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Criminal Tribunals

Mécanisme pour les
Tribunaux Pénaux
Internationaux

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CASE/AFFAIRE NO. MICT-13-48 BRDJANIN,
RADOSLAV **DATE** 15/07/2015

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Radoslav Brdjanin's Request for access to documents with annex, submitted by Defence counsel on 14 July 2015

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**THE UNITED NATIONS MECHANISM FOR
INTERNATIONAL CRIMINAL TRIBUNALS**

Date: 14 July 2015

B E F O R E

The President **Judge Theodor Meron**

Registrar: **Mr. John Hocking**

Filing Date: **14 July 2015**

PROSECUTOR

V.

RADOSLAV BRDJANIN

PUBLIC

**RADOSLAV BRDJANIN'S REQUEST FOR ACCESS TO DOCUMENTS
WITH ANNEX**

Office of the Prosecutor:
Mr. Hassan B. Jallow

Counsel for the Defence:
Mr. Novak Lukić

THE UNITED NATIONS MECHANISM FOR
INTERNATIONAL CRIMINAL TRIBUNALS

PUBLIC

**RADOSLAV BRDJANIN'S REQUEST FOR ACCESS TO DOCUMENTS
WITH ANNEX**

INTRODUCTION

1. The defense counsel for Radoslav Brdjanin respectfully request the President of the MICT to order access for defence to non-publicly released documents and transcripts from the trial before the ICTY case No IT-99-36.

BACKGORUND

2. Mr. Radoslav Brdjanjin was convicted before the ICTY /case IT-99-36/ and sentenced to 30 years imprisonment. He serves his sentence in prison in the Kingdom of Denmark. During Court proceedings, he was represented by Mr. John Ackerman, the attorney from the USA as the lead defence counsel .

3. While serving his sentence, Mr. Brdjanjin addressed the ICTY Registry with request to appoint Mr. Novak Lukic as his counsel during post conviction phase-so as to assess possibilities for eventual procedures of review of the judgment and early release. In the correspondence that subsequently followed, the Registry of the MICT informed counsel N. Lukic that he is authorized to represent Mr. Brdjanin as the *pro bono* counsel¹, provided that he previously signs the Undertaking, as Mr. Lukic did.²

REQUEST

4. Having in mind that counsel Lukic did not represent Mr. Brdjanin during the court proceedings, he is unable to acquaint himself with the entire court case, which also includes access to the transcripts of the private and closed sessions, and documents and exhibits which were admitted under seal.

5. In order to consider the possibility of potential application for review and the conditions that MICT proscribes in the rule 146 (A) of the Rules, it is necessary for the counsel, who did not

¹ Letters by office of MICT Registrar dated 24th April 2015 and 22nd June 2015

² Undertaking signed by Mr. Lukić

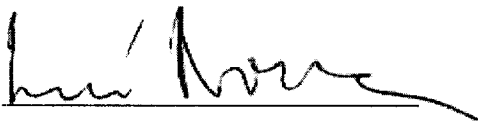
participate in the procedure, to be completely informed of the case file. By signing the Undertaking and particularly by accepting the obligation and conditions provided in the Para 3 thereto, counsel N. Lukic undertook the responsibility to act in accordance with the provisions of the Rules of Procedure and Evidence of the MICT as well as the Code of Professional Conduct for defense counsel appearing before the MICT, as counsel from the list of defense counsels of MICT.

RELIEF SOUGHT

6. Having in mind all above, the counsel for Mr. Brdjanin hereby respectfully asks the President of MICT to order the Registry of MICT to authorize Mr.Lukic', as counsel for Mr. Radoslav Brdjanin, access to following documents of the ICTY case file no. IT - 99-36:

- All transcripts of the private and close sessions during pre-trial, trial and appeal stage;
- All exhibits admitted with the status under seal;
- *65ter* list of the Prosecution containing all potential exhibits;
- *65ter* list of the Defense containing all potential exhibits;

Word count 446



Counsel for Mr. Radoslav Brdjanin
Novak Lukic

A N N E X

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MICT · MTPJ

OFFICE OF THE REGISTRAR / BUREAU DU GRÉFFIER

24 April 2015
MICT/A/IO/2015/176

Mr. Lukić,

I refer to your email of 11 December 2014 to Ms. Susan Stuart, requesting the Mechanism for International Criminal Tribunals ("Mechanism") to assign you as defence counsel to Mr. Radoslav Brđanin. In your email you indicated that Mr. Brđanin wished for you to represent him in review and early release proceedings, and any other issue relevant for a convicted person serving his sentence.

Under the Mechanism Rules of Procedure and Evidence ("Rules"), convicted persons are not entitled to have counsel appointed or assigned to them, and are not entitled to have counsel remunerated by the Mechanism. Nonetheless the Registrar may recognise pro bono counsel representing such persons in proceedings before the Mechanism.

In such cases, former accused, convicted or released persons wishing to engage such pro bono counsel must formally submit a power of attorney to the Registrar of the Mechanism, including the name and contact information of proposed counsel. Proposed pro bono counsel must then sign an Undertaking, attached to this letter.

I note that Mr. Brđanin has already submitted a power of attorney expressing his desire to have you represent him. In order to finalise the process of recognition please sign and return the attached Undertaking to the Mechanism Registry.

Note that such recognition does not mean that counsel has been or will be appointed or assigned under Rules 42 or 43 of the Rules. Moreover, the Mechanism will not provide remuneration to such counsel pursuant to such recognition.

Please be advised that the Mechanism Registry is presently considering its approach towards the provision of legal aid for post-convicted proceedings, and will notify you accordingly.

Should you have any questions, please do not hesitate to contact the Registry.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Algozin".

Samuel Algozin
Legal Officer

To: Mr. Novak Lukić
(per email: novak.lukic@gmail.com)

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P.O. Box 6016, Arusha, Tanzania
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E-mail: mict-registry@un.org

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MICT-MTP1

OFFICE OF THE REGISTRAR / BUREAU DU GRÉFFIER

22 June 2015
MICT/A/IOI/2015/289

Mr. Lukić,

I refer to my letter of 24 April 2015 (Ref. MICT/A/IOI/2015/176) responding to your request to be appointed as counsel to Mr. Radoslav Brđanin. In this letter I informed you that under the Mechanism Rules of Procedure and Evidence ("Rules"), convicted persons are not entitled to have counsel appointed or assigned and are not entitled to have counsel remunerated by the Mechanism. I further noted that the Mechanism was in the process of considering its approach toward the provision of legal aid in post-conviction proceedings, and that you would be informed accordingly. This letter serves to inform you of the official Mechanism approach to legal assistance in post-conviction proceedings.

Please note that the Mechanism approach to legal assistance in post-conviction proceedings is two-fold: (i) convicted persons are only granted legal aid at the expense of the Mechanism in exceptional circumstances, and only after a judicial order to that effect; and (ii) upon request, the Mechanism may assist a convicted person by soliciting an expression of interest from counsel currently on the Mechanism's list of counsel who may be willing to provide legal assistance on a pro bono basis. The Mechanism however cannot guarantee that in such cases it will find counsel available and willing to provide pro bono assistance. I note that you have already been retained as Mr. Brđanin's pro bono counsel at this time.

Should you have any additional questions, please do not hesitate to contact the Registry.

Sincerely,

Samuel Algozin
Legal Officer

To: Novak Lukić
(per email: novak.lukic@gmail.com)

CC: Mr. Radoslav Brđanin
Nyborg Statsfengsel
Vindingevej 36
5800 Nyborg, Denmark

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Undertaking

I, Lukić Novak, (full name) Legal Counsel to Radoslav Brstanić (full name of the applicant) ("Applicant"),

herewith make this undertaking ("Undertaking") to acknowledge and agree that as a condition of my recognition as Legal Counsel before the Mechanism for the International Criminal Tribunals ("Mechanism") I shall abide by each of the below:

1. I shall at all times comply with the Statute of the Mechanism ("Statute"), the Rules of Procedure and Evidence ("Rules"), the Rules of Detention, the Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism ("Code of Conduct"), this Undertaking and any other applicable law including such rulings as to conduct and procedure as may be issued by the Mechanism in its proceedings.
2. I shall preserve the confidentiality of the Applicant's affairs and shall not reveal to any other person, other than to recognised members of the Applicant's defence team who need such information for the performance of their duties, information which has been entrusted to me in confidence, or use such information to the detriment of any third party or to my advantage or that of any accused before the Mechanism, the International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda, unless the Applicant has been fully consulted and knowingly consents.
3. I acknowledge that by virtue of the Registry's recognition of me as Counsel for the Applicant, I may be granted access to confidential information and documents of the Mechanism, and I understand and agree that I may not disclose such information or documents, in whole or in part, nor shall I participate in any respect, in their disclosure to any party not expressly authorised by the Mechanism to receive such information or documents. I understand that I am responsible to affirmatively determine whether a party is authorised to receive such information or documents, and I shall not knowingly disclose or participate in the disclosure of the same.
4. I understand and agree that it shall be a violation of this Undertaking and grounds for immediate suspension and/or revocation of the Registry's recognition of me as Counsel for the Applicant to:
 - (i) violate or attempt to violate the Statute, the Rules, the Code of Conduct, this Undertaking or any other applicable law, or to knowingly assist or induce another person to do so, or to do so through the acts of another person;
 - (ii) commit a criminal act which reflects adversely on my honesty or trustworthiness;
 - (iii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (iv) engage in conduct which is prejudicial to the proper administration of justice before the Mechanism; or
 - (v) provide inaccurate information or fail to disclose material information regarding my qualifications and background; in particular information demonstrating a clear conflict of interest in my assignment.

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MICT-13-48

I warrant and represent that I have had an opportunity to review this Undertaking prior to agreeing to the terms hereof. By my signature below I confirm my understanding and agreement to each of the terms of this Undertaking.

I understand and agree that any violation of the terms hereof may result in the immediate suspension or termination of the Registry's recognition of me as Counsel to the Applicant, and any access to the Applicant or the Registry granted to me in connection therewith.

I further acknowledge that I am aware that a copy of the Rules, the Statute and the Code of Conduct is available for my review at <http://unmict.org>.

Signature:

Wuu Kwan

Done this 28 day of April 2015
(month) (year)

in

BELGRADE
(Place)

SERBIA
(Country)



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Greffe du MTPI</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>		
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input checked="" type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i> <input type="checkbox"/> Other/ <i>Autre :</i>		
Case Name/ Affaire :	Radoslav Brdjanin		Case Number/ Affaire n° :		
Date Created/ Daté du :	14 July 2015	Date transmitted/ Transmis le :	14 July 2015	No. of Pages/ Nombre de pages :	8
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	RADOSLAV BRDJANIN'S REQUEST FOR ACCESS TO DOCUMENTS WITH ANNEX				
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>			
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>			
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>			
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>			
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :			
Document type/ Type de document :	<input checked="" type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>		
	<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>		
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>		
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>			

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<input type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)					
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