

4-03-69-T  
D 42909 - D 42906  
18 July 2012

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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: 18 July 2012  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 18 July 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**DECISION CONCERNING THE TESTIMONY OF  
WITNESS CW-1**

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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

**TRIAL CHAMBER I** of the 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 (“Chamber”);

**NOTING** its decision to call one Chamber witness (“Witness CW-1”) in this case and to hear his testimony via video-conference link;<sup>1</sup>

**NOTING** that Witness CW-1 is currently in detention pending his extradition to stand trial for offences allegedly committed in the territory of the former Yugoslavia between 1991 to 1993;

**NOTING** that on 24 May 2012 the Chamber instructed the parties not to contact or communicate with Witness CW-1;<sup>2</sup>

**NOTING** the Registry’s six reports on practical arrangements concerning Witness CW-1’s testimony;<sup>3</sup>

**NOTING** that on 29 June 2012 the Chamber requested the Registry, through an informal communication, to assign or appoint duty counsel to Witness CW-1 to assist him prior to and during the course of his testimony and particularly with regard to the provisions of Rule 90 (E) of the Tribunal’s Rules of Procedure and Evidence;

**NOTING** that on 3 July 2012, the Registry assigned duty counsel to Witness CW-1 (“Duty Counsel”) which was notified to the Chamber through an informal communication;

**NOTING** that, according to the Registry’s sixth report, due to practical considerations, Duty Counsel would only be in a position to advise Witness CW-1 during the course of his testimony from the seat of the Tribunal by privileged telephone communication;<sup>4</sup>

**CONSIDERING** the information provided by Duty Counsel was such that the Chamber could reasonably expect that Witness CW-1 would refuse to testify via video-conference link and/or

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<sup>1</sup> T. 19806; Request for Assistance, 25 May 2012.

<sup>2</sup> T. 19806.

<sup>3</sup> Registrar’s Report on Implementation of the Request for Assistance, 1 June 2012; Registrar’s Second Report on Implementation of the Request for Assistance, 8 June 2012; Registrar’s Third Report on Implementation of the Request for Assistance, 15 June 2012; Registrar’s Fourth Report on Implementation of the Request for Assistance, 22 June 2012; Registrar’s Fifth Report on Implementation of the Request for Assistance, 29 June 2012; Registrar’s Sixth Report on Implementation of the Request for Assistance, 6 July 2012.

<sup>4</sup> Registrar’s Sixth Report on Implementation of the Request for Assistance, 6 July 2012.

invoke his right not to answer questions if his answers would tend to incriminate him and/or would not accept the conditions of receiving legal advice;<sup>5</sup>

**CONSIDERING** that, given the offences for which Witness CW-1 has been indicted, his expected testimony would be considerably limited in scope in the event that he invoked his right not to answer questions so as not to incriminate himself;

**CONSIDERING** that despite the interest of the Chamber in hearing Witness CW-1's anticipated evidence, his testimony is not indispensable for delivering a judgment meeting all the requirements of fairness;

**CONSIDERING** the costs and practical difficulties involved with hearing this witness from the video-conference link location;

**CONSIDERING** the present stage of the proceedings in this case and the likelihood that further efforts to hear Witness CW-1's testimony would lead to considerable delay;

**CONSIDERING FURTHER** that the parties had ample opportunity to call Witness CW-1 and seek the assistance of the Chamber to overcome any practical problems in hearing his evidence, but refrained from doing so;<sup>6</sup>

**CONCLUDES**, having weighed the above considerations, that it would not be in the interests of justice to make further efforts to hear Witness CW-1's testimony and would also result in the uneconomic use of judicial resources;

**RECONSIDERS** its decision to call Witness CW-1 as a Chamber Witness;

**DECIDES** not to call Witness CW-1 as a Chamber Witness;

**NOTES** that this decision, which was reached by the Chamber on 6 July 2012 and was informally communicated to the parties, Registry and Duty Counsel, is hereby delivered in writing;

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<sup>5</sup> Through an informal communication and subsequently by the Duty Counsel Notice, 6 July 2012 (Confidential and *ex parte*).

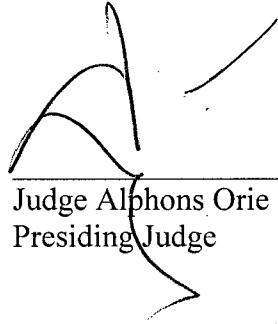
<sup>6</sup> On 30 March 2012, the Simatović Defence was urged through an informal communication and in relation to its request to call additional witnesses "to take all legal and practical measures to arrange for the witnesses' testimony and, if necessary, to seek the Chamber's intervention without delay." On 12 April 2012 the Chamber, through an informal communication, requested the Defence to bear in mind that any requests to the Chamber concerning hearing the testimony of additional witnesses, for instance requests for subpoenas or use of video-link facilities, should allow sufficient time for filing of the other parties' submissions and for the Registry to take related necessary measures.

**LIFTS** the order to the parties not to contact or communicate with Witness CW-1;

**EXPRESSES** its gratitude to the Registry and the relevant authorities for their assistance in this matter; and

**REQUESTS** the Registry to inform Duty Counsel and the relevant authorities of the present decision.

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



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Judge Alphons Orié  
Presiding Judge

Dated this eighteenth day of July 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**