

IT-06-90-T
D36925-D36922
23 August 2010

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International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
since 1991

Case No. IT-06-90-T
Date: 23 August 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 23 August 2010

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

DECISION ON CROATIA'S REQUEST FOR PROTECTIVE MEASURES OF 12
NOVEMBER 2009

Office of the Prosecutor

Mr Alan Tieger

Republic of Croatia

Per: the Embassy of the Republic of Croatia
to the Kingdom of the Netherlands

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

TRIAL CHAMBER I (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED OF the Republic of Croatia’s (“Croatia”) request for closed session testimony and pseudonym for Witness MM-24 and confidentiality for four reports from the Service for the Protection of the Constitutional Order (“SZUP Reports”) pursuant to Rules 54 *bis* (F) and (G), 79 (A) (iii), and Rule 53 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules” and “Request”);¹

NOTING that Croatia, after an invitation from the Chamber, submitted in support of the Request that the SZUP Reports were “created by applying specific methods and measures” and that the SZUP Reports’ disclosure would “result in the revealing of the objectives of the then interests of [Croatia] and [its] methods of data collection as well as of the identity of persons mentioned in the SZUP intelligence data”;²

NOTING that the Markač Defence provided the Chamber with the decision of the Security and Intelligence Agency (“Release Decision”) conditionally releasing Witness MM-24 from his obligation to protect the confidentiality of certain classified data;³

NOTING Croatia’s additional submissions in relation to the Request, wherein it notes that Witness MM-24 has only been relieved of the duty of confidentiality of classified information during closed session hearings;⁴

NOTING that none of the parties objected to the Request;

RECALLING that on 16 November 2009, the Chamber provisionally, pending a final decision on the Request, assigned a pseudonym to Witness MM-24 and heard his testimony in closed session;⁵

¹ Request for a Decision on Testifying Pursuant to Rules 54 *bis* and 79, 12 November 2009; Response of the Republic of Croatia Regarding the Request for Application of Protective Measures, 17 December 2009 (“Response”).

² Response, p. 1; Invitation to the Republic of Croatia in Relation to her Request for Protective Measures, 30 November 2009.

³ Defendant Mladen Markač’s Submission in Relation to Witness MM-24, 13 November 2009, Appendix C.

⁴ Response of the Republic of Croatia regarding Request for Protective Measures, 26 January 2010, p. 3.

⁵ T. 24517.

CONSIDERING that pursuant to Article 20 (4) of the Statute and Rule 78 of the Rules hearings and proceedings at the Tribunal shall be held in public unless otherwise provided and that individuals accused before this Tribunal have a right to a fair and public trial pursuant to Article 21 (2) of the Statute;

CONSIDERING that under Rule 54 *bis* of the Rules appropriate measures may be ordered in the protection of a state's demonstrated national security interests;

CONSIDERING that a Trial Chamber may order appropriate measures for the protection of the interests of justice pursuant to Rule 79 (A) (iii) of the Rules;

CONSIDERING that the Release Decision states that “[t]here is [...] a need for the confidentiality of data that are to be provided in the testimony, so the members of the [Markač] defence team and the defendant himself are obliged to protect the confidentiality of the given information, [...] in order to prevent the possible criminal act of disclosing secret information”;

CONSIDERING the Markač Defence's submission that “should the witness act either through his own accord or someone else's in violation of the [Release] Decision, he would have to incur the consequences of his actions in the country where he resides, i.e., the Republic of Croatia”;⁶

CONSIDERING that, while requested by Croatia, the Release Decision does not explicitly refer to the need for keeping the witness's identity confidential;

CONSIDERING FURTHER that revealing the identity of Witness MM-24 nonetheless could give rise to such consequences as mentioned in the Release Decision;

FINDING that Croatia has not sufficiently demonstrated how disclosure to the public of the information sought to be protected would jeopardise its national security interests;

CONSIDERING that a reasoned request for protective measures should more appropriately have been submitted earlier so as to allow for the final settlement of the request prior to the beginning of the witness's testimony before this Chamber;

⁶ T. 24515.

FURTHER FINDING, in spite of the foregoing, that the absence of objections from the parties coupled with possible legal sanctions against both the witness and the Markač Defence should the Request not be granted, in this particular case militates in favour of granting the Request in the interests of justice;

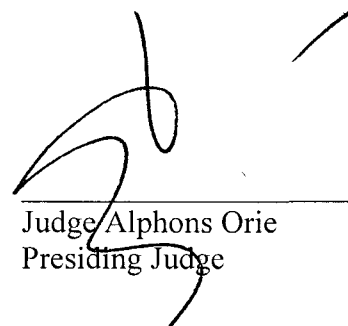
PURSUANT TO Rules 54 and 79 (A) (iii) of the Rules;

GRANTS the Request;

ORDERS that Witness MM-24 retain his pseudonym; and

ORDERS that Witness MM-24's testimony and the SZUP Reports⁷ remain under seal.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-third day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ The SZUP Reports were admitted as exhibits D1791-D1794.