



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

Case No. IT-01-42-PT  
Date: 16 January 2002  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Alphons Orie, Pre-Trial Judge  
**Registrar:** Mr. Hans Holthuis  
**Order of:** 16 January 2002

**THE PROSECUTOR**

v.

**PAVLE STRUGAR  
MIODRAG JOKIĆ  
& Others**

**ORDER ON PROSECUTION'S MOTIONS FOR PROTECTIVE MEASURES**

**The Office of the Prosecutor:**  
**Ms. Joanna Korner**

**Defence Counsel:**  
**Mr. Goran Rodić**  
**Mr. Alun Jones**

**I, JUDGE APHONS ORIE**, Pre-Trial Judge in this case;

**BEING SEISED** of the “Prosecution’s Motion for Protective Measures,” filed on 8 November 2001, concerning the Prosecution’s request for protective measures in relation to non-public materials disclosed to the accused Pavle Strugar and his defence team (the “First Motion”);

**BEING FURTHER SEISED** of the “Prosecution’s Motion for Protective Measures,” filed on 21 November 2001, again concerning a request by the Prosecution for protective measures in relation to non-public materials disclosed to the accused Miodrag Jokić and his defence team (the “Second Motion”);

**CONSIDERING** that the Second Motion mirrors the First Motion in terms of the substantive requests made by the Prosecution for protective measures in relation to materials disclosed to Pavle Strugar, Miodrag Jokić and their respective defence teams (together the “Strugar and Jokić Defence”) and that in addition the Prosecution asks in the Second Motion that any decision on this matter should encompass both<sup>1</sup>;

**CONSIDERING** that as a result, the First Motion and the Second Motion will be considered together in this order (together the “Motions”);

**NOTING** that the Prosecution states in general that the measures requested in the Motions are necessary in order to safeguard the security and privacy of victims and witnesses and the integrity of the evidence and proceedings<sup>2</sup>;

**NOTING** that the Prosecution states that to ensure expeditious disclosure to the Strugar and Jokić Defence, it redacted the current whereabouts, telephone number and employment details of victims and witnesses as contained in the materials submitted in support of the confirmed indictment until adequate protective measures were in place<sup>3</sup>;

**NOTING** that the Prosecution’s precise requests and its reasons for them may be summarised as follows:

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<sup>1</sup> The Second Motion, para. 14.

<sup>2</sup> The Motions, para. 2.

<sup>3</sup> The Motions, para. 4.

1. protective measures in relation to witness statements contained in the supporting materials and those to be disclosed in the future (including strict terms and conditions governing the disclosure and use of such statements), on the basis that “[t]he integrity of these proceedings will be substantially jeopardised if witnesses’ identities, their whereabouts and/or contents of their statements are disclosed to the public”<sup>4</sup>;
2. leave to redact from the statements of all witnesses it proposes to call to give evidence information concerning the current whereabouts of each witness on the basis that such “a blanket order for non-disclosure of current whereabouts is appropriate in the interests of justice and safety of witnesses”<sup>5</sup>;
3. a prohibition against the disclosure by the Strugar and Jokić Defence of non-public material not being witness statements provided by the Prosecution, “except to the limited extent necessary for the preparation and presentation of this case,” on the basis that this could jeopardise the safety of victims and witnesses and compromise ongoing investigations and existing indictments<sup>6</sup>;
4. an order that the Strugar and Jokić Defence return all non-public disclosed materials at the conclusion of the proceedings and that should any member of the Strugar and Jokić Defence withdraw from the case, all disclosed materials in their possession be returned to their lead counsel<sup>7</sup>;

**NOTING** that no responses to the Motions have been filed to date by the Strugar and Jokić Defence and that the requests by the Prosecution in the Motions are currently unopposed;

**NOTING** the following provisions of the Statute of the International Tribunal (“the Statute”) which are relevant to the Motions: Article 20(1) which provides that “[t]he Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses”; Article 21(2) which provides that “[i]n the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute”; and Article 22 which states that “[t]he International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures

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<sup>4</sup> The Motions, para. 8.

<sup>5</sup> The Motions, para. 9.

<sup>6</sup> The Motions, para. 10.

<sup>7</sup> The Motions, para. 11.

shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity";

**NOTING FURTHER** the following provisions of the Rules of Procedure and Evidence of the International Tribunal (the "Rules") which are also relevant to the Motions: Rule 75 which provides *inter alia*, that "[a] Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused"<sup>8</sup>; Rule 69 which provides *inter alia* that "the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness"; Rule 66 which governs disclosure by the Prosecution; and Rule 53(A) which provides that "[i]n exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order";

**NOTING** the obligations imposed generally by "[t]he Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal" and the codes of any national body or organisation to which counsel may belong;

**CONSIDERING** that the Prosecution has formulated its requests in the Motions in the most general of terms and has not put forward detailed or any reasons in relation to specific and identified material, justifying why in relation to such material, the protective measures sought should be granted;

**CONSIDERING** however that in view of the fact that the Strugar and Jokić Defence have not opposed the Motions, it must be assumed that they do not believe at this stage of the proceedings that the measures proposed would be prejudicial to the preparation of their defence, Article 21(4)(b) of the Statute providing, *inter alia*, that an accused shall be entitled "to have adequate time and facilities for the preparation of his defence";

**NOTING** the Prosecution's request for a blanket order for non-disclosure to the Strugar and Jokić Defence of any information concerning the current whereabouts of all witnesses the Prosecution proposes to call to give evidence in this case, the Prosecution submitting that the Strugar and Jokić

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<sup>8</sup> Rule 75(A) of the Rules.

Defence “would always have the opportunity to apply for information as to current whereabouts of any particular witness based on a reasonable showing”<sup>9</sup>;

**CONSIDERING** that the burden rests on the party seeking protective measures to justify in each case why the measures requested should be granted and that the burden does not rest upon the other party to justify disclosure;

**CONSIDERING** that it appears from the contents of the Motions that the Prosecution has not redacted from the materials already disclosed to the Strugar and Jokić Defence, information concerning the identity of witnesses and that its request in this regard concerns exclusively the redaction of any information from the statements of witnesses it proposes to call to give evidence in this case which would lead to identification of the current whereabouts of those witnesses;

**CONSIDERING** that in view of this limited request and the considerations which have been referred to above, at this stage such an order may be granted;

**CONSIDERING HOWEVER** that for the sake of clarity and in view of the redactions which the Prosecution states it has already made to the supporting materials, it is appropriate to ensure that the Prosecution has fully complied with its obligations under Rule 66(A)(i) of the Rules and in particular, has disclosed to the Strugar and Jokić Defence, copies of the supporting material which accompanied the indictment when confirmation was sought together with all prior statements obtained by the Prosecution from the respective accused, in an unredacted form subject only to those redactions permitted within the terms of this order;

**CONSIDERING** that the requests in the Motions concerning the non-disclosure of non-public information by the Strugar and Jokić Defence may be granted at this stage of the proceedings;

**CONSIDERING** that although it may be appropriate to order the return of documents to lead counsel by members of a defence team who leave prior to the conclusion of a case, a request for an order that the Strugar and Jokić Defence return all non-public disclosed materials to the International Tribunal at the conclusion of the case cannot properly be considered at this stage of the proceedings and is rather more appropriately to be considered at the end of the trial, when the risks involved in a failure to issue such an order, if any, may be more easily identified;

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<sup>9</sup> The Motions, para. 9.

**CONSIDERING FURTHER**, in particular in view of the observations made above concerning the generality of the requests contained in the Motions and the lack of submissions filed to date by the Strugar and Jokić Defence, that these findings are without prejudice to any future application which may be made by any party or person seeking such other or additional protective orders or measures or a variation of the terms of this order, as may be viewed as appropriate concerning a particular witness or other evidence or seeking rescission of the terms of all or some of this order;

**PURSUANT TO** Articles 20, 21 and 22 of the Statute and Rules 53(A), 66 and 75 of the Rules;

**HEREBY ORDERS** as follows:

Disposition

1. For the purposes of this disposition:

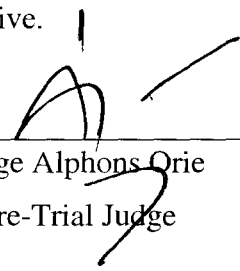
- (a) the “Prosecution” means the Prosecutor of the Tribunal and her staff;
- (b) the “Strugar and Jokić Defence” as designated above, means and includes only the accused Pavle Strugar and Miodrag Jokić and such counsel and their immediate legal assistants and staff, and others specifically assigned by the Tribunal to the accused’s trial defence teams and specifically identified in a list to be maintained by each lead counsel and filed with the Trial Chamber *ex parte* and under seal within ten days of the entry of this order. Any and all additions and deletions to the initial list in respect of any of the above categories of persons who are necessarily identified and properly involved in the preparation of the defence shall be notified to the Trial Chamber in similar fashion within seven days of such additions or deletions;
- (c) the “public” means all persons, governments, organisations, entities, clients, associations and groups, other than the judges of the Tribunal and the staff of the Registry (assigned to either Chambers or the Registry), and the Prosecutor, and the Strugar and Jokić Defence, as defined above. The “public” specifically includes, without limitation, family, friends and associates of the Accused, family, friends and associates of the co-accused, the accused in other cases or proceedings before the Tribunal and defence counsel in other cases or proceedings before the Tribunal;
- (d) the “media” means all video, audio and print media personnel, including journalists, authors, television and radio personnel, their agents and representatives.

2. The Prosecution must either:
  - (a) comply within fourteen days with its obligation under Rule 66(A)(i) of the Rules to supply to each of the accused copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by it from that accused, such materials to contain no redactions save for any information concerning the current whereabouts of witnesses the Prosecution proposes to call to give evidence in this case, for which leave is granted at this stage;  
  
or
  - (b) in the alternative, file a document with the Trial Chamber within five days of this order confirming that it has fulfilled its obligations under Rule 66(A)(i) of the Rules and that no redactions have been made to the material disclosed to the Strugar and Jokić Defence other than those permitted within the terms of this order;
3. The Prosecution is granted leave to redact from the statements of all witnesses whom it proposes to call to give evidence in this case any information concerning the current whereabouts of each witness.
4. The Strugar and Jokić Defence shall not disclose to the media any confidential or non-public materials provided by the Prosecution.
5. Save as is directly and specifically necessary for the preparation and presentation of this case, the Strugar and Jokić Defence shall not disclose to the public:
  - (a) the names, identifying information or whereabouts of any witness or potential witness identified to them by the Prosecution; or
  - (b) any evidence (including documentary, physical or other evidence) or any written statement of a witness or potential witness, or the substance, in whole or in part, of any such non-public evidence, statement or prior testimony disclosed to them.
6. If the Strugar and Jokić Defence find it directly and specifically necessary to disclose such information for the preparation and presentation of this case, they shall inform each person

among the public to whom non-public material or information (such as witness statements, prior testimony, or videos, or the contents thereof), is shown or disclosed, that such a person is not to copy, reproduce or publicise such statement or evidence, and is not to show or disclose it to any other person. If provided with the original or any copy or duplicate of such material, such person shall return it to the Strugar and Jokić Defence when such material is no longer necessary for the preparation and presentation of this case.

7. If a member of the Strugar and Jokić Defence withdraws from the case, all material in his or her possession shall be returned to their lead defence counsel.

Done in both English and French, the English text being authoritative.



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Judge Alphons Orie  
Pre-Trial Judge

Dated this sixteenth day of January 2002  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**