IT-95-5/18-T
D86058-D86056
22 AUGUST 2014

~~MICT-13-55-R90.3~~
~~D51-D49~~
~~22 August 2014~~

~~51~~
~~HC~~ 86058

UNITED NATIONS

Mechanism for International Criminal Tribunals

Case No. MICT-13-55-R90.3
IT-95-5/18-T

Date: 22 August 2014

Original: English

SINGLE JUDGE

Before Judge: Judge Vagn Joensen, *Single Judge*

Registrar: Mr. John Hocking

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON REQUEST FOR DESIGNATION OF SINGLE JUDGE TO CONSIDER APPOINTMENT OF AMICUS CURIAE PROSECUTOR TO INVESTIGATE CONTEMPT BY OFFICE OF THE PROSECUTOR

The Office of the Prosecutor

Hassan B. Jallow
Mathias Marcussen

Applicant

Radovan Karadžić

1. On 19 May 2014, Dr. Radovan Karadžić ("Karadžić") requested that the President of the Mechanism for International Criminal Tribunals ("Mechanism") appoint, pursuant to Rule 90 (C) of the Mechanism Rules of Procedure and Evidence, a Single Judge to "consider the appointment of an *amicus curiae* prosecutor to investigate whether members of the Office of the Prosecutor [of the International Criminal Tribunal for the former Yugoslavia (the "ICTY")] have wilfully interfered with the administration of justice at [the ICTY]" ("Request").[1]

2. On 21 May 2014, the Office of the Prosecutor of the Mechanism ("Prosecution") filed a motion to strike the Request ("Prosecution Motion to Strike") arguing that a Mechanism Single Judge could only be appointed if and when the Karadžić Trial Chamber determines that there is "reason to believe" that members of the ICTY Prosecution had wilfully interfered with the administration of justice in the Karadžić case ("Jurisdictional Issue").[2]

3. On 26 May 2014, Karadžić responded to the Prosecution Motion to Strike[3] and on 2 June 2014, the Prosecution filed a response with respect to the merits of the Request.[4]

4. By decision of 5 June 2014, the President of the Mechanism assigned me as Mechanism Single Judge to rule on the Jurisdictional Issue and the Karadžić Request.[5]

5. On 21 July 2014, I found that the Karadžić Trial Chamber retained jurisdiction to determine whether there is "reason to believe" that members of the ICTY Prosecution may be in contempt pursuant to Rule 90 (C) of the Mechanism Rules. I, therefore, invited the Karadžić Trial Chamber to make such a determination and remained seised of the matter pending a decision from the Trial Chamber.[6]

6. On 6 August 2014, the Karadžić Trial Chamber, Judge Morrison dissenting, accepted my invitation to determine whether members of the ICTY Prosecution may be in contempt pursuant to Rule 90 (C) of the Mechanism Rules.[7]

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[1] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3, Request for Designation of Single Judge to Consider Appointment of *Amicus Curiae* Prosecutor to Investigate Contempt by Office of the Prosecutor, 19 May 2014, paras. 1, 30 ("Request").

[2] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3, Prosecution Motion to Strike Request for Designation of Single Judge to Consider Appointment of *Amicus Curiae* Prosecutor to Investigate Contempt by Office of the Prosecutor, 21 May 2014, paras. 1-2, 5-6 ("Prosecution Motion to Strike").

[3] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3, Response to Prosecution Motion to Strike, 26 May 2014.

[4] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3, Prosecution Response to Karadžić's Request to Designate Single Judge to Consider Appointing an *Amicus Curiae* Prosecutor, 2 June 2014, paras. 1-2, 8.

[5] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3, Decision on Prosecution Motion to Strike and Assigning a Single Judge, 5 June 2014, p. 2.

[6] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3 and IT-95-5/18-T, Decision to Invite the ICTY Trial Chamber in the Karadžić Case to Determine Whether There is "Reason to Believe" that Contempt has been Committed by Members of the Office of the Prosecutor, 21 July 2014, para. 21.

[7] *The Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R90.3 and IT-95-5/18-T, Decision on Invitation from the Single Judge of the Mechanism for International Criminal Tribunals, 6 August 2014, p. 2.

7. The Karadžić Trial Chamber determined that despite numerous disclosure violations from the ICTY Office of the Prosecutor, it has never found that "such violations were indicative of a lack of good faith on the part of the Prosecution".[8] The Karadžić Trial Chamber, therefore, held that there is no reason to believe that contempt may have been committed by members of the Prosecution.[9]

8. Considering the Decision from the Karadžić Trial Chamber, I find Karadžić's Request moot.

FOR THE FOREGOING REASONS, I

I. **DISMISS** as moot Dr. Radovan Karadžić's Request in its entirety.

Arusha, 22 August 2014, done in English and French, the English version being authoritative.

Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]

[8] *Id*, p. 3.
[9] *Id*