



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: 12 October 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 12 October 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION URGENT MOTION RELATED
TO NON-COMPLIANCE OF STANIŠIĆ DEFENCE WITH
RULE 65 TER (G) AND RULE 67 OF THE RULES**

Office of the Prosecutor
Mr Dermot Groome

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Mr Wayne Jordash
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Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 9 June 2011, the Prosecution filed an urgent motion (“Motion”) alleging the Stanišić Defence’s non-compliance with Rules 65 *ter* (G) and 67 of the Rules of Procedure and Evidence (“Rules”) and requesting the Chamber to: (a) postpone the cross-examination of the Stanišić Defence’s first two witnesses; (b) order the Stanišić Defence to provide notice of potential exhibits associated to the witnesses scheduled to testify before the summer recess; (c) order the Stanišić Defence to file supplemental 65 *ter* witness summaries for several witnesses; (d) order the Stanišić Defence to re-file within two weeks an updated and more detailed exhibit list; and (e) grant leave to exceed the word limit in the Motion.¹ On the same day, through an informal communication, the Chamber set 10 June 2011 as the deadline for responses to the Motion.

2. On 10 June 2011, the Stanišić Defence responded requesting that the Chamber deny the Motion (“Response”) and announcing that it would file an updated exhibit list within two weeks.² On 14 June 2011, the Prosecution requested leave to reply to the Response.³ On the same day, the Chamber granted leave and the Prosecution replied orally in court.⁴ The Stanišić Defence also made further submissions.⁵

3. On 21 June 2011, the Prosecution requested the Chamber to order the Stanišić Defence to immediately disclose the statements including interview, proofing, and other notes of all their witnesses pursuant to Rule 67 (A) (ii) of the Rules (“Disclosure Motion”).⁶ The Stanišić Defence opposed the Disclosure Motion in court on 22 June 2011 (“Disclosure Response”).⁷ On 23 June 2011, the Chamber partially granted the Disclosure Motion, ordering disclosure of any written statements taken by the Stanišić Defence of its prospective witnesses.⁸ The Chamber deferred its decision on the Prosecution’s request for disclosure of notes taken during meetings with prospective witnesses and invited further submissions from the parties by 4 July 2011.⁹ On 28 June 2011, the

¹ Prosecution Urgent Motion Related to Non-Compliance of Stanišić Defence with Rule 65 *ter* (G) and Rule 67 of the Rules, 9 June 2011 (Confidential). See also Stanišić Defence Submission Pursuant to Rule 65 *ter* (G), 6 June 2011 (Confidential).

² Stanišić Defence Response to Prosecution Urgent Motion Related to Non-Compliance of Stanišić Defence with Rule 65 *ter* (G) and Rule 67 of the Rules, 10 June 2011 (Confidential). See also Corrigendum to Stanišić Defence Submission Pursuant to Rule 65 *ter* (G) (ii), 14 June 2011. On 23 June 2011, the Stanišić Defence informed the Chamber and the parties through an informal communication that an updated exhibit list would be filed by 4 July 2011; Stanišić Defence Submission of Revised Rule 65 *ter* (G) (ii) List, 4 July 2011.

³ Request for Leave to Reply to Stanišić Response to Prosecution Urgent Motion Related to Non-Compliance of Stanišić Defence with Rule 65 *ter* (G) and Rule 67 of the Rules, 14 June 2011 (Confidential).

⁴ T. 11516-11518, 11520-11521.

⁵ T. 11518-11520.

⁶ T. 11637-11642.

⁷ T. 11790-11794. The Simatović Defence joined the Stanišić Defence’s opposition, T. 11794.

⁸ T. 11878-11879.

⁹ T. 11878-11880.

Prosecution made submissions further elaborating on its Disclosure Motion (“Prosecution Submission”).¹⁰ The Stanišić Defence responded on 4 July 2011, seeking leave to exceed the word limit, opposing the Disclosure Motion, and, in the alternative, seeking a similar order with regard to Prosecution notes (“Stanišić Submission”).¹¹ On 6 July 2011, the Simatović Defence joined the Stanišić Submission requesting the same relief in relation to the Simatović Defence should the Disclosure Motion be granted.¹² On 11 July 2011, the Prosecution requested leave to reply and replied to the Stanišić Submission, reiterating its request for full disclosure of all notes recording the statements of Defence witnesses, requesting the Chamber to set a deadline for the Defence to meet its disclosure obligations, and requesting leave to exceed the word limit in its reply (“Disclosure Reply”).¹³ On 31 August 2011, the Prosecution requested an order for disclosure of all draft statements of upcoming witnesses.¹⁴ On 21 September 2011, the Prosecution filed an addendum to the Disclosure Motion (“Addendum”).¹⁵

II. SUBMISSIONS OF THE PARTIES

A. Motion

4. The Prosecution requests leave to exceed the word limit in the Motion so as to properly address the content of the Stanišić Defence’s “52-page witness list and 214-page exhibit list”.¹⁶

5. The Prosecution submits that the Stanišić Defence’s Rule 65 *ter* (G) filings lack specificity as to the scope of the testimony for some of its upcoming witnesses.¹⁷ It argues that this failure inhibits the Prosecution’s ability to adequately prepare and results in inefficient expenditure of resources.¹⁸ It argues that its preparations for Witnesses DST-051 and DST-032, the first two Stanišić Defence witnesses, are particularly inhibited by this lack of notice.¹⁹ The Prosecution submits that the Stanišić Defence’s Rule 65 *ter* (G) (i) (b) information is inadequate for twelve of

¹⁰ Prosecution Submission Further Elaborating Prosecution’s Urgent Oral Motion for Defence Disclosure Pursuant to Rule 67 (A) (ii), 28 July 2011.

¹¹ Stanišić Defence Response to Prosecution Submission Further Elaborating Prosecution’s Urgent Oral Motion for Defence Disclosure Pursuant to Rule 67 (A) (ii), 4 July 2011.

¹² Joinder to Stanišić Defence Response to Prosecution Submission Further Elaborating Prosecution’s Urgent Oral Motion for Defence Disclosure Pursuant to Rule 67 (A) (ii), 6 July 2011.

¹³ Prosecution Urgent Request to Reply to Stanišić Response to Prosecution’s Urgent Motion for Defence Disclosure Pursuant to Rule 67 (A) (ii), 11 July 2011.

¹⁴ T. 13725.

¹⁵ Addendum to Prosecution’s Urgent Motion for Defence Disclosure Pursuant to Rule 67 (A) (ii), 21 September 2011 (Confidential).

¹⁶ Motion, p. 1.

¹⁷ Motion, paras 1, 6.

¹⁸ Motion, para. 1.

¹⁹ Motion, paras 13-23.

its prospective witnesses.²⁰ It argues that the summaries of facts are too general and do not put the Prosecution sufficiently on notice of the witnesses' testimonies.²¹

6. The Prosecution further submits that various irregularities in the Stanišić Defence's 65 *ter* exhibit list impede its preparations for upcoming witnesses.²²

B. Response

7. The Stanišić Defence submits that its Rule 65 *ter* summaries for the first two witnesses provide sufficient detail on the facts and scope of their testimony for the Prosecution to effectively prepare for its cross-examination.²³

8. In relation to the Rule 65 *ter* summaries for eight proposed Rule 92 *bis* witnesses, the Stanišić Defence submits that all the material to be tendered under Rule 92 *bis* appears on its 65 *ter* exhibit list, thereby putting the Prosecution on notice of the precise contents of the material to be tendered.²⁴ The Stanišić Defence submits that the information provided for three other witnesses is sufficient for the Prosecution to prepare its cross-examination.²⁵ As for the scope of testimony of the Stanišić Defence's proposed expert, the Stanišić Defence concedes that it will provide greater specificity as soon as practicable.²⁶

9. In relation to its exhibit list, the Stanišić Defence acknowledges that it contains some irregularities and duplications but denies that the Prosecution suffered any prejudice from these errors.²⁷

C. Disclosure Motion and Prosecution Submission

10. The Prosecution submits that the Appeals Chamber has held that the fact that a witness statement is not in standard form does not free a party from its obligation to disclose it.²⁸ It further submits that the Appeals Chamber has considered interview notes as witness statements under Rule 66 (A) (ii) of the Rules.²⁹ While this finding related to Prosecution disclosure obligations, the Prosecution submits that as Rules 66 and 67 protect "notice principles" the finding should be

²⁰ Motion, para. 24.

²¹ Motion, paras 25-28.

²² Motion, paras 29-30.

²³ Response, para. 4.

²⁴ Response, para. 10.

²⁵ Response, para. 11.

²⁶ Response, para. 12.

²⁷ Response, paras 13-14.

²⁸ T. 11638; Prosecution Submission, paras 6, 10.

²⁹ *Ibid.*

consistently applied to all disclosure obligations.³⁰ The Prosecution acknowledges that interview notes may contain mental impressions or other internal work product of the Defence and submits that the Defence is entitled to redact the notes accordingly.³¹ According to the Prosecution, to allow the Defence to circumvent disclosure obligations simply by failing to reduce interview notes to a formal statement would lead to an absurd result emphasizing form over substance.³² The Prosecution submits that Rule 67 (A) (ii), like Rule 66 (A) (ii), is intended to promote the truth-finding process by allowing witnesses to be confronted with their prior statements.³³ According to the Prosecution, this goal is achieved not only by disclosure of formal statements but also by disclosure of other interview notes.³⁴ Lastly, the Prosecution submits that the Appeals Chamber has held that Prosecution interview notes do not constitute work product within the meaning of Rule 70 (A) of the Rules.³⁵ As Rule 70 (A) of the Rules does not make a distinction between Prosecution and Defence work product, the Prosecution submits that Defence interview notes should not fall under Rule 70 (A) either.³⁶

D. Disclosure Response and Stanišić Submission

11. The Stanišić Defence submits that the Disclosure Motion is an attempt to impose similar disclosure obligations on the Defence as those in place for the Prosecution.³⁷ It submits that Rule 67 must be interpreted in light of the presumption of innocence, the right against self-incrimination, and Rules 70 (A) and 97 of the Rules.³⁸ The Stanišić Defence submits that the wording of Rule 67 (A) (ii), particularly the words “if any”, make clear that the term “statements” cannot reasonably be interpreted to include interview or other notes.³⁹

E. Disclosure Reply

12. The Prosecution submits that the Stanišić Defence continues to breach its disclosure obligation pursuant to Rule 67 (A) (ii) of the Rules by disclosing formal witness statements later than foreseen in the Rule.⁴⁰

³⁰ Prosecution Submission, paras 8-10.

³¹ T. 11639; Prosecution Submission, paras 7, 14.

³² T. 11639-11640; Prosecution Submission, para. 9.

³³ T. 11640.

³⁴ T. 11640; Prosecution Submission, para. 9.

³⁵ T. 11640; Prosecution Submission, paras 7, 15.

³⁶ T. 11640-11641; Prosecution Submission, para. 15.

³⁷ T. 11790; Stanišić Submission, para. 3.

³⁸ T. 11790, 11792; Stanišić Submission, paras 21-29.

³⁹ Stanišić Submission, paras 10-12.

⁴⁰ Disclosure Reply, para. 4.

13. The Prosecution challenges the Stanišić Defence's textual interpretation of Rule 67 (A) (ii) and draws the Chamber's attention to the fact that this Rule requires disclosure of two kinds of categories: (a) statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and (b) copies of all written statements taken in accordance with Rules 92 *bis*, Rule 92 *ter*, or 92 *quater*, which the Defence intends to present at trial.⁴¹

14. The Prosecution submits that the Stanišić Defence should not be permitted to avoid its disclosure obligations by entangling a witness's evidence with internal work product.⁴² According to the Prosecution, what matters is that the Stanišić Defence fulfils its disclosure obligations in whatever form by giving notice of Defence evidence.⁴³ In that respect, the Prosecution submits that adopting a "form-over-substance" approach to Rule 67 (A) (ii) allows the Defence to delay formalizing witness statements thereby circumventing the disclosure deadline of the Rule.⁴⁴

F. Addendum

15. The Prosecution submits that it continues to be prejudiced by the Defence's ongoing breach of disclosure obligations and requests that the Chamber set a deadline by which the Defence must disclose all statements of witnesses on its Rule 65 *ter* witness lists.⁴⁵ It proposes that the Chamber could request the Defence to provide it with interview or other notes on an *ex parte* basis so as to determine whether the notes can be qualified as internal work product.⁴⁶

III. APPLICABLE LAW

16. Rule 65 *ter* (G) of the Rules states:

After the close of the Prosecutor's case and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:

- (i) a list of witnesses the defence intends to call with:
 - (a) the name or pseudonym of each witness;
 - (b) a summary of the facts on which each witness will testify;
 - (c) the points in the indictment as to which each witness will testify;

⁴¹ Disclosure Reply, paras 8-9, 11.

⁴² Disclosure Reply, para. 15.

⁴³ *Ibid.*

⁴⁴ Disclosure Reply, paras 12-22.

⁴⁵ Addendum, paras 3, 7-16, 21.

⁴⁶ Addendum, paras 19, 21.

(d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;

(e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and

(f) the estimated length of time required for each witness and the total time estimated for presentation of the defence case; and

(ii) a list of exhibits the defence intends to offer in its case, stating where possible whether the Prosecutor has any objection as to authenticity. The defence shall serve on the Prosecutor copies of the exhibits so listed.

17. Rule 67 (A) of the Rules reads as follows:

Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall:

(i) permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial; and

(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.

18. According to Rule 70 (A) of the Rules, notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

19. According to Rule 97 of the Rules, all communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless: (i) the client consents to such disclosure; or (ii) the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

IV. DISCUSSION

20. At the outset, the Chamber considers the complexity and importance of the issue at hand and will allow the requested word limit extensions and the Prosecution's request for leave to reply of 11 July 2011.

21. Further, the Chamber notes that many requests contained in the Motion have become moot. Witnesses DST-051 and DST-032 have completed their testimonies before this Chamber, which included cross-examination by the Prosecution. Also, the Defence filed an updated exhibit list on 4 July 2011.⁴⁷ Lastly, a total of six Defence witnesses completed their testimonies before the summer recess. Recalling its decision on the Disclosure Motion of 23 June 2011, the Chamber's discussion will focus on the two remaining requests, namely (a) for an order to provide supplemental summaries for a number of witnesses ("Summary Request"), and (b) for an order to disclose interview or other notes of prospective witnesses ("Disclosure Request").

22. In relation to the Summary Request, the Chamber considers that the underlying principle of Rule 65 *ter* (G) of the Rules is to put the Prosecution on notice of the main facts upon which Defence witnesses are expected to testify, thus allowing the Prosecution to prepare its cross-examination.⁴⁸ Eight of the twelve witnesses that the Prosecution sought additional information about are proposed Rule 92 *bis* witnesses. The Stanišić Defence submitted that it had provided the Prosecution with the statements to be tendered of all of these eight witnesses and the Chamber accepts this representation. Accordingly, the Chamber finds that the Prosecution was put on notice of the main facts upon which these witnesses are expected to testify.

23. In relation to the Stanišić Defence's proposed expert, the Chamber notes that the Stanišić Defence conceded in the Response that the description of his expected testimony could be enhanced in specificity. Since then, the parties and the Chamber have, on various occasions in and out of court, discussed the proposed expert's production of his report.⁴⁹ These discussions shed some light on the gist of the examination the proposed expert was intending to conduct. This process however also made clear that the proposed expert had not yet conducted the envisaged examination of documents for the report, thereby not being in a position to communicate the findings of the examination. While this clarified that Rule 65 *ter* (G) (i) (b) of the Rules had been breached in relation to this witness, the Chamber accepts that the delay in conducting the envisaged examination was due to various practical matters. The Chamber considers this unique situation, the fact that the Prosecution will have time to formulate its position once the proposed expert report is filed, and the *rationale* of Rule 65 *ter* (G) and finds that the lack of sufficient notice provided in

⁴⁷ The Chamber notes that the updated list filed on 4 July 2011 does not correspond in all aspects to what was requested by the Prosecution. Specifically, the list does not include a column indicating through which witness the documents will be tendered. However, while such information could contribute to an expeditious trial, the Rules do not require this of the Defence. In light of this and the fact that the Prosecution has seemingly accepted the Stanišić Defence's explanations about its exhibit list, the Chamber will not further consider this matter.

⁴⁸ See *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Decision on Urgent Prosecution's Motion for Additional Detail in Rule 65 *ter* Summaries of the Accused Ljube Boškoski and Johan Tarčulovski, 24 January 2008 (Confidential), para. 10.

⁴⁹ T. 11547-11553, 11583-11584, 12429, 12563-12564, 13129-13132.

relation to the proposed expert's expected testimony is sufficiently remedied by the Prosecution's opportunity to formulate its position once the report is filed.

24. The Prosecution further asserts that the summaries of facts for three other witnesses (Witnesses DST-055, DST-060, and DST-073) are overly broad and therefore inadequate. The Stanišić Defence subsequently informed the parties and the Chamber through an informal communication that it had decided not to call Witness DST-073. The Chamber has reviewed the remaining two summaries to determine whether they indeed contain a "summary of the facts" of the expected testimony of each witness within the meaning of Rule 65 *ter* (G). The Chamber finds that these summaries contain sufficient identification information in relation to each witness, as well as to their occupation at the relevant time and the content of their expected testimonies.⁵⁰

25. In relation to the Disclosure Request, the Chamber first addresses the Prosecution's allegation that the Defence has breached and continues to breach its disclosure obligations by not having disclosed its Rule 92 *ter* statements by 7 June 2011. The Stanišić Defence has submitted that it is not in possession of any other statements not already disclosed on that date.⁵¹ Statements which were disclosed at a date after 7 June 2011, according to the Stanišić Defence, were also produced or finalized at a later date.⁵² In the absence of evidence to the contrary, the Chamber accepts the Stanišić Defence's representation and, as no one can be obliged to perform the impossible, does not find that the Stanišić Defence has breached its disclosure obligations. Similarly, in the absence of any evidence that the Simatović Defence has completed any Rule 92 *bis*, *ter*, or *quater* statements to date or is in possession of any other statements of witnesses it intends to call to testify at trial, the Chamber is similarly inclined to hold that the Simatović Defence has not breached its obligations under Rule 67 (A) (ii) of the Rules. Notwithstanding the above, the Chamber will invite the Simatović Defence to confirm this on the record, as it did not respond to the Addendum. At the same time, the Chamber notes that any producing or formalizing of witness statements only shortly before a witness's scheduled testimony is not conducive to an expeditious trial because it impedes the opposing party's preparation of its cross-examination. Accordingly, the Chamber strongly encourages the Defence to produce or formalize its witness statements at an earlier time.⁵³ Failure

⁵⁰ Specifically in relation to Witness DST-060, the Stanišić Defence declared in court on 12 October 2011 that it would provide the Prosecution with further details about that witness's expected testimony. The Prosecution was satisfied with this declaration and refrained from seeking any further Chamber involvement for the time being. Notwithstanding that, the Rule 65 *ter* summary for Witness DST-060 contains the broad phrase "The witness will testify to the related events in the indictment concerning these issues". While the Chamber is satisfied that the summary as it stands is overall in compliance with the Rules, the testimony of the witness in relation to this broad phrase may necessitate further time to prepare for the cross-examining parties.

⁵¹ See e.g. T. 12796.

⁵² *Ibid.*

⁵³ See also fn. 56 for a way to address this problem.

to do so may eventually result in non-admission of the witness statements and receiving the witness's testimony *viva voce*.

26. The Chamber now turns to the question of whether interview or other notes are to be disclosed under Rule 67 (A) (ii) of the Rules.

27. The Chamber notes the similarities between the wording of the Prosecution's disclosure obligation in Rule 66 (A) (ii) and that of the Defence in Rule 67 (A) (ii). The term "statement" in Rule 66 (A) (ii) has been interpreted broadly in the Tribunal's case law to include interview notes.⁵⁴ The Chamber notes that a broad interpretation of the term "statement" in relation to Prosecution disclosure obligations has little practical effect as the far-reaching Prosecution disclosure obligations would, in any event, cover interview or other notes – whether exculpatory or incriminating. The Chamber notes that generally the disclosure obligations of the Prosecution and the Defence are incongruent in scope. For example, the Prosecution has disclosure obligations pursuant to Rule 68 (ii) in relation to relevant material in its possession. In addition, the Prosecution has disclosure obligations pursuant to Rule 68 (i) of the Rules in relation to exculpatory material. Corresponding disclosure obligations do not exist for the Defence, evidencing the asymmetrical disclosure relationship between the parties.

28. The Chamber considers the rationale of Rule 67 (A) (ii) of the Rules to be two-fold. On the one hand, the Rule intends to provide the opposing party with notice of any statement or testimony to be tendered. On the other hand, it intends to inform the opposing party of any prior statements of the witness so that the witness can be confronted with his previous remarks. The Chamber considers it to be the prerogative of the presenting party how exactly it puts its evidence before the Chamber, provided that it is in conformity with the Rules. As such, if the Defence chooses to present its witnesses as *viva voce* witnesses, the Prosecution may have less notice than if it had received the witnesses' 92 *ter* statements. However, Rule 65 *ter* (G) (i) (b) of the Rules applies irrespective of the mode of testimony of witnesses and provides a sufficient safeguard to ensure that adequate notice is provided.

29. The parties do not dispute that the Defence must disclose statements intended to be tendered under Rules 92 *bis*, *ter*, or *quater*. The disagreement relates to the first part of Rule 67 (A) (ii) in relation to statements of all witnesses intended to be called to testify at trial. The Chamber further considers that prior testimony or statements of the witness *not* taken by the Defence, or signed statements or transcribed interviews of the witness given to the Defence, fall under this provision as

⁵⁴ See e.g. *Prosecutor v. Milutinović et al.*, Case no. IT-05-87-T, Decision on Renewed Prosecution Motion for Leave to Amend its Rule 65 *ter* List To Add Michael Phillips and Shaun Byrnes, 15 January 2007, para. 15.

material to be disclosed. The Chamber then turns to the disputed area of interview or other notes taken as a result of talking to prospective Defence witnesses.

30. Under the Rules the Defence does not have corresponding disclosure obligations to those of the Prosecution. Taking this into consideration, the Chamber finds that interpreting Rules 67 (A) (ii) and 66 (A) (ii) in a similar manner would be inconsistent with the general asymmetry of the parties' disclosure obligations. Accordingly, the Chamber finds that the Defence does not have an obligation to disclose to the Prosecution interview or other notes of its prospective witnesses. In the absence of such a disclosure obligation, the Chamber does not consider it necessary to address the Stanišić Defence's argument regarding the scope of disclosure protections offered by Rules 70 (A) and 97.

31. Notwithstanding the above, the Chamber considers that any additional information a party can give to the other side about its upcoming witnesses, for example in terms of providing greater notice of expected testimony than required under the Rules, contributes to an expeditious trial. An expeditious trial is in the interests of justice. In this regard, the Chamber notes that the Stanišić Defence has lately shown a willingness to provide the Prosecution, upon request, with further information about upcoming testimonies in the interests of an expeditious trial.⁵⁵ The Chamber encourages the Stanišić Defence to continue this practice.⁵⁶

V. DISPOSITION

32. For the foregoing reasons and pursuant to Rules 65 *ter*, 67, and 126 *bis* of the Rules, the Chamber

GRANTS the parties' requests to exceed the word limit in relation to the filings related to this decision;

GRANTS the Prosecution's request for leave to reply;

DECLARES moot

- a. the Prosecution's request for an adjournment of cross-examination for two witnesses,

⁵⁵ See e.g. T. 13616, 13639-13641.

⁵⁶ One way to provide such greater notice could be a courtesy disclosure of draft statements, as raised by the Prosecution on 31 August 2011.

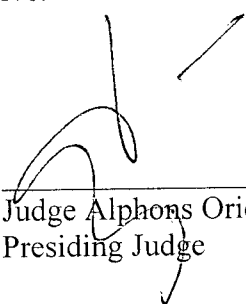
- b. the Prosecution's request for an order to the Stanišić Defence to provide lists of exhibits to be used for witnesses scheduled to testify before the summer recess of 2011,
- c. the Prosecution's request for an order to the Stanišić Defence to provide an updated exhibit list, and
- d. the Prosecution's request to provide a supplemental Rule 65 *ter* summary for Witness DST-073;

DENIES the Summary Request;

DENIES the Disclosure Request; and

INVITES the Simatović Defence to file, within one week of this decision, a notification confirming that it is, to date, not in possession of any Rule 92 *bis*, *ter* or *quater* statements to be tendered for its witnesses or any other statements of witnesses it intends to call to testify at trial.

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



Judge Alphons Orie
Presiding Judge

Dated this Twelfth of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]