

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No: MICT-14-81

Date: 19 September 2014

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**THE PROSECUTOR**

v.

**MLADO RADIĆ**

**PUBLIC**

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**PROSECUTION'S APPLICATION ON BEHALF OF THE  
PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA  
FOR MODEL OF OMARSKA CAMP TO REMAIN WITH THE  
COURT OF BOSNIA AND HERZEGOVINA**

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**The Office of the Prosecutor:**

Mr. Hassan B. Jallow, Prosecutor  
Mr. Mathias Marcussen, Senior Legal Officer

**Counsel for Mlado Radić:**

Mr. Toma Fila

## A. Introduction

1. Pursuant to the Decision of the ICTY Appeals Chamber in *Prosecutor v. Mlado Radić*, Case No.IT-98-30/1-R.1,<sup>1</sup> the Prosecution applies on behalf of the Prosecutor's Office of Bosnia-Herzegovina (POBiH) for the model of the Omarska camp (Model) that was transferred to the BiH Court for use in the in the *Željko Mejakić et al.* trial<sup>2</sup> to remain with the Registry of the Court of Bosnia and Herzegovina (BiH Court) for use in three cases which are at the investigative and criminal report stages. .
2. The Prosecution files this application with the President of the Mechanism because no Single Judge or Chamber is currently seized of proceedings in the *Radić* or *Mejakić et al.* cases.

## B. Submissions

3. On 28 August 2014, the POBiH submitted an application to the Prosecution<sup>3</sup>—annexed to this motion—seeking for the Model to continue to remain with the Registry of the BiH Court. No “main trials” are currently being conducted before the BiH Court that require use of the Model, but the POBiH intends to seek the Model's admission into evidence before the BiH Court in three Omarska-related cases that are currently at the investigative and criminal report stages, “[i]f indictments are filed and main trials initiated in these cases”.<sup>4</sup> The Model will be “valuable evidentiary material” in these cases.<sup>5</sup>
4. The Prosecution supports the POBiH Application for the model to remain for with the Registry of the BiH Court. Whereas the Model may be useful in future trials in BiH, the

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<sup>1</sup> *Prosecutor v. Mlado Radić*, Case No.IT-98-30/1-R.1 (*Radić* case), Decision on Prosecutor's Request to Transfer Model of Omarska Camp to the Prosecutor's Office of Bosnia and Herzegovina, 10 November 2006 (Decision).

<sup>2</sup> *Prosecutor v. Željko Mejakić, Momčilo Gruban, Dušan Fuštar and Dušan Knežević*, Case No.IT-02-65 (*Mejakić et al.* case) was referred pursuant to Rule 11*bis* of the ICTY Rules of Procedure and Evidence to the BiH Court on 9 May 2006, following the Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11*bis* with Confidential Annex issued by the ICTY Referral Bench on 20 July 1995 and upheld by the ICTY Appeals Chamber on 7 April 2006 (*see Mejakić et al.*, Decision on Joint Defence Appeal against Decision on Referral under Rule 11*bis*, 7 April 2006). The Model was listed as Exhibit P74 in the Prosecution Exhibit List in the *Mejakić et al.* case pursuant to Rule 65*ter*. The BiH Court completed the proceedings in the *Mejakić et al.* case on 16 February 2009 by Decision of the Appellate Division of the BiH Court.

<sup>3</sup> Application that the Registry of the Court of Bosnia and Herzegovina Retains the Omarska Camp Model for the Purpose of Utilising it in War Crimes Proceedings, 28 August 2014 (POBiH Application).

<sup>4</sup> POBiH Application, p.2. The cases are referred to as T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 and T20 0 KTRZ 0004545 07 (POBiH cases). *See also* p.1.

<sup>5</sup> POBiH Application, p.2.


Model is not needed in any of the remaining ICTY cases.<sup>6</sup> The Mechanism's statutory obligation to respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of serious violations of international humanitarian law in the former Yugoslavia militates in favour of granting the POBiH's request.<sup>7</sup> In addition, as the Model is "large and fragile",<sup>8</sup> limiting transport of the Model until it is no longer needed in BiH will help preserve the evidentiary record in the *Mlado Radić* case.

5. In order to ensure that there is a mechanism for return of the Model, a time-limit should be set for its return, which may, upon request to the President of the Mechanism be extended.

### C. Relief requested

6. For the reasons outlined above, the Prosecution requests a variation of the Decision allowing
- a) that the Model be returned by the Registry of the BiH Court to the MICT Registry within three years of the decision on this motion, or immediately upon completion of the trials and appeals in the POBiH cases if that occurs before the expiry of the three-year deadline, and
  - b) that the POBiH applies directly to the President of the Mechanism for extension of this deadline if there is a demonstrated need that the Model remain in the temporary custody of the Registry of the BiH Court for use in proceedings before the BiH Court.

Word Count: 783

  
 Mathias Marcussen  
 Senior Legal Officer

Dated this 19th day of September 2014  
 At The Hague, The Netherlands.

<sup>6</sup> The Model was previously admitted into evidence before the Tribunal in *Prosecutor v. Miroslav Kvočka, Dragoljub Prcać, Milojica Kos, Mlado Radić and Zoran Žigić*, Case No.IT-98-30/1-T (Prosecution Exhibit 3/16) and *Prosecutor v. Duško Tadić*, Case No.IT-94-1-T (Exhibit P130).

<sup>7</sup> See Statute of the Mechanism, Article 28(3).

<sup>8</sup> *Prosecutor v. Mlado Radić*, Case No.IT-98-30/1-R.1, Deputy Registrar's Submission regarding the Prosecutor's Request to Transfer Model, 25 October 2006, para.8.

# ANNEX

Case No. MICT-14-81

Public

## BOSNIA AND HERZEGOVINA



## Prosecutor's Office of Bosnia and Herzegovina

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**Number: A-RZ 76/14****Date: 28 August 2014****URGENT!****OFFICE OF THE PROSECUTOR AND THE REGISTRY  
OF THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA****Churchillplein 1  
2517 JW The Hague  
Kingdom of the Netherlands****SUBJECT: Application that the Registry of the Court of Bosnia and Herzegovina retains the Omarska camp model for the purpose of utilising it in war crimes proceedings**

Dear Sirs,

We are referring to you with regard to the implementation of the Decision issued by the Appellate Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) Ref: IT-98-30/1-R.1 in the case *Prosecutor v Mlađo Radić*, dated 10 November 2006, which was issued based on an Application of the Prosecutor's Office of Bosnia and Herzegovina (PO BiH) in the case *11bis Prosecutor v Željko Mejakić et al.* Pursuant to the Decision, the Omarska camp model, as well as the photos and video recordings of the model, were forwarded to the Court of BiH for the purpose of their utilisation at the main trial in the case *Mejakić et al.* As is known, the case *Mejakić et al.* was completed before the Court of BiH by a final and binding decision of the Appellate Panel dated 16 February 2009.

In the Decision concerned, the PO BiH was instructed to send an application to the ICTY requesting it to allow the Registry of the Court of BiH to retain it for the purpose of utilising it in other specific criminal cases that are currently being conducted before the Court of BiH.

In relation to the Decision, we would like to inform you that currently no main trials requiring the use of the Omarska camp model are being conducted before the Court of BiH.

However, the PO BiH is currently conducting criminal proceedings which are at the investigative and criminal report stage with regard to three cases, as follows: T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 and T20 0 KTRZ 0004545 07, which, *inter alia*, include crimes committed at Omarska camp in Prijedor.

In these cases, suspects and reported persons are, among other things, alleged that they, as members of the Republika Srpska Army, Commander of 43<sup>rd</sup> Motorised Brigade, Commander of 4<sup>th</sup> Tactical Group of the VRS, member of the SDS Crisis Staff, member of the National Defence

Assembly, Commander of JNA barracks “Žarko Zgonjanin”, member of the Prijedor Crisis Staff Prijedor, took part in an attack against non-Serb civilians of Prijedor municipality in the period between April and end of 1992 and that they attacked the town and neighbouring villages in order to assume authority in the town. After the town had been captured, the neighbouring Bosniak villages were shelled and then the infantry forces entered the villages killing civilians, setting houses on fire, separating men from women, unlawfully taking men to the camps **Omarska** and Keraterm and to the barracks “Žarko Zgonjanin”, and women to the camp Trnopolje, where the killing, mental and physical maltreatment of a large number of victims continued. The suspects and the reported persons are charged with their individual and command responsibility and participation in the commission of the criminal offences ‘Crimes against Humanity’ in violation of Article 172 of the Criminal Code of Bosnia and Herzegovina.

The Prosecutor’s Office of Bosnia and Herzegovina has been undertaking required investigative activities to inspect the circumstances under which these criminal offences were committed, collect material documentation and establish facts necessary to prove the actions of commission and criminal-legal accountability of the suspects and the reported persons. We note that these are very complex and extensive cases with severe consequences of the criminal offence that require the processing of the roles and capacities of a large number of the reported persons, suspects and witnesses, as well as the processing of voluminous documentation, and which the PO BiH is obliged to process as priority cases, in compliance with the National Strategy for Work on War Crimes Cases.

We are of the opinion that the Omarska camp model is valuable material evidence that may help in proving indirect conditions under which activities were carried out in the Omarska camp. If indictments are filed and main trials initiated in these cases, the PO BiH intends to move the Omarska camp model as an exhibit that would be presented before the Court of BiH.

Considering the above reasons, we are of the opinion that it would be justified that the the Registry of the Court retains the Omarska camp model until the proceedings in the said cases are completed.

For this purpose and pursuant to the Decision of the ICTY Appellate Chamber Ref. IT-98-30/1-R.1 dated 10 November 2006, we, through the Office of the Prosecutor, file an application that the Omarska camp model be retained by the Registry of the Court of BiH until criminal proceedings in the PO BiH cases Ref. T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 and T20 0 KTRZ 0004545 07 are completed.

Please accept assurances of our highest consideration and appreciation for your cooperation with the Prosecutor’s Office of Bosnia and Herzegovina.

**PROSECUTOR’S OFFICE  
OF BOSNIA AND HERZEGOVINA  
Deputy Chief Prosecutor  
Head of Special Department for War Crimes**

**GORDANA TADIĆ**

Cc:

- Case files Ref. T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 and T20 0 KTRZ 0004545 07



**Tužilaštvo - Tužiteljstvo Bosne i Hercegovine**  
**Тужилаштво Босне и Херцеговине**

**Broj: A-RZ 76/14**

**HITNO!**

**Datum: 28.08.2014.godine**

**URED TUŽIOCA I SEKRETERIJAT**  
**MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU**

**Churchillplein 1**  
**2517 JW The Hague**  
**Kraljevina Nizozemska**

**PREDMET: Molba da se maketa logora Omarska zadrži u Uredu registrara Suda BiH, radi korištenja u krivičnim postupcima u predmetima ratnih zločina**

Poštovani,

Obraćamo Vam se u vezi provođenja Odluke Žalbenog vijeća Međunarodnog krivičnog suda za bivšu Jugoslaviju (MKSJ), broj: IT-98-30/1-R.1 u predmetu *Tužilac protiv Mlađe Radića*, od 10.11.2006.godine, koja je donesena na osnovu zahtjeva Tužilaštva Bosne i Hercegovine (BiH) u predmetu *11bis Tužilac protiv Željka Mejakića i dr.* U skladu sa Odlukom, maketa logora Omarska, kao i fotografije i video snimke makete proslijeđene su Sudu BiH radi korištenja na glavnom pretresu u predmetu *Mejakić i dr.* Kao što je poznato, predmet *Mejakić i dr.* je odlukom Apelacionog vijeća od 16.02.2009.godine pravosnažno okončan pred Sudom BiH.

U predmetnoj Odluci, data je uputa Tužilaštvu BiH, da, posredstvom tužioca Međunarodnog suda, zatraži da maketa ostane u Uredu registrara Suda BiH radi korištenja u drugim konkretnim krivičnim predmetima koji se trenutno održavaju pred Sudom BiH.

Vezano za Odluku, želimo Vas obavijestiti da se trenutno ne vode glavni pretresi pred Sudom BiH u kojima je potrebno koristiti maketu logora Omarska.

Međutim, Tužilaštvo BiH trenutno provodi krivični postupak u fazi istrage i prijave u tri predmeta, i to: T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 i T20 0 KTRZ 0004545 07, koja, između ostalog, obuhvataju i zločine počinjene u logoru Omarska u Prijedoru.

U ovim predmetim, osumnjičena i prijavljena lica se, između ostalih navoda, terete da su u svojstvu pripadnika Vojske Republike Srpske, komandanta 43. Motorizovane brigade, komandanta 4. Taktičke grupe VRS, člana Kriznog štaba SDS-a, člana Savjeta za narodnu odbranu, komandanta kasarne JNA Žarko Zgonjanin, člana Kriznog štaba Prijedor, učestvovali u napadu na nesrpsko civilno stanovništvo općine Prijedor u periodu od aprila do kraja 1992. godine, te izvršili napad na

grad i okolna sela kako bi obezbijedili preuzimanje vlasti u gradu. Nakon zauzimanja grada, granatirana su okolna bošnjačka sela, a potom je pješadija ušla u sela, ubijala stanovništvo, palila kuće, razdvajala muškarce od žena i djece, muškarce protivzakonito odvodila u logore **Omarska**, Keraterm i kasarnu Žarko Zgonjanin, a žene u logor Trnopolje, gdje je nastavljeno ubijanje, psihičko i fizičko maltretiranje velikog broja žrtava. Osumnjičena i prijavljena lica terete se za individualnu i komandnu odgovornost i učešća u počinjenju krivičnog djela Zločin protiv čovječnosti iz člana 172. Krivičnog zakona Bosne i Hercegovine.

Tužilaštvo Bosne i Hercegovine poduzima neophodne istražne radnje kako bi se ispitala okolnosti izvršenja ovih krivičnih djela, saslušavaju svjedoke, prikupljaju materijalnu dokumentaciju i utvrđuju činjenice neophodne za dokazivanje radnji izvršenja i krivičnopravne odgovornosti osumnjičenih i prijavljenih osoba. Napominjemo da se radi o veoma složenim i obimnim predmetima sa teškim posljedicama krivičnog djela, koji zahtijevaju obradu uloga i svojstvava velikog broja prijavljenih i osumnjičenih lica, svjedoka i obimne dokumentacije koje je Tužilaštvo BiH obavezno procesuirati prioritetno u skladu sa Državnom strategijom za rad na predmetima ratnih zločina.

Mišljenja smo da bi maketa logora Omaraska predstavlja vrijedan materijalni dokaz koji bi mogao pomoći u dokazivanju posrednih okolnosti pod kojima su počinjene radnje u logoru Omarska. Ukoliko se u ovim predmetima podignu optužnice i otvore glavni pretresi, Tužilaštvo u tom smislu namjerava predložiti maketu logora Omarska kao materijalni dokaz koji bi bio izveden pred Sudom BiH.

Razmatrajući naprijed iznesene razloge, mišljenja smo da bilo opravdano da se maketa logora Omarska zadrži u Uredu registrara Suda BiH sve do okončanja krivičnih postupaka u naznačenim predmetima.

U tom smislu, a na osnovu Odluke Žalbenog vijeća MKSJ-a, broj: IT-98-30/1-R.1 od 10.11.2006.godine, putem Ureda tužioca MKSJ-a, podnosimo molbu za zadržavanje makete logora Omarska u Uredu registrara Suda BiH sve do okončanja krivičnih postupaka u predmetima Tužilaštva BiH, broj: T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 i T20 0 KTRZ 0004545 07.

Molimo da primite izraze našeg poštovanja i zahvalnosti za Vašu saradnju i podršku koju pružate Tužilaštvu BiH.

**TUŽILAŠTVO/TUŽITELJSTVO BIH**  
**Zamjenica glavnog tužitelja**  
**Rukovoditeljica Posebnog odjela za ratne zločine**

**GORDANA TADIĆ**



*Kopija:*

*- predmeti, broj: T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 i T20 0 KTRZ 0004545 07*