



Mechanism for International Criminal Tribunals

Case No.: MICT-12-29-R

Date: 6 March 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Review Judge

Registrar: Mr. Olufemi Elias

Decision of: 6 March 2017

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

**DECISION ON REPUBLIC OF TURKEY'S
NON-COMPLIANCE WITH ITS OBLIGATION TO
COOPERATE WITH THE MECHANISM**

The Office of the Prosecutor:

Government of the Republic of Turkey

Mr. Serge Brammertz
Ms. Michelle Jarvis
Mr. Richard Karegyesa
Mr. Mathias Marcussen
Ms. Sunkarie Ballah-Conteh

Counsel for Mr. Augustin Ngirabatware:

Mr. Peter Robinson

I, THEODOR MERON, Presiding Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Pre-Review Judge in this case;¹

NOTING that, on or around 21 September 2016, Judge Aydin Sefa Akay, a member of the bench of the Appeals Chamber in this case, was detained in the Republic of Turkey in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey;²

RECALLING that, on 31 January 2017, I ordered the Government of the Republic of Turkey to: (i) cease all legal proceedings against Judge Akay; and (ii) take all necessary measures to ensure Judge Akay’s release from detention as soon as practicable, but no later than Tuesday, 14 February 2017, so that he can resume his judicial functions in this case;³

CONSIDERING that, pursuant to Article 28 of the Statute, States shall comply without undue delay with orders issued by the Mechanism;

CONSIDERING that nearly three weeks have passed since the expiry of the deadline of 14 February 2017 set in the Order of 31 January 2017 for the cessation of legal proceedings against Judge Akay and his release from detention;

CONSIDERING that, at no point since Judge Akay’s arrest, has the Government of the Republic of Turkey formally communicated with the Mechanism in relation to this case;⁴

CONSIDERING that there is no information before me indicating that the legal proceedings against Judge Akay in Turkey have been ceased, that he has been released from detention since the issuance of the Order of 31 January 2017, or that such actions may otherwise be imminent;

CONSIDERING, therefore, that the Government of the Republic of Turkey has failed to comply with the Order of 31 January 2017 in accordance with Article 28 of the Statute;

¹ Order Designating a Pre-Review Judge, 17 August 2016, p. 1; Article 12(3) of the Mechanism’s Statute (“Statute”). See also Order Assigning Judges to Consider a Case Before the Appeals Chamber, 25 July 2016.

² See Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017 (“Order of 31 January 2017”), paras. 3, 4; Oral Hearing, T. 17 January 2017 pp. 1, 2; Order for Oral Hearing, 21 December 2016, p. 1.

³ Order of 31 January 2017, para. 18.

⁴ The Government of the Republic of Turkey had been provided with several opportunities to be heard prior to the issuance of the Order of 31 January 2017. See Order of 31 January 2017, paras. 7, 8.

CONSIDERING that the Government of the Republic of Turkey's non-compliance materially impedes the Appeals Chamber's consideration of the merits of this case and threatens the independence of the Mechanism's judiciary;⁵

CONSIDERING that, in accordance with Rules 8(A) and 131 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), non-compliance with any order relating to a proceeding before the Appeals Chamber may be reported to the United Nations Security Council;⁶

CONSIDERING that, as Pre-Review Judge, I am "vested with the power to address problems arising during the review proceedings *on behalf of the Appeals Chamber*", shall ensure that the proceedings are not unduly delayed, and shall take any measures related to procedural matters, including the issuing of decisions, orders, and directions with a view to preparing the case for a fair and expeditious hearing;⁷

CONSIDERING that, in order to ensure the proper preparation of this case for a fair and expeditious hearing, I find it necessary as Pre-Review Judge acting on behalf of the Appeals Chamber to initiate the procedure envisioned under Rules 8(A) and 131 of the Rules;


FOR THE FOREGOING REASONS,

FIND that the Government of the Republic of Turkey has failed to comply with its obligations under Article 28 of the Statute to cooperate with the Mechanism in relation to the proceedings in this case and to comply without undue delay with a judicial order issued by the Mechanism; and

DETERMINE that, pursuant to Rules 8(A) and 131 of the Rules, this matter shall be reported to the United Nations Security Council.

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

Done this 6th day of March 2017,
At The Hague,
The Netherlands.


Judge Theodor Meron,
Pre-Review Judge

[Seal of the Mechanism]

⁵ See Order of 31 January 2017, paras. 11, 12.

⁶ See *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-AR108 bis, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, paras. 33-35.

⁷ See *Prosecutor v. Drago Josopivić*, Case No. IT-95-16-R, Order Designating a Pre-Review Judge, 25 April 2002, p. 2 (emphasis added). See also Rule 135(B) of the Rules.



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