



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-PT
Date: 6 March 2008
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Pedro R. David
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 6 March 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON DEFENCE MOTION FOR EXCLUSION OF
PROSECUTION WITNESSES DUE TO LATE DISCLOSURE
OF THEIR UNREDACTED STATEMENTS**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović for Franko Simatović

TRIAL CHAMBER III (“Trial Chamber”) of the 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 (“Tribunal”) is seized of the Defence Motion on Prosecution Failure to Disclose Unredacted Witness Statements, filed by the Stanišić Defence on 22 February 2007 (“Defence Motion”).

1. On 26 October 2004, the Trial Chamber ordered the Prosecution to disclose the full and unredacted statements and related exhibits of 26 Prosecution witnesses no later than thirty days prior to the anticipated start of trial in this matter, unless otherwise ordered by the Trial Chamber.¹ The Prosecution was to disclose the statements and related exhibits of these witnesses in redacted form by 1 November 2004.²

2. On 11 February 2008, the Pre-Trial Judge issued an order scheduling the Pre-Trial Conference to be held within 28 days, namely on 10 March 2008.³ Between 18 and 20 February 2008, the Prosecution complied with its obligation to disclose the unredacted statements of the aforementioned 26 Prosecution witnesses.⁴

3. On 22 February 2008, the Defence filed its Motion. In its Motion, the Stanišić Defence requests the Trial Chamber to exclude all said witnesses from being called to trial, or in the alternative, to postpone the start of trial.⁵ In short, the Stanišić Defence argues that the Accused’s right to a fair trial, and in particular the right to have adequate time in preparation of its case⁶, has been violated by the late disclosure of unredacted witness statements by the Prosecution.⁷

4. On 29 February 2008, the Prosecution filed its Response to the Defence Motion (“Prosecution Response”).⁸ It argues that it could not have complied with the Trial Chamber’s Order in any event, as the anticipated date of trial was announced 28 days before trial.⁹ It submits that the requested relief is not proportional in relation to the alleged breach, and it proposes not to call the 26 Prosecution witnesses in question before 20 March 2008, allowing the Defence at least

¹ Decision on confidential Prosecution motions for protective measures, operative para. (1) (iii), and 2 (iii), 26 October 2004.

² Decision on confidential Prosecution motions for protective measures, operative para. (1) (ii), and 2 (ii), 26 October 2004.

³ Scheduling Order, 11 February 2008.

⁴ Defence Motion, para. 6; Prosecution Response to Defence Motion on Prosecution Failure to Disclose Unredacted Witness Statements, 29 February 2008.

⁵ Defence Motion, para. 11 (A) and (B).

⁶ See Article 21(4) (b) of the Statute.

⁷ Defence Motion, para. 6 and 7.

⁸ Prosecution Response to Defence Motion on Prosecution Failure to Disclose Unredacted Witness Statements, 29 February 2008.

⁹ Prosecution Response, para. 6.

30 days to prepare for cross-examination of said witnesses.¹⁰ The Prosecution cites ICTY and ICTR jurisprudence in support of its arguments, and submits that such jurisprudence was incorrectly interpreted by the Stanišić Defence.¹¹

5. The Trial Chamber agrees with the Prosecution that it could not have complied with the 30-day disclosure deadline set out in the Trial Chamber's order of 26 October 2004, as the start of trial was notified 28 days in advance. Thus, the question is whether the Prosecution unreasonably infringed on the rights of the Accused by disclosing the statements approximately 20 days before trial, and so, if such an infringement can be remedied by the Prosecution's proposal not to call the said 26 witnesses before 20 March 2008.

6. In the present circumstances, the Trial Chamber does not find it unreasonable that the Prosecution required some eight days to prepare their disclosure. The Trial Chamber also finds the Prosecution's proposal not to call the 26 witnesses before 20 March 2008 is reasonable and sufficiently addresses any prejudice that might otherwise be suffered by the Accused, as this will allow the Defence at least 30 days to investigate the identifying information of said witnesses in order to adequately prepare for their cross-examination.

For the foregoing reasons, pursuant to Articles 20 and 22 of the Statute and Rules 54, 69 and 75 of the Rules of Procedure and Evidence, the Trial Chamber **DENIES** the Defence Motion and **ORDERS** the Prosecution not to call the 26 Prosecution witnesses identified in the Trial Chamber's Decision of 26 October 2004 before 20 March 2008.

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



Judge Patrick Robinson
Presiding Judge

Dated this sixth day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ Prosecution Response, para. 8.

¹¹ Prosecution Response, paras 10–12.