



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: 29 May 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Pre-Trial Judge, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Order of: 29 May 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON START OF TRIAL AND MODALITIES FOR TRIAL

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Zoran Jovanović
Mr Vladimir Domazet

PROCEDURAL HISTORY

1. On 16 May 2008, the Appeals Chamber instructed the Chamber to adjourn the proceedings in this case and to “reassess the Accused’s [Jovica Stanišić’s] state of health before determining when the trial should commence”.¹ Accordingly, the Chamber adjourned proceedings *sine die* on 20 May 2008.² On 26 May 2008, the Chamber granted provisional release to both Jovica Stanišić and Franko Simatović and established a comprehensive reporting procedure to monitor the health of the Accused Stanišić (hereinafter “the Accused”).³

2. On 17 December 2008, after having reassessed the Accused’s health, the Chamber prolonged the adjournment of proceedings and instructed, *inter alia*, two independent court experts to submit further medical reports by 17 March 2009.⁴ On 19 and 23 March 2009 respectively, Dr de Man and Dr Siersema filed their reports pursuant to the December 2008 Re-Assessment Decision.⁵

3. On 6 April 2009, the Prosecution filed a motion for revocation of the Accused’s provisional release and re-assessment of his health.⁶ On 20 April 2009, the Stanišić Defence responded to the Motion, opposing it.⁷ On 22 April 2009, the Prosecution requested leave to reply and replied to the Stanišić Response.⁸ On 24 April 2009, the Chamber issued its decision on the Prosecution’s motion.⁹ The Chamber decided that the trial in the present case should recommence and, accordingly, revoked the provisional release of the two Accused.¹⁰ The Chamber further stated that it was “satisfied that Mr Stanišić is able to endure the rigours of a trial and to effectively participate in the trial *provided that accommodating measures are introduced*”.¹¹ Also on 24 April 2009, the Chamber invited the parties to comment on a

¹ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008 (“16 May 2008 Decision”), para. 22.

² T. 1258.

³ Decision on Provisional Release, 26 May 2008, para. 68.

⁴ Decision on Prosecution Motion for Re-Assessment of Jovica Stanišić’s Health and Re-Commencement of Trial and Decision on Prosecution Motion to Order Further Medical Reports on Jovica Stanišić’s Health, 17 December 2008 (“December 2008 Re-Assessment Decision”), para. 38.

⁵ Registry Submission Pursuant to Rule 33 (B) Concerning Psychiatric Expert Report, 19 March 2009 (“Dr De Man Report”); Registry Submission Pursuant to Rule 33 (B) Concerning Expert Report, 23 March 2009 (“Dr Siersema Report”). Collectively, these reports will be referred to as “the Reports”.

⁶ Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of his Health, 6 April 2009, paras 4, 28.

⁷ Defence Response to Prosecution Motion of Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of his Health, 20 April 2009.

⁸ Prosecution Request for Leave to Reply and Reply to Stanišić Defence Response to Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of His Health, 22 April 2009.

⁹ Decision on Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of his Health and Revocation of Franko Simatović’s Provisional Release, 24 April 2009 (“24 April Decision”).

¹⁰ *Ibid.*

¹¹ *Ibid.*, para. 20 (emphasis added).

number of proposed contingency measures which may prove necessary “for the purpose of facilitating Mr Stanišić’s effective participation in the trial and for the purpose of enabling the Chamber to monitor the health condition of the Accused”.¹² The Chamber received the parties submissions on 4 May 2009.¹³

4. On 24 April 2009, the Chamber ordered that a status conference be held on 12 May 2009, the Pre-Trial Conference on 18 May 2009, and the start of the trial be scheduled for 25 May 2009.¹⁴ In the Scheduling Order for Recommencement of Trial, the Chamber noted that

The Presiding Judge of the Trial Chamber is currently presiding over trial proceedings in the case of *Prosecutor v. Gotovina et al.*, in which the Defence cases, if any, are scheduled to commence on 27 May 2009, and of which limits for the near future the time the Presiding Judge is available to preside over the present case in court.¹⁵

5. At the Status Conference on 12 May 2009, the Chamber decided for a variety of reasons unrelated to a pending motion for postponement,¹⁶ to reschedule the Pre-Trial Conference for 2 June 2009.¹⁷

DISCUSSION

Introductory remarks

6. In its 24 April Decision, the Chamber considered in particular the Dr De Man Report and the Dr Siersema Report and concluded that the trial could commence “provided that accommodating measures are introduced”.¹⁸ At that time, the proceedings in the present case had been adjourned for more than 11 months from the date of the Appeals Chamber’s 16 May 2008 Decision. In the present Decision, the Chamber will set out the modalities for the trial, including the “accommodating measures” needed in order to start the trial. In doing so, the Chamber will consider the medical situation of the Accused, as set out in the mentioned Reports, and the submissions by the parties in response to the Chamber’s 24 April

¹² Invitation to Parties to Comment on Modalities for Trial, 24 April 2009 (“24 April Invitation”).

¹³ Prosecution Submissions Regarding Trial Modalities, 4 May 2009 (“Prosecution Submission”); Defence for Stanišić’s Response to Trial Chamber’s Invitation to Comment on Modalities for Trial, 4 May 2009 (“Stanišić Submission”); Simatović Defence Comments Pursuant to Trial Chamber Invitation of 24 April 2009, 4 May 2009 (“Simatović Submission”).

¹⁴ Scheduling Order for a Status Conference, 24 April 2009; Scheduling Order for Recommencement of Trial, 24 April 2009.

¹⁵ Scheduling Order for Recommencement of Trial, 24 April 2009, p. 2.

¹⁶ Defence Request for Postponement of Commencement of Trial, 6 May 2009.

¹⁷ T. 1348.

¹⁸ 24 April Decision, para. 20.

Invitation.¹⁹ It will further consider developments subsequent to the 24 April Decision, in particular these reflected in medical reports following this decision with regard to the Accused's health situation and the scheduling in the cases of *Prosecutor v. Ante Gotovina et al.* and *Prosecutor v. Momčilo Perišić*, in which Judges of this Chamber participate.

Submissions by the parties in response to the 24 April Invitation

7. The Stanišić Defence submits that it is not able to comment on the Chamber's proposal on the modalities for trial.²⁰ It argues that the Dr De Man Report and the Dr Siersema Report fail to comment precisely upon the Accused's ability to instruct counsel, to focus on the details of the case, or to physically withstand the rigours of the trial, including attending court proceedings.²¹ Also, the Stanišić Defence argues, the Reports do not deal with the medical treatment regime which will be required at the United Nations Detention Unit ("UNDU") and the issue of how this might work alongside a trial schedule.²² The Stanišić Defence further argues that the Accused is "physically unwell, deeply depressed, fragile, exhausted, and unfocused" and that it cannot identify any modalities "which have removed or diminished these symptoms".²³ Consequently, the Stanišić Defence submits that the modalities should be developed only after further enquiry has been made to the Accused's treating doctors and the independent experts.²⁴

8. Regrettably, the Stanišić Defence ignores in its submission that the Reports in fact deal extensively with the issue of appropriate treatment of the Accused, including the use of medications and the possibility of surgical intervention, as well as the possibilities for him to participate in the trial proceedings. Dr Siersema indeed proposed an adapted trial regime as a means of accommodation.²⁵ The Chamber is satisfied that the Reports provide sufficient information upon which the Chamber may rely in setting out the modalities for the initial phase of the trial. These modalities will include mechanisms for the Chamber to be regularly apprised of the Accused's health condition as the trial progresses so as to enable it to adjust the modalities whenever needed. This is reflected in the modalities for trial, as set out in the Annex to this Decision.

¹⁹ In its submission, the Simatović Defence explained that since all the specific modalities discussed up to this moment were related to the health condition of Mr Stanišić it had no specific proposal and would accept any decision rendered by the Chamber on this matter. See Simatović Submission.

²⁰ Stanišić Submission, para. 2.

²¹ Ibid., para. 2.

²² Ibid., para. 2.

²³ Ibid., para. 3.

²⁴ Ibid., para. 4.

9. The Prosecution submits that it is essential to distinguish between what is required to ensure effective treatment of the Accused's illnesses and what the Chamber needs to know in order to decide whether the trial can proceed at any given time.²⁶ The Prosecution further submits that, based on the statements of the Treating Medical Officer of the UNDU ("TMO"),²⁷ the decision not to attend court is effectively a subjective one made by an accused.²⁸ Therefore, and "[g]iven the frequency with which this occurred when the case originally went to trial", the Chamber needs a mechanism to assess and determine when the subjective decision of the Accused not to attend court amounts to a voluntary waiver.²⁹ In this respect, the Prosecution proposes a number of guidelines amounting to the creation of such a mechanism.³⁰ The Prosecution further makes a number of concrete proposals with regard to the video-conference link facility at the UNDU.³¹ Finally, the Prosecution points out that the scheduling of witnesses will become considerably more complicated, burdensome for witnesses, and costly if hearings are conducted only two days per week.³² The Prosecution therefore proposes that the Chamber schedule the two court hearings per week as follows: Thursday, Friday, Monday, and Tuesday on successive weeks.³³

10. The Chamber understands the Prosecution's submissions to mean that a distinction needs to be drawn between the reporting function of treating physicians, whether UNDU medical officers or private medical specialists, and the reporting function of Chamber-appointed independent medical experts. The Chamber accepts this and it is reflected in the modalities for the trial, as set out in the Annex to this Decision. The Chamber further takes into account the Prosecution's proposals with regard to the video-conference link facility at the UNDU and with regard to trial scheduling. These are also reflected in the modalities for the trial.

Dr De Man Report and Dr Siersema Report

11. When identifying appropriate modalities, the Chamber has considered all medical reports submitted to it since the Appeals Chamber's 16 May 2008 Decision and in particular the recent reports by Dr De Man and Dr Siersema, both non-treating independent medical

²⁵ Dr Siersema Report, p. 5; Registry Submission Pursuant to Rule 33 (B) Concerning Expert Gastroenterologist Report, 12 September 2008, p. 5.

²⁶ Prosecution Submission, paras 2, 6-7.

²⁷ Dr. Paulus Falke.

²⁸ Ibid., para. 4.

²⁹ Ibid., paras 5, 10-11.

³⁰ Ibid., para. 12.

³¹ Ibid., paras 14-15.

³² Ibid., para. 16.

experts with medical specialisations appointed by the Chamber. With regard to the Accused's physical health, the Chamber recalls in particular that Dr Siersema set out:

In my experience, the physical disorders [of Mr Stanišić] do not prevent the vast majority of patients to live an (almost) normal life. It is however imaginable that some adjustments need to be made when patients with these type of disorders attend trial.³⁴

This should also be considered in conjunction with the numerous alternative ways of treating the Accused, as suggested by Dr Siersema, which in his view might lead to improvements of the Accused's physical health. The Chamber has also considered that the conclusions by Dr Siersema was not based on a full examination due to the Accused's failure to fully cooperate.³⁵

12. With regard to the Accused's mental health, the Chamber considers in particular Dr De Man's observations during his visits to the Accused at the Belgrade Military Medical Academy. Summarizing his first visit on 30 January 2009, Dr De Man states:

Subject is well oriented and shows no disturbance of memory. His attention can be captured but is not easily sustained. There are no signs of disturbances of perception and everyday judgement. No thought disturbances are noted. No hallucinatory experiences are related or observed. The speed of thinking and acting is lowered. Mood is low with negative affect modulating only to a limited extent.³⁶

Similar, and even more positive, observations were noted on a second visit three weeks later:

The formal psychiatric examination shows again no disturbance of memory. His attention can be captured but is clearly better sustained. Still he seems to tire easily, thereby limiting the duration of the interview. As before, there are no signs of disturbances of perception and everyday judgement. No thought disturbances are noted. No hallucinatory experiences are related or observed. The speed of thinking and acting is better than it was on the first examination. Mood is low with negative affect, but clearly modulating to a greater extent.³⁷

On a third visit, conducted in the presence of psychiatrist Dr Blagojević, Dr de Man found it difficult to examine the Accused.³⁸ According to Dr De Man, the answers given by the Accused to his questions were monosyllabic and yielded no additional information.³⁹

³³ Ibid.

³⁴ Dr Siersema Report, p. 5. With regard to Dr Siersema's comments with regard to the Accused's mental health, see the 24 April Decision, para. 16.

³⁵ Dr Siersema Report, p. 4.

³⁶ Dr De Man Report, pp. 6-7.

³⁷ Ibid., p. 7.

³⁸ Ibid., pp. 7-8.

³⁹ Ibid., pp. 7-8.

13. The Accused was already deemed legally fit to stand trial through a decision by the Chamber on 10 March 2008 and the Chamber accepts this determination to the present date.⁴⁰ The medical reports received since then have not warranted a need to revisit this issue. The Chamber concludes from the Dr De Man Report and the Dr Siersema Report that the Accused can participate in the trial proceedings in the present case within the framework of a court schedule which reasonably accommodates his particular medical ailments and shortcomings. This would necessarily include a trial conducted with relatively shorter court sessions and longer breaks between sessions, so as to permit him to the extent practicable to participate in his own defence with minimised discomfort under the circumstances. Further adjustments corresponding to the Accused's daily health situation can be implemented where appropriate. The Chamber further considers it advantageous to the orderly conduct of proceedings to have in place an additional option for the Accused to follow the proceedings in the form of a video-conference link from an observation room in the UNDU. This observation room should be equipped so as to allow the Accused to effectively participate in the trial proceedings, including unhindered communication with his counsel. Although the Chamber would prefer that the Accused is present at all scheduled court sessions, it would not disallow the Accused to avail himself of the opportunity to participate in trial proceedings by using the video-conference link. The Chamber further concludes from the Reports a need for regular medical reporting to allow the trial forecast to be adjusted in both the long and short term. Such reporting is particularly relevant on days in which court sessions are scheduled, and for this reason the Chamber has sought special dispensation for all court sessions in this case to be scheduled in the afternoons in order to allow for the preparation of such medical reports. All these considerations are reflected in the modalities for the trial, as set out in the Annex to this Decision.

Medical situation subsequent to the 24 April Decision

14. With regard to the Accused's health situation subsequent to the 24 April Decision, the Chamber has received five medical reports from the Reporting Medical Officer of the UNDU ("RMO")⁴¹. On 5 May 2009, the day after the Accused was returned to the UNDU, the RMO submitted his first weekly report.⁴² Beyond summarizing the medical file of the Accused and setting out his upcoming medical appointments, the RMO stated that when he met with the Accused at the airport on 4 May 2009, the latter complained that he was tired

⁴⁰ Decision on Motion Re Fitness to Stand Trial, 10 March 2008.

⁴¹ Dr Michael Eekhof.

⁴² Medical Report by Dr Michael Eekhof, Reporting Medical Officer, dated 5 May 2009, filed 21 May 2009.

from the trip but that he had no complaints which demanded immediate action.⁴³ On 5 May 2009, when the RMO met with the Accused in his cell, the Accused complained of stomach problems, lower back pain, fatigue and abdominal pain.⁴⁴ According to the RMO, the Accused “gave the impression of being depressed”.⁴⁵

15. On 11 May 2009, the RMO submitted his second weekly report.⁴⁶ The RMO stated that the medical reports concerning the Accused’s treatment during hospital stays in Belgrade had been made available.⁴⁷ These reports revealed a new medical issue, a lumbar disc herniation.⁴⁸ According to the RMO, “[o]ver the weekend the symptoms of his lumbar discal herniation have increased to the point that he has enormous difficulties to change any body position, getting out of bed without help is nearly impossible”.⁴⁹ The RMO reported that a Magnetic Resonance Imaging scan (“MRI”) was scheduled for the same day and a visit to a neurologist would be realized on short notice.⁵⁰ According to the RMO, the Accused had reported that his defecation frequency had increased slightly to 12 times per day and a visit to the gastroenterologist had therefore been scheduled for the same day.⁵¹ Finally, the RMO reported that the Accused’s psychological situation had been assessed by Dr Vera Petrović who had concluded that “his overall psychological functioning has worsened”.⁵²

16. On 12 May 2009, the RMO complemented his 11 May Report.⁵³ The RMO stated that the Accused had visited the gastroenterologist the day before and that “there were no new aspects and the medication was not changed”.⁵⁴ With regard to the lumbar discal herniation, referred to in the 11 May Report, the RMO stated:

Mr. Stanišić underwent a MRI yesterday, a small discal herniation was seen; on Thursday a visit to the neurologist is planned. Mr Stanišić states that he cannot stand or walk for more than a few moments. [...] As the neurological evaluation has not yet been completed, I cannot exclude a somatic reason for the problems with walking and standing.⁵⁵

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, dated 11 May 2009, filed on 25 May 2009 (“11 May Report”).

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, dated 12 May 2009, filed on 14 May 2009 (“12 May Report”), p. 1.

⁵⁴ Ibid.

⁵⁵ Ibid.

The RMO added that “[t]he psychological situation has worsened”.⁵⁶ The RMO concluded that “Mr Stanišić cannot attend court on medical grounds”.⁵⁷

17. A Status Conference was held on 12 May 2009.⁵⁸ Therefore, the RMO had attached to the 12 May Report a form filled in by the Deputy Commanding Officer of the UNDU (“DCO”) with regard to the Accused’s possible attendance in court. According to the DCO, the Accused had indicated that he was too unwell to attend court in person and that he did not wish to use the video-conference link.⁵⁹ The DCO further reported that the Accused waived his right to attend court in person although he declined to indicate this on the UNDU form titled “Absence From Court Due To Illness”.⁶⁰ At the Status Conference on 12 May 2009, Counsel for the Accused confirmed that the Accused indeed waived his right to be present in court.⁶¹

18. On 18 May 2009, the RMO submitted his third weekly report.⁶² The RMO reported that “[t]he colitis is unchanged, his weight has not changed, urine test prove positive energy balance. The psychological situation is unchanged”.⁶³ With regard to the lumbar discal herniation, the RMO stated that the Accused had visited a neurologist on 14 May 2009 and further:

Although a small discal herniation was seen on the MRI, no neurological substrate for Mr. Stanišić’s inability to walk was found. Mr Stanišić has twice refused being treated by the physiotherapist.⁶⁴

The RMO concluded that the Accused’s general condition has improved slightly but that he is not able to participate in proceedings if sitting for more than 10 minutes is required.⁶⁵ The RMO added that a bed has been installed in the video-conference link room.⁶⁶

19. On 26 May 2009, the RMO submitted his fourth weekly report, adding to the information provided in the 18 May Report that “[the Accused’s] back pain is improving slowly” and that his general condition has improved slightly although he would still not be

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ T. 1343-1369.

⁵⁹ 12 May Report, p. 2.

⁶⁰ Ibid., pp. 2-3.

⁶¹ T. 1346.

⁶² Medical Report by Dr Michael Eekhof, Reporting Medical Officer, dated 18 May 2009, filed on 20 May 2009 (“18 May Report”),

⁶³ Ibid.

⁶⁴ Ibid. Upon filing of this Decision, the Chamber was informed that the report by the neurologist was being translated and filed. The Chamber reviewed a courtesy copy of the report. The Chamber considers that nothing in the summary of this report, made by the RMO, is contradicted by the report itself.

⁶⁵ Ibid.

⁶⁶ Ibid.

able to participate in proceedings if sitting for more than 10 minutes is required.⁶⁷ The RMO also stated that the Accused had reported a short period of unconsciousness on 24 May 2009 and that the TMO had found no neurological or cardiovascular abnormality upon examination.⁶⁸ An electrocardiogram taken on 25 May 2009 revealed no abnormalities.⁶⁹

20. The Chamber needs to consider that the five medical reports are relatively brief and reflect the result of examinations and assessments by primary care physicians as opposed to medical specialists. Having reviewed these reports, the Chamber finds that the general medical situation of the Accused is most accurately and extensively reported in the Dr De Man Report and the Dr Siersema Report although the reports submitted by the RMO do not significantly differ from the former in material respects. The RMO reflects in the 12 May Report that “[t]he psychological situation has worsened” but this must be read in conjunction with the 11 May Report, in which the RMO merely incorporates the assessment of Dr Vera Petrović without independent verification. No further information with regard to this assessment was provided in the 11 May Report. The Chamber will therefore rely primarily on the Dr De Man Report, with regard to the mental health of the Accused, when identifying the modalities for the trial.

21. The only new medical issue since the 24 April Decision appears to be the lumbar discal herniation. This issue was referred to in the medical reports concerning the Accused’s treatment during hospital stays in Belgrade and was therefore not brought to the attention of the medical staff at the UNDU until sometime after the first weekly report had been submitted. According to the 11 May Report, the Accused had “enormous difficulties to change any body position” and “getting out of bed without help is nearly impossible”. This report was based largely upon information provided by the Accused. The following day, however, after the Accused had undergone an MRI, the medical report was far less pessimistic. The RMO stated that the MRI had revealed “a small discal herniation” and that somatic (i.e., physical) reasons for the Accused’s claimed difficulties in walking or standing could not be excluded before a neurological evaluation had been completed. Such an evaluation was completed on 14 May 2009 and the conclusion, as referred to in the RMO’s 18 May Report, was that “no neurological substrate [or underlying reason] for Mr. Stanišić’s inability to walk was found”. Moreover, according to the same report, the Accused had twice refused to be treated by a physiotherapist. The Chamber will closely monitor the development of this situation. The Chamber concludes that accommodating measures can be put in place to

⁶⁷ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, dated 26 May 2009, filed on 27 May 2009 (“26 May Report”).

⁶⁸ Ibid.

alleviate any discomfort felt by the Accused due to the small discal herniation and this will allow the Accused to be physically present in court or to participate in the proceedings via video-conference link from an observation room in the UNDU.⁷⁰

22. In three of the reports submitted by the RMO, the RMO appears to draw ultimate conclusions as to the Accused's ability to attend court at a particular moment in time.⁷¹ The Chamber accepts these conclusions as stemming from the vantage of a medical assessment in isolation. However, the question whether an accused is able to attend court proceedings requires a legal determination in which facts presented by a medical assessment are but one, although a large, consideration. This determination is ultimately for the Chamber to make, once informed as to the circumscribed medical facts available to the RMO. In this respect, it is also imperative that the medical officer reporting to the Chamber makes a clear distinction in the reports between what the Accused has stated to the medical officer and the medical facts supporting that statement. Such a distinction can be of importance, as the example of the discal herniation in the previous paragraph shows.

23. The medical reports that the Chamber received subsequent to the 24 April Decision have confirmed to the Chamber that regular and transparent reporting on the medical situation of the Accused, in particular on days with court sessions, is of great importance. This is reflected in the modalities for the trial, as set out in the Annex to this Decision.

Scheduling in other cases

24. With regard to the scheduling of other cases in which the Judges in the present Chamber are involved, the Chamber notes that, pursuant to the Order Composing a Trial Bench of 28 May 2009, the bench is composed of Judge Orić, Judge Picard, and Judge Gwaunza. Judge Orić and Judge Gwaunza are sitting on the *Prosecutor v. Ante Gotovina et al.* case. On 27 May 2009, the Defence case in the *Gotovina et al.* case started. At the Pre-Defence Conference on that day, the *Gotovina et al.* Chamber decided the three Defence teams would be granted 210 hours for the presentation of their cases.⁷² Judge Picard is sitting on the *Prosecutor v. Momčilo Perišić* case. The trial in that case started on 2 October 2008 and the Prosecution has been granted 355 hours for the presentation of its case.⁷³ These are

⁶⁹ Ibid. A vaso-vagal reflex due to colitis was deemed to be the most likely diagnosis.

⁷⁰ As described in the Annex to this Decision, the observation room is furnished with a bed from which the video-conference link and telecommunications equipment can be accessed. It is also furnished with a toilet.

⁷¹ 12 May Report; 18 May Report; 26 May Report.

⁷² *Prosecutor v. Ante Gotovina et al.*, T. 17737.

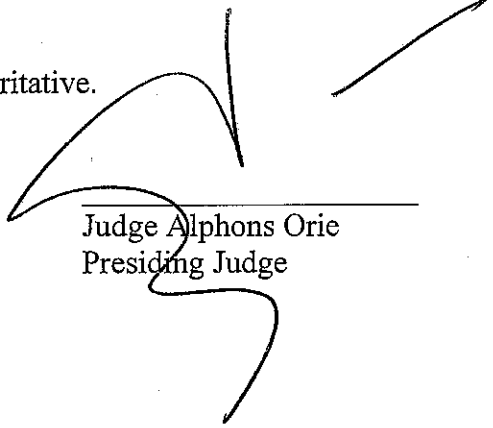
⁷³ *Prosecutor v. Momčilo Perišić*, T. 343.

important considerations that will affect the trial schedule for considerable time. This is reflected in the modalities for the trial, as set out in the Annex to this Decision

Conclusion

25. According to Article 20 of the Statute “[t]he Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses”. Pursuant to this obligation upon the Chamber, it has considered the Accused’s health situation as described in the medical reports submitted to it since the Appeals Chamber’s 16 May 2008 Decision and, particularly, in the Dr De Man Report, the Dr Siersema Report, and subsequent medical reports by the RMO, as well as the trial commitments of the Judges in the present Chamber. The Chamber finds that the trial in *Prosecutor v. Jovica Stanišić and Franko Simatović* can commence pursuant to the modalities for the trial, as set out in the Annex to this Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-ninth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

Modalities for the trial in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*

1. As set out in the Scheduling Order for Recommencement of Trial of 24 April 2009, the Chamber will only hold hearings in the present case two days a week. The daily hearings will be divided into sessions of 1 hour and 15 minutes, with breaks lasting 30 minutes. Mr Stanišić can at all times address the Chamber if he has a need for additional breaks. Whenever and insofar as the courtroom schedule of the Tribunal allows this, the hearings will be conducted on consecutive days and in a manner as to avoid long interruptions of the presentation of evidence. The hearings will also take place in the afternoon in order to facilitate any determination of the medical status of Mr Stanišić prior to the hearing.
2. The schedule set out in item 1 is valid for the first three months of the trial, although the Chamber may further extend it. In addition, the Chamber will make any adjustments to this schedule that it deems fit, in particular taking into account the Judges' trial schedule and the health of Mr Stanišić. The Chamber may invite submissions of the parties with regard to any such adjustments.
3. During Mr Stanišić's detention at the United Nations Detention Unit ("UNDU"), the UNDU Reporting Medical Officer will submit a written report to the Chamber on the medical condition of the Accused once a week, so as to allow for adjustments in the schedule set out in item 1, if necessary. In addition, Mr Stanišić is to be examined at least once every four weeks by a gastroenterologist who will report in writing to the Chamber on the Accused's medical condition after each examination. If the Chamber considers it necessary, based on the regular reporting set out above, it will request that a medical specialist, for example a psychiatrist, examine Mr Stanišić and report in writing to the Chamber. All the reports referred to in this item should be filed publicly, unless the Chamber indicates otherwise.
4. Mr Stanišić will be physically present in court during the court hearings. As all accused before the Tribunal, Mr Stanišić may waive his right to be present in court. If he waives this right due to illness, Mr Stanišić is to follow the procedure set out by the Registry, including filling out the form for waiving the right as will be provided to him by the staff of the UNDU.
5. In order to further accommodate Mr Stanišić, the Chamber will allow him, if he opts to, not to be present in court but instead follow the proceedings via a video-conference link from the UNDU. For this purpose, an observation room with toilet facility has been arranged at the UNDU in close vicinity to Mr Stanišić's cell. Mr Stanišić should inform the staff of the UNDU of this decision at the earliest possible time. The staff of the UNDU should convey

this message to the Chamber, via the Court Officer, before the start of the hearing on any particular day. A video-conference link will allow Mr Stanišić to follow the proceedings, to see the witnesses at all times, to make a statement pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence if he chooses to do so, and to otherwise address the court. The Chamber and the parties in the courtroom will also be able to see Mr Stanišić at the video-conference link. A telephone line will allow Mr Stanišić to communicate with his counsel in the courtroom and a member of the Defence team may be present with Mr Stanišić at the UNDU. Mr Stanišić will also have access to eCourt and Livenote transcript in the observation room.

6. On each court day, the Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall remind Mr Stanišić of the court schedule for the day and that the normal arrangements are in place for his transport to court. If Mr Stanišić indicates that he is too unwell to attend court in person, the Commanding Officer is to remind him of his right to be present in court, ask him if he waives his right to attend and offer him the opportunity to communicate with counsel. The Commanding Officer shall also inform Mr Stanišić that he may make use of the video-conference link from the UNDU, should he opt not to physically attend court.

7. If Mr Stanišić does not waive his right to be physically present and does not opt to participate in the proceedings via video-conference link from the UNDU but claims that he is too ill to go to court, he shall be medically examined before the court session. The Reporting Medical Officer at the UNDU or an independent medical expert shall familiarize him- or herself with the medical condition of Mr Stanišić and submit, through the Court Officer, a written report to the Chamber. This report will be filed publicly unless the Chamber indicates otherwise. The Reporting Medical Officer at the UNDU or the independent medical expert shall also be ready to report orally to the Chamber at the beginning of the court session. The Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall inform the Chamber, through the Court Officer, about the above as soon as possible, including that Mr Stanišić is or has been medically examined. At the beginning of the court session, Defence Counsel shall confirm to the Chamber that Mr Stanišić has not waived his right to be present. The Chamber shall then, if it deems necessary, hear the Reporting Medical Officer or the independent medical expert in court or through the video-conference link on the medical condition of Mr Stanišić. The Chamber may also seek further information about the condition of Mr Stanišić from other sources, as it deems fit.

8. Upon hearing the Reporting Medical Officer or the independent medical expert the Chamber shall determine that either:

(a) Mr Stanišić is well enough to participate in the proceedings, either in person or, if he elects, via video-conference link, in which case Mr Stanišić shall be deemed to have waived his right to be present and the trial will continue in his absence, unless the Chamber uses its discretion to adjourn the proceedings taking into account Mr Stanišić's health problem; or

(b) Mr Stanišić is too unwell to participate in the proceedings in either way, in which case the Chamber shall adjourn the proceedings until the next scheduled court session.