

IT-03-69-T
D32729-032727
17 August 2011

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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: 17 August 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 August 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**REASONS FOR GRANTING PROTECTIVE MEASURES TO
WITNESS DST-043**

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 11 July 2011, the Stanišić Defence (“Defence”) confidentially filed its “Urgent Stanišić Motion for Protective Measures for Witness DST-043” (“Motion”), in which it requested a pseudonym and the use of face and voice distortion for Witness DST-043. The Defence submitted that, if the witness were to testify without these protective measures, it would endanger his personal safety and that of his family.¹ Specifically, the Defence submitted that the witness was fearful that family members who live and travel abroad would be endangered if it became known that he testified in this trial.² Additionally, the witness was the target of an act of intimidation and fears further such acts.³

2. On 18 July 2011, both the Prosecution and the Simatović Defence submitted that they took no position on the Motion.⁴ The Chamber considered the submissions of the parties and granted Witness DST-043 a pseudonym and the use of face and voice distortion, with reasons to follow.⁵

II. APPLICABLE LAW

3. Under Rule 75 (A) of the 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.

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

[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.

¹ Motion, paras 5-7.

² Motion, para. 6.

³ Motion, para. 7.

⁴ T. 12898.

⁵ T. 12899.

⁶ T. 3691.

5. The Chamber has further provided that:⁷

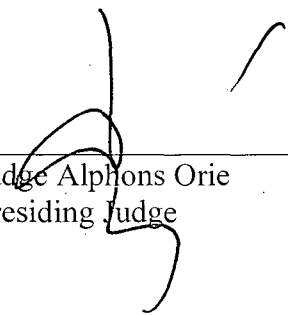
Even though granting protective measures is and should be the exception to the rule of a public trial, the threshold for when protective measures should be granted cannot be set too high. For example, to exclude persons who have not experienced actual threats or harassment would defy the purpose of the 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 considered the act of intimidation against the witness and the high probability that this act was directly related to the witness's cooperation with this Tribunal. The Chamber further considered that, should the witness testify without the requested protective measures, he may be subjected to further acts of intimidation.

7. Given the objectively-grounded risk to the security and welfare of the witness, and considering that the Prosecution and the Simatović Defence did not object to the protective measures requested, the Chamber granted the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this seventeenth day of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ T. 3691-3692.