



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-PT

Date: 25 July 2008

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 25 July 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR
PROTECTIVE MEASURES FOR WITNESS JF-005**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz
Mr. Gregory Townsend
Mr. John Docherty

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović and Mr. Vladimir Domazet for Franko Simatović

TRIAL CHAMBER III (“Trial Chamber”) 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 (“Tribunal”);

BEING SEISED OF the “Prosecution Motion for Protective Measures for Witness JF-005 with Confidential Annex A”, filed by the Office of the Prosecutor (“Prosecution”) on 8 July 2008 (“Motion”), wherein the Prosecution requested the Trial Chamber order protective measures, in particular (a) the assignment of a pseudonym, (b) the non-disclosure to the public of any records identifying the witness and (c) giving of testimony through image- and voice-altering devices¹;

NOTING that no response was filed by either Defence within the 14 days authorised for a response in accordance with Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

NOTING that Article 20(1) of the Statute of the Tribunal (“Statute”) provides that the Trial Chamber shall guarantee the rights of the accused and ensure the protection of victims and witnesses, while Article 21(2) guarantees a public trial to all accused, subject to the dispositions of Article 22 of the Statute concerning the protection of victims and witnesses;

NOTING that pursuant to Rule 69(A) of the Rules, the Trial Chamber may order, in exceptional circumstances, “the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal” but that according to Rule 69(C), “subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence”;

NOTING that Rule 75(A) of the Rules allows the Trial Chamber to “order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused”;

NOTING that the Motion does not include a request for delayed disclosure to the defence of the identity of Witness JF-005,

¹ Prosecution Motion for Protective Measures for Witness JF-005 with Confidential Annex A, filed confidentially 8 July 2008.

CONSIDERING the Trial Chamber's duty to strike an appropriate balance between the protection of victims and witnesses on one side and the right of the Accused to a fair trial on the other, and most particularly, his right to be allowed adequate time for the preparation of his defence²;

CONSIDERING further that it is constant in the case law of the Tribunal that a *real* fear for the security of the witness or that of his family must exist,³ and that the "subjective fears of the potential witness that he or she may be in danger or at risk are not, *per se*, sufficient to establish any real likelihood that the witness may actually be in danger or at risk from disclosure of his or her identity to the opposing party"⁴;

CONSIDERING that in light of the information provided by the Prosecution in the confidential and *ex parte* annex to the Motion as to witness JF-005, the requested protective measures are necessary and warranted;

FOR THE FOREGOING REASONS

PURSUANT TO Article 20(1) and 22 of the Statute and Rules 69 and 75 of the Rules

GRANTS the Motion in part and **ORDERS** that

- i. the witness shall be referred to only by his pseudonym JF-005 at all times in the course of testimony or whenever referred to during the proceedings or in documents including the transcript;
- ii. Witness JF-005 shall be screened from the public and granted image- and voice-distortion in all audio-visual recording and transmission of testimony;

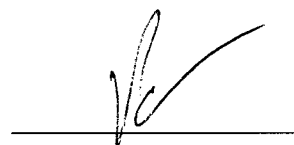
² *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on the Prosecution Motion for Trial Related Protective Measures (Bosnia), 30 July 2002, para. 5. See also *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Prosecution's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, paras 33, 66.

³ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Prosecution's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para. 66.

⁴ *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, Decision on Prosecution's Twelfth Motion for Protective Measures for Victims and Witnesses, 12 December 2002, para. 8.

- iii. the Prosecution shall either disclose the identity of the witness to the Defence or, no later than Friday 8 August 2008, file a motion requesting the non-disclosure of the identity of Witness JF-005 to the Defence pursuant to Rules 69 and 75 of the Rules.

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



Judge Patrick Robinson
Presiding

Dated this twenty-fifth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]