



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: 7 October 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 7 October 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION
OF EVIDENCE OF WITNESS JF-070 PURSUANT TO RULE
92 QUATER**

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

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”);

BEING SEISED of the “Prosecution Motion for Admission of Evidence of Witness JF-070 Pursuant to Rule 92 *quater*” filed publicly with confidential Annexes A and B on 6 September 2010 (“Motion”), whereby the Prosecution seeks admission pursuant to Rule 92 *quater* of the previous testimony of Witness JF-070 in *Prosecutor v. Slobodan Milošević* (“Milošević case”), 13 associated exhibits, three statements given by the witness and his death certificate (“Proffered Evidence”);¹

NOTING that the Prosecution submits that Witness JF-070 passed away on 28 June 2010 and that the Proffered Evidence is relevant, reliable and in large part corroborated by other witnesses who testify about the events in Zvornik;²

NOTING the “Defence Response to Prosecution Motion for Admission of Evidence of Witness JF-070 Pursuant to Rule 92 *quater*” filed confidentially on 22 September 2010 (“Response”), whereby the Stanišić Defence opposes the Motion relying on the arguments set out in its previous filing;³

NOTING that the Simatović Defence did not respond to the Motion;

NOTING that the applicable law governing the admission of evidence pursuant to Rule 92 *quater* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) has been set out in the “Decision on Prosecution Motion for Admission of Evidence of Witness B-179 Pursuant to Rule 92 *quater*”;⁴

NOTING that the general arguments relating to the right of the Accused to cross-examine witnesses⁵ as well as to the issue of associated exhibits,⁶ on which the Stanišić Defence relied by reference, have been addressed by the Chamber in “Decision on Prosecution Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*”;⁷

¹ Motion, paras 1, 11; Annexes A and B.

² Motion, paras 2, 4, 6, 8, 10, Annex B.

³ Response, para. 3, referring to “Response to Prosecution Motions Pursuant to Rule 92 *bis*, Notification Pursuant to Rule 94 *bis*, and Request for Leave to Exceed the Page Limit”, 9 July 2007 (confidential) (“92 *bis* Response”). On 20 September 2010, the Stanišić Defence submitted its response to the Motion through informal correspondence. On 21 September 2010, the Chamber requested the Stanišić Defence to file its response formally no later than 22 September 2010.

⁴ See Decision on Prosecution Motion for Admission of Evidence of Witness B-179 Pursuant to Rule 92 *quater*, 11 March 2010, paras 27-34.

⁵ See 92 *bis* Response, paras 8 *et seq.*

⁶ See 92 *bis* Response, paras 27 *et seq.*

⁷ See Decision on Prosecution Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*, 7 October 2010 (“92 *bis* Decision”), paras 35-36, 49 *et seq.*, 60.

CONSIDERING that this Chamber is convinced that Witness JF-070 is deceased and therefore unavailable within the meaning of Rule 92 *quater*(A)(i);

CONSIDERING that the circumstances in which the Proffered Evidence was given, especially the fact that Witness JF-070's previous testimony has been subject to cross-examination in the *Milošević* case; and the circumstances in which the proffered written statements were made and recorded, give the Proffered Evidence strong indicia of reliability;

CONSIDERING that the Proffered Evidence does not go to the acts and conduct of the Accused as charged in the Indictment and is corroborated by other evidence in this case;⁸

FURTHER CONSIDERING that Witness JF-070 has been granted protective measures in the *Milošević* case which pursuant to Rule 75 (F)(i) shall continue to have effect in the present proceedings;⁹

FINDING that the Proffered Evidence fulfils the requirements of Rule 89 in being relevant and of probative value to the charges in the Indictment and that its probative value is not substantially outweighed by the need to ensure a fair trial;

FINDING that the Proffered Evidence should be admitted pursuant to Rule 92 *quater*;

⁸ See Witnesses JF-007, B-161 as well as potentially 92 *bis* witness B-1769; see also 92 *bis* Decision, paras 31, 42-43.

⁹ See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Trial Related Protective Measures for Witnesses Identified as B-1098, B-1237, B-1775 and B-1518, 6 May 2003.

FOR THE FOREGOING REASONS PURSUANT TO Rules 75 (F)(i), 89 and 92 *quater* of the Rules,

GRANTS the Motion;

ADMITS into evidence:

- Three Statements with 65 *ter* number 1156 (under seal);
- Transcript: IT-02-54-T (T.21318:1-T.21384:24) (under seal);
- Associated Exhibits with 65 *ter* numbers: 42, 66, 67, 68, 69, 70, 71, 72, 569 (under seal), 570, 1154, 1155 (under seal), 5485 (under seal);
- Death Certificates attached to the Motion as Annex B (under seal).

REQUESTS the Registrar to assign exhibit numbers to the admitted documents and inform the parties and the Chamber of the exhibit numbers so assigned.

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



Judge Alphons Orié
Presiding Judge

Dated this seventh day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]