



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
D29375-D29372
26 April 2011

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Case No. IT-03-69-T
Date: 26 April 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 26 April 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ REQUEST FOR CERTIFICATION
TO APPEAL AGAINST THE SCHEDULING ORDER AND
DECISION ON DEFENCE REQUESTS FOR ADJUSTMENT OF
SCHEDULING ORDER OF 16 FEBRUARY 2011**

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

1. On 8 April 2011, the Simatović Defence requested certification to appeal the Chamber's "Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011", filed on 1 April 2011 ("Request" and "Impugned Decision", respectively).¹ In the Impugned Decision, the Chamber partly granted a Defence request for additional time before the commencement of the Defence case, should there be a need to present one.²

2. On 15 April 2011, the Prosecution responded to the Request, not taking a position on the relief sought therein.³

II. SUBMISSIONS OF THE PARTIES

3. The Simatović Defence submits that the Impugned Decision affects Simatović's right to a fair trial, specifically his right to have adequate time and facilities for the preparation of his defence.⁴ The Simatović Defence recalls that it previously requested a period of five months between the Chamber's Rule 98 *bis* decision and the commencement of the Defence case for the co-accused Stanišić.⁵ According to the Simatović Defence, the Impugned Decision established a schedule wherein presentation of evidence by the Stanišić Defence would start "1 month and 10 days" after the Rule 98 *bis* decision, thus directly affecting Simatović's right to have adequate time to prepare his defence.⁶ The Simatović Defence argues that without adequate preparation time, it will not be in a position to present key evidence challenging the Indictment.⁷ The Simatović Defence stresses that an "immediate resolution of the issue would prevent a situation in which the Appeals Chamber may order that the Accused be 'retried according to law' pursuant to Rule 117 (C) of the Rules, if the Appeal[s] Chamber were to find that Simatović did not have the appropriate period of time to prepare his defence case".⁸

¹ Request for Certification to Appeal under Rule 73 (B) Against the Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 8 April 2011. The Simatović Defence also requested expedited pleadings pursuant to Rule 127, Request, para. 18. The Chamber granted this request on 11 April 2011 and set the deadline for responses to the Request to 15 April 2011, T. 11438.

² Impugned Decision, p. 4.

³ Prosecution Response to Defence Request for Certification to Appeal Scheduling Order, 15 April 2011 ("Response").

⁴ Request, para. 5.

⁵ Request, para. 6.

⁶ Ibid.

⁷ Request, paras 7-9.

⁸ Request, para. 10.

4. In substantiating its claim for more time, the Simatović Defence recalls its arguments about late appointment of counsel and inadequate hand-over of material from previous counsel.⁹ It submits that “practically the only time in which it [will be] able to use all [...] its resources for the preparation of the defence case is after 15 April 2011”, thus only providing for a period of a month and a half until the required submissions according to Rule 65 *ter* of the Rules.¹⁰

5. The Prosecution, while taking no position on the Request, submits that the assessment of preparation time must be viewed in actual time available for Defence preparations.¹¹ It argues that the last Prosecution witness testified on 9 February 2011 and that the Chamber on a previous occasion specifically held that the adjournment prior to the Rule 98 *bis* submissions was also intended to be used for Defence case preparations.¹²

III. APPLICABLE LAW

6. Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requires two cumulative criteria to be satisfied to allow a Trial Chamber to grant a request for certification to appeal: 1) that the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

IV. DISCUSSION

7. With respect to the first prong of Rule 73 (B), the Chamber considers that the Impugned Decision involves the issue of how much time to grant to Simatović to prepare his defence. This issue significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial, thus meeting the first prong of Rule 73 (B) of the Rules.

8. The Chamber further considers that granting certification to appeal at this stage may materially advance the proceedings as any prejudice, if found by the Appeals Chamber, could more appropriately be remedied during the trial as opposed to during an appeals procedure. Remedying a prejudice arising from the issue at hand during the first instance proceedings has a positive effect on the expeditiousness of the overall proceedings. In this respect, the Chamber also notes that granting

⁹ Request, para. 11.

¹⁰ Request, para. 16.

¹¹ Response, fn. 5.

¹² Ibid.

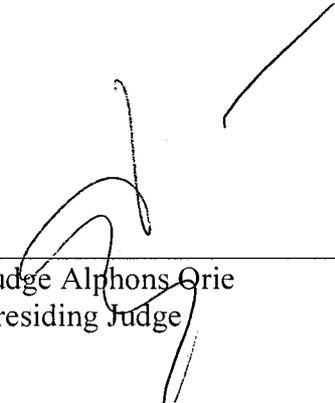
certification to appeal at this stage does not cause immediate further delays in the proceedings, as granting certification does not, in itself, lead to a suspension of the proceedings.

9. The Chamber further considers that a decision on appeal cannot be determined on the basis of the Impugned Decision alone. The Chamber addressed and considered requests for additional time and challenges faced by the Simatović Defence on numerous occasions since the fall of 2009.¹³ For this very reason, the Chamber is of the view that an interlocutory appeal on this issue would require an evaluation of the Impugned Decision in the context of the entire relevant procedural history. The Chamber understands that the Appeals Chamber is not procedurally barred from looking beyond the Impugned Decision in deciding on an appeal.

V. DISPOSITION

10. For the foregoing reasons, pursuant to Rule 73 (B) of the Rules, the Chamber **GRANTS** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-sixth of April 2011
At The Hague
The Netherlands

¹³ See e.g. Decision on Adjournment of Proceedings by the Simatović Defence, 15 October 2009; Decision on Simatović Motion Requesting Issuance of Order to Prosecution Regarding the Order of Witnesses, 24 November 2009; Decision on Urgent Simatović Defence Request for Adjournment, 23 February 2010; T. 6307-6308, 7177, 7403, 10567-10568.