



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: 17 July 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: 17 July 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON DEFENCE REQUEST FOR CERTIFICATION TO APPEAL
THE TRIAL CHAMBER'S ORAL RULING DATED 28 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

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”);

BEING SEISED of “Defence Request for Certification to Appeal the Trial Chamber’s ‘Oral Ruling for the Continuation via Video Link and Refusal for Adjournment of Proceedings’ Dated 28 April 2008”, filed by the Defence for the Accused Jovica Stanišić (“Stanišić Defence”) on 5 May 2008 (“Motion”);

NOTING that at the hearing held on 28 April 2008 the Trial Chamber found that “[i]n light of the evidence as a whole, and in particular the evidence given by [Dr. Falke] that the trial could proceed with the video-conference link subject to close monitoring of the health of the Accused, [...] the trial will proceed with the video-conference link”;¹

CONSIDERING that a request for leave for certification to appeal will be successful if the party moving for such leave shows that the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

NOTING the Stanišić Defence’s submission that the Trial Chamber’s oral decision of 28 April 2008 is based on “a misapprehension” of Dr. Falke’s evidence and “severely impacts on the rights of the Accused to an expeditious trial because the Accused is not currently in a position to participate in the proceedings”;²

NOTING that, in its confidential response filed on 9 May 2008, the Prosecution requested that certification to appeal be denied, submitting that the Stanišić Defence’s arguments in the Motion “are the same or substantially the same” as those put forward in its appeal against the Trial Chamber’s decision of 9 April 2008 on the future course of the proceedings, the only difference being “the reliance on the testimony of Dr. Falke”;³

¹ 28 April 2008, T. 975. The Trial Chamber subsequently clarified its decision as follows: “the Trial Chamber’s ruling was that the Accused Stanišić was well enough to follow and participate in the proceedings by video conference link. In that decision, [the Trial Chamber] w[as] very much encouraged and felt supported by [Dr. Falke]’s evidence that [the Accused Stanišić] could follow and participated in the proceedings by video conference link through subject to close monitoring of his health” (T. 977).

² Motion, para. 2 (“the Trial Chamber did misapprehend the evidence of Dr. Falke”).

³ Prosecution’s Response to the Defence Request for Certification to Appeal the Trial Chamber’s Oral Decision on Continuation of Trial via Video-Conference Link.

NOTING that on 16 May 2008 the Stanišić Defence replied that the Motion “deals with a novel situation, namely a rejection of a subsequent request for adjournment of the proceedings based on additional and new medical evidence”;⁴

NOTING that on 9 April 2008 the Trial Chamber rendered its decision on the future course of the proceedings, in which it required that a video-conference link be established to enable the Accused to participate in his trial proceedings from the United Nations Detention Unit,⁵ and that on 16 April 2008 the Trial Chamber granted the Stanišić Defence’s request for leave to appeal this decision;⁶

NOTING that the Stanišić Defence’s main argument in ground three of its appeal was, as noted by the Appeals Chamber,⁷ that the Trial Chamber “erred by disregarding a reasonable alternative – namely, to adjourn the proceedings for three to six months as per the recommendation of Dr. De Man – when it ordered the establishment of the video-conference link” and that, in the view of the Appeals Chamber, this argument did not amount “to a challenge of the Trial Chamber’s decision not to reconsider the Fitness Decision”⁸ but rather should be construed “as support for the general assertion of the Defence that in disregarding a reasonable alternative, the Trial Chamber erred in its application of the proportionality principle”;⁹

NOTING that in its decision of 16 May 2008 the Appeals Chamber granted the Stanišić Defence’s appeal against the Trial Chamber’s decision of 9 April 2008 on the future course of the proceedings and, in particular, allowed “the Defence request to adjourn the proceedings for a minimum of three months and to reassess the Accused’s state of health before determining when the trial should commence”;¹⁰

CONSIDERING that the proceedings have been adjourned for a minimum of three months, there is no need to examine whether the Trial Chamber erred on 28 April 2008 by denying the Stanišić Defence’s “subsequent request for adjournment of the proceedings”;¹¹

CONSIDERING, in addition, that the question of whether the Trial Chamber erred in its assessment of Dr. Falke’s medical evidence on 28 April 2008 has become immaterial, as the

⁴ Defence Reply to Prosecution’s Response to Defence Request for Certification to Appeal the Trial Chamber’s Oral Decision on Continuation of Trial via Video-Conference Link, 16 May 2008, para. 3.

⁵ Decision on Future Course of Proceedings, 9 April 2008, paras 14-15.

⁶ Decision on Defence Motion Requesting Certification for Leave to Appeal, 16 April 2008.

⁷ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008.

⁸ *Ibid.*, para. 10. The Appeals Chamber referred to the Trial Chamber’s Decision on Motion Re Fitness to Stand Trial, Confidential and *Ex Parte*, 10 March 2008.

⁹ *Id.*

¹⁰ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008, para. 22.

¹¹ See Defence Reply to Prosecution’s Response to Defence Request for Certification to Appeal the Trial Chamber’s Oral Decision on Continuation of Trial via Video-Conference Link, para. 3.

Accused Stanišić's state of health has developed over the last two months and a new assessment will be conducted at the end of the three-month period of adjournment;

CONSIDERING therefore, that an immediate resolution of the matter by the Appeals Chamber would not materially advance the proceedings;

FOR THE FOREGOING REASONS, the Trial Chamber **DENIES** the Motion in its entirety.

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



Judge Patrick Robinson
Presiding

Dated this seventeenth day of July 2008

At The Hague

The Netherlands

[Seal of the Tribunal]