



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-02-55-Misc.7  
Date: 22 September 2005  
Original: English

**BEFORE THE TRIAL CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Amin El Mahdi  
Judge Alphons Orié

**Registrar:** Mr. Hans Holthuis

**Decision of:** 22 September 2005

**PROSECUTOR**

v.

**ANTO FURUNDŽIJA**

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**DECISION ON MOTION FOR PROTECTIVE MEASURES AND  
FOR INVESTIGATION OF CONTEMPT OF TRIBUNAL**

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**The Office of the Prosecutor:**

Mrs. Carla Del Ponte

**Counsel for Furundžija**

Mr. Misić

**I, LIU DAQUN**, Judge 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 (“the Tribunal”);

**BEING SEISED OF** the “Defendant’s Motion for Protective Measures and for Investigation of Contempt of Tribunal”<sup>1</sup> filed on 5 November 2002 (“the Motion”);

**NOTING** the “Prosecution Response to Defendant’s Motion for Protective Measures and for Investigation of Contempt of Tribunal” filed on 15 November 2002 (“the Prosecution Response”) and its “Motion to Supplement Prosecution Response to Defendant’s Motion for Protective Measures and for Investigation of Contempt of Tribunal” filed on 26 November 2002 (“Supplemental Motion”);

**NOTING** the Order of the President of the Tribunal issued on 20 January 2003, assigning this case to Trial Chamber I,

**CONSIDERING** that in the Motion the Defense states that:

- i. during October 2002 public statements were made which alleged that the Croatian Government had abandoned its investigation of an individual which the Tribunal had indicted;<sup>2</sup>
- ii. following the publication of statements on 3 November 2002, an unknown intruder burglarised Furundžija’s counsel’s office in Croatia (“Croatian office”) and stole a computer, scanner, computer printer and video recorder (“the equipment”);<sup>3</sup> and
- iii. the computer contained files from the Furundžija case that were protected under Rules 70(A) and 97 of the Rules of Procedure and Evidence (“the Rules”),<sup>4</sup>

**CONSIDERING** that in the Motion, the Defense argues that the violation of the attorney-client privilege, identified in Rule 97, as well as the violation of the protection of attorney work-product, as provided in Rule 70(A), rises to the level of interference in the Tribunal’s administration of justice;<sup>5</sup>

<sup>1</sup> On 10 December 1998, Trial Chamber II rendered its Judgement in the case of *Prosecutor v Furundžija*, sentencing Mr. Anto Furundžija to 10 years of imprisonment. The sentence was affirmed by the Appeals Chamber on 21 July 2000. On 29 July 2004, the President granted a request from Finland, where Mr Furundžija was serving his sentence, that he be released on 17 August 2004, owing to the fact that on that date he would have served two thirds of his sentence.

<sup>2</sup> The Prosecution’s Motion at para. 6.

<sup>3</sup> *Ibid* at para. 7.

<sup>4</sup> *Ibid* at para. 8.

<sup>5</sup> *Ibid* at paras 9-10.

**CONSIDERING** that in the Motion, the Defense requested the Tribunal to order:

- i. the relevant Croatian authorities to provide the Tribunal with any information which it has regarding the identity of those responsible for the burglary and the theft of the equipment;
- ii. the relevant Croatian authorities to return the equipment or any material which seems to have been obtained from the equipment, should it be, or come to be, in the possession of the Republic of Croatia to the Counsel;<sup>6</sup>
- iii. an investigation under Rule 77 of the Rules be carried out, in order to determine whether there has been a “knowing and wilful” breach of Rules 97 and 70(A) of the Rules and Article 21 of the Tribunal’s Statute.<sup>7</sup>

**CONSIDERING** that in the Prosecution’s Response and Supplemental Motion, the Prosecution argues that under Rule 77(C), a Chamber may direct an investigation by the Prosecution, or an *amicus curiae*, or may “initiate proceedings itself”, if it “has reason to believe that a person may be in contempt of the Tribunal”, and that the Motion does not provide a factual basis for why there is “reason to believe” that the person(s) who are said to have taken the computer were “knowingly and wilfully” interfering with the Tribunal’s administration of justice, other than the facts stated in paragraphs 6 and 7 of the Motion, which are not sufficient to give rise to such a belief;<sup>8</sup>

**CONSIDERING** that under Rule 77(C) a Trial Chamber may direct an investigation to determine whether there has been contempt of court, provided that it has “reason to believe that a person may be in contempt of court”, which indicates that the party seeking the investigation must provide a sufficient factual basis for the allegation that the person in relation to whom the investigation is sought, knowingly and wilfully, interfered with the Tribunal’s administration of justice;

**CONSIDERING** that on the basis of the facts alleged in the Motion there is an insufficient link between the statements made against the Republic of Croatia and the burglary of Furundžija’s counsel’s office and, therefore, an insufficient link between the burglary and a knowing and wilful interference with the Tribunal’s administration of justice;

**CONSIDERING** that there is an insufficient factual basis for proceeding with further investigation;

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<sup>6</sup> *Ibid* at para. 15(A).

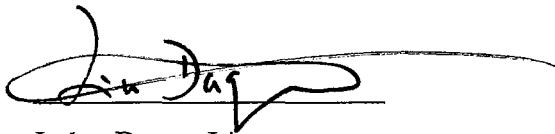
<sup>7</sup> *Ibid* at para. 15(B).

**FOR THE FOREGOING REASONS, and**

**PURSUANT** to Rules 54 and 70(C) of the Rules,

**REJECTS** the Motion,

Dated this 22<sup>nd</sup> day of September 2005,  
At The Hague  
The Netherlands



Judge Daqun Liu  
President of Trial Chamber 1

**[Seal of the Tribunal]**

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<sup>8</sup> The Prosecution's Response at para 6 and the Prosecution's Supplemental Motion at para. 4.