



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 December 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 December 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION REGARDING REQUESTS FOR PROTECTIVE
MEASURES AND PROSECUTION'S NOTICES OF
COMPLIANCE WITH THE TRIAL CHAMBER'S
7 OCTOBER 2010 DECISION**

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 7 October 2010, the Chamber issued its “Decision on Prosecution’s Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*” (“92 *bis* Decision”), wherein it decided on the admissibility of evidence of 24 witnesses (“92 *bis* Witnesses”) and instructed the Prosecution *inter alia* to:

- a) inform the Chamber within 14 days whether it prefers to call Witness C-1175 for cross-examination under Rule 92 *bis* (C) or whether to accept the admission of the statements of the witness with the suggested redactions;
- b) provide within 28 days the proper translations of verifications and declarations for statements of fourteen 92 *bis* Witnesses; and
- c) report to the Chamber within 28 days as to whether it will apply for protective measures in relation to certain witnesses.¹

2. On 21 October 2010, the Prosecution filed confidentially its “Submission of Redacted Evidence of C-1175” wherein it stated that it had elected not to call Witness C-1175 for cross-examination but requested that the Chamber’s suggested redactions be limited in its scope (“C-1175 Request”).²

3. On 4 November 2010, the “Prosecution’s Notice of Compliance with the Trial Chamber’s 7 October 2010 Decision and Request for Limited Protective Measures” was filed (“Limited Protective Measures Motion”), wherein the Prosecution informed the Chamber that it had uploaded the missing translations into eCourt.³ Additionally, it requested limited protective measures in the form of redacting the contact details of fifteen 92 *bis* Witnesses.⁴ The Stanišić Defence and Simatović Defence filed no responses to the Limited Protective Measures Motion.

4. On 5 November 2010, the Prosecution filed confidentially its “Prosecution Motion for Protective Measures for Witness JF-060” (“JF-060 Motion”) requesting that the Chamber grant Witness JF-060⁵ protective measures in the form of a pseudonym and redaction of the witness’s

¹ 92 *bis* Decision, paras 67, 70.

² C-1175 Request, paras 2-5.

³ Limited Protective Measures Motion, paras 3-4. The Chamber notes that not all the missing translations were submitted within 28 days as required by the 92 *bis* Decision, as part of them was only released on eCourt by the Prosecution on 19 November 2010. The Chamber nevertheless accepts this late submission.

⁴ Limited Protective Measures Motion, paras 6-8.

⁵ In the 92 *bis* Decision this witness was referred to under his previous pseudonym B-1049.

name and other identifying information.⁶ On 19 November 2010, the Stanišić Defence filed confidentially the “Defence Response to ‘Prosecution Motion for Protective Measures for Witness JF-060’” (“JF-060 Response”) opposing the JF-060 Motion. The Simatović Defence did not file a response. On 23 November 2010, the “Prosecution Motion for Leave to Reply to Stanišić Defence Response to Prosecution Motion for Protective Measures for Witness JF-060” was filed. On 25 November 2010, the Chamber denied leave to reply.⁷

5. On 2 December 2010, the Prosecution filed its “Prosecution’s Final Notice of Compliance with the Trial Chamber’s 7 October 2010 Decision” (“Compliance Submission”) wherein it informed the Chamber that it had uploaded the necessary verifications and declarations for statements of the remaining seven 92 *bis* Witnesses and complied with all of the Chamber’s remaining instructions.⁸ The Prosecution also requested that the evidence of these witnesses be admitted in evidence.⁹

II. APPLICABLE LAW

6. The Chamber recalls the applicable law concerning admission of evidence pursuant to Rule 92 *bis* and protective measures as set out in detail in previous decisions.¹⁰

III. DISCUSSION

A. Redactions of evidence of Witness C-1175

7. In its 92 *bis* Decision, the Chamber suggested to redact information in the evidence of Witness C-1175 relating to a person who the witness alleges to be a member of the Serbian DB.¹¹ The Prosecution argues that its understanding of the 92 *bis* Decision in relation to Witness C-1175’s evidence is that only the references to the DB be redacted.¹² It proposes that reference to the presence of the alleged DB member in the area of Dalj is left unredacted, and to only redact information concerning his alleged affiliation with the DB.¹³ The Prosecution argues that the

⁶ JF-060 Motion, paras 4, 10, 13.

⁷ T. 9513.

⁸ Compliance Submission, paras 1-2; Annex A.

⁹ Compliance Submission, para. 3.

¹⁰ See 92 *bis* Decision, paras 29-38; T. 3690-3693.

¹¹ 92 *bis* Decision, paras 51, 70. The suggested redactions included 0203-4644 (sentence in 4th paragraph starting with “Later on, I saw certain...”) and T.25464, lines 13-15 – sentence starting with “He also saw...”).

¹² C-1175 Request, para. 3.

¹³ C-1175 Request, paras 3-4.

presence of this man in the region can be found in the evidence of four other witnesses who testified before the Chamber, and that those witnesses do not provide evidence that he was a DB agent.¹⁴

8. The Chamber notes that two of the four witnesses referred to by the Prosecution connected this man directly with the Serbian MUP.¹⁵ The Chamber considers that, in the present circumstances, even after redacting the evidence directly linking this person to the Serbian DB, the reference to the presence of such a person in the region concerns acts and conduct of persons sufficiently proximate to the Accused as to warrant the witness's cross-examination.

9. The Chamber therefore finds that if the Prosecution does not agree to redact all information concerning the presence of this person in the region¹⁶ from the evidence of Witness C-1175, it should elect to call this witness for cross-examination. Accordingly, the C-1175 Request is denied.

B. Translations

10. The Chamber acknowledges that the Prosecution provided the translations of verifications and declarations relating to statements of fourteen 92 *bis* Witnesses which pursuant to the 92 *bis* Decision was a condition for admission of these witnesses' evidence.

C. Missing Verifications and Declarations

11. The Chamber finds that the Prosecution provided the verifications and declarations, together with their translations, relating to statements of seven 92 *bis* Witnesses the evidence of whom was found admissible in the 92 *bis* Decision.

D. Protective measures

1. Limited Protective measures

12. The Prosecution requests limited protective measures in the form of redacting the contact details of fifteen 92 *bis* Witnesses. The Chamber notes that the requested redactions concern only the witnesses' addresses, telephone numbers and numbers of their identification cards. As such, they in no way touch upon the substance of the witness's evidence.¹⁷ Due to their limited character, and in the absence of any objections from the Defence, the Chamber therefore finds that such

¹⁴ C-1175 Request, para. 3.

¹⁵ See Witness JF-032, T. 4687 and P553 (Witness Bogunović), para. 23.

¹⁶ See *supra* at 11.

¹⁷ The Chamber notes that protective measures redactions should be aimed at withholding information from the public, but not from the Chamber or the parties. In this respect, the Chamber reiterates its "Decision on

redactions are necessary to protect the privacy of these witnesses and do not unduly limit the public character of the proceedings.

2. Witness JF-060

13. The Prosecution requests that the Chamber order the protective measures of pseudonym and redaction of this witness's name and other identifying information from his evidence.¹⁸ It submits that there exists an objectively grounded risk to the witness's security.¹⁹ The Prosecution states that the witness currently lives close to the border of Republika Srpska,²⁰ and notes a recent report of the Office of the High Representative in Bosnia and Herzegovina ("OHR") indicating that in the lead-up to the elections in Bosnia and Herzegovina in October 2010 the political atmosphere deteriorated, exacerbated by statements of political leaders in Republika Srpska, who have criticised the rulings of the Tribunal.²¹ In turn, this could lead to antagonism against local residents who cooperate with the Tribunal.²²

14. The Stanišić Defence argues that the fears of witness JF-060 are subjective, as the witness did not receive any specific threats or provide any concrete circumstance establishing a threatening situation of environment.²³ The Stanišić Defence submits that the OHR report does not refer to specific threats of past or potential witnesses.²⁴

15. The Chamber considers that the arguments advanced by the by the Prosecution indicate the existence of an unstable security situation in the territory of Republika Srpska that is particularly unfavourable to witnesses who cooperate with the Tribunal. In these circumstances, the fact that Witness JF-060 gave testimony to the Tribunal may antagonise persons living in the vicinity of his place of residence. In this respect, the Chamber also considers the subject matter of the witness's testimony and the Chamber's reasons for granting protective measures to Witness B-1048.²⁵ The Chamber is further mindful of the fact that granting the motion would not unduly impact on the public nature of the trial, as, in accordance with the Chamber's 23 August 2010 Decision, the

Prosecution Motion for Admission of Redacted Copies of Confidential Exhibits as Public Exhibits" rendered on 23 August 2010 ("23 August 2010 Decision").

¹⁸ JF-060 Motion, paras 4, 10, 13.

¹⁹ JF-060 Motion, para. 11.

²⁰ Ibid.

²¹ JF-060 Motion, para. 12.

²² Ibid.

²³ JF-060 Response, paras 6, 9. The Stanišić Defence requests in the alternative that the Chamber orders a hearing prior to the witness's testimony on the need for protective measures. As this witness's evidence has been tendered by the Prosecution and deemed admissible by the Chamber under Rule 92 *bis* of the Rules, there is currently no expectation of the witness coming to testify. Accordingly, the alternative request is moot.

²⁴ JF-060 Response, para. 7.

²⁵ See T. 2984-2987.

Prosecution would then be under an instruction to include a redacted version of the witness's statement in a later public filing.²⁶ Accordingly, the Chamber finds that granting the protective measures sought by the Prosecution is warranted.

IV. DISPOSITION

16. For the foregoing reasons and pursuant to Rules 54, 75, 89 and 92 *bis* of the Rules, the Chamber

GRANTS the limited protective measures with regard to fifteen 92 *bis* Witnesses (C-1089, C-1247, C-1123, C-1162, B-1769, C-1194, C-1234, C-1102, C-1201, JF-071, JF-003, MM-043, B-1626, JF-065, C-1202);

PLACES the documents to which the limited protective measures apply under seal as specified below in accordance with the Chamber's 23 August 2010 Decision;

GRANTS the JF-060 Motion;

ACKNOWLEDGES receipt of the translations of verifications and declarations of 92 *bis* statements of fourteen 92 *bis* Witnesses;

DECLARES that the following material is now admitted into evidence pursuant to paragraph 67 of the 92 *bis* Decision:

- 1) C-1211: all evidence under seal; Statements by 65 *ter* number: 5497, 5498, 5831; Testimony: 65 *ter* number: 5499 (IT-95-11).
- 2) C-1175 with redactions:²⁷ Statements by 65 *ter* number: 5477 (under seal), 5479 (under seal), 5478 (under seal); 5820 (under seal); 5467 (under seal); Testimony by 65 *ter* number: 5480 (IT-02-54 (T.25462:18-T.25476:22, T.25477:7-T.25490:24)); Associated Exhibits by 65 *ter* number: 1749 (under seal), 1741 (under seal), 5468 (under seal), 5469, 5470, 5471, 5472, 5473, 5474, 5475, 5476.
- 3) C-1089: Statements by 65 *ter* number: 5829 (under seal); 5830 (under seal); 5832 (under seal), 5833, 5834; Associated Exhibit by 65 *ter* number: 1865.

²⁶ 23 August 2010 Decision, para. 5.

²⁷ See *supra*, paras 7-9.

- 4) C-1247: Statement by 65 *ter* number: 561 (under seal); Testimony by 65 *ter* number: 5414 (IT-02-54-T (T.25514-T.25538)).
- 5) C-1123: Statements by 65 *ter* number: 5431 (under seal), 5433 (under seal), 5441, 5821 (under seal); Associated Exhibits by 65 *ter* number: 5432, 5435, 5434, 4634, 5436, 5437, 5439, 5440.²⁸
- 6) C-1162: Statements by 65 *ter* number: 5452, 5453 (under seal), 5454, 5456 (under seal); Associated Exhibit by 65 *ter* number: 5455.²⁹
- 7) B-1769: Statements by 65 *ter* number: 5459 (under seal), 5460 (under seal),³⁰ 5461 (under seal); Associated Exhibit by 65 *ter* number: 4535.1.
- 8) C-1194: Statements by 65 *ter* number: 5489 (under seal), 5490, 5491, 5822 (under seal).
- 9) C-1202: Statements by 65 *ter* number: 5495 (under seal), 5496 (under seal), 5823, 5824 (under seal).
- 10) C-1231: all evidence under seal; Statements by 65 *ter* number: 5500, 5501.
- 11) C-1234: Statements by 65 *ter* number: 5502 (under seal), 5503 (under seal), 5504, 5825 (under seal); Testimony by 65 *ter* number: 5505 (IT-02-54-T (T.23686-T.23719)), 5506 (IT-95-11 (T.2647-T.2720; T.2721-T.2734)); Associated Exhibit by 65 *ter* number: 650.³¹
- 12) C-1102: Statements by 65 *ter* number: 4785 (under seal), 5422 (under seal), 5826 (under seal), 5423; Testimony: 65 *ter* number: 5424 (IT-02-54-T (T.24969:5-T.25004:9)), 5425 (IT-95-11 (T.3864:23-T.3880:15)); Associated Exhibits by 65 *ter* number: 282; 285; 283; 4615; 1936.2.³²

²⁸ The Chamber notes that 65 *ter* 2832 and 5438 were also tendered as P909 and P910 through Witness Strinović and will deal with their admission together with other documents marked for identification during Witness Strinović's testimony.

²⁹ The Chamber notes that 65 *ter* 1667 has already been admitted as exhibit P29 and 65 *ter* 1657 as exhibit P30. They will be simply cross-referenced.

³⁰ The Chamber notes that this document has been previously tendered by the Simatović Defence and has been assigned an exhibit number: MFI D203. The Chamber hereby decides to admit it in this decision and requests the Registry to assign it a prosecution exhibit number. As a consequence, the exhibit number D203 is therefore vacated.

³¹ The Chamber notes that 65 *ter* 45 has already been admitted as exhibit P70 and will be simply cross-referenced.

³² The Chamber notes that 65 *ter* 45 has already been admitted as exhibit P70 and 65 *ter* 31 as P141; they will be simply cross-referenced.

- 13) C-1201: Statements by 65 *ter* number: 5492 (under seal), 5493 (under seal), 5828 (under seal); Testimony by 65 *ter* number: 5494 (IT-95-11 (T.2829-T.2858)); Associated Exhibit by 65 *ter* number: 2813.³³
- 14) JF-071: Statements by 65 *ter* number: 5487, 5488 (under seal), 5827 (under seal); Associated Exhibit by 65 *ter* number: 1228.1.

DENIES the C-1175 Request;

ADMITS the following evidence:

- 1) JF-060: Statements by 65 *ter* number: 5401 (under seal), 5815 (under seal).
- 2) JF-003: Statements by 65 *ter* number: 5402 (under seal), 5403, 5816 (under seal); Associated Exhibit by 65 *ter* number: 5404.³⁴
- 3) MM-043: Statements by 65 *ter* number: 5415 (under seal), 5837 (under seal); Testimony by 65 *ter* number: 5419 ((IT-95-11 (T.3223-T.3292; T.3385-T.3444))); Associated Exhibits by 65 *ter* number: 5416, 5417; 5418.³⁵
- 4) B-1638: Statements by 65 *ter* number: 5134 (under seal), 5817 (under seal); Testimony by 65 *ter* number: 5482 (IT-95-9 (T.11676-T.11716; T.11717-T.11810; T.11811-T.11875)) (under seal); Associated Exhibits by 65 *ter* number: 4690 (under seal), 4599, 4700 (under seal), 20, 3536, 3746, 3690, 3552, 3541, 3743, 4699, 757, 3555, 3635, 3630, 3783, 5421 (under seal).³⁶

³³ 65 *ter* number 1936, although relevant here, is admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record it will not be admitted here for a second time but rather simply cross-referenced. Moreover, the Chamber notes that 65 *ter* 2811 has already been admitted as exhibit P100 and 65 *ter* 2812 as P101; they will be simply cross-referenced.

³⁴ 65 *ter* numbers 1657 and 1667, although relevant here, are to be admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record, they will not be admitted here for a second time but rather simply cross-referenced. The Chamber also notes that 65 *ter* 1628 has already been admitted as exhibit P321 and will be simply cross-referenced.

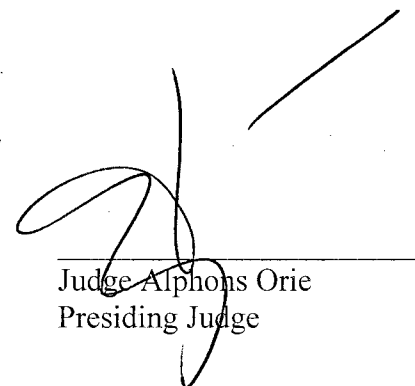
³⁵ 65 *ter* numbers 2812 and 2813, although relevant here, are to be admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record they will not be admitted here for a second time but rather simply cross-referenced.

³⁶ The Chamber notes that 65 *ter* 3678 has already been admitted as exhibit P209 and will be simply cross-referenced.

- 5) PW-125: Statements by 65 *ter* number: 5457 (under seal), 5836 (under seal); Testimony: 65 *ter* number: 5458 (IT-05-88-T (T.3300-T.3321)) (under seal); Associated Exhibits 65 *ter* number: 1228.2; 1228.4 (under seal).³⁷
- 6) B-1626: Statements by 65 *ter* number: 5148, 5818 (under seal); Testimony by 65 *ter* number: 5149 (IT-95-9 (T.1516:16-T.1552:18, T.1553:13-T.1622:20; T.1634:5-T.1692:9; T. 1693:17-T.1758:4; T.1760:12-T.1834:21, T.1840:7-T.1905:13; T.1906:13-T.1986:5; T.1987-21-T.2074:16; T.2075:18-T.2107:18, T.2159:15-T.2179:5)) (under seal); Associated Exhibits by 65 *ter* number: 91, 752, 753, 3539, 3553, 3570, 3571, 3575, 3577, 3586, 3605, 3606, 3608, 3614, 3616, 3627, 3632, 3636, 3637, 3645, 3659, 3668, 3672, 3687, 3689, 3702, 3705³⁸, 5146, 5147, 5159, 5160, 5167, 5411, 5412.³⁹
- 7) JF-065: Statements by 65 *ter* number: 5430, 5819 (under seal); Associated Exhibit by 65 *ter* number: 1228.3.

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 in French, the English being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this seventh day of December 2010
At The Hague.
The Netherlands

³⁷ ERN number 0363-9711-0363-9711, although relevant here, is admitted into evidence through other 92 *bis* witness. In order not to overburden the trial record it will not be admitted here for a second time but rather simply cross-referenced.

³⁸ Appearing in e-court as a duplicate of 65 *ter* 21 and containing only one photograph.

³⁹ 65 *ter* numbers 20, 3536 and 4699, although relevant here, are also tendered into evidence through other 92 *bis* witness. In order not to overburden the trial record they will be admitted here (as opposed to being simply cross-referenced) only in case the evidence of Witness B-1638 is not admitted. Similarly, the Chamber notes that 65 *ter* 754 has already been admitted as exhibit D17, 65 *ter* 3316 as P194, 65 *ter* 3569 as P197, 65 *ter* 3591 as P200, 65 *ter* 3609 as P93, 65 *ter* 3663 as P205, 65 *ter* 3670 as D18, 65 *ter* 3673 as P207, 65 *ter* 3695 as P212, 65 *ter* 3696 as P213, 65 *ter* 3699 as P214, 65 *ter* 3705 (a duplicate of 65 *ter* 21) as P126, 65 *ter* 3709 as P215 and 65 *ter* 3712 as P216.