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07 November 2012

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**UNITED  
NATIONS**



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-03-69-T  
Date: 7 November 2012  
Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Michèle Picard  
Judge Elizabeth Gwaunza

**Registrar:** Mr John Hocking

**Decision of:** 7 November 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**ORDER IN RELATION TO PROTECTIVE MEASURES  
PURSUANT TO RULES 54 *BIS*, 75, AND 79 OF THE RULES**

**Office of the Prosecutor**

Mr Dermot Groome

**Counsel for Jovica Stanišić**

Mr Wayne Jordash  
Mr Scott Martin

**The Government of the Republic of Serbia**

*Per:* The Embassy of the Republic of Serbia  
to the Kingdom of the Netherlands

**Counsel for Franko Simatović**

Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. PROCEDURAL HISTORY

1. On 3 November 2009, 7 October and 11 November 2011, 26 January, 14 June, 18 July, and 9 October 2012, the Chamber ordered protective measures in relation to documents and the identity and testimony of a number of witnesses under Rule 54 *bis* of the Rules of Procedure and Evidence (“Rules”) for active members of Security and Information Agency (“BIA”) of the Republic of Serbia (“Serbia”) and for members of the Ministry of the Interior (“MUP”) of Serbia with tasks of a sensitive nature.<sup>1</sup>

2. On 7 October and 11 November 2011, 12 and 17 April, 14 June, 18 July, and 9 October 2012, the Chamber ordered protective measures in relation to documents and the testimony of a number of witnesses under Rule 54 *bis* of the Rules for: BIA sources; the sources of a Serbian government commission; contacts and cooperation between the BIA and foreign intelligence services; persons presently subject to BIA monitoring; locations in use by the BIA; technical details of the BIA’s use of radio monitoring equipment and information and communications technology; and the BIA’s interception of telephone conversations from a foreign embassy.<sup>2</sup>

3. On 7 October 2011 and 19 January, 27 March, and 18 July 2012, the Chamber ordered protective measures for information under Rule 79 of the Rules in relation to documents and the testimony of a witness for: deceased former BIA operatives, (alleged) rape victims, and a note which appeared to indicate that a certain person may be a CIA operative.<sup>3</sup> On 7 October 2011, the Chamber further noted that protective measures ordered for certain victims in the *Karadžić* case under Rule 75 of the Rules continued to have effect *mutatis mutandis* in the present case.<sup>4</sup>

<sup>1</sup> Second Decision on the Republic of Serbia’s Motion for Protective Measures, 3 November 2009 (Confidential) (“3 November 2009 Decision”), para. 11; Decision on the Republic of Serbia’s Requests for Protective Measures in relation to Documents Provided to the Prosecution, 7 October 2011 (Confidential) (“7 October 2011 Decision”), para. 35; Decision on the Republic of Serbia’s Requests for Protective Measures in relation to Two Witnesses and Related Documents, 11 November 2011 (Confidential) (“11 November 2011 Decision”), paras 12, 23-24; Decision on the Republic of Serbia’s Request for Protective Measures for One Document Provided to the Stanišić Defence, 26 January 2012, p. 1; Decision on Serbia’s Requests for Protective Measures in relation to Eight Witnesses, 14 June 2012 (Confidential) (“14 June 2012 Decision”), para. 35; Decision on Serbia’s Requests for Protective Measures in relation to Defence Documents, 18 July 2012 (“18 July 2012 Decision”), para. 29 (b); Decision on the Republic of Serbia’s Requests for Protective Measures in relation to Four Witnesses, 9 October 2012 (“9 October 2012 Decision”), paras 16, 22.

<sup>2</sup> 7 October 2011 Decision, para. 35; 11 November 2011 Decision, paras 17, 22, 24; Decision on the Republic of Serbia’s Request for Protective Measures for Four Documents, 12 April 2012 (“12 April 2012 Decision”), paras 13, 15; Decision on the Republic of Serbia’s Motion for Protective Measures concerning Three Witnesses, 17 April 2012, para. 26; 14 June 2012 Decision, para. 35; 18 July 2012 Decision, para. 29 (b); 9 October 2012 Decision, para. 22.

<sup>3</sup> 7 October 2011 Decision, paras 30, 35; Decision on the Republic of Serbia’s Motion for Protective Measures for Witness DST-074, 19 January 2012, paras 9, 11; Decision on the Prosecution’s Request for Clarification of the Trial Chamber’s Decision of 7 October 2011, 27 March 2012 (Confidential), para. 8; 18 July 2012 Decision, paras 27, 29 (b).

<sup>4</sup> 7 October 2011 Decision, paras 33, 35.

## II. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing protective measures under Rules 54 *bis*, 75 and 79 of the Rules, as set out in previous decisions.<sup>5</sup>

## III. DISCUSSION

5. As noted above, the Chamber has ordered protective measures for a number of categories of information pursuant to Rules 54 *bis*, 75, and 79 of the Rules. With a view to ensuring the granted measures, the Chamber has on a number of occasions instructed Serbia and the parties to file lists of the persons (including active BIA members, sources, and persons presently being monitored by the BIA) who were subject to protective measures.<sup>6</sup> The Stanišić and the Simatović Defence are still to submit one such list pursuant to a previous decision.<sup>7</sup>

6. A list which consolidates the previously filed lists and provides an overview of the information subject to the protective measures would greatly assist the parties and the Chamber in ensuring that confidential information is not publicly disclosed. Such a list would provide a full overview of all information for which the Chamber has granted protective measures other than pursuant to Rule 75 of the Rules in relation to witnesses, namely pursuant to Rules 54 *bis*, 75 in relation to victims, and 79 of the Rules, including in the abovementioned decisions. Consequently, the Chamber will instruct the parties to submit a joint filing containing such a consolidated list by the end of 2012.

7. A number of requests by Serbia for protective measures under Rule 54 *bis* of the Rules remain outstanding. Consequently, the Chamber expects the parties to include in the consolidated list those protective measures which the Chamber has ordered pursuant to the Rules specified above on or prior to 30 November 2012. The Chamber will issue additional instructions to amend the consolidated list for any protective measures the Chamber grants in and after December 2012.

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<sup>5</sup> 7 October 2011 Decision, paras 17-22; 17 April 2012 Decision, paras 11-18.

<sup>6</sup> Decision of 3 November 2009, para. 11; 7 October 2011 Decision, para. 35; 11 November 2011 Decision, para. 24; 12 April 2012 Decision, paras 15-16; 18 July 2012 Decision, para. 29 (b).

#### IV. DISPOSITION

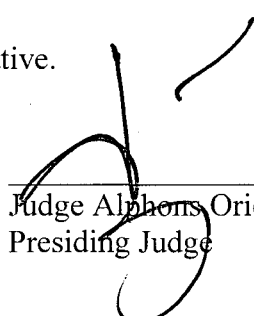
8. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber

**REMINDS** the Stanišić and the Simatović Defence to submit in a confidential filing an overview containing the names of active BIA operatives, of BIA sources, and of persons presently being monitored by the BIA mentioned in the documents which they have used in court or tendered into evidence and which are subject to protective measures pursuant to the Chamber's decision of 18 July 2012;

**INSTRUCTS** the parties to submit a joint confidential filing no later than 21 December 2012 which contains a list of all information for which the Chamber has granted protective measures on or prior to 30 November 2012 other than pursuant to Rule 75 of the Rules in relation to witnesses, namely pursuant to Rules 54 *bis*, 75 in relation to victims, and 79 of the Rules ("Consolidated List"); and

**INSTRUCTS** the parties to communicate with Serbia insofar as necessary to compile the Consolidated List.

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



Judge Alphons Orie  
Presiding Judge

Dated this Seventh day of November 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>7</sup> 18 July 2012 Decision, para. 29 (b). On 30 August 2012, the Stanišić Defence informed the Chamber through an informal communication that it was in the process of reviewing the documents and communicating with Serbia in order to provide the list as instructed.