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Mécanisme pour les  
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<b>STATUS</b>	Public	<b>D/ A</b>	57
<b>CASE/AFFAIRE NO.</b>	MICT-13-50-R86H.2 HADZIHASANOVIC and KUBURA (R86H)	<b>DATE</b>	10/02/2016

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Public redacted version of the 18 December 2013 Decision on Application pursuant to Rule 86(H) by the Prosecutor's office of [redacted], submitted by Judge on 10 February 2016

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NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-50-R86H.2

Date: 10 February 2016

Original: English

**BEFORE THE SINGLE JUDGE**

**Before:** Judge Bakone Justice Moloto  
**Registrar:** Mr. John Hocking  
**Decision of:** 10 February 2016

**PROSECUTOR**

**v.**

**ENVER HADŽIHASANOVIĆ  
AND  
AMIR KUBURA**

***PUBLIC***

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**PUBLIC REDACTED VERSION OF THE  
18 DECEMBER 2013 DECISION ON APPLICATION  
PURSUANT TO RULE 86(H) BY THE PROSECUTOR'S  
OFFICE OF  
[REDACTED]**

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**The Applicant**

[REDACTED]

**The Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. Mathias Marcussen

**I, BAKONE JUSTICE MOLOTO**, Judge of the Mechanism for International Criminal Tribunals (“Mechanism”), am seised of the “Application of the Prosecutor’s Office of [REDACTED] for the variation of protective measures pursuant to Rule 86(H) of the Rules of Procedure and Evidence of MICT”, filed confidentially and *ex parte* on 28 October 2013 (“Application”), whereby the Prosecutor’s Office of [REDACTED] requests information about the protective measures that apply to a witness as granted in the *Prosecutor v. Hadžihasanović and Kubura* case (Case No. IT-01-47-T).

### I. Procedural history

1. On 1 November 2013, the President of the Mechanism assigned the Application to me.<sup>1</sup> On 27 November 2013, I ordered the Witnesses Support and Protection Unit (“WISP”) to contact the witness to ascertain whether s/he consents to the variation of the protective measures and to file a submission by 4 December 2013.<sup>2</sup> I also ordered the Registry to serve copies of the Application upon the Office of the Prosecutor (“Prosecution”) and gave the Prosecution until 4 December 2013 to respond.<sup>3</sup> On 3 December 2013, the Prosecution responded to the Application (“Prosecution Response”).<sup>4</sup> On 4 December 2013, the WISP filed a submission (“WISP Submission”).<sup>5</sup>

### II. Submissions

#### (i) [REDACTED]

2. The [REDACTED] submits that a witness in the case against [REDACTED] before the Court of [REDACTED] (“Court of [REDACTED]”) has stated that s/he testified with protective measures in the *Hadžihasanović and Kubura* case before the International Criminal Tribunal for the former Yugoslavia (“Tribunal”).<sup>6</sup> However, as the witness does not recall which protective measures were granted, the [REDACTED] requests to be informed thereof in order that the protective measures may be applied in the case before the Court of [REDACTED].<sup>7</sup>

<sup>1</sup> Order assigning a Single Judge to consider an application pursuant to Rule 86(H), issued confidentially and *ex parte* on 1 November 2013.

<sup>2</sup> Order for submissions on application pursuant to Rule 86(H), issued confidentially and *ex parte* on 27 November 2013, p. 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> Prosecution’s response to application of the Prosecutor’s Office of [REDACTED] for the variation of protective measures pursuant to Rule 86(H) of the Rules of Procedure and Evidence of MICT, filed confidentially and *ex parte* on 6 December 2013.

<sup>5</sup> Registrar’s submission pursuant to Rule 31(B) of the Rules in compliance with the order dated 27 November 2013, filed confidentially and *ex parte* on 4 December 2013.

<sup>6</sup> Application, paras. 4-5.

<sup>7</sup> Application, paras. 5, 8-9.

(ii) Prosecution

3. The Prosecution does not object to the Application but submits that the witness did not testify in the *Hadžihasanović and Kubura* case.<sup>8</sup> Rather, it submits that the witness testified in the *Prosecutor v. [REDACTED]* case (Case No. [REDACTED]) and the *Prosecutor v. [REDACTED]* case (Case No. [REDACTED]), in both cases in open session without protective measures.<sup>9</sup>

(iii) WISP

4. The WISP submits that it has found no record of the witness as having testified in the *Hadžihasanović and Kubura* case.<sup>10</sup> The WISP also submits that the witness testified in the [REDACTED] and the [REDACTED] cases.<sup>11</sup>

### III. Applicable law

5. Rule 86 of the Mechanism's Rules of Procedure and Evidence ("Rules") provides, in relevant parts, as follows:

(H) A judge or bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the ICTY, the ICTR, or the Mechanism may seek to rescind, vary, or augment protective measures ordered in proceedings before the ICTY, the ICTR, or the Mechanism by applying to the President of the Mechanism, who shall refer the application to a Single Judge or to the Chamber remaining seized of the proceedings.

(I) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may order proprio motu the rescission, variation, or augmentation of protective measures in the absence of such consent.

### IV. Discussion

6. I have noted the submissions that the witness did not testify in the *Hadžihasanović and Kubura* case but that s/he testified in the [REDACTED] and the [REDACTED] cases without protective measures. Having examined the trial record in those cases, I note that the witness testified in open session on [REDACTED] in the [REDACTED] case and also in open session on [REDACTED] in the [REDACTED] case. For these reasons, I consider that there is nothing in the Application to be ruled upon.

<sup>8</sup> Prosecution Response, para. 2.

<sup>9</sup> *Ibid.*

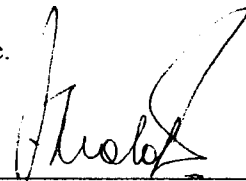
<sup>10</sup> WISP Submission, para. 2.

<sup>11</sup> WISP Submission, para. 3.

**V. Disposition**

7. Pursuant to Article 20 of the Statute and Rule 86 of the Rules, I **DISMISS** the Application.

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



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Judge Bakone Justice Moloto

Dated this 10th day of February 2016

At The Hague

The Netherlands

**[Seal of the Mechanism]**



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