings before the Mechanism or another jurisdiction unless and until they are rescinded, varied, or augmented;

CONSIDERING that, pursuant to Rule 86(H) of the Rules, a party in another jurisdiction may seek to vary protected measures ordered by the ICTY or the Mechanism upon being authorised to do so by an appropriate judicial authority;

FINDING that the Applicant has duly demonstrated that it was authorised to seek the variation of the protective measures;[8]

RECALLING that, pursuant to Rule 86(I) of the Rules, the Chamber determining an application for variation of protective measures made by a party in another jurisdiction shall ensure that the protected witness has given consent to the variation of protective measures;

CONSIDERING that the witness has consented to the requested variation provided that the protective measures granted by the ICTY remain in force;

PURSUANT TO Article 20 of the Statute of the Mechanism and Rule 86 of the Rules;

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[5] Prosecution Submission on Application Pursuant to Rule 86, 10 February 2017 (confidential and *ex parte*) ("Prosecution Submission"), paras. 1-3.

[6] Prosecution Submission, para. 1, *referring to* [REDACTED] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*); Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*).

[7] [REDACTED] Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86, 18 January 2017 (confidential and *ex parte*), p. 1; [REDACTED] Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86, 18 January 2017 (confidential and *ex parte*), p. 1. The Applicant may file before the Appeals Chamber in this

HEREBY GRANT the Application;

VARY the protective measures granted to the witness identified in the Application solely with regard to the release to the Applicant of the confidential documents and information sought in the Application for the purposes of the [REDACTED] case;

ORDER the Registrar to inform the Applicant of the witness's pseudonym in the *Karadžić* case and release to the Applicant certified copies of the unredacted closed-session transcripts of the witness's testimony in the *Karadžić* case, as well as of the witness's statements admitted on the trial record in the *Karadžić* case, as identified in the Prosecution Submission;[9]

ORDER the Prosecution to release to the Applicant any prior statements of the witness that are in the Prosecution's possession;

ORDER that the information and material released to the Applicant pursuant to this decision shall be treated as confidential by the Applicant and all parties to the [REDACTED] proceedings in [REDACTED]to whom such information may be disclosed under the law of [REDACTED], and shall not be used for any other purpose than that for which they are released pursuant to this decision;

ORDER that the Applicant shall not disclose the information and material that is released pursuant to this Decision to any other party or person, except to the judicial authorities and parties or persons involved in the preparation or conduct of the proceedings in the [REDACTED] case, and provided that the Applicant obtains assurances under the threat of criminal sanctions that such parties or persons to whom the information and material are released will maintain their strict confidentiality;

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the witness identified in the Application and shall ensure the same level of protection as that granted to the witness by the ICTY; and

ORDER that, should the Applicant seek to rescind, vary, or augment the protective measures that apply to the information and material released by this decision, it shall request such relief in an application to the President of the Mechanism pursuant to Rule 86(H) of the Rules.

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case its requests under Rule 86 of the Rules in the event it is advised by Single Judges in other cases that the Appeals Chamber in this case is best placed to assess certain requests for variation of protective measures.

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

Done this 21st day of February 2017,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

[8] Application, Registry Pagination 10.
[9] *See* Prosecution Submission, para. 3.

UNITED NATIONS

Case No.: MICT-13-55-R86H.3

Mechanism for International Criminal Tribunals Date: 8 March 2017

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding Judge**

Registrar: **Mr. Olufemi Elias**

Decision of: **8 March 2017**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

[REDACTED]

DECISION ON AN APPLICATION PURSUANT TO RULE 86

Prosecutor's Office of [REDACTED]
[REDACTED]
[REDACTED]

The Office of the Prosecutor
Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

I, THEODOR MERON, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Presiding Judge in this case;[1]

BEING SEISED OF a confidential and *ex parte* application filed on 13 January 2017, in which the Prosecutor's Office of [REDACTED] ("Applicant") requests the unredacted transcripts of a witness's testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18 ("*Karadžić* case"), heard before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the pseudonym under which the witness testified, and the statements given by the witness in the course of the investigation, in order to assist criminal proceedings in [REDACTED] ("[REDACTED] case");[2]

RECALLING the "Order for Submissions on an Application Pursuant to Rule 86" filed on 27 January 2017, in which I ordered: (i) the Witness Support and Protection Unit of the Mechanism ("WISP") to inform me of any protective measures in force with respect to the witness identified in the Application that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism and to inform me of the witness's position on the requested variation of protective measures; and (ii) the Office of the Prosecutor of the Mechanism ("Prosecution") to file any submission on the Application;[3]

NOTING the Prosecution's submission filed confidentially and *ex parte* on 1 February 2017, in which the Prosecution submits that, because the ICTY is currently seised of proceedings involving the witness, the Application should be dismissed for lack of jurisdiction;[4]

NOTING the Registrar's submission filed confidentially and *ex parte* on 2 February 2017, in which the Registrar notes that the witness testified in the *Karadžić* case and a case currently pending before the ICTY and seeks guidance from the Appeals Chamber as to whether the WISP should

[1] Order Assigning a Chamber to Consider an Application Pursuant to Rule 86, 16 January 2017 (confidential and *ex parte*); Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016. 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] Application of the Prosecutor's Office of [REDACTED] for Variation of Protective Measures Pursuant to Rule 86(F) of the MICT Rules of Procedure and Evidence, 13 January 2017 (confidential and *ex parte*) ("Application"), paras. 5, 8; 9, 12.

[3] Order for Submissions on an Application Pursuant to Rule 86, 27 January 2017 (confidential and *ex parte*) ("Order of 27 January 2017"), p. 2.

[4] Prosecution's Submission on Application Pursuant to Rule 86, 1 February 2017 (confidential and *ex parte*), para. 1.

proceed with contacting the witness and providing the information requested in the Order of 27 January 2017;[5]

RECALLING the "Order on an Application Pursuant to Rule 86" filed on 16 February 2017, in which I found that, pursuant to Article 5(3) of the Transitional Arrangements, the Mechanism has jurisdiction over the Application and ordered the WISP to comply with the Order of 27 January 2017 without delay;[6]

NOTING the Registrar's submission filed confidentially and *ex parte* on 21 February 2017, in which the Registrar submits that the witness was granted protective measures in the case of [REDACTED], that these were continued and subsequently augmented in the *Karadžić* case [REDACTED] and that the witness consented to the requested variation provided that the protective measures would remain in force;[7]

RECALLING that, pursuant to Rule 86(F)(i) of the Rules, once protective measures have been granted in any proceedings before the ICTY they continue to apply *mutatis mutandis* in any other proceedings before the Mechanism or another jurisdiction unless and until they are rescinded, varied, or augmented;

CONSIDERING that, pursuant to Rule 86(H) of the Rules, a party in another jurisdiction may seek to vary protected measures ordered by the ICTY or the Mechanism upon being authorised to do so by an appropriate judicial authority;

FINDING that the Applicant has demonstrated that it was authorised to seek the variation of the protective measures requested;[8]

RECALLING that, pursuant to Rule 86(I) of the Rules, the Chamber determining an application for variation of protective measures made by a party in another jurisdiction shall ensure that the protected witness has given consent to the variation of protective measures;

CONSIDERING that the witness consented to the requested variation provided that the protective measures granted by the ICTY remain in force;

PURSUANT TO Article 20 of the Statute of the Mechanism and Rule 86 of the Rules;

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[5] Registrar's Submission Concerning the Order of 27 January 2017, 2 February 2017 (confidential and *ex parte*), para. 2.
[6] Order on an Application Pursuant to Rule 86, 16 February 2017 (confidential and *ex parte*), p. 2.

HEREBY GRANT the Application;

VARY the protective measures granted to the witness identified in the Application solely with regard to the release to the Applicant of the confidential documents and information sought in the Application for the purposes of the [REDACTED] case;

ORDER the Registrar to inform the Applicant of the witness's pseudonym in the *Karadžić* case and release to the Applicant certified copies of the unredacted closed-session transcripts of the witness's testimony in the *Karadžić* case, as well as of the witness's statements admitted on the trial record in the *Karadžić* case, as identified in the Registrar's Submission of 21 February 2017;[9]

ORDER the Prosecution to release to the Applicant any prior statements of the witness that are in the Prosecution's possession;

ORDER that the information and material released to the Applicant pursuant to this decision shall be treated as confidential by the Applicant and all parties to the [REDACTED] proceedings in [REDACTED] to whom such information may be disclosed under the law of [REDACTED], and shall not be used for any other purpose than that for which they are released pursuant to this Decision;

ORDER that the Applicant shall not disclose the information and material that is released pursuant to this Decision to any other party or person, except to the judicial authorities and parties or persons involved in the preparation or conduct of the proceedings in the [REDACTED] case, and provided that the Applicant obtains assurances under the threat of criminal sanctions that such parties or persons to whom the information and material are released will maintain their strict confidentiality;

ORDER that the Applicant shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the witness identified in the Application and shall ensure the same level of protection as that granted to the witness by the ICTY; and

ORDER that, should the Applicant seek to rescind, vary, or augment the protective measures that apply to the information and material released by this decision, it shall request such relief in an application to the President of the Mechanism pursuant to Rule 86(H) of the Rules.

[7] Registrar's Submission in Compliance with the Order of 16 February 2017, 21 February 2017 (confidential and *ex parte* with confidential and *ex parte* Annex) ("Registrar's Submission of 21 February 2017"), Annex, paras. 2, 3.

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

Done this 8th day of March 2017,
At The Hague,
The Netherlands

Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

[8] Application, Registry Pagination 10.
[9] *See* Registrar's Submission of 21 February 2017, Annex, para. 3, n. 7.