



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: 26 April 2010  
Original: English

IT-03-69-T  
021686-021683  
26 April 2010

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**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Order of:** 26 April 2010

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

**PUBLIC**

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**ORDER ON THE RE-CALLING OF TWO WITNESSES**

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**Office of the Prosecutor**

Mr Dermot Groome

**Counsel for Jovica Stanišić**

Mr Geert-Jan Alexander Knoops  
Mr Wayne Jordash

**Counsel for Franko Simatović**

Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. PROCEDURAL HISTORY

1. On 15 January 2010, the Simatović Defence filed a confidential “Defence Motion Requesting that Witnesses Charles Kirudja and [Witness Kovačević] be Re-called for the Purpose of Being Cross-Examined by the Simatović Defence” (“Simatović Motion”). On 26 January 2010, the Prosecution filed a confidential “Prosecution Response to Simatović Defence Motion to Re-call Charles Kirudja and [Witness Kovačević] for Cross-Examination” (“Prosecution Response to Simatović Motion”), wherein it sought (i) that the Victims and Witnesses Section of the Tribunal (“VWS”) be directed to schedule the appearance of Witness Kirudja at the same time as his appearance in the *Karadžić* case; (ii) that VWS be directed to contact Witness Kovačević to determine his availability for the week of 29 March 2010 and to inform the Prosecution thereof; (iii) that an additional 10 to 15 minutes be granted to the Prosecution in which to complete its examination-in-chief of Witness Kovačević; and (iv) that all issues related to the admission of documents tendered by the Prosecution during the testimony of Witness Kovačević be resolved prior to cross-examination.<sup>1</sup>

## II. DISCUSSION

### (a) Witness Kovačević

3. The Chamber notes that on 27 August 2009, the Stanišić Defence requested that the testimony of Witness Milomir Kovačević be postponed due to the late disclosure of proofing notes containing new evidence requiring further investigations.<sup>2</sup> The Prosecution opposed postponing the witness’s testimony, but stated that it would not oppose a postponement of cross-examination.<sup>3</sup> On the same day, the Chamber decided to hear the examination-in-chief of Witness Kovačević; granted the Stanišić Defence’s request for additional time to prepare for cross-examination; and further decided that the cross-examination by the Simatović Defence could also be postponed.<sup>4</sup> As the Chamber has already decided that Witness Kovačević should be re-called for cross-examination by the Stanišić and the Simatović Defence, the Chamber considers that the Simatović Motion is moot in this respect.

<sup>1</sup> Prosecution Response to Simatović Motion, paras 5-7.

<sup>2</sup> Hearing of 27 August 2009, T. 2106-2109.

<sup>3</sup> Hearing of 27 August 2009, T. 2109-2110.

<sup>4</sup> Hearing of 27 August 2009, T. 2112-2114.

4. On 27 August 2009, towards the end of its examination-in-chief of Witness Kovačević, the Prosecution asked for an additional 10 to 15 minutes in which to complete its examination-in-chief.<sup>5</sup> The Chamber stated that it would consider the request.<sup>6</sup> On 26 January 2010, the Prosecution repeated this request in its Response to the Simatović Motion.<sup>7</sup> The Chamber considers that the Prosecution seeks to further question the witness in relation to exhibit P53 as well as other exhibits that are pending admission.<sup>8</sup> In light of the limited additional time requested, the Chamber finds it appropriate to grant the Prosecution's request.

(b) Witness Kirudja

5. On 26 August 2009, the Chamber noted that Mr Simatović's lead counsel, Mr Zoran Jovanović had passed away on 2 August 2009 and invited the co-counsel, Mr Vladimir Domazet, and, exceptionally, Mr Simatović, to address the Chamber on the resulting situation as to Mr Simatović's representation.<sup>9</sup> Mr Simatović opined that he and Mr Domazet were not in a position to proceed with Witness Kirudja as they had not had time to discuss his examination after Mr Jovanović's death.<sup>10</sup> The Chamber decided to proceed with hearing the examination-in-chief of Witness Kirudja and the cross-examination by the Stanišić Defence, and suggested that the Simatović Defence be given the opportunity to cross-examine Witness Kirudja to the extent that it felt able to do so and that the Chamber would consider at a later stage any request to re-call Witness Kirudja for further cross-examination by the Simatović Defence.<sup>11</sup> On 15 December 2009, the Chamber asked the Simatović Defence orally whether they had already considered whether to request that Witness Kirudja be re-called for cross-examination and, if they had, instructed them to file a written request demonstrating good cause.<sup>12</sup>

6. The Chamber notes that the Prosecution does not object to the Simatović Defence request to re-call Witness Kirudja.<sup>13</sup> The Chamber considers that the witness's testimony was heard shortly after the passing away of Mr Jovanović, lead counsel for Mr Simatović. In these circumstances, the Chamber considers that the Simatović Defence did not have an effective opportunity to cross-examine Witness Kirudja. For this reason, the Chamber considers it appropriate to re-call Witness Kirudja for cross-examination by the Simatović Defence. The Chamber finally notes that it is not in

<sup>5</sup> Hearing of 27 August 2009, T. 2182.

<sup>6</sup> Hearing of 27 August 2009, T. 2182.

<sup>7</sup> Prosecution Response to Simatović Motion, para. 7.

<sup>8</sup> Prosecution Response to Simatović Motion, para. 5.

<sup>9</sup> Hearing of 26 August 2009, T. 2046-2050.

<sup>10</sup> Hearing of 26 August 2009, T. 2050, 2054.

<sup>11</sup> Hearing of 26 August 2009, T. 2051-2052, 2054.

<sup>12</sup> Hearing of 15 December 2010, T. 2644-2645.

<sup>13</sup> Prosecution Response to Simatović Motion, para. 7.

possession of any information that Witness Kirudja is to be called in the *Karadžić* case in the near future and therefore considers that it is more efficient for Witness Kirudja to be re-called in the present case at the earliest time convenient for the Parties.

### III. DISPOSITION

7. For the foregoing reasons, the Chamber

**DECLARES** the Simatović Motion moot insofar as it relates to the re-calling of Witness Kovačević;

**GRANTS** the Prosecution's request for an additional 15 minutes in which to complete its examination-in-chief of Witness Kovačević;

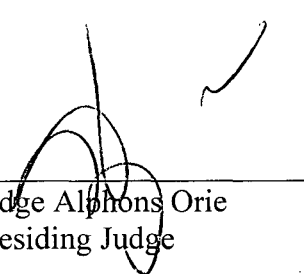
**ORDERS** that Witness Kirudja be re-called for cross-examination by the Simatović Defence;

**INSTRUCTS** the Prosecution to inform VWS of the date(s) at which the Prosecution, having consulted with the Stanišić and the Simatović Defence, wishes Witnesses Kirudja and Kovačević to be re-called so that VWS can make appropriate arrangements for the appearance of both witnesses;

**INSTRUCTS** VWS to inform Witnesses Kirudja and Kovačević that the Chamber's instruction not to discuss the testimony they have given in the present case with anyone remains in force until further notice; and

**DEFERS** its decision on the admission of documents tendered by the Prosecution during the testimony of Witness Kovačević.

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



Judge Alphons Orie  
Presiding Judge

Dated this Twenty-sixth day of April 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]