

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-23-129-I

Date: 23 January 2025

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 23 January 2025

PROSECUTOR

v.

**VOJISLAV ŠEŠELJ
MILJAN DAMJANOVIĆ
MIROLJUB IGNJATOVIĆ
LJILJANA MIHAJLOVIĆ
OGNJEN MIHAJLOVIĆ**

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF “DECISION ON
PROSECUTION REQUEST CONCERNING PROTECTED
WITNESSES AND ON ACCESS TO CASE RECORDS”
DATED 2 SEPTEMBER 2024**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen

I, **LIU DAQUN**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

RECALLING that, on 11 August 2023, I confirmed an indictment against Vojislav Šešelj, Miljan Damjanović, Miroljub Ignjatović, Ljiljana Mihajlović, and Ognjen Mihajlović (collectively, “Accused”) for contempt of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the Mechanism, pursuant to Article 1(4)(a) of the Statute of the Mechanism (“Statute”) and Rule 90 of the Rules of Procedure and Evidence of the Mechanism (“Rules”);²

RECALLING that, on 29 February 2024, I ordered, *inter alia*: (i) that the case against the Accused (Case No. MICT-23-129-I) be referred to the authorities of the Republic of Serbia (“Serbia”) for trial in accordance with Articles 1(4) and 6 of the Statute and Rule 14 of the Rules (“Referred Case”); and (ii) the Office of the Prosecutor of the Mechanism (“Prosecution”) to transfer to the Public Prosecutor’s Office for War Crimes (“Prosecutor’s Office of Serbia”), as soon as possible, all information relating to the case that it considered appropriate including, in particular, the Indictment and the material supporting the Indictment;³

RECALLING that, in the Decision of 29 February 2024, I also invited the Prosecutor’s Office of Serbia to seek, by application pursuant to Rule 86 of the Rules, any variation of protective measures as may be necessary;⁴

BEING SEISED OF a request, filed confidentially and *ex parte* by the Prosecution on 4 March 2024, seeking an order to the Registry of the Mechanism (“Registry”) to disclose to the Prosecutor’s Office of Serbia the identity, specific pseudonym, and protective measures of: (i) all protected witnesses, irrespective of whether they gave evidence, in the following cases [REDACTED]; and (ii) [REDACTED];⁵

¹ Order Assigning a Single Judge to Consider a Request, 13 March 2024 (confidential and *ex parte*), p. 1. *See also* Order Assigning a Single Judge to Consider a Matter, 9 October 2023, p. 1.

² Decision on Confirmation of Indictment, 11 August 2023 (confidential and *ex parte*) (“Confirmation Decision”), pp. 1, 2. The indictment and the public redacted version thereof were filed on 15 August 2023 and were both placed under seal pursuant to an instruction contained in the Confirmation Decision. *See* Notice of Filing of Indictment, 15 August 2023 (confidential and *ex parte*), Appendix (“Indictment”); Notice of Filing of Public Redacted Version of Indictment, 15 August 2023 (confidential and *ex parte*), Appendix; Confirmation Decision, p. 2. The Confirmation Decision and the public redacted version of the Indictment were subsequently made public pursuant to a decision issued on 5 October 2023. *See* Decision on Prosecution Request to Unseal Public Redacted Version of Indictment and Other Matters, 5 October 2023, p. 2.

³ *See* Decision on Referral of the Case to the Republic of Serbia, 29 February 2024 (“Decision of 29 February 2024”) paras. 6, 21, pp. 9, 10.

⁴ Decision of 29 February 2024, p. 10.

⁵ Prosecution Request for the Registry to Inform Authorities of the Republic of Serbia of Protected Witnesses, 4 March 2024 (confidential and *ex parte*) (“Request”), paras. 1, 3. *See also* Request, n. 2, *referring to* Decision of 29 February 2024, para. 6.

NOTING the Prosecution’s submission that part of the information that it considers should be transferred to the Prosecutor’s Office of Serbia consists of “a large volume of ICTY transcripts and video-recordings (including in closed or private session), and confidential filings” and that, in order for the Prosecutor’s Office of Serbia to comply with its obligations under Rule 86(F) of the Rules, it should be provided with information on the identity and protective measures granted to the witnesses who are the subject of the Request;⁶

RECALLING that, on 20 March 2024, I ordered the Prosecution and the Registry to file submissions addressing issues arising from the Request;⁷

NOTING the submissions, filed confidentially and *ex parte* by the Prosecution on 26 March 2024, providing, *inter alia*, a list of the court records that it has requested the Registry to certify for the purpose of their transfer to the Prosecutor’s Office of Serbia (“Court Records”);⁸

NOTING the submissions, filed confidentially and *ex parte* by the Registry on 15 April 2024, indicating, *inter alia*: (i) the importance of following procedures under Rule 86 of the Rules; (ii) that contact with [REDACTED] by the Witness Support and Protection Unit of the Mechanism (“WISP”); and (iii) [REDACTED];⁹

NOTING the submissions, filed confidentially and *ex parte* by the Prosecution on 23 April 2024, *inter alia*, [REDACTED], confirming it will do its utmost to ensure that the Prosecutor’s Office of Serbia understands which confidential materials need to be protected and protect the information unlawfully made public, and [REDACTED];¹⁰

RECALLING that, on 5 June 2024, in issuing an interim order, I, *inter alia*: (i) found that the Court Records are not part of the Referred Case and thus procedures for access to confidential materials from another case before the ICTY and the Mechanism apply; (ii) noted that, pursuant to Rule 86 of the Rules, informing the Prosecutor’s Office of Serbia of the identity, specific pseudonym, and protective measures of the witnesses subject to the Request (“Witnesses”) would

⁶ Request, para. 3.

⁷ Order for Submissions, 20 March 2024 (confidential and *ex parte*) (“Order of 20 March 2024”), p. 3.

⁸ Prosecution Submission Pursuant to Order for Submissions of 20 March 2024, 26 March 2024 (confidential and *ex parte*) (“Prosecution Submission of 26 March 2024”), n. 7, Annex. *See also* Prosecution Submission of 26 March 2024, para. 2.

⁹ Registrar’s Submission Pursuant to the Order for Submissions of 20 March 2024, 15 April 2024 (confidential and *ex parte*), paras. 6, 8, 10, 11.

¹⁰ Prosecution Request for Leave to File Submission on the Registrar’s Submission Pursuant to the Order for Submissions of 20 March 2024 and Submission in Annex, 23 April 2024 (confidential and *ex parte*) (“Prosecution Submission of 23 April 2024”), Annex, paras. 4-6, 8, 9. *See* Interim Order for Submissions, 5 June 2024 (confidential and *ex parte*) (“Interim Order”), para. 8 (granting the Prosecution leave to file the Prosecution Submission of 23 April 2024).

amount to a variation of protective measures granted by the ICTY; (iii) observed that, in circumstances where an external party is unable to file applications under Rule 86 of the Rules, applications by the Prosecution have been accepted; and (iv) noting the measure of discretion in the application of Rule 86 of the Rules, considered it appropriate, in the unique circumstances of this case, to seek comments from the Witnesses rather than their consent;¹¹

RECALLING FURTHER that I ordered: (i) the WISP to inform me of any protective measures in force with respect to the Witnesses that may have been ordered, continued, or varied in proceedings before the ICTY or the Mechanism, and to inform the Witnesses of the Request, give them an opportunity to comment thereupon, and communicate to me any such comments; and (ii) [REDACTED];¹²

NOTING the submission, filed confidentially and *ex parte* by the Registry on 19 June 2024, providing that [REDACTED];¹³

NOTING the Registrar's submission, filed confidentially and *ex parte* on 22 July 2024, wherein the WISP submitted a report on the protective measures in force with respect to the [REDACTED] Witnesses subject to the Request and on [REDACTED];¹⁴

RECALLING that the Mechanism has the obligation to protect witnesses under its jurisdiction, who are subject to protective measures ordered by the ICTY or the Mechanism, and to ensure the confidentiality of sensitive information;¹⁵

CONSIDERING that [REDACTED];¹⁶

EMPHASISING that [REDACTED] the Prosecutor's Office of Serbia should do its utmost and take all necessary measures, both legal and practical, to ensure the safety and security of all the Witnesses, and shall ensure the same level of protection as that granted to the Witnesses by the ICTY and the Mechanism;

CONSIDERING [REDACTED];¹⁷

¹¹ Interim Order, paras. 16-18 and references cited therein.

¹² Interim Order, p. 9.

¹³ Registrar's Submission Regarding Audio-Visual Recordings Pursuant to the Interim Order for Submissions of 5 June 2024, 19 June 2024 (confidential and *ex parte*) ("Registrar Submission of 19 June 2024"), paras. 11, 12.

¹⁴ Registrar's Submission Pursuant to the Interim Order for Submissions of 5 June 2024, 22 July 2024 (confidential with confidential and *ex parte* annex) ("Registrar Submission of 22 July 2024"), paras. 2, 3, Annex. [REDACTED].

¹⁵ Order of 20 March 2024, p. 2 and references cited therein.

¹⁶ *See, e.g.*, Registrar Submission of 22 July 2024, Annex, paras. 12, 14, 24, 26, 38, 40, 42, 44, 58, 64, 70. *See also* Registrar Submission of 22 July 2024, Annex, paras. 33, 35, 62.

CONSIDERING that, in relation to the Witnesses who are deceased,¹⁸ all protective measures ordered by the ICTY or the Mechanism with respect to these witnesses continue to have effect, *mutatis mutandis*, in any proceedings before another jurisdiction;¹⁹

REITERATING, in the circumstances of this case, the need to give full effect to the Decision of 29 February 2024 and to balance the Mechanism’s mandate to assist national investigations and prosecutions with its mandate to protect victims and witnesses;²⁰

FINDING that it is appropriate to vary the protective measures of the Witnesses for the purposes of the Referred Case;

FINDING FURTHER [REDACTED];

RECALLING, in relation to the Prosecution’s submission regarding the transfer of the Court Records, that the Prosecutor’s Office of Serbia may be granted access to confidential material from cases other than the Referred Case only pursuant to a judicial order;²¹

RECALLING that, in cases where a party to proceedings in another jurisdiction seeks access to confidential material, the material sought shall be specifically identified, a legitimate forensic purpose for such access must be demonstrated, and the likelihood that the material will materially assist the relevant case must be established;²²

CONSIDERING that the Prosecution has sufficiently identified the material that the Prosecutor’s Office of Serbia should be granted access to, and has demonstrated a legitimate forensic purpose for such access and that the material is likely to materially assist the Prosecutor’s Office of Serbia in prosecuting the Referred Case;²³

CONSIDERING FURTHER [REDACTED];²⁴

¹⁷ See Registrar Submission of 22 July 2024, Annex, paras. 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110. See also Registrar Submission of 22 July 2024, Annex, para. 35, 48, 74.

¹⁸ See Registrar Submission of 22 July 2024, Annex, paras. 111-126.

¹⁹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-R86H.9, Public Redacted Version of the “Decision on an Application Pursuant to Rule 86(H)”, 21 December 2018, pp. 1, 2 (reflecting that a deceased witness’s protective measures continue to apply).

²⁰ Interim Order, para. 18.

²¹ See Order of 20 March 2024, p. 2 and references cited therein; Interim Order, para. 16.

²² See Interim Order, para. 14 and references cited therein.

²³ See Interim Order, paras. 11, 16; Prosecution Submission of 26 March 2024, Annex.

²⁴ Registrar Submission of 19 June 2024, paras. 11, 12.

FINDING that, in the interest of the expeditious transfer of the materials relevant to the Referred Case, it is appropriate to authorise the provision [REDACTED] to the Prosecutor's Office of Serbia, with appropriate instructions;

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 6 and 20 of the Statute and Rule 86 of the Rules,

HEREBY GRANT the Request;

INSTRUCT the Registry to serve, as soon as practicable, a copy of the present Decision on the Prosecutor's Office of Serbia and to report to me once service has been executed;

VARY the protective measures of the Witnesses for the purposes of the proceedings in the Referred Case;

INSTRUCT the Registry to inform the Prosecutor's Office of Serbia of the identity of and protective measures in force for the Witnesses, including the specific pseudonym assigned to each witness;

ORDER that the Prosecutor's Office of Serbia shall take all necessary measures, both legal and practical, in order to ensure the safety and security of the Witnesses and shall ensure the same level of protection as that granted to the Witnesses by the ICTY and the Mechanism;

ORDER that, should the Prosecutor's Office of Serbia proceed to contact any of the Witnesses for the purposes of the Referred Case, such contact must be carried out with utmost concern for the Witnesses' safety and well-being;

ORDER that [REDACTED];

ORDER that, should the Prosecutor's Office of Serbia seek to rescind, vary, or augment the protective measures that apply to the Witnesses, it shall request such relief in an application to the President of the Mechanism pursuant to Rule 86(H) of the Rules;

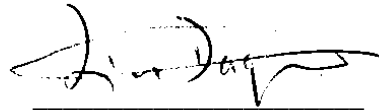
ALLOW the Prosecutor's Office of Serbia access to the Court Records, with the exception of any material provided under Rule 76 of the Rules, where no consent by the information provider is obtained, material related to health and personal information of the Accused and their family members, and material having no forensic purpose;

ORDER that the Prosecutor's Office of Serbia may not disclose the information that is released pursuant to this Decision to anyone, except to the judicial authorities, parties or persons involved in the preparation and conduct of the Referred Case, and provided that the Prosecutor's Office of Serbia obtains assurances under the threat of criminal sanctions that the parties or persons to whom the information is released will maintain its strict confidentiality; and

ORDER that the information released pursuant to this Decision shall be treated as confidential by the Prosecutor's Office of Serbia and all to whom such information may be disclosed and shall not be used for any other purpose or proceeding than the Referred Case.

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

Done this 23rd day of January 2025,
At The Hague,
The Netherlands



Judge Liu Daqun
Single Judge

[Seal of the Mechanism]



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ Greffe du MIFRTP		<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye
From/ De :	<input type="checkbox"/> President/ Président	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense
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Case Name/ Affaire :	Prosecutor v. Vojislav Šešelj et al.		Case Number/ Affaire n° :	MICT-23-129-I
Date Created/ Daté du :	23 January 2025		Date transmitted/ Transmis le :	23 January 2025
			Number of Pages/ Nombre de pages :	7
Original Language/ Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S
	<input type="checkbox"/> Other/Autre (specify/ préciser):			
Title of Document/ Titre du document :	Public Redacted Version of "Decision on Prosecution Request Concerning Protected Witnesses and on Access to Case Records" dated 2 September 2024			
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue		
	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu		
		<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu		
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu		
		<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/ préciser) :		
Document type/ Type de document :	<input type="checkbox"/> Motion/ Requête <input type="checkbox"/> Judgement/ Jugement/Arrêt <input type="checkbox"/> Book of Authorities/ Recueil de sources <input type="checkbox"/> Warrant/ Mandat <input checked="" type="checkbox"/> Decision/ Décision <input type="checkbox"/> Submission from parties/ Écritures déposées par des parties <input type="checkbox"/> Affidavit/ Déclaration sous serment <input type="checkbox"/> Notice of Appeal/ Acte d'appel <input type="checkbox"/> Order/ Ordonnance <input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers <input type="checkbox"/> Indictment/ Acte d'accusation			

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word du document est jointe)
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