

**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: 20 July 2011  
Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orié, Presiding  
Judge Michèle Picard  
Judge Elizabeth Gwaunza  
**Registrar:** Mr John Hocking  
**Decision of:** 20 July 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**REASONS FOR GRANTING PROTECTIVE MEASURES TO  
WITNESS DST-035**

**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 OF THE PARTIES

1. On 20 June 2011, the Stanišić Defence (“Defence”) filed a confidential Motion for Protective Measures for Witnesses DST-051, DST-032 and DST-035 (“Motion”), in which it requested, *inter alia*, a pseudonym and closed session testimony for Witness DST-035. The Defence submitted that such protective measures were warranted because should the witness testify publicly, it would endanger the witness’s personal safety.<sup>1</sup> On 27 June 2011, the Defence submitted a motion for the admission of written evidence of Witness DST-035 and related exhibits pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup>
2. On 29 June 2011, Witness DST-035 was examined in Court on the request for protective measures in relation to concerns raised regarding his personal safety.<sup>3</sup> On 30 June 2011, the Defence made further submissions that the witness’s testimony was likely to antagonize members of a group that he was going to testify about.<sup>4</sup> The Defence stated that members of this group are dangerous and the general security situation in the area where the witness and his family reside is unstable.<sup>5</sup> Further, the Defence noted a previous situation whereby another witness’s identity had been accidentally revealed, which resulted in such serious risks to that witness’s personal safety from members of the same group that the witness had to be relocated.<sup>6</sup> The Prosecution acknowledged the dangerousness of the group the witness was to testify about and did not ultimately object to the Defence’s request for protective measures.<sup>7</sup>
3. The Chamber considered these submissions and granted Witness DST-035 a pseudonym and closed session testimony to protect his personal security, with reasons to follow.<sup>8</sup>

## 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

<sup>1</sup> Motion, paras 10, 15.

<sup>2</sup> Stanišić Motion for the Admission of Written Evidence of Witness DST-035 and Related Exhibits Pursuant to Rule 92*ter* (Confidential), 27 June 2011.

<sup>3</sup> T. 12121-12124.

<sup>4</sup> T. 12134-121035.

<sup>5</sup> T. 121035.

<sup>6</sup> T. 12136, 12139.

<sup>7</sup> T. 12137-12138.

<sup>8</sup> T. 12139-12140.

privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

5. The Chamber has set out its test for granting protective measures to witnesses for personal security reasons in previous decisions:<sup>9</sup>

[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.

6. The Chamber has further provided that:<sup>10</sup>

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

7. The Chamber considered that Witness DST-035's testimony could antagonize members of the group that he is to testify about. Members of this group reside in the same territory as the witness and his family and could endanger the security of the witness and his family if they found out about his testimony. In this respect, the Chamber noted that members of this group have threatened another witness who had appeared before this Tribunal when that witness's identity was accidentally revealed. The Chamber further considered that an unstable security situation may exist in the territory where the witness and his family reside so as to endanger their personal safety. Hence, given the objectively-grounded risks to the security and welfare of the witness and his family, and considering that the Prosecution and Simatović Defence did not object to the protective measures request, the Chamber granted the witness the protective measures of pseudonym and closed session testimony.

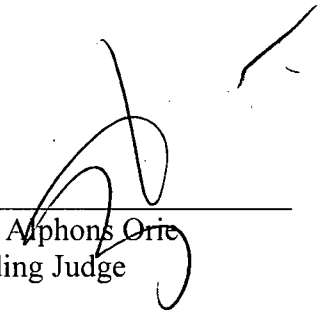
<sup>9</sup> T. 3691.

<sup>10</sup> T. 3691-3692.

#### IV. DISPOSITION

8. In light of the foregoing, and pursuant to Rule 75 (A) of the Rules, the Chamber **GRANTED** the Motion, to the extent that it pertains to the request based on the safety and welfare of Witness DST-035 and his family.

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



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Judge Alphons Orie  
Presiding Judge

Dated this Twentieth of July 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]