



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: 16 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:** 16 April 2008

**PROSECUTOR**

**v.**

**JOVICA STANIŠIĆ  
AND  
FRANKO SIMATOVIĆ**

***PUBLIC***

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**DECISION ON DEFENCE MOTION REQUESTING CERTIFICATION FOR  
LEAVE TO APPEAL**

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**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

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 “Defence Request for Leave to Appeal the Trial Chamber’s ‘Decision on Motion Future Course of Proceedings’”, filed on 11 April 2008 (“Defence Motion”). On 15 April 2008, the Prosecution filed its Response to the Defence Motion.<sup>1</sup>

2. By its Motion, the Defence for Jovica Stanišić (“Stanišić Defence”) requests certification to appeal the Trial Chamber Decision of 9 April 2008 (“Decision”),<sup>2</sup> wherein the Trial Chamber, upon finding that the health condition of the Accused Jovica Stanišić (“Accused”) is a factor that persistently interferes with the right to a fair and expeditious trial, requested the Registrar to put in place a system that will enable the Accused to participate in the proceedings from the UNDU on days that he is too unwell to attend court.<sup>3</sup> The Stanišić Defence argues this “derogation or denial” of the Accused’s right to be present in court affects the fairness of the proceedings.<sup>4</sup>

3. The main argument of the Stanišić Defence that an immediate resolution of the Appeals Chamber may materially advance the proceedings is that (i) “the accused may well be ill for much longer period of time”<sup>5</sup> and (ii) the Decision places the Stanišić Defence “into the position of having to be the *de facto* guardians of the health of the accused whilst trying to represent the accused at trial”.<sup>6</sup>

4. In its Response, the Prosecution submitted that certification of the Decision would be appropriate, but argued that the Appeal should be restricted to the Chamber’s order regarding the possibility of a video-conference link between the Tribunal and the UNDU, while the issue regarding the Accused’s fitness to stand trial should be outside the scope of an appeal. With respect to the latter argument, the Chamber observes that its Decision did not deal with the Accused’s fitness to stand trial.

5. In order for certification to be granted, it must be established, pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”), that the decision of the Trial Chamber (a) involves an

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<sup>1</sup> Prosecution’s Response to Defence Request for Certification to Appeal the Trial Chamber’s Decision on Future Course of Proceedings, 15 April 2008.

<sup>2</sup> Decision on Future Course of Proceedings, 9 April 2008.

<sup>3</sup> Para. 14 of the Decision reads: “If the Accused is too ill to attend court, he can follow the proceedings by form of video-conference link and, if he so wishes, he can make a statement pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence at a later stage of the trial. The video-conference link that is to be established will allow the Accused to see the witnesses. Also, a telephone line will be established that will enable him to communicate with his counsel in the Courtroom. At the same time, a member of the Defence team may be present with the Accused at the UNDU”.

<sup>4</sup> Defence Motion, para. 7.

<sup>5</sup> Defence Motion, para. 15.

issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and (b) for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

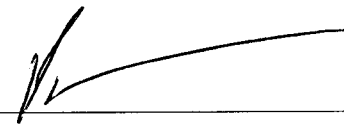
6. Regarding the first criterion of Rule 73 (B) of the Rules, the Chamber holds that the issue as to the consistency of the video-conference link with the right of the Accused to be present in court is one that affects the fair and expeditious conduct of the proceedings or the outcome of the trial. Therefore, it finds that the first criterion of Rule 73 (B) of the Rules has been met.

7. With respect to the second criterion of Rule 73 (B) of the Rules, the Chamber notes that the Prosecution has concluded that an immediate resolution by the Appeals Chamber may materially advance the proceedings.<sup>7</sup> The Chamber shares this conclusion and, notwithstanding that it finds no merit in the Defence argument on this point, holds that the second criterion has been met. For this reason, it will grant the Defence Motion in this respect.

8. Lastly, the Stanišić Defence requested a stay of the proceedings until the Appeals Chamber decides on the issue. The Chambers sees no merit in the Defence argument that its request should be granted on the basis that the issue would be “exceptional, unusual and highly controversial”.<sup>8</sup> The Accused’s ill health has dominated the present proceedings since the beginning of January this year; any request for further delays should be well-founded and strictly necessary. It is also not convinced that the result of a reversal of its decision by the Appeals Chamber would result in “irreparable damage to the integrity of the process”.<sup>9</sup> In sum, the Chamber has not been persuaded by the Defence on this matter.

In the light of the foregoing, the Trial Chamber **GRANTS** the Defence Motion **IN PART**, **GRANTS** the Defence request for certification and **DENIES** the Defence request for a stay of the proceedings.

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



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Judge Patrick Robinson  
Presiding

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<sup>6</sup> Defence Motion, para. 16.

<sup>7</sup> Prosecution Response, para. 7.

<sup>8</sup> Defence Motion, para. 19.

<sup>9</sup> Defence Motion, para. 19.

Dated this sixteenth day of April 2008

At The Hague

The Netherlands

**[Seal of the Tribunal]**