

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55

Date: 16 April 2020

Original: English

BEFORE A SINGLE JUDGE

Before: Judge José Ricardo de Prada Solaesa

Registrar: Mr. Olufemi Elias

Decision of: 16 April 2020

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A MOTION
FOR AN ORDER PURSUANT TO RULE 76**

The Office of the Prosecutor:

Laurel Baig
Barbara Goy

Counsel for Radovan Karadžić:

Peter Robinson

The United States of America:

Lara Berlin

I, JOSÉ RICARDO DE PRADA SOLAESA, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

NOTING the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia on 24 March 2016 convicting Mr. Radovan Karadžić (“Karadžić”) of genocide, crimes against humanity, and violations of the laws or customs of war, and sentencing him to 40 years of imprisonment;²

NOTING the judgement issued in this case by the Appeals Chamber of the Mechanism (“Appeals Chamber”) affirming the majority of Karadžić’s convictions for genocide, crimes against humanity, and violations of the laws or customs of war, and increasing his sentence to life imprisonment;³

NOTING the decision, issued on 18 February 2019, wherein the Appeals Chamber, *inter alia*: (i) considered that the Government of the United States of America (“Government”) conducted a search, pursuant to Karadžić’s request (“Request”), yielding one potentially relevant document and that the Government conditioned its provision to parties on an order pursuant to Rule 76 of the Rules of Procedure and Evidence of the Mechanism (“Rules”); and (ii) ordered that the provisions of Rule 76 of the Rules apply to any information provided by the Government to Karadžić and the Prosecution pursuant to the decision;⁴

BEING SEISED OF a motion, filed on 27 January 2020, wherein Karadžić submits that the Government has advised him that it located one more document that is responsive to the Request (“Document”) and requests an order that the provisions of Rule 76 of the Rules apply thereto;⁵

NOTING Karadžić’s submission that the Government is willing to provide the Document to Karadžić upon receipt of an order that the provisions of Rule 76 of the Rules apply thereto;⁶

NOTING FURTHER that Karadžić submits that, while the Document is not likely in and of itself to constitute a new fact warranting review of Karadžić’s convictions, when combined with other information, it “may warrant a request for review”;⁷

¹ Order Assigning a Single Judge, 24 February 2020, p. 1.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016, paras. 6071, 6072.

³ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019, para. 777.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Binding Order Pursuant to Article 28 and Related Requests, 18 February 2019 (“Decision of 18 February 2019”), pp. 3-5.

⁵ Motion for Order Pursuant to Rule 76, 27 January 2020 (“Motion”), paras. 1, 2, 5.

⁶ Motion, para. 2.

⁷ Motion, para. 4.

NOTING the Prosecution's response, filed on 5 February 2020, submitting that, while Karadžić has failed to meet the heightened standard required for post-appeal investigative assistance, it does not oppose the Motion given that the Government has identified the Document pursuant to the Request and is willing to provide the Document to Karadžić and the Prosecution on a confidential basis;⁸

OBSERVING that the Mechanism has before it no submission from the Government concerning its willingness to provide the Document to Karadžić at this stage where the trial and appeal proceedings in his case have concluded or any conditions the Government may have for doing so;

CONSIDERING that, after the trial stage, a Chamber or a Judge will only facilitate investigations in exceptional circumstances;⁹

CONSIDERING FURTHER that exceptional circumstances may be demonstrated where the purpose of the document sought through the investigation is to establish a new fact capable of constituting the basis of a review application;¹⁰

CONSIDERING that the Motion presents only very general submissions which do not demonstrate that the purpose of seeking the Document is to establish a new fact capable of constituting the basis of a review application of Karadžić's convictions;

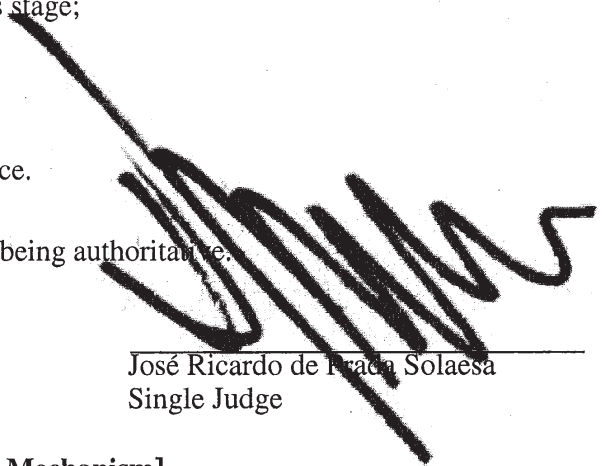
FINDING therefore that the Motion fails to demonstrate any exceptional circumstances that would justify facilitating Karadžić's investigation at this stage;

FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion without prejudice.

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

Done this 16th day of April 2020,
At The Hague,
The Netherlands



José Ricardo de Prado Solaesa
Single Judge

[Seal of the Mechanism]

⁸ Prosecution's Response to Karadžić's Motion for Order Pursuant to Rule 76, 5 February 2020, para. 1.

⁹ Cf. Decision of 18 February 2019, p. 4, n. 18 and references cited therein.

¹⁰ Cf. *Laurent Semanza v. Prosecutor*, Case No. MICT-13-36-R, Decision on a Request for Access and Review, 9 April 2018, para. 8; *Prosecutor v. Eliézer Niyitegeka and Prosecutor v. Clément Kayishema & Obed Ruzindana*, Case Nos. MICT-12-10-R86G.1, MICT-12-15-R86G.1, MICT-12-16-R86G.1, Decision on Motions for Access to Confidential Materials in the *Niyitegeka and Kayishema and Ruzindana* Cases, 27 February 2018, para. 7; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on Stanislav Galić's Further Motion for Access to Confidential Materials in the *Karadžić* Case, 4 August 2016, para. 14; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on Stanislav Galić's Motion for Access to Confidential Materials in the *Karadžić* Case, 9 June 2016, para. 10.



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