

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: 27 September 2011
Original: English

IT-03-69-T
D33855-033852
27 September 2011

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IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 27 September 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROTECTIVE MEASURES FOR
WITNESS JF-026**

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. Between 1 and 3 December 2010, Witness JF-026 testified as a witness in this case. Pursuant to Rule 75 (F) (i) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the protective measures of pseudonym and face- and voice distortion, granted during his testimony in a previous Tribunal proceeding, remained in effect.¹ At the beginning of his testimony, the witness requested the further protective measure of closed session testimony ("Request").² The witness submitted that this was due to concerns that his identity from previous testimonies had already become public, and that revealing his status as a witness would cause problems for him in his community.³ The Chamber decided to hear the witness's testimony provisionally in closed session – while keeping the existing protective measures in force – so that it could further consider the Request.⁴ On 3 December 2010, the Chamber invited the witness to speak with the Tribunal's Victims and Witnesses Section ("VWS") to clearly establish the witness's reasons for the Request.⁵

2. On 4 July 2011, VWS filed a report⁶ ("VWS Report") stating that the witness had received a threat against his life, but that he did not consider it credible, nor did he want it reported to local authorities.⁷ The witness also did not want any further investigation into the matter, believing that it would only cause him greater problems.⁸ VWS was unable to investigate further without violating the protective measures and therefore could not establish the veracity of the allegation.⁹ VWS recommended erring on the side of caution regarding the protective measures for this witness.¹⁰ On 5 July 2011, the Chamber invited the parties to respond to the VWS Report within two weeks.¹¹ The parties did not make any submissions on the VWS Report.

¹ The Chamber notes in this regard that it later learned that the witness's protective measures had been varied before coming to testify in this case, as he had testified with only pseudonym and face distortion in a previous case. As the parties did not draw the Chamber's attention to this, voice distortion was also in effect during the witness's testimony. For technical reasons, the Chamber is unable to practically rescind the voice distortion retroactively from the trial video.

² T. 9644.

³ T. 9637, 9644-9645.

⁴ T. 9649.

⁵ T. 9880.

⁶ Rule 33 (B) Submission in Response to the Trial Chamber's Oral Invitation to the Victims and Witnesses Section to Make Submissions in relation to Witness JF-026, Dated 3 December 2010, Filed 4 July 2011.

⁷ VWS Report, paras 4-5, 11.

⁸ VWS Report, para. 11.

⁹ VWS Report, paras 10, 12.

¹⁰ VWS Report, para. 13.

¹¹ T. 12295-12296.

3. On 18 August 2011, the Prosecution informed the Chamber that portions of the witness's testimony presented in provisional closed session in this case had been given by the witness in open session in another case.¹²

II. APPLICABLE LAW

4. 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.

5. Under Rule 75 (F) (i) of the Rules:

Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the 'first proceedings'), such protective measures :

- (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal ('second proceedings') or another jurisdiction unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule [...]

6. Article 20 (4) of the Tribunal's Statute provides as follows:

The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

III. DISCUSSION

7. The witness has expressed concerns about his name having become public from previous trials in which he testified, and the reaction from his community if he cooperates with the Tribunal. At the same time, the witness testified partially in open session in another case - after his testimony in this case - without requesting closed session testimony.

8. Witness JF-026 allegedly received a threat against his life. The witness has stated that he does not believe the threat against him to be credible. At the request of the witness, no further investigation into the threat took place. Given the doubt cast upon the credibility of the threat by the witness himself coupled with the fact that there is no indication that the threat was related to the witness's cooperation with the Tribunal, the Chamber finds that the witness has not demonstrated that closed session testimony is essential to protecting the witness's identity.

¹² T. 13361.

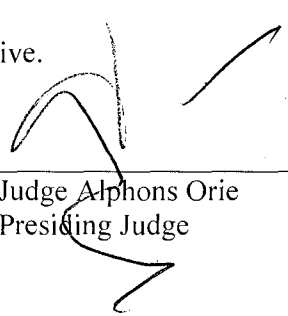
IV. DISPOSITION

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

DENIES the Request; and

INVITES the parties to file, within two weeks of the filing of this decision, a table setting out which parts of the witness's testimony, as well as whether exhibits P1699-P1701 and exhibit D215, can be made public keeping in mind that the identity of the witness remains protected.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-Seventh of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]