



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: 31 March 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 31 March 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

REASONS FOR DECISION TO RECALL WITNESS JF-047

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. Witness JF-047 testified before this Chamber as a Prosecution witness on 4, 5 and 6 October 2010. On 17 December 2010, the Stanišić Defence filed a confidential motion seeking leave to recall Witness JF-047 for further cross-examination on matters arising from a statement disclosed by the Prosecution after his testimony (“Motion”).¹

2. The Stanišić Defence submitted that one month after Witness JF-047’s testimony in this case, the Prosecution disclosed a dossier from the Security Intelligence Agency of Serbia containing a biographical note apparently authored by Witness JF-047 (“Note”).² It submitted that the Note indicated the witness was affiliated with the Republic of Serbian Krajina Ministry of Internal Affairs (“RSK MUP”) as a squad commander in the Special Purpose Unit of the Police of Slavonija, Baranja and Western Srem, and thereafter as a squad commander for the Special Purpose Unit of Ministry of Internal Affairs of Krajina (“MUP Krajina”), combat group Bosanski Šamac, during operations in Bosnia and Herzegovina.³ The Stanišić Defence argued, *inter alia*, that this was the first time the witness had mentioned any affiliation with the RSK MUP, and that the Note was inconsistent with his testimony that, at the relevant time, he was a member of the Red Berets and part of a special purposes unit of the Ministry of Internal Affairs of Serbia (“MUP Serbia”).⁴ The Stanišić Defence submitted that it required an opportunity to confront Witness JF-047 with the Note, which contrasted with the Prosecution’s case in relation to links between members of the alleged JCE, and affected the credibility and reliability of Witness JF-047’s testimony.⁵

3. On 28 December 2010, the Prosecution responded to the Motion, not opposing it but taking issue with the Stanišić Defence’s characterisation of the Prosecution’s case and the Note’s impact on the credibility of the witness.⁶

4. Through an informal communication on 12 January 2011, the Chamber (1) informed the parties of its decision to grant the Motion; (2) ordered the parties to refrain from any contact with the witness prior to conclusion of his testimony; (3) instructed the witness not to speak or otherwise communicate with anyone else about his testimony; and (4) instructed the Victims and Witness Section to inform the witness and arrange for his re-appearance before the Chamber. This decision

¹ Stanišić Motion Requesting Recall of Witness JF-047, 17 December 2010 (Confidential).

² Motion, para. 3. The Stanišić Defence stated the Note was disclosed on 2 November, *ibid*.

³ Motion, para. 4, referring to exhibit P2126, p.1.

⁴ Motion, paras 4, 5.

⁵ Motion, paras 6-9.

⁶ Prosecution Response to Stanišić Motion Requesting Recall of Witness JF-047, 28 December 2010 (Confidential), paras 2, 5.

was put on the record on 1 February 2011, with written reasons to follow.⁷ These reasons are set out below.

II. APPLICABLE LAW

5. Pursuant to Rule 89(B) of the Rules of Procedure and Evidence (“Rules”), a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

6. In determining whether there are sufficient grounds to recall a witness, the Chamber will consider whether the requesting party has demonstrated good cause to recall the witness.⁸ In assessing good cause, a Chamber will consider the purpose of recalling the witness and the applicant’s justification for not eliciting the relevant evidence from the witness when he or she originally testified.⁹

III. DISCUSSION

7. In determining whether the Stanišić Defence had shown good cause to recall Witness JF-047, the Chamber considered that the Note appeared to be significant for assessing an important part of the witness’s evidence. In this respect, the Chamber noted that the witness had testified he had been a member of the “Red Berets” and part of a brigade for special purposes of MUP Serbia,¹⁰ whereas the Note indicated Witness JF-047 had been affiliated with the “MUP Krajina”. The Chamber further considered that, at the time of Witness JF-047’s testimony, neither the Prosecution nor the Defence were in possession of the Note. Therefore, the Defence did not have the opportunity to confront Witness JF-047 with it. Based on the foregoing, the Chamber found that the Stanišić Defence had shown good cause to recall Witness JF-047.

⁷ T.10872 (1 February 2011).

⁸ *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-T, Decision on Prosecution Motion to Recall Marjo Rajčić, 24 April 2009 (“*Gotovina Decision*”), para. 10; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005 (“*Bagosora 2005 Decision*”), para. 2; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004 (“*Bagosora 2004 Decision*”), para. 6.

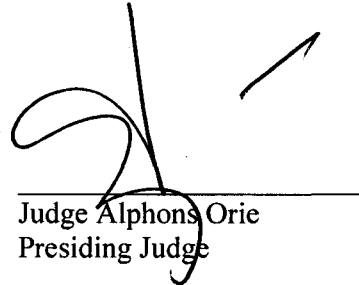
⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Decision on Prosecution Motion to Recall Witness VS-1033 or, in the Alternative, Admit the Witness’s Written Statement, 14 October 2010, para. 7 (“*Šešelj Decision*”); *Gotovina Decision*, para. 10; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion to Recall Prosecution Witness Ahmed Mbonkiza, 27 September 2007, para. 5; *Bagosora 2005 Decision*, para. 2; *Bagosora 2004 Decision*, para. 6.

¹⁰ T.7621-7622, T.7630-7640, T.7671-7672 (4 October 2010); T.7688-7692, T.7740 (5 October 2010); P1516.

IV. CONCLUSION

8. Considering that (1) the Note was inconsistent with Witness JF-047's testimony in significant respects; and (2) the timing of its disclosure resulted in the Stanišić Defence being deprived of an opportunity to confront the witness with it, the Chamber found that the Defence had shown good cause and, as a consequence, that witness should be recalled for further cross-examination.

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



Judge Alphons Orié
Presiding Judge

Dated this thirty-first day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]