



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: 21 July 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 21 July 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROTECTIVE MEASURES FOR WITNESS
DST-051 FOR PERSONAL REASONS**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 20 June 2011, the Stanišić Defence (“Defence”) confidentially filed the Stanišić Motion for Protective Measures for Witnesses DST-051, DST-032 and DST-035 (“Motion”), wherein it requested, *inter alia*, closed session testimony and the use of a pseudonym for Witness DST-051.¹ The Defence submitted that both the Republic of Serbia (“Serbia”) and the witness took the position that protective measures were warranted because should the witness testify publicly, it would endanger Serbia’s national security interests.² The Defence also submitted that the witness was concerned for his and his family’s well-being, should his testimony become public.³

2. On 21 June 2011, the Simatović Defence submitted that it took no position on this issue.⁴ The Prosecution submitted that it did not have enough information at the time to take a position but suggested that the Chamber consider granting the lesser protective measure of pseudonym and face distortion.⁵ The witness was then examined on the request for protective measures and further clarified the reasons for it.⁶ The witness stated that he does not fear physical harm but rather repercussions that could negatively affect him or his family.⁷ Previously, the witness’s family members lost employment when employers learned of their relationship with the witness.⁸ The witness is fearful that, should his identity be made known, his family will face further repercussions.⁹ However, the witness acknowledged that his identity and occupation were made public by the media in 1991.¹⁰ Based on the submissions, the Chamber provisionally granted the protective measures of closed session, pseudonym and face and voice distortion, with a decision based on the merits of the request to follow.¹¹

II. APPLICABLE LAW

3. Under Rule 75 (A) of the Rules of Procedure and Evidence (“Rules”):

A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

¹ Motion, para. 16.

² Motion, paras 8-9. This decision will only address the protective measures request based on the safety and welfare of the witness and his family.

³ Motion, paras 10-13.

⁴ T. 11622.

⁵ T. 11622-11624.

⁶ T. 11626-11633.

⁷ T. 11627.

⁸ T. 11627, 11632.

⁹ T. 11627-11628, 11632.

¹⁰ T. 11632.

¹¹ T. 11634-11635.

4. The Chamber has set out its test for granting protective measures to witnesses for personal reasons in previous decisions:¹²

[T]he party seeking protective measures for a witness must demonstrate an objectively-grounded risk to the security or welfare of the witness, or the witness's family, should it become known that the witness has given evidence before the Tribunal. This standard may be satisfied by showing that a threat was made against the witness or the witness's family. It may also be [met] by demonstrating a combination of the following three factors:

1. The witness's testimony may antagonise persons who reside in a specific territory.
2. The witness, or his or her family, live or work in that territory, have property in that territory, or have concrete plans to return to live in that territory.
3. There exists an unstable security situation in that territory which is particularly unfavorable to witnesses who appear before the Tribunal.

5. The Chamber has further provided that:¹³

Even though granting protective measures is and should be the exception to the rule of a public trial, the threshold for when protective measures should be granted cannot be set too high. For example, to exclude persons who have not experienced actual threats or harassment would defy the purpose of the measures; namely, the protection from risks that might occur as a result of the testimony. The Chamber must, therefore, make a risk assessment, and inherent in such an assessment is applying a certain level of caution and erring on the safe side.

III. DISCUSSION

6. The Chamber notes that neither Witness DST-051 nor his family have been subjected to threats nor has the witness expressed fear of physical harm to himself or his family. The Chamber further notes that it is already public knowledge for whom the witness worked, as this was reported by the media in 1991. The Chamber considers that the loss of employment faced by the witness's family members was a result of the witness's employment previously being made common knowledge. The Chamber further considers that the Defence's and witness's submissions do not demonstrate that certain individuals will be antagonized by the content of the witness's testimony. Hence, given that the witness has not demonstrated an objectively-grounded risk to his personal security or welfare or that of his family, the Chamber denies the witness the requested protective measures based on personal safety reasons.

¹² T. 3691-3693.

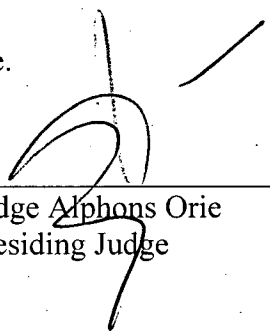
¹³ Ibid.

IV. DISPOSITION

For the foregoing reasons, pursuant to Rule 75(A) of the Rules, the Chamber

DENIES the Motion, to the extent that it pertains to the request based on the safety and welfare of Witness DST-051 and his family.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty First of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]