



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: 15 June 2010  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 15 June 2010

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**REASONS FOR DECISION OF 13 MAY 2010 ON  
PROSECUTION MOTION FOR LEAVE TO AMEND  
RULE 65 *TER* SUMMARY FOR WITNESS JF-033**

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**Office of the Prosecutor**

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1. On 7 May 2010, the Prosecution filed a Motion for leave to amend its Rule 65 *ter* summary for Witness JF-033 (“Motion”).<sup>1</sup> On 12 May 2010, the Stanišić Defence and the Simatović Defence objected to the Motion and the Prosecution and the Stanišić Defence made additional oral submissions thereto.<sup>2</sup> On 13 May 2010, the Chamber granted the Motion, with reasons to follow.<sup>3</sup> Witness JF-033 was scheduled to testify on 14 May 2010.

2. In reaching its Decision, the Chamber considered that the Prosecution sought leave to amend the Rule 65 *ter* summary for Witness JF-033 by adding five paragraphs containing supplementary facts related to training at Mount Tara and events that took place in and around Vukovar in 1991 (“Omitted Facts”). The Stanišić Defence submitted that by doing so, the Prosecution would put the Defence into the position of having to investigate a new crime base, since the events in Vukovar had been dropped from the Indictment and the Omitted Facts contain specific allegations of direct participation by Mr. Simatović in this respect.<sup>4</sup> The Stanišić Defence further submitted that it had not conducted an investigation into the Omitted Facts, as notice of this was not given in the Rule 65 *ter* summary.<sup>5</sup>

3. The Chamber considered that the Omitted Facts fell within the geographic and temporal scope of, or were otherwise relevant to, the Indictment, as the Indictment charges persecution and deportation/forcible transfer in the entire SAO/SBWS area, including Vukovar. The Chamber thus considered the main issue to be whether the Defence was put on notice that the witness would testify on issues the Prosecution were now seeking to elicit from the witness. A Rule 65 *ter* summary should provide notice of the facts on which a witness will testify and is initially provided prior to the Pre-Trial Conference, at which stage the other parties have not been otherwise informed of the topics of a witness’s testimony.<sup>6</sup> The Chamber noted that the Prosecution sought leave to amend its Rule 65 *ter* summary for Witness JF-033 to include the Omitted Facts on 7 May 2010, only seven days prior to the witness’s expected testimony. However, the Chamber considered that the Defence had been informed in other filings that Witness JF-033 would testify about the Omitted Facts. On 28 April 2008, the *ex parte* status of the annex to the Prosecution’s motion for the admission of Witness JF-033’s testimony was lifted.<sup>7</sup> In this annex, the Prosecution provided a

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<sup>1</sup> Prosecution Motion for Leave to Amend 65 *ter* Summary for Witness JF-033 With Confidential Annex, 7 May 2010.

<sup>2</sup> T. 4808, 4883-4886.

<sup>3</sup> T. 4887.

<sup>4</sup> T. 4883-4886.

<sup>5</sup> T. 4883, 4885-4886.

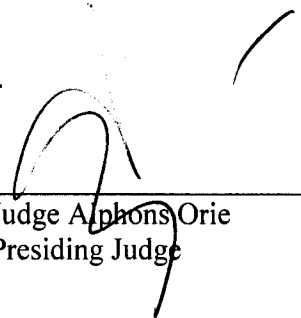
<sup>6</sup> See also T. 4809.

<sup>7</sup> T. 982

summary of the witness's expected testimony, which included most of the Omitted Facts.<sup>8</sup> Moreover, this annex indicated that the Prosecution would tender into evidence, pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence, the entirety of the witness's previous testimony.<sup>9</sup> In addition, the Prosecution's submission of 13 November 2009 confirmed that it intended to rely on all matters contained in the witness's previous testimony, including his previous testimony on the Omitted Facts.<sup>10</sup> The unredacted transcripts of Witness JF-033's previous testimony had been disclosed to the Defence on 18 February 2008. Although the transcripts were voluminous, the Chamber considered that the Defence was put on notice that the Omitted Facts would be part of the testimony.

4. For these reasons, the Chamber found that, although the Rule 65 *ter* summary was not complete, it was sufficiently clear that the Prosecution sought to rely on the entirety of the witness's previous testimony, including the Omitted Facts. The Defence was put on notice of this well in advance for it to investigate and prepare the cross-examination. The Chamber further considered that the amendment to the Rule 65 *ter* summary would ensure the completeness of the trial record in this regard. The Chamber was therefore satisfied that it was appropriate for the Prosecution to amend the Rule 65 *ter* summary for Witness JF-033.

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



Judge Alphons Orie  
Presiding Judge

Dated this Fifteenth day of June 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>8</sup> Prosecution Motion for the Admission of Witness B-174 Pursuant to Rule 92 *ter* with Confidential and *Ex Parte* Annex, 18 June 2007.

<sup>9</sup> Ibid.

<sup>10</sup> Motion, para. 2. See Prosecution Submission on 92 *ter* and 92 *bis* Witnesses, 13 November 2009; Corrigendum to Prosecution Submission on 92 *ter* and 92 *bis* Witnesses, 16 November 2009, ("Submission of 13 November 2009") Confidential Annex A, pp. 25-26.