

IT-03-69-T
D 42909 - D 42906
18 July 2012

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**UNITED
NATIONS**



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 July 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 18 July 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION CONCERNING THE TESTIMONY OF
WITNESS CW-1**

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

TRIAL CHAMBER I 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 (“Chamber”);

NOTING its decision to call one Chamber witness (“Witness CW-1”) in this case and to hear his testimony via video-conference link;¹

NOTING that Witness CW-1 is currently in detention pending his extradition to stand trial for offences allegedly committed in the territory of the former Yugoslavia between 1991 to 1993;

NOTING that on 24 May 2012 the Chamber instructed the parties not to contact or communicate with Witness CW-1;²

NOTING the Registry’s six reports on practical arrangements concerning Witness CW-1’s testimony;³

NOTING that on 29 June 2012 the Chamber requested the Registry, through an informal communication, to assign or appoint duty counsel to Witness CW-1 to assist him prior to and during the course of his testimony and particularly with regard to the provisions of Rule 90 (E) of the Tribunal’s Rules of Procedure and Evidence;

NOTING that on 3 July 2012, the Registry assigned duty counsel to Witness CW-1 (“Duty Counsel”) which was notified to the Chamber through an informal communication;

NOTING that, according to the Registry’s sixth report, due to practical considerations, Duty Counsel would only be in a position to advise Witness CW-1 during the course of his testimony from the seat of the Tribunal by privileged telephone communication;⁴

CONSIDERING the information provided by Duty Counsel was such that the Chamber could reasonably expect that Witness CW-1 would refuse to testify via video-conference link and/or

¹ T. 19806; Request for Assistance, 25 May 2012.

² T. 19806.

³ Registrar’s Report on Implementation of the Request for Assistance, 1 June 2012; Registrar’s Second Report on Implementation of the Request for Assistance, 8 June 2012; Registrar’s Third Report on Implementation of the Request for Assistance, 15 June 2012; Registrar’s Fourth Report on Implementation of the Request for Assistance, 22 June 2012; Registrar’s Fifth Report on Implementation of the Request for Assistance, 29 June 2012, Registrar’s Sixth Report on Implementation of the Request for Assistance, 6 July 2012.

⁴ Registrar’s Sixth Report on Implementation of the Request for Assistance, 6 July 2012.

invoke his right not to answer questions if his answers would tend to incriminate him and/or would not accept the conditions of receiving legal advice;⁵

CONSIDERING that, given the offences for which Witness CW-1 has been indicted, his expected testimony would be considerably limited in scope in the event that he invoked his right not to answer questions so as not to incriminate himself;

CONSIDERING that despite the interest of the Chamber in hearing Witness CW-1's anticipated evidence, his testimony is not indispensable for delivering a judgment meeting all the requirements of fairness;

CONSIDERING the costs and practical difficulties involved with hearing this witness from the video-conference link location;

CONSIDERING the present stage of the proceedings in this case and the likelihood that further efforts to hear Witness CW-1's testimony would lead to considerable delay;

CONSIDERING FURTHER that the parties had ample opportunity to call Witness CW-1 and seek the assistance of the Chamber to overcome any practical problems in hearing his evidence, but refrained from doing so;⁶

CONCLUDES, having weighed the above considerations, that it would not be in the interests of justice to make further efforts to hear Witness CW-1's testimony and would also result in the uneconomic use of judicial resources;

RECONSIDERS its decision to call Witness CW-1 as a Chamber Witness;

DECIDES not to call Witness CW-1 as a Chamber Witness;

NOTES that this decision, which was reached by the Chamber on 6 July 2012 and was informally communicated to the parties, Registry and Duty Counsel, is hereby delivered in writing;

⁵ Through an informal communication and subsequently by the Duty Counsel Notice, 6 July 2012 (Confidential and *ex parte*).

⁶ On 30 March 2012, the Simatović Defence was urged through an informal communication and in relation to its request to call additional witnesses "to take all legal and practical measures to arrange for the witnesses' testimony and, if necessary, to seek the Chamber's intervention without delay." On 12 April 2012 the Chamber, through an informal communication, requested the Defence to bear in mind that any requests to the Chamber concerning hearing the testimony of additional witnesses, for instance requests for subpoenas or use of video-link facilities, should allow sufficient time for filing of the other parties' submissions and for the Registry to take related necessary measures.

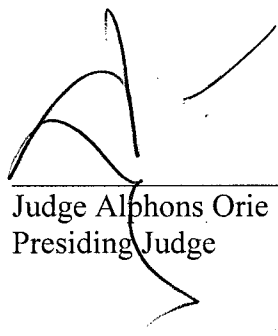
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LIFTS the order to the parties not to contact or communicate with Witness CW-1;

EXPRESSES its gratitude to the Registry and the relevant authorities for their assistance in this matter; and

REQUESTS the Registry to inform Duty Counsel and the relevant authorities of the present decision.

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



Judge Alphons Orié
Presiding Judge

Dated this eighteenth day of July 2012
At The Hague
The Netherlands

[Seal of the Tribunal]