



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 October 2011  
Original: English

IT-03-69-T  
D34798-D34795  
20 October 2011

34798  
SMS

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 20 October 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**DECISION ON STANIŠIĆ DEFENCE MOTION TO ADD  
WITNESS DST-081 TO ITS RULE 65 TER WITNESS LIST**

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**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

1. On 28 September 2011, the Stanišić Defence filed a motion to add Witness DST-081 to its Rule 65 *ter* witness list as a Rule 92 *bis* witness (“Motion”).<sup>1</sup> On 17 October 2011, the Prosecution responded, stating that it did not oppose the Motion.<sup>2</sup> The Simatović Defence did not respond to the Motion.

## II. SUBMISSIONS

2. The Stanišić Defence submits that Witness DST-081 only recently confirmed that he was willing to provide testimony on behalf of the Accused.<sup>3</sup> The Stanišić Defence further submits that the addition of the proposed witness would place a limited burden on the other parties.<sup>4</sup> The Stanišić Defence argues that the proposed witness’s expected evidence is relevant and of probative value, as it reflects positively on Mr. Stanišić’s good character.<sup>5</sup> The proposed witness, a former official of the French government, is expected to provide evidence about Mr. Stanišić’s involvement in September 1995 in negotiations between the French government and Mr. Milošević regarding two pilots who were being held against their will by General Mladić.<sup>6</sup> According to the Stanišić Defence, the proposed witness’s evidence will also contextualise aspects of the Mladić notebooks and indicate that Mr. Stanišić communicated with Mr. Mladić through intermediaries.<sup>7</sup>

3. The Prosecution does not oppose the addition of Witness DST-081 to the Stanišić Rule 65 *ter* witness list.<sup>8</sup> However, it reserved its right to oppose the proposed mode of testimony.<sup>9</sup>

## III. APPLICABLE LAW

4. Pursuant to Rule 73 *ter* (D) of the Rules of Procedure and Evidence (“Rules”), the Defence may, after commencement of the defence case, file a motion to vary the decision as to which

<sup>1</sup> Stanišić Defence Motion to Add [Witness DST-081] to the Rule 65 *ter* Witness List, 28 September 2011 (Confidential), paras 1, 18.

<sup>2</sup> Response to Stanišić Defence Motion to Add [Witness DST-081] to the Rule 65 *ter* Witness List, 17 October 2011 (Confidential) (“Response”), para. 4. On 10 October 2011, the Prosecution had notified the Chamber by means of an informal communication that it did not oppose the Motion.

<sup>3</sup> Motion, para. 16.

<sup>4</sup> Ibid.

<sup>5</sup> Motion, paras 11-12.

<sup>6</sup> Motion, paras 2-4, 11-13.

<sup>7</sup> Motion, paras 13-15.

<sup>8</sup> Response, para. 4.

<sup>9</sup> Response, para. 4. On 10 October 2011, the Prosecution had notified the Chamber by means of an informal communication that since a written statement had not yet been provided, it was not in a position to make a submission in relation to the admissibility of the proposed witness’s evidence under Rule 92 *bis* of the Rules of Procedure and Evidence. The Prosecution also noted that the proposed witness’s prospective evidence, as described by the Defence, appeared to relate to the acts and conduct of the accused.

witnesses may be called. The Chamber may grant any motion for an amendment to the Defence's Rule 65 *ter* witness list if satisfied that it is in the interests of justice.<sup>10</sup> In this respect, the Chamber must balance the Accused's right to present the available evidence during his or her defence case with the right of the Prosecution and any co-accused to have adequate time and facilities to prepare their cases.<sup>11</sup> The Chamber will consider the burden placed on the other parties by the late addition of a witness to the Rule 65 *ter* witness list.<sup>12</sup> The Chamber will also consider whether the proposed evidence is *prima facie* relevant and of probative value.<sup>13</sup> The Chamber will further consider whether the Defence has shown good cause why it did not seek to add the witness to the list at an earlier stage of the proceedings.<sup>14</sup> Good cause may exist where witnesses have only recently become available to give evidence, or where the relevance of the evidence has only recently become apparent.<sup>15</sup>

#### IV. DISCUSSION

5. Witness DST-081's expected evidence relates to Mr. Stanišić's involvement in negotiations concerning two French pilots who were held against their will by General Mladić. The expected evidence also concerns Mr. Stanišić's means of communication with General Mladić. Further, considering Witness DST-081's position at the time of the events, the Chamber accepts that the proposed evidence is *prima facie* relevant and of probative value.

6. Given that Witness DST-081 only recently confirmed that he was willing to provide testimony for the Stanišić Defence, the Chamber accepts that the Stanišić Defence has shown good cause for not having included Witness DST-081 in its witness list at an earlier stage. None of the parties have objected to the addition of Witness DST-081 to the Stanišić Defence's witness list. For the above reasons, the Chamber is satisfied that it is in the interests of justice to grant the addition of the proposed witness to the Stanišić Defence's Rule 65 *ter* witness list.

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<sup>10</sup> *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Čermak Defence's Fourth Motion to Amend the Rule 65 *ter* (G) Witness List, 15 October 2009, para. 3 and sources cited therein.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

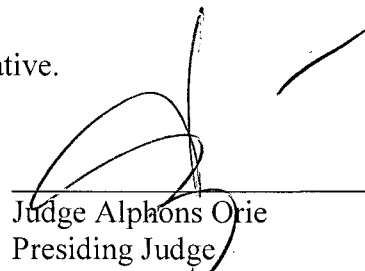
<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

## V. DISPOSITION

7. For the foregoing reasons, pursuant to Rule 73 *ter* (D) of the Rules, the Chamber **GRANTS** the Motion.

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



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Judge Alphons Orie  
Presiding Judge

Dated this twentieth day of October 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]