

IT-03-69-T
D 46912 - D 46909
03 December 2012

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**UNITED
NATIONS**



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: 3 December 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 3 December 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION'S REQUEST FOR
RECONSIDERATION OF DECISION DENYING ADMISSION
OF REBUTTAL EVIDENCE REGARDING WITNESS JF-057**

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

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. In November 2010, Witness JF-057 gave evidence before this Chamber. On 4 June 2012, Defence Counsel for Franko Simatović (“Simatović Defence”) filed a motion requesting the admission of two letters which Witness JF-057 had sent to the Prosecution and Defence Counsel for Jovica Stanišić (“Stanišić Defence”) in March 2012.¹ The letters contain statements made by the witness that relate to the circumstances surrounding the witness’s testimony before this Chamber and on which the Defence intends to rely to challenge the witness’s credibility. On 5 July 2012, the Chamber granted the Defence request, and the letters were admitted as D1356 and D1357 (“Letters”).²

2. On 2 August 2012, the Prosecution filed a motion requesting the admission of rebuttal evidence in relation to the Letters, by which it intended to show that Witness JF-057’s testimony was not fabricated.³ In particular, it requested admission of the witness’s contemporaneous notes in diaries from the Indictment period, as well as three additional documents which, in its view, corroborate the witness’s testimony.⁴ On 16 August 2012, the Stanišić and Simatović Defence opposed the Motion arguing that the Prosecution had not met the standard for admission of rebuttal evidence,⁵ the material tendered by the Prosecution did not rebut any significant issues arising out of the Letters,⁶ and the Defence challenge to the witness’s credibility could have reasonably been anticipated.⁷ On 20 September 2012, the Chamber denied admission of the proposed rebuttal material.⁸

3. On 26 September 2012, the Prosecution requested the Chamber to reconsider its decision of 20 September 2012 (“Request for Reconsideration”).⁹ It contended that although the Chamber had acknowledged that the Prosecution could not reasonably anticipate the tendering of the Letters and that the Letters related to a significant issue in the trial and, in particular, the credibility of Witness JF-057, it had made a clear error of reasoning in finding that the proposed rebuttal evidence could

¹ Simatović Defence Second Bar Table Motion with Confidential Annex, 4 June 2012.
² See First Decision on Simatović Defence Second Bar Table Motion of 4 June 2012, 5 July 2012, paras 3, 10.
³ Prosecution Motion to Admit Rebuttal Evidence Regarding JF-057 via the Bar Table, 2 August 2012 (“Prosecution Motion”), filed confidentially with Confidential Annexes A, B and C, paras 1-7.
⁴ Prosecution Motion, Confidential Annexes A, B and C.
⁵ Stanišić Defence Response to Prosecution Motion to Admit Rebuttal Evidence Regarding JF-057 via the Bar Table, 16 August 2012 (“Stanišić Defence Response”), paras 5-7; Simatović Defence Response on Prosecution Motion to Admit Rebuttal Evidence Regarding JF-057 via the Bar Table, 16 August 2012 (“Simatović Defence Response”), paras 5-7, 12, 22.
⁶ Simatović Response, paras 6-7.
⁷ Stanišić Defence Response, para. 6.
⁸ Decision on Prosecution Bar Table Motion to Admit Rebuttal Evidence Regarding JF-057, 20 September 2012.
⁹ Prosecution Request for Reconsideration of the Decision on Prosecution Bar Table Motion for Admission of Rebuttal Evidence Regarding JF-57, 26 September 2012, paras 2, 5.

not be considered highly probative.¹⁰ The Prosecution submitted that the Letters, which did not assert that the testimony was untruthful, nevertheless raise the spectre of something improper having influenced Witness JF-057's evidence and the Defence made clear that they intend to rely on this and argue that Witness JF-057's evidence had been fabricated.¹¹ Although the proposed rebuttal material was not the only evidence on the record that, in the Prosecution's view, demonstrated the credibility of Witness JF-057, it provided a way for the Chamber to assess the Defence challenge to Witness JF-057's credibility and was therefore highly probative.¹² Lastly, it submitted that failure to admit and consider the proposed rebuttal material could lead to an unjust and incorrect determination on Witness JF-057's credibility which, given the importance of this witness's evidence, would lead to an injustice.¹³

4. On 10 October 2012, the Stanišić Defence responded that the Prosecution had failed to demonstrate any clear error of reasoning in the impugned decision and the Chamber's assessment was logical and amounted to a reasonable exercise of its discretion.¹⁴ It also submitted that the proposed rebuttal material does not demonstrate at all that Witness JF-057's evidence was consistent with that previously provided, and the Chamber's credibility assessment of this witness would turn on the contradictions tainting the whole of Witness JF-057's evidence.¹⁵ It added that the Prosecution cannot be allowed to tender additional evidence merely because its case was met by contrasting evidence.¹⁶ Lastly, it submitted that the Prosecution has not identified any particular circumstances which would justify reconsideration in order to prevent an injustice.¹⁷ The Simatović Defence did not respond to the Request for Reconsideration.

II. APPLICABLE LAW

5. The Chamber refers to the applicable law on reconsideration of a Chamber's decision as set out in its Decision of 14 September 2012.¹⁸

¹⁰ Request for Reconsideration, para. 5.
¹¹ Request for Reconsideration, para. 6.
¹² Request for Reconsideration, paras 2, 5, 7-8; 10.
¹³ Request for Reconsideration, paras 12-13.
¹⁴ Stanišić Defence Response to the Prosecution's Request for Reconsideration of the Trial Chamber's Decision on Prosecution Bar Table Motion for Admission of Rebuttal evidence regarding JF-57, 10 October 2012 ("Stanišić Defence Response to Reconsideration Request"), paras 3, 9.
¹⁵ Stanišić Defence Response to Reconsideration Request, para. 10.
¹⁶ Stanišić Defence Response to Reconsideration Request, para. 12.
¹⁷ Stanišić Defence Response to Reconsideration Request, paras 15-16.
¹⁸ Decision on Stanišić Defence Request for Reconsideration of Documents Previously Denied Admission through the Bar Table, 14 September 2012, para. 4.

III. DISCUSSION

6. The Chamber notes the Prosecution's submission that reconsideration is necessary because of a clear error of reasoning in finding that the material tendered in rebuttal did not meet the necessary threshold for admission. The proposed rebuttal material does not address the specific challenge to the witness's credibility based on the impropriety allegedly transpiring from the Letters tendered by the Defence. As such, it fails to satisfy the conditions for admission of rebuttal evidence in not being highly probative of a significant issue arising directly out of Defence evidence which could not have reasonably been anticipated. Consequently, the Prosecution has not demonstrated that the Chamber made a clear error of reasoning in finding that the material did not reach the required threshold for admission in rebuttal.

7. Furthermore, the argument that exclusion of this material could lead to an incorrect assessment of this witness's credibility and therefore to an injustice is speculative. Although the Defence may rely on the Letters to challenge Witness JF-057's credibility, the Chamber has heard this witness's testimony over the course of three days and has all opportunity to assess the witness's credibility, particularly in the context of the witness's previous testimony in another case and the other evidence that has already been admitted into evidence. Accordingly, the Prosecution has not shown that there are any particular circumstances justifying reconsideration of the Chamber's decision in order to avoid an injustice.

IV. DISPOSITION

8. For the foregoing reasons, the Chamber **DENIES** the Request for Reconsideration.

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



Judge Alphons Orie
Presiding Judge

Dated this third day of December 2012
At The Hague
The Netherlands

[Seal of the Tribunal]