



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: 9 September
2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Order of: 9 September 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**INSTRUCTIONS TO WITNESS CHARLES KIRUDJA IN
RELATION TO CONTACT BEFORE THE END OF
TESTIMONY**

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Vladimir Domazet

I. PROCEDURAL HISTORY

1. Witness Charles Kirudja (“the Witness”) was scheduled to testify on 26 August 2009.¹
2. On 26 August 2009, the Chamber, noting the death of Franko Simatović’s lead counsel, Zoran Jovanović on 2 August 2009, invited the co-counsel, Vladimir Domazet, and, exceptionally, Franko Simatović (“the Accused”), to address the Chamber regarding the resulting situation relating to the Accused’s representation.²
3. The Accused expressed the opinion that he and Domazet were not in a position to proceed with the Witness as they had not had time to discuss the examination of the Witness together after Jovanović’s death.³ The Chamber decided to proceed with hearing the examination-in-chief of the Witness and the cross examination by the Stanišić Defence, and suggested that Mr Domazet be given the opportunity to cross examine the Witness to the extent that he felt able to do so with the Chamber considering at a later stage any request to recall the witness for further cross examination by the Simatović Defence.⁴
4. Considering the possibility remaining open that the Witness could be recalled in the future and that the Witness may face further questions from the Simatović Defence regarding his examination-in-chief and the Stanišić Defence’s cross examination, the Witness was requested by the Chamber not to speak of his testimony to anyone during what could be a period of weeks or months.⁶
5. The Prosecution responded by drawing attention to the fact that the Witness was scheduled to give evidence in the case against Radovan Karadžić (“*Karadžić case*”) and that against Mičo Stanišić and Stojan Župljanin (“*Stanišić and Župljanin case*”) and therefore requested that no member of the Prosecution assigned to the present case have any contact with the Witness, but that members of the Prosecution on unrelated cases should be able to contact the Witness in order to interview him on matters that are unrelated to this case.⁷

¹ OTP Witness Notification, confidential, 29 July 2009.

² Hearing of 26 August 2009, T. 2049.

³ Hearing of 26 August 2009, T. 2050.

⁴ Hearing of 26 August 2009, T. 2051-2052.; *see also Id.*, T. 2054.

⁶ Hearing of 26 August 2009, T. 2096.

⁷ Hearing of 26 August 2009, T. 2096.

6. The Chamber responded to the Prosecution's request by stating that it would issue further guidance to the Witness regarding this matter within fourteen days, having heard any submissions from the Stanišić Defence and Simatović Defence on the issue at hand.⁸

7. The Chamber received an informal communication from the Stanišić Defence on 4 September 2009, stating that it had no objection to the Prosecution contacting the Witness with the proviso that the cross examination by the Stanišić Defence of the Witness should not be discussed.

8. The Simatović Defence did not respond.

II. DISCUSSION

9. The Chamber recalls that after taking the solemn declaration set forth in Rule 90 of the Rules of Procedure and Evidence of the Tribunal ("Rules"),⁹ a witness is no longer allowed to have any communication with the parties outside the courtroom. From the moment a witness makes the solemn declaration at the latest, the said witness must no longer be considered a witness of either of the parties to the trial, but only as a witness of justice, testifying to establish the truth.¹⁰

10. On 26 August 2009, the Chamber instructed the Witness not to speak to anyone about the testimony he had given. Although the Prosecution raised the concern that further contact with the Witness might be needed, with regard to proceedings in other cases before the Tribunal, it did not provide any details as to the nature or timing of such contacts as would be necessary for the Chamber to rule on a request to vary its instructions. Moreover, depending on when the Prosecution is planning to call the Witness in these other proceedings, it might not be necessary for the Chamber to decide on an exception to the instructions given to the Witness

⁸ Hearing of 26 August 2009, T. 2097.

⁹ See Rule 90(A): "Every witness shall, before giving evidence, make the following solemn declaration: 'I solemnly declare that I will speak the truth, the whole truth and nothing but the truth'".

¹⁰ *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Decision on Communication Between Parties and Witnesses, 17 December 1998, p. 2; see also *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Santić aka "Vlado"*, Case No. IT-95-16-T, Decision on Communication Between the Parties and their Witnesses, 21 September 1998, p. 3.

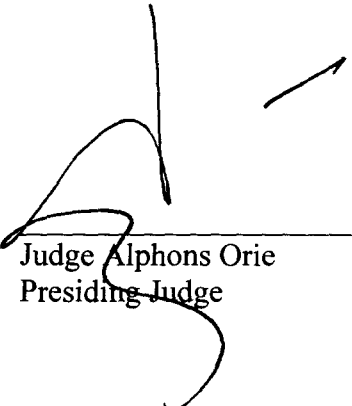
III. DISPOSITION

11. For the foregoing reasons, the Chamber informs the Witness that the instruction not to discuss the testimony he has given in the present case with anyone remains in force until further notice.

12. In the event that the Prosecution in other cases before the Tribunal should wish to contact the Witness in preparation of his testimony in other cases, a formal application shall be made to the Chamber.

13. The Chamber further requests that the Registry serve this Order on the Witness as soon as practicable.

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



Judge Alphons Orie
Presiding Judge

Dated this ninth day of September 2009
At The Hague
The Netherlands

[Seal of the Tribunal]