

IT-03-69-T
D36044-D36041
15 November 2011

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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: 15 November 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 15 November 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**REASONS FOR DECISION ON URGENT STANIŠIĆ DEFENCE
MOTION FOR VIDEO-CONFERENCE LINK FOR
TESTIMONY OF WITNESS DST-060**

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 October 2011, the Stanišić Defence filed an urgent motion to hear the testimony of Witness DST-060 via video-conference link (“Motion”).¹ On 31 October 2011, in an informal communication, the Simatović Defence notified the Chamber that it would not take a position on the matter. The Prosecution responded on 1 November 2011 (“Response”).² On 2 November 2011, the Stanišić Defence requested leave to reply to the Response.³ On the same day, in an informal communication, the Chamber granted leave to reply, ordering that the reply be filed no later than 1 p.m. on 3 November 2011. On 3 November 2011, the Stanišić Defence filed a reply (“Reply”).⁴ The Chamber denied the Motion on the same day and informally communicated the decision to the Parties with reasons to follow.

II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submitted that Witness DST-060 would be unable to travel to the Tribunal due to the significant responsibilities of his position as a Serbian state employee.⁵ The Stanišić Defence stated that testifying via video-conference link is a reasonable compromise for busy professionals to assist the Tribunal while permitting them to perform their professional duties.⁶ The Stanišić Defence argued that Witness DST-060 would offer important and relevant probative evidence as it would counter a principal allegation by the Prosecution in its case.⁷ The Stanišić Defence further stated that testimony via video-conference link would not prejudice the Simatović Defence or the Prosecution.⁸

3. The Prosecution submitted that the Defence did not provide a sufficient basis to grant a video-conference link for the testimony of Witness DST-060.⁹ It claimed that the witness was able to travel to the Tribunal and lacked good reasons for being unwilling to come to testify.¹⁰ It further argued that the witness’s proposed evidence would be of minimal value and relevance to the case,

¹ Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of DST-060, 28 October 2011 (Confidential).

² Prosecution Response to the Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of DST-060, 1 November 2011 (Confidential).

³ Stanišić Defence Application for Leave to Reply to the Prosecution Response to the Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of DST-060, 2 November 2011 (Confidential).

⁴ Stanišić Defence Reply to the Prosecution Response to the Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of DST-060, 3 November 2011 (Confidential).

⁵ Motion, para. 3.

⁶ Reply, para. 3.

⁷ Motion paras 4-5; Reply, paras 5-7.

⁸ Motion, para. 7.

⁹ Response, para. 1.

¹⁰ Response, paras 3-7.

would not materially advance a resolution of any issues in the case, and that it would not be unfair to the Stanišić Defence to proceed without the witness's testimony.¹¹

III. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing requests for witness testimony via video-conference link as set out in a previous decision.¹²

IV. DISCUSSION

5. Regarding whether the witness's testimony is sufficiently important to make it unfair to the Stanišić Defence to continue without it, the Chamber noted that Witness DST-060 was expected to testify about the activities of the Serbian Ministry of Interior in the *Republika Srpska* in 1995 and to counter evidence from the Mladić notebooks about the Accused's involvement in events in Sanski Most or Novi Grad in September 1995.¹³ Accordingly, the Chamber was convinced that the witness's expected testimony would be of sufficient importance to the case to make it unfair to the Stanišić Defence to proceed without it.

6. With regard to the right of an accused to confront the witness, the Chamber found that the Simatović Defence would not be materially prejudiced in the exercise of its rights and that a video-conference link should be regarded as an extension of the courtroom to the location of the witness.¹⁴

7. However, regarding whether the witness was unable or had good reasons to be unwilling to come to the Tribunal, the Chamber found that the reasons provided by the Stanišić Defence were unsatisfactory. The Chamber found that the witness's busy schedule did not make him unable to come to testify in The Hague. Similarly, the Chamber found that the Stanišić Defence had not demonstrated that the witness possessed good reasons to be unwilling to testify in The Hague. Accordingly, the Chamber found that this element was not met.

8. Finally, the Chamber did not find that granting the Motion in this case would nonetheless be in the interests of justice as there were no particular or special circumstances identified in the Motion to overcome the lack of good reasons for Witness DST-060's apparent unwillingness to testify in court. Moreover, the Chamber considered that video-conference link testimony was not the

¹¹ Response, paras 3, 10.

¹² See Reasons for Decision on Urgent Stanišić Defence Motion for Video-Conference Link for Testimony of Witness Leković, 4 November 2011 (Confidential), para. 5.

¹³ Motion, para. 4; Reply, paras 5-7.

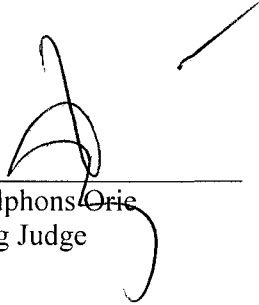
¹⁴ See Decision on Prosecution Motion for Video-Conference Link for the Testimony of Witness JF-034, 18 June 2010, para. 5.

only option available to the Stanišić Defence to secure the witness's testimony, as it could still apply for a *subpoena ad testificandum*.

V. DISPOSITION

9. For the foregoing reasons, pursuant to Rule 81*bis* of the Tribunal's Rules of Procedure and Evidence, the Chamber **DENIED** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this fifteenth of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]