



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-03-67-T
Date: 8 July 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr Hans Holthuis

Decision of: 8 July 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**REDACTED VERSION OF THE "DECISION ON MOTIONS BY THE
PROSECUTION AND THE ACCUSED TO INSTIGATE CONTEMPT
PROCEEDINGS AGAINST MS DAHL (FROM THE OFFICE OF THE
PROSECUTOR) AND MR VUČIĆ (ASSOCIATE OF THE ACCUSED)"
DATED 10 JUNE 2008**

The Office of the Prosecutor

Mr Daryl Mundis

The Accused

Mr Vojislav Šešelj

The Amicus Curiae

[redacted]

Ms Dahl

Mr Vučić

I. INTRODUCTION

1. Trial Chamber III (“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”) is seized of several motions presented by the Office of the Prosecutor (“Prosecution”) and by Vojislav Šešelj (“Accused”) to conduct investigations into the allegations of contempt against, respectively, an associate of the Accused, Aleksandar Vučić (“Mr Vučić”) and the principal representative of the Prosecution in the present case, Christine Dahl (“Ms Dahl”).

II. PROCEDURAL BACKGROUND

2. On 30 January 2008, the Chamber rendered its confidential “Decision on Motions by the Prosecution and the Accused to Implement Rule 77 of the Rules of Procedure and Evidence” (“Decision of 30 January”).¹ Pursuant to Rule 77 (C) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Chamber ordered:

(i) the Registry to appoint an *amicus curiae*

a. to investigate the case presented in the Motion brought against Ms Dahl, with regard to witnesses [redacted] and [redacted] and to report to the Chamber if there are sufficient grounds for instigating contempt proceedings against Ms Dahl;

b. to investigate the case presented in the Motion brought against Mr Vučić and to report to the Chamber if there are sufficient grounds for instigating contempt proceedings against Mr Vučić, by examining the role played by [redacted] in the matter;

(ii) Ms Dahl not to participate in any phase of the preparation, at the seat of the Tribunal or elsewhere, of the testimony or the follow-up to the testimony of witnesses [redacted] and [redacted].²

3. The next day, the Chamber rendered its confidential “*Addendum* to the Decision on Motions by the Prosecution and the Accused to Implement Rule 77 of the Rules of Procedure and Evidence” (“*Addendum* to the Decision of 30 January”). The

¹ For details of the procedure before the Decision of 30 January, *see* the Decision of 30 January, paras. 3-8.

² Decision of 30 January, pp. 10-11.

Chamber clarified the mission and the mode of the *amicus curiae*'s investigation, indicating in particular that

(ii) the Registry, Prosecution and Accused must, as soon as possible, provide the *amicus curiae* with all the documents, including those of a confidential and *ex parte* nature, dealing with [redacted] and [redacted] in this case, as well as any other documents the *amicus curiae* may deem necessary;

(iii) the *amicus curiae* shall have full authority to investigate the incidents referred to in sub-paragraphs (i) a. and (i) b. above, and shall examine in particular, in accordance with paragraphs 39 and 40 of the Decision [of 30 January], the role of [redacted] in respect of the incident concerning Witness [redacted] involving Mr Vučić;

(iv) in the context of his mission, the *amicus curiae* shall respect the confidential and/or *ex parte* nature of the documents provided to him by the Registry, Prosecution and Accused;

(v) the *amicus curiae* shall present the report containing his findings to the Chamber no later than 30 days after his appointment by the Registry, which time-limit may be extended upon a reasoned request from the *amicus curiae*.³

4. On 18 February 2008, the Tribunal Registry ("Registry") appointed [redacted] as *amicus curiae*.⁴ On 19 February 2008, in its "Decision Regarding Implementation of the Decision of 30 January 2008 and of its *Addendum*" ("Decision of 19 February"), the Chamber provided supplementary clarification of the practical modes of the *amicus curiae*'s mission. The Chamber thus indicated that:

(i) in order to carry out the mission assigned to her in accordance with the Decision [of 30 January] and the *Addendum* [to the Decision of 30 January], the *amicus curiae* shall:

a. review the documents provided to her in accordance with paragraph (ii) of the *Addendum*;

b. conduct hearings, as well as confrontation hearings if determined necessary, of persons whom the *amicus curiae* considers essential to hear, and at the very least shall hear

i. Ms Christine Dahl,

ii. Mr Aleksandar Vučić,

iii. [redacted],

³ *Addendum* to the Decision of 30 January, pp. 1-2.

⁴ Decision by the Deputy Registrar, confidential, 18 February 2008.

iv. Witnesses [redacted] and [redacted];

c. inform Ms Dahl and Mr Vučić that they have the possibility of being assisted by Counsel of their choosing during these hearings and, if necessary, the confrontation hearings;

(ii) the Registry shall make available:

a. to Ms Dahl, Mr Vučić and Counsel referred to in paragraph (i) (c) above, all of the documents made available to the *amicus curiae*, provided that they concern only the incidents alleged in respect of Ms Dahl and Mr Vučić, respectively;

b. to the *amicus curiae*, all of the substantive decisions rendered by the Trial Chambers or the Appeals Chamber of the Tribunal on the subject of contempt: decisions to initiate or not to initiate proceedings for contempt as well as Trial and Appeals Chamber judgements in this area;

(iii) Ms Dahl, Mr Vučić and Counsel referred to in paragraph (i) (c) above shall respect the confidential, or *ex parte*, where appropriate, nature of the documents disclosed in accordance with paragraph (ii) (a) above;

(iv) if necessary, the *amicus curiae* may be assisted by an interpreter, who must respect the confidentiality and *ex parte* status of all the information he/she will acquire in the context of the present mission;

(v) the arrangements set out previously in the Decision [of 30 January] and *Addendum* [to the Decision of 30 January] shall continue to apply.⁵

5. On 26 February 2008, following a request from the Prosecution,⁶ the Chamber rendered a “Decision on Prosecution Request for Clarification or Reconsideration of the Chamber’s Decision of 19 February 2008”. Here it recalled that the *amicus curiae* was to respect the confidential and/or *ex parte* nature of the documents made available to her within the scope of her mission and that the Registry would make available to Mr Vučić only those documents concerning allegations by the Prosecution against him.⁷

6. On 10 March 2008, the Chamber responded to a confidential and *ex parte* motion by the *amicus curiae*, recalling that “she has full authority within the scope of

⁵ Decision of 19 February, pp. 1-2.

⁶ “Prosecution Request for Clarification or Reconsideration of 19 February 2008 Decision Regarding Implementation of Rule 77 of the Rules of Procedure and Evidence”, confidential and *ex parte*, 21 February 2008, *see also* Decision of 19 February.

⁷ “Decision on Prosecution’s Request for Clarification or Reconsideration of the Chamber’s Decision of 19 February 2008”, confidential, 26 February 2008, p. 3.

her mission” and decided that there was no cause at this stage to issue her further instructions.⁸

7. The *amicus curiae* filed her report on 17 April 2008 along with documents in appendix (“Report” and “Appendices”, respectively).⁹

8. On 24 April 2008, the Chamber rendered its confidential and *ex parte* “Order for Additional Inquiries Further to the Report of the *Amicus Curiae*” (“Order of 24 April”). Indeed, in her report the *amicus curiae* stated that witnesses [redacted] and [redacted] had refused to meet with her¹⁰ and that [redacted] present at the meeting with Witness [redacted], had not been interviewed.¹¹ To complete the Report, the Chamber thus ordered that before 8 May 2008:

(i) the authorities of the Republic of Serbia shall organize the immediate hearing by [redacted] of Witnesses [redacted] and [redacted] and of the [redacted] who accompanied Ms Dahl [redacted] shall request specific details regarding:

a. Witness [redacted]: Witness [redacted] shall provide specific details about the circumstances of his meetings with the Tribunal’s Office of the Prosecutor, mentioning in particular any possible threats, pressure or intimidation he may have been subjected to;

b. Witness [redacted]: Witness [redacted] and [redacted] shall provide specific details about the visit referred to in subparagraph (i) of the disposition above and, in particular, details about any possible threats, pressure or intimidation they may have been subjected to in this respect [...].¹²

9. Since the interviews could not be organized [redacted], [redacted] transmitted reports of the requested hearings to the Chamber [redacted], and they were filed confidentially and *ex parte* [redacted] (“Additional Inquiries”). The Chamber notes that in addition to the requested hearings, [redacted] also heard [redacted].¹³

⁸ “Decision on the *Amicus Curiae*’s Motion to be Issued Further Instructions”, confidential, 10 March 2008, p. 2.

⁹ “Report of *Amicus Curiae*’s Findings About the Contempt Allegations Against Mrs. Christine Dahl and Mr. Aleksandar Vučić”, confidential and *ex parte*, 17 April 2008 (“Report”); see also “Order to Extend Time-Limit”, confidential, 13 March 2008, p. 1, extending the time-limit to file the Report until 18 April 2008.

¹⁰ Report, para. 72.

¹¹ *Id.*, para. 89.

¹² “Order for Additional Inquiries Further to the Report of the *Amicus Curiae*”, confidential and *ex parte*, 24 April 2008, p. 2.

¹³ Additional Inquiries, statement of [redacted].

III. APPLICABLE LAW

10. Rule 77 of the Rules provides that:

(A) [t]he Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who:

[...]

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;

[...]

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; [...]

11. Article 77 (C) of the Rules describes the procedure to be undertaken when “*la Chambre a des motifs de croire qu’une personne s’est rendue coupable d’outrage au Tribunal*”.¹⁴ In this case, the Chamber may, pursuant to Rule 77 (C) of the Rules, “where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings”.¹⁵

12. Thus, in the scope of the present decision, the Chamber should determine, based on the Report and Additional Inquiries, whether there are sufficient grounds to instigate contempt proceedings against Ms Dahl and/or Mr Vučić.

IV. DISCUSSION

A. Preliminary observations

13. In the Report, the *amicus curiae* explains that in order to reach her conclusions, she examined a series of documents made available to her by the

¹⁴ “[w]hen Chamber has reason to believe that a person may be in contempt of the Tribunal” (emphasis added); *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, “Order Pursuant to Rule 77 (C) (i) in Relation to Witness 18”, 31 October 2007, para. 10.

¹⁵ Emphasis added.

Registry,¹⁶ and another set of documents provided by the Prosecution.¹⁷ Furthermore, the *amicus curiae* held interviews with Ms Dahl on 21 February and 9 March 2008,¹⁸ and with two of the officers in the Victims and Witnesses Section (“VWS”) on 28 February and 7 March 2008.¹⁹ Witnesses [redacted] and [redacted] refused to meet with the *amicus curiae*.²⁰

B. Allegations against Ms Dahl

1. Conclusions of the *amicus curiae*

(a) Concerning Witness [redacted]

14. In the Decision of 30 January, the Chamber restricted the *amicus curiae*’s investigation of the allegations against Ms Dahl with regard to Witness [redacted] as follows: (i) allegedly almost daily calls in November 2007; and (ii) the potential blackmail this witness underwent.²¹

15. The *amicus curiae* considers that the allegations against Ms Dahl with regard to the witness are too vague. Indeed, at this stage, no concrete element was presented that could demonstrate the existence of pressure, intimidation or blackmail exerted by Ms Dahl against Witness [redacted].²² The *amicus curiae* notes that in November and December 2007, the Prosecution maintains it called Witness [redacted] seven times in

¹⁶ “Professor Vojislav Šešelj’s Motion for Trial Chamber III to Issue an Order to the Prosecution to Cease Exerting Pressure on Defence Witnesses (Submission 343)”, presented on 22 November 2007 and registered confidentially on 5 December 2007; “Professor Vojislav Šešelj’s Second Motion for Trial Chamber III to Issue an Order Preventing the Prosecution from Continuing to Exert Pressure on Defence Witnesses (Submission 357)”, presented on 10 December 2007 and filed confidentially on 18 December 2007; “Prosecution Response to the Accused’s Motion for an Order to the Prosecution to ‘Cease Exercising Pressure on Defence Witnesses’ (Submission No 343 and No 357)”, confidential, 21 December 2007; “Prosecution Addendum to Response to Submissions 343 and 357”, confidential, 28 December 2007; “Motion of Professor Vojislav Šešelj for Trial Chamber III to Initiate and Conduct Proceedings Against Christine Dahl for Contempt of the International Tribunal (Submission 359)”, presented on 11 December 2007 and filed confidentially on 2 January 2008; “Prosecution’s Response to Second Motion for Contempt Proceedings Against the Prosecution”, confidential, 16 January 2008; “Prosecution’s Notice of Filing Additional Evidence In Re motion for an Order to Investigate Potential Contempt of the Tribunal”, confidential and *ex parte*, 23 January 2008.

¹⁷ The list of documents examined by the *amicus curiae* is on page 25 of the Report. Some of these Prosecution internal working documents have been redacted.

¹⁸ Report, paras. 58-63; Appendices 11, 12.

¹⁹ *Id.* Paras. 65-69, the Chamber noting the probable error in para. 67 of the Report indicating that the second interview took place on 7 March 2005.

²⁰ Report, para. 72, Appendix 15.

²¹ Decision of 30 January, paras. 31-34.

²² Report, paras. 80, 82, 84-87.

23 days.²³ It also ensues from the documents provided by both the Prosecution and the VWS that these calls were made in order to respond to Witness [redacted]'s security concerns and to organize his testimony before the Tribunal.²⁴

(b) Concerning Witness [redacted]

16. The Decision of 30 January restricted the *amicus curiae*'s investigation of the allegations regarding Witness [redacted] to Ms Dahl's behaviour during her visit to this witness's residence [redacted] and in particular the search of his apartment and computer without a search warrant.²⁵

17. With regard to the allegation that the witness was threatened that he would be sent to The Hague by force at his own expense, the *amicus curiae* notes, on the one hand, that "Ms Dahl did not confirm having said anything of the sort".²⁶ Indeed, during her interview, Ms Dahl said that she had informed Witness [redacted] of the importance of his testimony and, when the witness expressed his reluctance to testify, the possibility of requesting protective measures from the Chamber. On the other hand, she did not explain the potential consequences of refusing to comply with a subpoena.²⁷ Furthermore, the *amicus curiae* submits that informing someone of their rights and obligations cannot be considered a threat.²⁸

18. Second, the *amicus curiae* reports the absence of elements establishing that Ms Dahl forced Witness [redacted] to give false evidence.²⁹ Since this witness refused to meet with her, during the *amicus*' investigation leading to the Report, she was unable to obtain supplementary elements on the allegations regarding the search of this witness's apartment and computer.

19. She thus concludes that with regard to Witness [redacted], there are no grounds to instigate contempt proceedings against Ms Dahl.³⁰

²³ *Id.*, para. 55.

²⁴ *Ibid.*

²⁵ Decision of 30 January, paras. 26-30.

²⁶ Report, para. 82.

²⁷ *Id.*, Appendix 12, pp. 33-36.

²⁸ *Id.*, para. 82.

²⁹ *Id.*, para. 88.

³⁰ *Id.*, para. 92.

2. Additional Inquiries

(a) Concerning Witness [redacted]

20. Pursuant to the Order of 24 April, Witness [redacted] was heard by [redacted]. This hearing took place [redacted] and [redacted] was present.³¹

21. The Chamber notes that the retranscription of this hearing is virtually the same as the statement [redacted].³² Witness [redacted] reiterated that the Prosecution, in particular Ms Dahl and representatives from VWS, asked to speak to him by telephone almost daily in the month preceding the commencement of the trial against the Accused.³³ Ms Dahl also told him that he would be charged with contempt and would have to serve a seven-year prison sentence “if [he] I did not do as she said.”³⁴ [redacted]. Finally, Ms Dahl allegedly said that she would visit him when she felt like it when he was put in the central prison and “[he] would pray to God that this would be soon.”³⁵

22. Nevertheless, Witness [redacted] ended this interview by stating that his biggest problems came when “[redacted] revealed [his] name [redacted].” He was branded [redacted].³⁶

(b) Concerning Witness [redacted]

(i) Statement by [redacted] present during the visit [redacted]

23. In his statement [redacted] who accompanied Ms Dahl during her visit to the residence of Witness [redacted] stated that he insisted that Ms Dahl and the other people in her escort wait while he inspected the flat before they entered. [redacted] had the impression that Witness [redacted] were not surprised by this visit. After Ms Dahl entered the apartment, [redacted] waited in another room with [redacted], but he

³¹ Additional Inquiries, statement by Witness [redacted], p. 5.

³² “Professor Vojislav Šešelj’s Second Motion for Trial Chamber III to Issue an Order Preventing the Prosecution from Continuing to Exert Pressure on Defence Witnesses (Submission 357)”, presented on 10 December 2007 and filed confidentially on 18 December 18 2007.

³³ Additional Inquiries, statement by Witness [redacted], p. 5.

³⁴ *Id.*, p. 7.

³⁵ *Ibid.*

³⁶ *Ibid.*

states that he did not hear a single word that seemed out of the ordinary. The escort left after the different persons exchanged farewells “in quite the normal way”.³⁷

(ii) Statement of [redacted]

24. Pursuant to the Order of 24 April, [redacted] was heard by the [redacted]. This hearing took place [redacted] and [redacted] was present.³⁸

25. On this occasion, Witness [redacted] stated that [redacted]. During the hearing, the witness nonetheless [redacted].³⁹

(iii) Statement of [redacted]

26. [redacted] was also interviewed. [redacted] was present.⁴⁰

27. [redacted] confirms the statement of [redacted] that he proceeded to search the apartment before Ms Dahl entered it and that during the conversation between Ms Dahl and [redacted] and another person, who appears to be a [redacted], stayed in another room. She furthermore states that she was neither [redacted] by the fact that “Ms Dahl [redacted].”⁴¹ Furthermore, [redacted] were “disturbed”.⁴² Nevertheless, [redacted] makes no reference to the allegation that [redacted] computer was searched.

3. Conclusions of the Chamber

(a) Concerning the weight to be attached to the Additional Inquiries

28. As a preliminary remark, the Chamber holds that the reliability of certain parties in the Additional Inquiries is strongly diminished by the conditions [redacted]. Indeed, for [redacted] of witnesses [redacted] and [redacted] and [redacted],

³⁷ Additional Inquiries, statement [redacted], p. 2.

³⁸ Additional Inquiries, statement [redacted], p. 10.

³⁹ *Ibid.*; see “Professor Vojislav Šešelj’s Motion for Trial Chamber III to Issue an Order to the Prosecution to Cease Exerting Pressure on Defence Witnesses (Submission 343)”, presented on 22 November 2007 and registered confidentially on 5 December 2007; “Motion of Professor Vojislav Šešelj for Trial Chamber III to Initiate and Conduct Proceedings Against Christine Dahl for Contempt of the International Tribunal (Submission 359)”, presented on 11 December 2007 and filed confidentially on 2 January 2008.

⁴⁰ Additional Inquiries, statement [redacted], p. 18.

⁴¹ *Ibid.*

⁴² Additional Inquiries, statement [redacted], p. 19.

[redacted] was present. [redacted] is part of the Accused's team of associates.⁴³ In a case concerning allegations of contempt, a representative of the Party raising these allegations cannot be legitimately present [redacted]. Indeed, the Chamber cannot exclude the fact that the presence of [redacted] had a certain influence on these witnesses' statements. As such, the Chamber has attached weight only to the declaration of [redacted] present during Ms Dahl's visit to the residence of Witness [redacted].

(b) Concerning Witness [redacted]

29. First, with regard to the pressure that was allegedly exerted by the almost daily telephone calls from Ms Dahl during the month preceding the commencement of the trial, the Chamber considers that neither the Report nor the Additional Inquiries allows it to confirm the almost daily frequency of these calls. The Report notes seven calls in 23 days while Witness [redacted] stated before [redacted] that he received calls practically every day from the Tribunal and Ms Dahl in particular. The frequency of these calls actually coming from Ms Dahl is thus uncertain. Indeed, the witness himself said that the VWS had contacted him to ensure his protection and prepare his trip to The Hague.⁴⁴

30. Second, with regard to the allegations of bribes that Witness [redacted] received, the documents examined by the *amicus curiae* do not mention any specific pressure that Ms Dahl reportedly exerted on him. Furthermore, in her interview with the *amicus curiae*, Ms Dahl stated:

- (i) that she did not threaten Witness [redacted] that he would be detained for any specific reason or that he himself would be accused of war crimes;
- (ii) that she did not make him promises of any kind;
- (iii) that she did not persuade him to testify before the Tribunal;
- (iv) that she did not tell him that the Prosecution was going to impose protective measures on him but informed him that the VWS was responsible

⁴³ [redacted]

⁴⁴ Additional Inquiries, statement of Witness [redacted], p 6.

for the protection of witnesses and that the Chamber would order the protective measures that it deemed appropriate;

(v) that she did not offer money in exchange for his testimony but explained to him that the VWS would assist him with the logistical aspects of his testimony, including the provision of a daily allowance.⁴⁵

31. Thus, it does not transpire from the Report and the Appendices that by explaining to Witness [redacted] the mode of his possible testimony before the Tribunal, Ms Dahl acted beyond the scope of her authority. In accordance with the conclusions of the *amicus curiae*, the Chamber thus considers that pursuant to Rule 77 (D) of the Rules, there are no grounds to instigate contempt proceedings against Ms Dahl with regard to Witness [redacted].

(c) Concerning Witness [redacted]

(i) Search of Witness [redacted]'s apartment

32. The statement of [redacted] sheds light on this point that was still nebulous after the *amicus curiae*'s Report. Indeed, as indicated above, [redacted] said in his statement to [redacted] that the search of Witness [redacted]'s residence had been carried out at his instructions. In the interview with the *amicus curiae*, Ms Dahl stated that the established procedure since the beginning of her mission was for her to stay in the car before the security staff told her that she should get out of the car. This is precisely what she claims she did in the present case. She presumes that the security staff carried out its mission which was to ensure her security but states that she does not know the mode of how they carry out their mission. She thus did not know how the apartment was searched before she entered it.⁴⁶

33. The Chamber consequently considers that there are no grounds implicating Ms Dahl in the search of the apartment to instigate contempt proceedings in accordance with Rule 77 (D) of the Rules.

⁴⁵ Report, Appendix 12, pp. 9-15.

⁴⁶ *Id.*, Appendix 11, pp. 27-30.

(ii) Search of the computer at the residence of Witness [redacted]

34. The Report provides nothing about this alleged search. If the statement of [redacted] notes his presence and that of [redacted] in a different room from that where Ms Dahl, Witness [redacted] and [redacted] were located, nothing is said of any search of a computer. [redacted] makes no mention of this.

35. Thus, the Chamber considers that there are no grounds concerning the search of a computer to instigate contempt proceedings in accordance with Rule 77 (D) of the Rules.

(iii) Any other conduct by Ms Dahl during her [redacted] visit to the residence of Witness [redacted]

36. The question arises as to whether there are any other grounds concerning Ms Dahl's conduct during this visit that would be sufficient to instigate contempt proceedings against her in accordance with Rule 77 (A) (iv) of the Rules.

37. In the [redacted] statement to [redacted], he says that he did not hear any argument or confrontation. Furthermore, the Prosecution's representatives and Witness [redacted] apparently parted on good terms.⁴⁷ Nothing in the Report or the documents appended to it allows the Chamber to find that there are any grounds to instigate contempt proceedings against Ms Dahl for her conduct during the [redacted] visit to the residence of Witness [redacted].

(iv) Conclusions of the Chamber regarding Witness [redacted]

38. The Chamber considers that in view of the elements compiled and in accordance with Rule 77 (D) of the Rules, there are no grounds to instigate contempt proceedings against Ms Dahl with regard to Witness [redacted].

⁴⁷ Additional Inquiries, [redacted], p. 2.

C. Allegations against Mr Vučić

1. The conclusions of the *amicus curiae*

(a) With regard to Mr Vučić's role

39. The *amicus curiae* states that it has been established that the Chamber granted Witness [redacted] the protection of his identity [redacted], of which the Accused was informed on 26 September and 26 October 2007. From then on, the Accused's associates with privileged status, including Mr Vučić, were subject to the same obligation as the Accused not to disclose the identity of Witness [redacted]. Nevertheless, [redacted] Mr Vučić revealed this witness's identity and place of residence. This information was then published in the media [redacted]. The *amicus curiae* thus concludes that the material ground of contempt in accordance with Rule 77 (A) (ii) of the Rules has been proven.⁴⁸

40. On the other hand, the *amicus curiae* states that she did not establish the mental element of contempt. Indeed, it would have to be proven that Mr Vučić had effective knowledge of the protected status of Witness [redacted]. The *amicus curiae* thus concludes that in this case, sufficient grounds do not exist to instigate contempt proceedings against Mr Vučić.⁴⁹

(b) With regard to [redacted]'s participation

41. In its Decision of 30 January, the Chamber asked the *amicus curiae* "to report to the Chamber if there are sufficient grounds for instigating contempt proceedings against Mr Vučić, by examining the role played by [redacted] in the matter".⁵⁰ Indeed, in the motions that were partially behind the Decision of 30 January, the Accused stated the role that [redacted] allegedly had in disclosing the identity of Witness [redacted]. [redacted] allegedly revealed the identity of Witness [redacted].⁵¹

42. [redacted].⁵²

⁴⁸ Report, paras. 95, 109.

⁴⁹ *Id.*, paras. 95, 109-110.

⁵⁰ Decision of 30 January, p. 11.

⁵¹ Motions on exerting pressure (Submission 357), p. 7.

⁵² Report, paras. 103-104.

43. Pursuant to the Decision of 30 January, the *amicus curiae* met with [redacted].⁵³ During this meeting, [redacted] presented [redacted]⁵⁴ in which the name and place of residence of Witness [redacted] are identified.⁵⁵ Nothing led the *amicus curiae* to conclude that [redacted] had knowledge of the protected status of Witness [redacted]. Thus, according to the *amicus curiae*, [redacted] could not have publicly revealed the identity of a protected witness because [redacted] had no knowledge of the said witness's protected status.

2. Conclusions of the Chamber

44. Reading the Report and retranscription of the meeting between [redacted] and the *amicus curiae*, the Chamber considers that it has not been established that [redacted] knew about the privileged status of Witness [redacted]. On the contrary, [redacted] only repeated information contained [redacted].

45. On the other hand, [redacted], Mr Vučić stated:

[redacted]⁵⁶

46. The Chamber is apprised of the following elements:

(i) The "Decision on Adopting Protective Measures" dated 30 August 2007 concerning protective measures for Witness [redacted] was notified to the Accused in a language he understands on 26 September 2007;⁵⁷

(ii) The "Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007" dated 16 October 2007 was communicated to the Accused in a language he understands on 26 October 2007;⁵⁸

⁵³ *Id.*, Appendix 18.

⁵⁴ *Id.*, para. 105 [redacted].

⁵⁵ Report, paras. 105-106.

⁵⁶ *Id.*, Appendix 18, p. 10 (emphasis added).

⁵⁷ See procès verbal of reception signed by the Accused on 26 September 2007.

⁵⁸ Procès verbal of reception signed by the Accused on 26 October 2007.

(iii) Pursuant to the obligation to disclose 30 days prior to commencement of the trial, the Prosecution disclosed a series of documents concerning [redacted] to the Accused on 9 November 2007;⁵⁹

(iv) On 3 December 2007, the Accused received a memorandum from the Prosecution in a language he understands informing him of the schedule of witnesses for [redacted], indicating for [redacted].⁶⁰

47. Thus, as of 9 November 2007 at the latest, the Accused knew the identity of Witness [redacted] and as of 3 December 2007, he knew that his appearance before the Tribunal was planned [redacted].

48. As indicated by the *amicus curiae*, however, the Chamber does not have sufficient elements to determine whether Mr Vučić had effective knowledge of the protected witness status of [redacted] and thus deliberately revealed in public the fact that Witness [redacted] was to testify before the Tribunal as a witness for the Prosecution. Having noted nevertheless that Mr Vučić is an associate of the Accused for his defence, it might seem surprising that he had not been informed by the Accused of Witness [redacted] appearance for [redacted]. In accordance with the conclusions of the *amicus curiae*, the Chamber considers that pursuant to Rule 77 (D) of the Rules, sufficient grounds do not exist to prosecute Mr Vučić for his statements regarding Witness [redacted].

49. Nevertheless, the Chamber asks the Accused in future to inform his associates with a privileged status in the present case of all the documents and/or information that must remain confidential. The Chamber may thus consider as of the present time that the associates with a privileged status have the same effective knowledge of the confidential status of these documents and/or information as the Accused.

50. The Chamber also reminds Mr Vučić that his status as a privileged associate and his access to confidential information in the present case rests solely on the confidentiality agreement that he signed with the Tribunal's Registrar. Any failure by Mr Vučić to respect this confidentiality agreement will result in the removal of his

⁵⁹ See the document entitled "Receipt 104, Documents Subject to Delayed Disclosure 30 Days Before Trial", 9 November 2007, p. 5.

⁶⁰ IT-03-67-T "Witness Schedule [redacted]", confidential, 3 December 2007.

access to confidential information in the present case. The Chamber remains seized of this matter for all the associates who signed the confidentiality agreement with the Registry.

V. DISPOSITION

51. For the foregoing reasons, pursuant to Rule 77 (D) of the Rules, **DECIDES** that

(i) there are no grounds to instigate contempt proceedings against Ms Dahl with regard to the allegations of the Accused concerning witnesses [redacted] and [redacted] as set out in the present decision;

(ii) sufficient grounds do not exist to instigate contempt proceedings against Mr Vučić with regard to the allegations of the Prosecution concerning Witness [redacted] as set out in the present decision;

(iii) it remains seized, in future, of any possible failure by Mr Vučić to abide by his confidentiality agreement with the Registry; and

(iv) it will lift the confidentiality of certain passages of the present decision and thus render a redacted public version.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this eighth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]