



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: 20 July 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 20 July 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**REASONS FOR DENIAL OF PROTECTIVE MEASURES FOR
WITNESS DST-32**

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”) filed, confidentially, the Stanišić Motion for Protective Measures for Witnesses DST-51, DST-32 and DST-35 (“Motion”), wherein it requested closed session testimony and the use of a pseudonym for Witness DST-32.¹ 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 On 24 June 2011, the Defence further submitted that, due to the identifying nature of Witness DST-32’s testimony, closed session testimony was necessary to protect the identity of the witness.⁴

2. On 24 June 2011, Witness DST-32 reiterated that he did not want to testify publicly because he feared that his testimony would receive media attention that would lead to the harassment of his family.⁵ The witness submitted that previous false accusations portrayed in the media led to the harassment of a family member.⁶ However, the witness admitted that the family member had never been physically threatened.⁷ The witness also noted that, due to the previous media attention, he has been ostracized in his community.⁸ The witness believes that certain media sources would launch a campaign against the witness and his family were his testimony to be given in open session.⁹ The witness further noted that, because of his obligation to Serbia to keep state and official secrets, he would not be in a position to refute any unsubstantiated allegations made by the media.¹⁰

3. Also on 24 June 2011, the Prosecution submitted that any witness testifying in a public trial would be open to media criticism and that it did not believe that the witness had stated any basis for fearing for his personal security.¹¹ The Prosecution further submitted that the witness’s subjective fear of a media campaign against him was purely speculative.¹² The Defence submitted that previous media criticism led to an impact on the witness’s personal life.¹³ The Defence claimed that

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 10-11, 14.

⁴ T. 11929.

⁵ T. 11922-11927.

⁶ T. 11922-11924.

⁷ T. 11924.

⁸ T. 11924-11925.

⁹ T. 11925.

¹⁰ T. 11925-11926.

¹¹ T. 11927.

¹² T. 11929.

¹³ T. 11928.

such subjection of witnesses to vitriolic press campaigns is a situation that protective measures are designed to prevent.¹⁴ The Defence stated that its submissions had significantly passed the threshold previously indicated by the Prosecution in relation to protective measures.¹⁵ The Simatović Defence wholly agreed with the Defence's submissions.¹⁶

4. The Chamber considered the submissions and denied the request for protective measures to the extent that it was based on the witness's personal safety with reasons to follow.¹⁷

II. APPLICABLE LAW

5. 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.

6. The Chamber has set out its test for granting protective measures to witnesses for personal reasons in previous decisions:¹⁸

[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.

7. The Chamber has further provided that:¹⁹

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.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ T. 11929.

¹⁷ T. 11943-11944.

¹⁸ T. 3691.

¹⁹ T. 3691-3692.

III. DISCUSSION

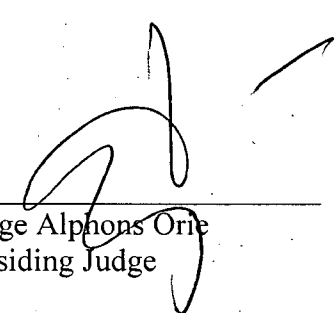
8. The Chamber noted that Witness DST-32 and his family had not been subjected to threats, nor had the witness expressed fear of physical harm to himself or his family. Based on the submissions by the Defence and the witness, there is no clear link between the witness's testimony and his fear of a media campaign against him, should he testify in open session. The Chamber considered that, even if such a media campaign were to occur, the witness provided no basis upon which to establish an objective fear that such media coverage would lead to harassment of his family members. The Chamber found that, even if testifying in open session would lead to unwanted and unpleasant media attention, neither fear of media nor community criticism outweighs the interest of a public trial. Hence, given that the witness had not demonstrated an objectively-grounded risk to his personal security or welfare or that of his family, the Chamber denied the witness the requested protective measures based on personal safety reasons.

IV. DISPOSITION

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

DENIED the Motion, to the extent that it pertains to the request based on the safety and welfare of Witness DST-32 and his family.

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



Judge Alphons Orie
Presiding Judge

Dated this Twentieth of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]