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24 MAY 2013

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UNITED
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International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case Nos. IT-05-88-A &
IT-95-5/18-T
Date: 24 May 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge William H. Sekule
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 24 May 2013

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON MOTION BY RADOVAN KARADŽIĆ FOR
ACCESS TO EXCULPATORY NON-PRIVILEGED MATERIAL**

Office of the Prosecutor:

Mr. Peter Kremer QC
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

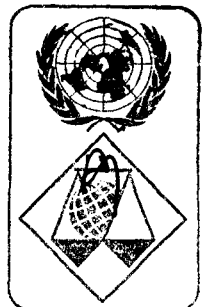
Mr. Radovan Karadžić *pro se*

Standby Counsel:

Mr. Richard Harvey

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović
Mr. John Ostojić for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević



THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEISED OF the “Karadzic [sic] Motion for Access to Exculpatory Non-Privileged Material”, filed by Radovan Karadžić (“Karadžić”) on 18 March 2013 (“Motion”);

NOTING that Karadžić requests immediate access to part of the material that was provided to the Office of the Prosecutor (“Prosecution”) by Serbian authorities in January and March 2010;¹

NOTING Karadžić’s submission that the Prosecution had identified some of this material as being potentially subject to lawyer-client privilege and isolated it pending determination of its privileged nature (“Potentially Privileged Material”);²

NOTING that Karadžić argues that the Potentially Privileged Material includes non-privileged exculpatory material (“Requested Material”) and that he has an interest in obtaining this part of the Potentially Privileged Material for use in his defence case;³

NOTING that, in its 16 July 2012 Decision, the Appeals Chamber requested the President of the Tribunal (“President”) to appoint a Judge (“Designated Judge”) to review the Potentially Privileged Material and, *inter alia*, identify the material not considered to be protected under Rules 70(A) or 97 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);⁴

NOTING that the President appointed the Designated Judge on 26 June 2012;⁵

NOTING that Karadžić submits that, on 21 August 2012, Trial Chamber III of the Tribunal (“*Karadžić* Trial Chamber”) denied his request to find that the Prosecution violated its disclosure obligations and found that, inasmuch as he did not yet have access to the Requested Material, he had not shown that it was of an exculpatory nature;⁶

¹ Motion, para. 6. See Motion, paras 1-2, 5.

² Motion, para. 1, referring to Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege, 16 July 2012 (public redacted version) (“16 July 2012 Decision”), paras 2-3, 8 & fn. 15. The confidential version of this decision was filed on 11 June 2012.

³ Motion, para. 5. See Motion, para. 2.

⁴ 16 July 2012 Decision, paras 8-10.

⁵ Order Assigning a Judge to Review Material Potentially Subject to Lawyer-Client Privilege, 26 June 2012 (confidential), p. 1.

⁶ Motion, paras 3-4, referring to *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused’s Seventy-Third Disclosure Violation Motion, 21 August 2012 (“21 August 2012 Trial Chamber Decision”), para. 10. See also 21 August 2012 Trial Chamber Decision, para. 12. Karadžić had contended before the *Karadžić* Trial Chamber that the Prosecution had violated its Rule 68 obligation by failing to seek an independent review of the privileged status of the Requested Material as soon as practicable. See 21 August 2012 Trial Chamber Decision, para. 3. See also Motion, para. 3.

NOTING the response filed by the Prosecution on 27 March 2013, in which it submits that Karadžić's claim that the Potentially Privileged Material contains non-privileged exculpatory material is "unfounded and speculative" as the Designated Judge had yet to conclude his review of the Potentially Privileged Material;⁷

CONSIDERING that the Designated Judge has now completed the review of the Potentially Privileged Material, determined that it contains no privileged material, and returned this material to the Prosecution,⁸ which must then act in accordance with its disclosure obligations under the Rules;

FINDING therefore that Karadžić's request for immediate access to the Requested Material is premature and unfounded at this stage;

HEREBY DENIES the Motion in its entirety.

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



Judge Patrick Robinson
Presiding

Dated this twenty-fourth day of May 2013,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁷ Prosecution Response to Karadžić Motion for Access to Exculpatory Non-Privileged Material, 27 March 2013 (public with confidential appendix) ("Response"), paras 1-2. The Prosecution further notes that it has already provided Karadžić with non-privileged material of the same origin insofar as it could be isolated. See Response, para. 2.

⁸ Order by Specially Designated Judge Concerning Material Potentially Subject to Lawyer-Client Privilege, 9 May 2013 (confidential and *ex parte*), p. 1.

