



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: 25 January 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 25 January 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR VIDEO-
CONFERENCE LINK AND PROTECTIVE MEASURES FOR
THE TESTIMONY OF WITNESS JF-061**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 21 May 2007, the Prosecution filed a confidential and partly *ex parte* motion wherein it sought the admission of the written evidence of 60 witnesses, including Witness JF-061, pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”).¹ On 7 October 2010, the Chamber denied the motion in relation to Witness JF-061 (“Witness”), and ruled that the Witness’s evidence would only be admissible subject to his appearance for cross-examination.²

2. On 8 December 2010, the Prosecution filed its “Motion for Video-Conference Link and Protective Measures for the Testimony of Witness JF-061” (“Motion”), requesting that the Witness be permitted to testify via video-conference link and that he be granted the protective measures of pseudonym and closed session.³ Neither the Stanišić nor the Simatović Defence filed a response. On 13 January 2011, the Chamber informed the Parties through an informal communication of its decision to grant the Motion.

II. SUBMISSIONS OF THE PARTIES

A. Video-Conference Link

3. The Prosecution submitted that due to the Witness’s personal health problems, and those of his son, for whom he is the sole caregiver, he is unable to travel to the Tribunal to testify.⁴ In support, the Prosecution attached a note from the Witness’s doctor, which states that the Witness is “chronically ill” and “not capable of travelling”.⁵ It further provided a doctor’s note for the Witness’s son, outlining that the Witness is solely responsible for administering medication to his son.⁶

4. The Prosecution submitted that the Witness’s evidence “is integral to the Prosecution’s case on Zvornik”,⁷ and that “it would be unfair if the Prosecution were now required to proceed without [his] evidence”.⁸ The Prosecution finally submitted that permitting the Witness to testify via video-conference link would not prejudice the rights of the Accused.⁹

¹ Prosecution Motion for Admission of Written Evidence Pursuant to Rule 92 *bis* with Confidential Annexes A through K and *Ex Parte* and Confidential Annex L, 21 May 2007 (Confidential and partly Ex Parte).

² Decision on Prosecution’s Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*, 7 October 2010 (“92 *bis* Decision”), paras 51, 65.

³ Motion, paras 2-3.

⁴ Motion, para. 3.

⁵ Motion, para. 16.

⁶ Motion, para. 17.

⁷ Motion, para. 18.

⁸ Motion, para. 19.

⁹ *Ibid.*

B. Protective Measures

5. The Prosecution submitted that although the Witness previously testified before this Tribunal without protective measures, changes in the Witness's circumstances warrant protective measures and that without such measures, the Witness and his family face an objectively grounded security risk.¹⁰ It was submitted that the Witness now lives near, and regularly deals with, people who were involved in the events about which he will testify.¹¹ According to the Prosecution, should the Witness testify publicly, he risks "retaliation" that would put the Witness and his family in danger.¹² The Prosecution submitted that closed session and pseudonym are necessary protective measures to protect the identity and personal safety of the Witness.¹³

III. APPLICABLE LAW

6. The Chamber recalls the law governing the granting of video-conference links as well as protective measures as set out previously by this Chamber, and refers to it.¹⁴

IV. DISCUSSION

A. Video-Conference Link

7. The Chamber considered the medical reports from both the Witness's doctor and his son's doctor, outlining the medical reasons for the Witness's inability to travel.¹⁵ The Chamber was satisfied that the poor health of the Witness, as well as his responsibility for the medical welfare of his son, sufficiently show that he is unable to travel to The Hague to testify. The Chamber considered that the Witness's proposed testimony is of sufficient importance as to make it unfair for the Prosecution to proceed without it. Furthermore, the Chamber found that the Accused would not be materially prejudiced in the exercise of their rights to cross-examine the Witness and emphasises that a video-conference link should be regarded as an extension of the courtroom to the location of the Witness.¹⁶ For these reasons, the Chamber concluded that it is in the interests of justice to hear the testimony of the Witness via video-conference link.

¹⁰ Motion, paras 9, 12.

¹¹ Motion, para. 13.

¹² Motion, paras 11, 14.

¹³ Motion, para. 15.

¹⁴ Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 24 February 2010, paras 7-9; Decision Regarding Requests for Protective Measures and Prosecution's Notices of Compliance with the Trial Chamber's 7 October 2010 Decision, 6 December 2010, para. 6; T. 3690-3693.

¹⁵ Motion, Annex B.

¹⁶ See Decision on Prosecution Motion for Video-Conference Link for the Testimony of Witness JF-034, 18 June 2010, para. 5.

B. Protective Measures

8. The Chamber noted that, according to the Prosecution, the perpetrators of the very crimes about which the Witness will testify live in the same area as the Witness. The Chamber considered that his testimony may antagonise persons living in the vicinity of his place of residence and put the Witness and his family in danger of retaliation. The Chamber refers to its previous finding that an unstable security situation exists in the Republika Srpska, which may place the Witness and his family in an unfavourable position.¹⁷ Furthermore, there is a significant risk that the Witness would be identifiable were he to testify without the requested protective measures. Considering all these circumstances, and balancing the risks that the Witness and his family may face after testifying before the Tribunal against the Accused's right to a public trial, the Chamber grants the request for protective measures of closed session and pseudonym.

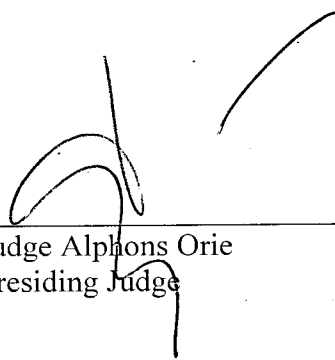
V. DISPOSITION

9. For the foregoing reasons, pursuant to Articles 20 and 22 of the Statute of this Tribunal and Rules 75 and 81 *bis* of the Rules, the Chamber

GRANTS the Prosecution's request for video-conference link; and

GRANTS the protective measures of closed session testimony and pseudonym for the testimony of Witness JF-061.

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



Judge Alphons Orié
Presiding Judge

Dated this 25 January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁷ See Decision Regarding Requests for Protective Measures and Prosecution's notices of compliance with the Trial Chamber's 7 October 2010 Decision, 7 December 2010, para. 15.