



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 Tapušević 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;<sup>1</sup>

**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”);<sup>2</sup>

**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;<sup>3</sup>

**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”);<sup>4</sup>

**NOTING** that the President appointed the Designated Judge on 26 June 2012;<sup>5</sup>

**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;<sup>6</sup>

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<sup>1</sup> Motion, para. 6. See Motion, paras 1-2, 5.

<sup>2</sup> 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.

<sup>3</sup> Motion, para. 5. See Motion, para. 2.

<sup>4</sup> 16 July 2012 Decision, paras 8-10.

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

<sup>6</sup> 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;<sup>7</sup>

**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,<sup>8</sup> 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.



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Judge Patrick Robinson  
Presiding

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

[Seal of the Tribunal]

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<sup>7</sup> 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.

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

