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**CASE/AFFAIRE NO.** MICT-14-84 Boskoski  
and Tarculovski **DATE** 04/12/2014

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**Single Judge/ *Juge unique*:** Judge Liu  
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**MADE PUBLIC BY JUDGE'S DECISION OF 27/01/2015, RP D107-D78,**

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**Application to lift the confidentiality of the 7 December 2007 decision in the Boskoski Case, submitted by Defence counsel on 2 December 2014**

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**MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

**Case No.: MICT-14-84**

**THE OFFICE OF THE PRESIDENT**

**Before: Judge Theodor Meron, President of the MICT**

**Registrar: Mr. John Hocking**

**Filed: 2 December 2014**

**THE PROSECUTOR**

**v.**

**Ljube BOŠKOSKI  
Johan TARČULOVSKI**

***CONFIDENTIAL***

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**APPLICATION TO LIFT THE CONFIDENTIALITY OF THE 7 DECEMBER 2007  
DECISION IN THE *BOŠKOSKI* CASE**

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**Office of the Prosecutor:**  
Mr. Hassan Bubacar Jallow

**Applicant:**  
Ms. Edina Residović  
Mr. Guénaél Mettraux

**Counsel for Johan Tarculovski:**  
Mr. Antonio Apolstolski

**A. Introduction**

1. Pursuant to Rule 95(B) of the Rules of Procedure and Evidence (“Rules”) of the Mechanism for International Criminal Tribunals (MICT), counsel for Mr Boškosi, respectfully ask the President of the MICT to issue an order lifting the confidentiality of Trial Chamber II’s Decision on Prosecution’s Motion for Admission into Evidence of Documents MFI P251, P379 and P435, dated 7 December 2007<sup>1</sup> (“Decision”) in the case of *Prosecutor v. Ljube Boškosi and Johan Tarčulovski* (Case No. IT-04-82-T). In the alternative, counsel asks the President to appoint a bench of the Appeals Chamber with a view for the Chamber to decide granting the sought relief.

**B. Procedural Background**

2. On 18 September 2007, the Prosecution in *Boškosi and Tarčulovski* made an oral request to admit several documents into evidence as exhibits P251, P379 and P435.<sup>2</sup> All documents proposed for admission related to the work of a commission established on 7 March 2003 by the then Minister of the Interior of the Republic of Macedonia to investigate the events in Ljuboten.<sup>3</sup> The Accused Tarčulovski had provided the commission with written and oral information regarding what he claimed was his role and that of others in the relevant events.<sup>4</sup>
3. Both the *Boškosi* and *Tarčulovski* Defence opposed the admission into evidence of these documents, arguing *inter alia* that the admission of statements given by the Accused Tarčulovski would be unfair to his Co-Accused Boškosi as he would not be able to fairly and effectively confront that evidence.<sup>5</sup> On 25

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<sup>1</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Decision on Prosecution’s Motion for Admission into Evidence of Documents MFI P251, P379 and P435, 7 December 2007.

<sup>2</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Court hearing, 18 September 2007, T.5135; 5147-5151. (“Court hearing of 18 September 2007”).

<sup>3</sup> Decision, para. 2.

<sup>4</sup> Decision, para. 3.

<sup>5</sup> Court hearing of 18 September 2007, T.5135-5145 (Counsel for Ljube Boškosi); T.5145-5146 (Counsel for Johan Tarčulovski).

September 2007, the Prosecution filed its written submissions.<sup>6</sup> The Boškosi Defence<sup>7</sup> and the Tarčulovski Defence<sup>8</sup> filed their respective submissions on 3 October 2007.

4. On 7 December 2007, Trial Chamber II issued the confidential Decision, granting the admission of the documents into evidence in part and excluding it in other respects.<sup>9</sup> The Trial Chamber ruled that it could not allow the admission of Tarčulovski's record of interview in relation to his co-defendant, Mr Boškosi.<sup>10</sup> In doing so, the Chamber took into consideration the fact that Mr Boškosi had not been offered any opportunity to test or challenge that evidence (which was later contradicted by Mr Tarčulovski himself).<sup>11</sup> The Chamber thus ruled that the probative value of the proposed evidence was outweighed by the need to ensure a fair trial for the co-Accused Ljube Boškosi.<sup>12</sup>
5. The Decision was issued confidentially as some of the material subject to the application was subject to requests for confidentiality.<sup>13</sup>
6. On 10 July 2008, Mr Boškosi was acquitted by the Trial Chamber<sup>14</sup> and his acquittal later upheld by the Appeals Chamber.<sup>15</sup>

### C. Submissions

7. Rule 95(B) of the MICT Rules provides that "[t]he Trial Chamber, after giving due consideration to any matters relating to witness protection, may order the

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<sup>6</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Prosecution's Submissions Regarding the Admission into Evidence of the Exhibits Marked for Identification as P00379, P00435 and P00251 with Public Annexes A, B, D and E and Confidential Annex C, 25 September 2007.

<sup>7</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Boškosi Defence Response to Prosecution Motion for Admission of Documents Pertaining to Second Ljuboten Commission, 3 October 2007.

<sup>8</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Johan Tarčulovski Submissions Regarding the Admission into Evidence of the Exhibits Marked for identification as P00379, P00435 and P00251 with Public Annex A, 3 October 2007.

<sup>9</sup> Decision, para. 45, 47.

<sup>10</sup> Decision, para. 47.

<sup>11</sup> Decision, para. 47.

<sup>12</sup> Decision, para. 49.

<sup>13</sup> The parties' submissions contained names of protected witnesses and Exhibit P251 was tendered into exhibits under seal (Transcript, 12 June 2007, T. 1905)

<sup>14</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Judgement, 10 July 2008.

<sup>15</sup> *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-A, Appeal Judgement, 19 May 2010.

disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist". Furthermore, where there is no reason to maintain the confidential status of an order or decision, the Trial and Appeals Chambers are authorised to instruct the Registry to lift the confidential status of that order.<sup>16</sup>

8. The Applicant respectfully submits that the President is competent to decide on matters regarding the lifting of the confidential status of filings.<sup>17</sup> In the alternative, counsel asks the President to assign a bench of the Appeals Chamber to decide the present application.
9. Chambers of the ICTY have repeatedly lifted the confidentiality of filings, referring to the interest of justice and the general importance of maintaining the public character of the proceedings in accordance with Articles 20(4) and 21(2) of the ICTY's Statute,<sup>18</sup> unless there are exceptional reasons for maintaining their confidentiality.<sup>19</sup>
10. The proceedings in this case have come to an end and the verdict is now final. The Decision itself does not disclose any information regarding protected witnesses. The only references to confidential material pertain to Exhibit P251

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<sup>16</sup> See e.g., *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Order Lifting Confidential and Ex Parte Status of Decision on Milan Gvero's Motion to Rescind Decision in Part or for an Extension of Time to File Various Briefs, 16 January 2013; *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Decision on Prosecution Motion Requesting Public Redacted Version of the Trial Chamber's Decision of 21 July 2011, 3 September 2014 ("Considering that issuing a public redacted version of the Decision will not prejudice either Stanišić or Župljanin"); *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Defence Request to Lift Confidentiality of Filings, 30 October 2009.

<sup>17</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Order Lifting the Confidential Status of the 29 July 2013 Order on the Early Release of Momčilo Krajišnik, 4 September 2013; *Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-ES, Order Lifting Confidential Status of "Order of the President on the Early Release of Vidoje Blagojević" Issued on 4 December 2012, 27 December 2012; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Order Withdrawing Confidential Status of order Designating the State in Which Dragan Obrenović is to Serve his Prison Sentence, 14 December 2007.

<sup>18</sup> See e.g., *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Defence Request to Lift Confidentiality of Filings, 30 October 2009, para. 4; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-S, Order Lifting Confidentiality, 12 December 2003.

<sup>19</sup> Rule 53(A) Rules of Procedure and Evidence of the ICTY and MICT. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.3, Order Lifting Confidentiality, 10 June 2011, p. 1; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.6, Decision on Ivan Cermak and Mladen Markac Interlocutory Appeals against Trial Chamber's Decision to Reopen the Prosecution Case, 1 July 2010, para. 6; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Prosecution's Motion to Lift Confidential Status of the Appeals Chamber's Rule 115 Decision of 21 July 2005, 23 October 2012, para. 8. See also *The Prosecutor v. Hormisdas Nsengimana*, Case Nos. ICTR-01-69-A and ICTR-2010-92, Order Lifting the Confidential Status of Safari's Respondent's Brief, 16 December 2010.

which was admitted under seal.<sup>20</sup> These references do not appear to warrant continued confidentiality. There is, therefore, no valid reason to maintain the confidentiality of the Decision. Furthermore, the need to guarantee public and transparent proceedings militate in favour of making that Decision public,<sup>21</sup> absent exceptional reasons in this case for maintaining their confidentiality.<sup>22</sup> However, if the Appeals Chamber takes the view that they still do, Applicant submits that these references could be redacted from the public version of the Decision.

11. Another factor militating in favour of the present application pertains to the jurisprudential importance of the Decision. The Decision provides precious jurisprudential guidance as regard the balancing of the fundamental rights of an accused (in particular, his right to remain silent and his right not to incriminate himself) and the effective prosecution of alleged international crimes. As an important precedent, the Decision should be made available to all interested parties (domestic and international tribunals as well as scholars).
12. In light of the above, counsel submits that it is in the interest of justice that the confidential status of the decision be lifted and that the Decision should be made public.

#### **D. Relief Sought**

13. For reasons provided above, the Applicant respectfully applies to have the confidentiality of the Decision lifted to the extent that it pertains to the fair trial rights of the accused and, if considered necessary in the circumstances, to have

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<sup>20</sup> Cover page – the title; paras 1, 5, 61, 62, 63; fn 8, 10, 20, 51, 67, 159; subheading (c) at p. 23; and Disposition under (i) at p. 25.

<sup>21</sup> See e.g., *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Defence Request to Lift Confidentiality of Filings, 30 October 2009, para. 4; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-S, Order Lifting Confidentiality, 12 December 2003.

<sup>22</sup> Rule 53(A) Rules of Procedure and Evidence of the ICTY and MICT. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.3, Order Lifting Confidentiality, 10 June 2011, p. 1; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.6, Decision on Ivan Cermak and Mladen Markac Interlocutory Appeals against Trial Chamber's Decision to Reopen the Prosecution Case, 1 July 2010, para. 6; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Prosecution's Motion to Lift Confidential Status of the Appeals Chamber's Rule 115 Decision of 21 July 2005, 23 October 2012, para. 8. See also *The Prosecutor v. Hormisdas Nsengimana*, Case Nos. ICTR-01-69-A and ICTR-2010-92, Order Lifting the Confidential Status of Safari's Respondent's Brief, 16 December 2010.

all the references to Exhibit P251 redacted from the public version of the Decision in order to preserve the confidentiality of that Exhibit.

14. Should the Appeals Chamber grant its application, counsel would ask that the present Motion be made public by the same order.

Word count: 1,780



A handwritten signature in black ink, appearing to read 'Edina Residovic', is written over a circular stamp. The stamp contains the text 'W/O/V D M A - RESIDOVIC EDINA' and 'Dr. 11'.

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Ms Edina Residović  
Lead Counsel for Ljube Boškoski



A handwritten signature in black ink, appearing to read 'Guénaél Mettraux', is written in a cursive style.

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Dr Guénaél Mettraux  
Co-counsel for Ljube Boškoski

Done on 2 December 2014

At Sarajevo/The Hague