



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

IT-03-69-T
D32710-032708
17 August 2011

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Case No. IT-03-69-T
Date: 17 August 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 August 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**REASONS FOR DECISION DENYING ORAL DEFENCE
MOTION FOR ADJOURNMENT OF CROSS-EXAMINATION
OF WITNESS STOPARIĆ**

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

1. On 14 December 2010, before the start of Goran Stoparić's testimony, the Stanišić and Simatović Defence ("the Defence") jointly requested to adjourn the cross-examination of the witness ("Request").¹ The Defence submitted that the Prosecution had breached its disclosure obligations pursuant to Rule 66 (A) (ii) of the Tribunal's Rules of Procedure and Evidence ("Rules") by (1) disclosing a statement given by Goran Stoparić to the Canadian police, dated 2 and 3 June 2004 ("Canadian Statement") partially translated and only one day before the witness appeared to testify; and (2) failing to disclose the witness's November 2003 testimony before a Belgrade Court in the case of former Skorpion member Sasa Cvetan ("Belgrade Testimony").² The Defence contended that these disclosure violations required thorough investigations in order to prepare the Defence's cross-examination of the witness.³ In particular, the Defence pointed at the Belgrade Testimony which may cast doubt on the witness's credibility.⁴

2. The Prosecution accepted that its late disclosure of the Canadian Statement and non-disclosure of the Belgrade Testimony constituted an inadvertent breach of its disclosure obligations.⁵ It further submitted that the disclosure of the Canadian Statement was accompanied by a complete translation.⁶ Overall, it submitted that despite this breach of the Prosecution's disclosure obligations, the Canadian Statement and the Belgrade Testimony relate to a different subject matter and the late disclosure would therefore not result in any prejudice to the Accused.⁷ The Prosecution suggested that cross-examination should commence, pledging that it would not oppose any later requests to recall the witness due to the Prosecution's disclosure violation or new material becoming available to the Defence.⁸

3. After having been provided with the belatedly disclosed documents pursuant to Rule 67 (D) of the Rules and having reviewed them, the Chamber decided that there were insufficient reasons to delay the cross-examination of the witness.⁹ The Chamber hereby provides its reasons for this decision.

4. The Canadian Statement and the Belgrade Testimony primarily relate to events in Kosovo in 1999. As such, they do not touch upon the core allegations in this case. The Chamber was mindful that events falling outside the temporal and geographic scope of the Indictment are not necessarily irrelevant to this case for this reason alone. It considered that prior statements may have an impact

¹ T. 10315-10318, 10347.

² Ibid.

³ T. 10315-10318.

⁴ T. 10315-10316.

⁵ T. 10318-10319, 10348.

⁶ T. 10318-10319.

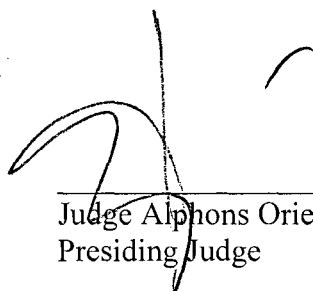
⁷ T. 10319, 10348.

⁸ T. 10322.

on the credibility of the witness. Considering all of the above, however, the Chamber found that the late disclosure of the Canadian Statement and the Belgrade Testimony did not warrant an adjournment of the witness's cross-examination. The Chamber considered that it had not been demonstrated that the Defence would be prejudiced by commencing its cross-examination. The Chamber was of the opinion that in this situation giving the defence an opportunity to recall the witness, if necessary, would be a sufficient remedy and be preferable to permitting a bifurcation of his testimony.¹⁰

5. For these reasons, the Chamber **DENIED** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this seventeenth of August 2011
At The Hague
The Netherlands

⁹ T. 10382.

¹⁰ The Chamber notes that at the end of the witness's testimony on 16 December 2010, it gave the Defence an opportunity to investigate whether any recall was necessary. On 12 and 25 January 2011 respectively, the Defence informed the Chamber that it had decided against asking for a recall of the witness, see T. 10566.