



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: 15 April 2008
Original: English

IN TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Decision of: 15 April 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON ORAL SUBMISSIONS DURING
HEARING OF 14 APRIL 2008**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz
Mr. Gregory Townsend
Mr. John Docherty

Counsel for the Accused

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

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 oral submissions made during the hearing of 14 April 2008 by the Prosecution and the Defence for Franko Simatović.

1. Submissions of the Defence for Franko Simatović

2. The Defence for Franko Simatović requested that the case commence on Tuesday, 29 April 2008, rather than Monday, 28 April 2008, so as to enable it not to travel during the Serbian Orthodox Easter.

3. The Trial Chamber postponed the proceedings until 28 April 2008, on which date the full video-conference link with the UNDU will be established. In that same week, the Trial Chamber will not sit from Wednesday, 30 April 2008, until Friday, 2 May 2008, with 30 April being a UN holiday that the Trial Chamber is obliged to observe. The Trial Chamber is sensitive to the religious persuasions of the Parties and notes that similar applications and grant of such applications are not without precedent. However, in the particular circumstances of this case, which has been delayed for so many weeks owing to the ill health of the Accused Jovica Stanišić and having regard to the fact that Wednesday, 30 April 2008, is a UN holiday which the Trial Chamber is obliged to observe, the Trial Chamber will not grant this request.

2. Submissions of the Prosecution

4. First, the Prosecution reiterated its request set out in its Motion Seeking a Scheduling Order, filed with confidential annex on 11 April 2008 (“Motion”), namely that it be allowed to call its first witness two or three days after the start of the opening statement, so as to avoid making travel arrangements and incurring costs for the appearance of the first witness without any certainty that his or her testimony would commence. In the Motion, the Prosecution submitted that it would require four hours to deliver its opening statement.¹ During the hearing, it submitted that it expected the opening statement to start on the day of the Pre-Trial Conference and to continue on the following day. It argued that the delay, were its request to be granted, would amount to only one day.

5. The Trial Chamber sees no reason why the Pre-Trial Conference and the opening statement of the Prosecution cannot be conducted in one day. The Pre-Trial Conference should last no more than 45 minutes. If the Trial Chamber were to grant the request, the delay of the proceedings would

thus amount to a minimum of two days. This case has already been postponed for several weeks owing to the ill health of the Accused Jovica Stanišić. The Trial Chamber is sensitive to the Prosecution argument concerning the costs incurred when a witness turns up for trial and his or her testimony is not taken. However, in the circumstances of this case, where the illness of an accused has had such an impact on the start of the trial and is likely to continue to affect the conduct of the trial, the Trial Chamber must make what it considers to be the best possible arrangements for a trial schedule. In that regard, the Trial Chamber has set Monday, 28 April 2008 for the Pre-Trial Conference and the opening statements. It sees no justification for granting requests for further delays.

6. The opening statement of the Prosecution must be concluded within three hours. In arriving at a decision as to who it will call as its first witness, the Prosecution should take account, *inter alia*, of the fact that there will be a break from Wednesday, 30 April 2008, to Monday, 5 May 2008. The first witness will be called following the conclusion of the Prosecution opening statement on Monday, 28 April 2008, when the hearing will commence at 13.15 hours. On Tuesday 29 April 2008, the hearing will also commence at 13.15 hours. In that regard, the Trial Chamber intends to sit an additional hour during hearings in the months of May and June, whenever the court schedule allows in order to make up for time that has been lost. Due notice will be given to the Parties of any such sitting.

7. Second, the Prosecution submitted that the reports of the specialists who “work with Mr. Stanišić and advise Dr. Falke” were to be submitted to the Trial Chamber, so it would be able to make the best assessment of the health of the Accused, Jovica Stanišić. The Defence for Jovica Stanišić responded that the correspondence of Dr. Falke showed that the specialists are treating physicians and that for reasons of protecting the doctor-patient confidentiality they might expect that their reports are not disclosed to third parties. The Defence for Jovica Stanišić also submitted that the medical standards under Dutch law provide for such confidentiality. As to the latter argument, the Trial Chamber referred to the obligation of states under Article 29 of the Statute to comply with orders of a Trial Chamber.

8. On 10 March 2008, the Trial Chamber issued its decision on the fitness to stand trial of the Accused Jovica Stanišić. This decision included an order, which reads, in relevant parts:

“[...] the Accused is to be examined at least once every four weeks or more often, when necessary, by a gastroenterologist. This gastroenterologist is to provide the Trial Chamber with a report on the Accused’s medical condition after each examination, again so as to allow for adjustments in the trial schedule.”

¹ Prosecution Motion, para. 5.

9. On 28 March 2008, Dr. Falke, as Medical Officer of the UNDU, provided a report to the Trial Chamber. This report included, in relevant part:

"[...] The treating gastroenterologist reports to me on a regular basis. He makes assessments on the frequency of appointments in response to the effectiveness of the prescribed treatments. Additional consultations with an independent gastroenterologist for the purpose of reporting will not offer additional information [...] but will require additional stressful and tiring appointments to Mr. Stanišić's already intensive program of medical appointments.

[...] in accordance with the Bronovo Hospital the treating gastroenterologist will only report to the treating general practitioner, in this case the Medical Officer. In respect to the Bronovo Hospital Policy and in respect of the content of the report, I opine in accordance with Rule 34 D ii [of the Rules of Detention] that Mr. Stanišić's gastroenterological condition has not changed significantly and consequently I would prefer not to disclose this report in line with my responsibilities outlined above".

10. The order of the Trial Chamber requires a gastroenterologist to provide a report on Jovica Stanišić's medical condition every four weeks. While the gastroenterologist may choose to report his findings to Dr. Falke as well, the Trial Chamber's order is abundantly clear that the gastroenterologist's report should be submitted to it. This report is to be submitted to the Trial Chamber through the Registrar.

3. Disposition

11. For the foregoing reasons and pursuant to Rule 54 of the Rules, the Trial Chamber

DENIES the request of the Defene for Franko Simatović, **DENIES** the Prosecution's request for a delay between the opening statement and the commencement of witness testimony, **REAFFIRMS** the order contained in its decision on fitness to stand trial of 10 March 2008, in that the gastroenterologist who examines the Accused Jovica Stanišić is to provide a report on this examination to the Trial Chamber after each examination and **SCHEDULES** the hearings of Monday, 28 April 2008, and Tuesday, 29 April 2008, to last from 13.15 hours to 19.00 hours.

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



Judge Patrick Robinson
Presiding Judge

Dated this fifteenth day of April 2008

At The Hague

The Netherlands

[Seal of the Tribunal]