



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: 7 April 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: 7 April 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION URGENT MOTION FOR DISCLOSURE OF
CONFIDENTIAL MEDICAL REPORTS TO DR. DE MAN**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz

Counsel for the Accused

Mr. Geert-Jan Alexander Knoop and Mr. Wayne Jordash for Jovica Stanišić

1. **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 seised of the “Prosecution’s Motion to Allow Dissemination of Psychiatric and Psychological Reports to Dr. De Man, and to Lift the Confidential and *Ex Parte* Nature of the Psychiatric and Psychological Evaluations Enumerated in this Report”, filed confidentially on 4 April 2008 (“Prosecution Motion”), requesting the dissemination of confidential and *ex parte* medical reports to Dr. De Man. On 7 April 2008, the Defence responded to the Motion, opposing to the dissemination of such reports to Dr. De Man, and requesting that further matters the Accused’s ill health be held in private or closed session (“Defence Response”).

2. The Trial Chamber had previously determined that the information to the Accused’s medical conditions should be given in public session. It made this determination after consulting with the Medical Doctor of the UNDU, as is required by Rule 34 of the Rules Governing the Detention of Persons awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal (“Rules of Detention”) and also because, as the Trial Chamber explained in court, the interest of justice and the proper administration of the trial required that course of action.¹ The Trial Chamber has considered the submission made by the Defence in its Response and sees no reason to depart from its earlier ruling. As the Trial Chamber explained in court, where the health of an Accused has interfered with the conduct of his trial to the extent that the medical condition of Stanišić has, information relating to his health becomes a matter of public interest. The Chamber recalls that this trial was scheduled to commence on 10 March 2008, and to this date has not so commenced. This has been entirely due to the health condition of the Accused Stanišić. On three occasions postponements have had to be made for commencing trial owing to Mr. Stanišić’s ill health. In the Chamber’s view, in those circumstances it is entitled to take the action that it has and will take in relation to the current submission of the Stanišić Defence. The requirements under Rule 34 of the Detention Rules have been fully met.

3. The Trial Chamber also notes the opposition of the Defence to the Prosecution’s request that Dr. De Man be given access to the following reports: Dr. Najman, Dr. Mimica, Ms. Smit and Dr. Dominicus, as well as their respective *curricula vitae*. It appears to the Trial Chamber to be perfectly reasonable that Dr. De Man be allowed to see these reports. It is artificial and unreal to view Dr. De Man’s report as an isolated event. This report must be seen in the context in which it was presented, that is against the background of the story of the Accused’s ill health as it has unfolded so far. Part of that story is the reports made by the other doctors from whom the Trial

¹ T. 701 (18 March 2008).

Chamber has heard. The Trial Chamber's understanding of the issue relating to the Accused's health can only be enhanced by allowing Dr. De Man to read these reports and by permitting such questioning in relation thereto as may be necessary. The Chamber stresses that it will monitor very carefully this aspect of the proceedings to ensure that any questioning of Dr. De Man in relation to these reports is confined to those areas that are strictly necessary.

4. The Trial Chamber notes that it did not consider the report of Dr. Dominicus in determining whether the Accused Jovica Stanišić is fit to stand trial,² and that it denied the Prosecution's request to hear Dr. Dominicus.³ It thus sees no reason to disclose the report of Dr. Dominicus to Dr. De Man. The Chamber also observes that the Prosecution has not requested that Dr. De Man be allowed to read the report of Dr. Blagojević, the treating psychiatrist of Mr. Stanišić. Dr. De Man may read this report if he so wishes.

5. Lastly, the Chamber notes that the Prosecution has requested that the confidential and *ex parte* nature of the reports of Dr. Najman, Dr. Mimica, Ms. Smit and Dr. Dominicus be lifted. The Chamber does not believe that at this stage, it is necessary to do so.

In the light of the foregoing, the Prosecution Motion is partially **GRANTED**. The Chamber **INSTRUCTS** the Registrar to disclose to Dr. De Man the confidential and *ex parte* reports of Dr. Najman, Dr. Mimica, Ms. Smit and Dr. Blagojević, as well as their respective *curricula vitae*. In order to allow Dr. De Man to read these reports, the hearing scheduled for today, 7 April 2008, will commence at 14.45.

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



Judge Patrick Robinson
Presiding

Dated this seventh day of April 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

² Decision on Motion Re Fitness to Stand Trial, filed confidentially and *ex parte* on 10 March 2008.

³ Decision on prosecution request to re-open hearing on Jovica Stanisic's fitness to stand trial and to provide further written submissions, filed confidentially and *ex parte* on 7 March 2008.