



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: 18 June 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 18 June 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR VIDEO-
CONFERENCE LINK FOR THE TESTIMONY OF
WITNESS JF-034**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 9 June 2010, the Prosecution filed a motion requesting the use of video-conference link to hear the evidence of Witness JF-034 (“Motion”).¹ On 11 June 2010, pursuant to Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”), the Chamber shortened the deadline for filing responses to the Motion to 15 June 2010, and informed the parties accordingly in an informal communication. On 15 June 2010, the Stanišić Defence filed a response, in which it objected to the Motion.² The Simatović Defence has not responded to the Motion. On 17 June 2010, the Chamber informed the parties in an informal communication that it had decided to grant the Motion.

II. SUBMISSIONS

2. The Prosecution submits that Witness JF-034 suffers from serious heart conditions and is unable and unwilling with good reason to travel to the Tribunal to testify.³ The Prosecution further submits that the witness was recently injured and hospitalized following an accident, and that his doctors have strongly advised against long distance travel.⁴ The Prosecution finally submits that Witness JF-034 is an important linkage witness, who is able to offer unique evidence sufficiently important to the trial as to make it unfair for the Prosecution to be required to proceed without presenting it.⁵

3. The Stanišić Defence submits that, aside from the declaration of a Prosecution investigator (“Declaration”), the Prosecution has provided no evidence to support its claim that Witness JF-034 is unable to travel, and in particular has provided no medical evidence.⁶ The Stanišić Defence further submits that the Prosecution has not provided the dates of the witness’s accident, or of the period for which the doctors have advised against long distance travel, and that in light of Witness JF-034’s expected recovery, the re-scheduling of the witness should be explored first.⁷ Finally, the Stanišić Defence submits that, given Witness JF-034’s expected testimony, to permit such a crucial witness to testify via video-conference link would place an unreliable or untruthful witness at an

¹ Prosecution Motion for Video-Conference Link for the Testimony of JF-034 with Confidential Annex, 9 June 2010, paras 1, 9.

² Defence Response to Prosecution Motion for Video-Conference Link for the Testimony of JF-034, 15 June 2010 (“Response”).

³ Motion, paras 1, 4; Confidential Annex A, paras 2, 4-5.

⁴ Motion, para. 4; Confidential Annex A, paras 3-5.

⁵ Motion, paras 5-7.

⁶ Response, paras 5-6.

⁷ Response, para. 6.

advantage, because of the “distancing” that naturally occurs through this mode of communication, and would diminish the effectiveness of cross-examination.⁸

III. APPLICABLE LAW

4. The Chamber recalls the law governing the granting of video-conference links as set out previously by this Chamber.⁹

IV. DISCUSSION

5. The Chamber notes that the Prosecution has not provided any medical documents in support of its submission that the witness’s health problems prevent him from travelling to the Tribunal. Notwithstanding the absence of medical documents, the Chamber sees no reason in this particular case to doubt the information with regard to the witness’s condition contained in the Declaration. In view of Witness JF-034’s serious medical conditions, his recent injury and subsequent hospitalisation, as well as his doctors’ advice against travelling, the Chamber finds that the witness is unable or unwilling for good reasons to travel to the Tribunal. However, the Chamber emphasises that in future, it would expect the Prosecution either to provide medical documents in support of a witness’s alleged health problems, or to indicate the steps it has taken to obtain such documents. Having reviewed the issues in relation to which Witness JF-034 will testify, the Chamber further considers that the proposed evidence is of sufficient importance as to make it unfair for the Prosecution to proceed without it. Finally, the Chamber emphasises that a video-conference link should be regarded as an extension of the courtroom to the location of the witness and that its use respects the right of the accused to cross-examine and directly confront witnesses while observing their reactions, and allows the Chamber to assess the credibility and reliability of the testimony in the same manner as for a witness in the courtroom.¹⁰ For these reasons, the Chamber concludes that given the present circumstances it is in the interests of justice to hear the testimony of Witness JF-034 via video-conference link.

⁸ Response, paras 6, 9.

⁹ Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 24 February 2010, paras 7-9.

¹⁰ See *Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač*, Case No. IT-06-90-T, Reasons for Decision Granting Prosecution’s Motion to Cross-Examine Four Proposed Rule 92 *Bis* Witnesses and Reasons for Decision to Hear the Evidence of those Witnesses via Video-Conference Link, 3 November 2009, para. 8.

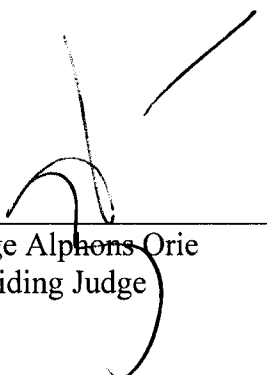
V. DISPOSITION

For the foregoing reasons, pursuant to Rule 81 *bis* of the Rules, the Chamber

GRANTS the Motion; and

REQUESTS the Registrar to make the necessary arrangements for a video-conference link for the testimony of Witness JF-034 on or about 28 June 2010.

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



Judge Alphons Orie
Presiding Judge

Dated this eighteenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]