



Mechanism for International Criminal Tribunals

Case No.: MICT-14-81

Date: 13 October 2014

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun
Registrar: Mr. John Hocking
Decision of: 13 October 2014

PROSECUTOR

v.

MLADO RADIĆ

PUBLIC

**DECISION ON 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**

The Office of the Prosecutor:

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

Counsel for Mlado Radić:

Mr. Toma Fila

Prosecutor's Office of Bosnia and Herzegovina:

Gordana Tadić, Deputy Chief Prosecutor

I, **JUDGE LIU DAQUN**, Judge of the Mechanism for International Criminal Tribunals (“Mechanism”), acting as a Single Judge in accordance with Article 12(1) of the Statute of the Mechanism (“Statute”);

RECALLING the “Decision on Prosecutor’s Request to Transfer Model of Omarska Camp to the Prosecutor’s Office of Bosnia and Herzegovina” issued publicly by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“Appeals Chamber” and “ICTY”, respectively) on 10 November 2006 in the *Radić* case¹ (“First Decision”), in which the Appeals Chamber, *inter alia*: (i) granted the request of the Office of the Prosecutor of the ICTY (“ICTY Prosecution”) to transfer the model of the Omarska camp listed as Exhibit 3/16 in the *Kvočka et al.* case² (“Model”), to the Prosecutor’s Office of Bosnia and Herzegovina (“POBiH” and “BiH”, respectively) for use in the *Mejakić et al.* trial before the Court of BiH; and (ii) invited the POBiH, upon completion of the *Mejakić et al.* trial, to request through the ICTY Prosecution that the Model remain with the Registry of the Court of BiH for use in other specific trials pending before the Court;³

NOTING the “Order Assigning a Single Judge to Consider an Application”, issued publicly on 3 October 2014 by the President of the Mechanism;

BEING SEISED of the “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” filed publicly by the Office of the Prosecutor of the Mechanism (“Prosecution”) on 19 September 2014 (“Application”), to which is attached the “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”, dated 28 August 2014 (“POBiH Application”), and in which the Prosecution requests a variation of the First Decision, so as to allow that: (i) the Model remain with the Registry of the Court of BiH and be returned to the Registry of the Mechanism within a period of three years of the decision on the Application, or immediately upon completion of the trials and appeals in three new cases; and (ii) the POBiH apply directly to the President of the Mechanism for extension of this time limit;⁴

NOTING the POBiH’s submissions that, *inter alia*: (i) the *Mejakić et al.* case before the Court of BiH was completed on 16 February 2009; (ii) there are currently no “main trials” being conducted

¹ *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-R.1 (“*Radić* case”).
² *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T.
³ First Decision, p. 4. *See also* First Decision, p. 2. The Appeals Chamber also ordered the ICTY Registry to take photographs and video recordings of the Model and to establish a chain of custody through the Court of BiH: First Decision, p. 4.
⁴ Application, paras. 1, 6.

before the Court of BiH that require the use of the Model; (iii) however, the POBiH is currently conducting investigations in three cases in relation to, *inter alia*, crimes committed at the Omarska camp (“Three Omarska Related Cases”);⁵ (iv) the suspects and “reported persons” in these cases are “charged” with “crimes against humanity” pursuant to Article 172 of the Criminal Code of Bosnia and Herzegovina; (v) the POBiH is of the view that the Model is “valuable material evidence” that may help in proving “indirect conditions” under which activities were carried out in the Omarska camp; (vi) if indictments are filed and main trials are initiated in these three cases, the POBiH intends to introduce the Model as an exhibit; and (vii) therefore, it would be justified that the Registry of the Court of BiH retains the Model until the proceedings in the Three Omarska Related Cases are completed;⁶

NOTING that the Prosecution supports the POBiH Application;⁷

FURTHER NOTING the Prosecution’s submissions that: (i) the Model is not needed in any of the remaining ICTY cases;⁸ (ii) 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 Application;⁹ (iii) limiting transport of the Model until it is no longer needed in BiH will help preserve the evidentiary record in the *Radić* case, as the Model is “large and fragile”;¹⁰ and (iv) in order to ensure that there is a mechanism for return of the Model, a time limit should be set for its return, which could, upon request to the President, be extended;¹¹

NOTING that no response to the Application was filed by Counsel for Mlado Radić;

NOTING that the Mechanism continues the functions of the ICTY;¹²

NOTING that the Mechanism is responsible for the management of the archives of the ICTY, including preservation and access;¹³

NOTING FURTHER that the Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of the former Yugoslavia;¹⁴

⁵ Cases Nos. T20 0 KTRZ 0004546 05, T20 0 KTRZ 0004542 05 and T20 0 KTRZ 0004545 07.

⁶ POBiH Application, p. 4, 3 (Registry’s pagination).

⁷ Application, para. 4.

⁸ Application, para. 4.

⁹ Application, para. 4.

¹⁰ Application, para. 4.

¹¹ Application, para. 5. *See also* Application, para. 6.

¹² Statute, article 2.

¹³ Statute, article 27(2).

CONSIDERING that the investigations conducted by the POBiH relate to serious violations of international humanitarian law in a country of the former Yugoslavia;

CONSIDERING the probative value of the Model;

CONSIDERING FURTHER that the Model is large, fragile and could easily be damaged in transit;¹⁵

CONSIDERING that in these circumstances, there is a need for the Model to remain in the temporary custody of the Registry of the Court of BiH;

NOTING, however, that the Mechanism shall operate for an initial period of four years starting 1 July 2012;¹⁶

CONSIDERING that the three-year time limit requested by the Prosecution extends beyond the initial mandate of the Mechanism;

CONSIDERING that in these circumstances, the time limit for the Model to return shall be limited to 18 months, or immediately upon completion of the trials and appeals in the Three Omarska Related Cases;

UNDERLYING that the POBiH may renew its application should the mandate of the Mechanism be extended;

CONSIDERING that it is in the interests of judicial economy that such application be filed directly by the POBiH, and not through the Prosecution;

FOR THE FOREGOING REASONS, pursuant to Articles 2, 12(1), 27(2) and 28(3) of the Statute and Rule 95(C) of the Rules of Procedure and Evidence of the Mechanism,

HEREBY GRANT the Application, in part;

VARY the First Decision;

ORDER that the Model remain in the temporary custody of the Registry of the Court of BiH;

¹⁴ Statute, article 28(3).

¹⁵ See First Decision, p. 2, referring to Radić case, "Deputy Registrar's Submission Regarding the Prosecutor's Request to Transfer Model", 26 October 2006 (public).

¹⁶ Security Council Resolution 1966 (2010), para. 17.

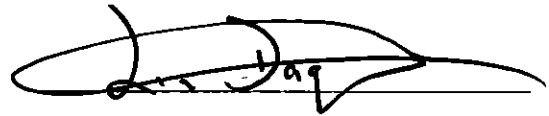
ORDER that the Model be returned to the Registry of the Mechanism within 18 months of the present decision, or immediately upon completion of the trials and appeals in the Three Omarska Related Cases if it occurs before the expiry of the 18-month time limit;

INVITE the POBiH to renew its application should the mandate of the Mechanism be extended;

ORDER that the POBiH apply directly to the President of the Mechanism for extension of this time limit if there is a demonstrated need for the Model to remain in the temporary custody of the Registry of the Court of BiH;

ORDER the Registry of the Mechanism to serve a copy of the present decision upon the POBiH.

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

A handwritten signature in black ink, appearing to read 'Liu Daqun', written over a horizontal line.

Judge Liu Daqun

Dated this thirteenth day of October 2014
At The Hague, The Netherlands

[Seal of the Mechanism]