



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-T
Date: 15 October 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Reasons of: 15 October 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**REASONS FOR DECISION DENYING THE STANIŠIĆ
DEFENCE REQUEST TO ADJOURN THE COURT
PROCEEDINGS AND FOR DECISION TO PROCEED WITH
THE COURT SESSION OF 15 JULY 2009 IN THE ABSENCE
OF THE ACCUSED**

Office of the Prosecutor

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I. BACKGROUND

1. On 15 July 2009, the Accused Jovica Stanišić (“the Accused”) claimed to be too unwell to attend court but did not waive his right to be present during the court session held that day. On the same day, the Stanišić Defence requested that the court proceedings be adjourned. Also on 15 July 2009, the Chamber denied the Stanišić Defence request and decided to proceed with the scheduled court hearing, in the absence of the Accused.

II. PROCEDURAL HISTORY AND SUBMISSIONS

2. With regard to the procedural history until 29 June 2009, the Chamber refers to its two previous written reasons of 2 July 2009 and 22 July 2009 substantiating oral decisions on a matter similar to the one dealt with in the present decision.¹ On 30 June 2009, the Accused informed the Chamber that he was too unwell to attend court, that he did not waive his right to be present during the court session on that day, and that he did not wish to use the video-conference link.² On the same day, the Reporting Medical Officer of the United Nations Detention Unit (“RMO”) submitted a report, concluding that “[the Accused’s] health problems remain unchanged”.³ The RMO added that the Accused’s medication had been reviewed and that it was unlikely that the Accused’s fatigue was caused by his medication.⁴ The RMO was not heard on this day since neither the parties nor the Chamber expressed any wish to question him.⁵ The Chamber decided to proceed with the court session scheduled for that day, in the absence of the Accused.⁶

3. On 6 July 2009, the Accused informed the Chamber that he was too unwell to attend court on that day and that he did not wish to use the video-conference link.⁷ Upon questioning by the staff of the United Nations Detention Unit whether he waived his right to attend court in person he responded that he did not understand.⁸ In court on the same day, Counsel for the Accused informed the Chamber that the Accused did not waive his right to be present during that day’s court session.⁹

¹ Reasons for Denying the Stanišić Defence Request to Adjourn the Hearings of 9 and 10 June 2009 and Have Jovica Stanišić Examined by a Psychiatrist Before the Start of Trial and for Decision to Proceed with the Court Session of 9 June 2009 in the Absence of the Accused, 2 July 2009 (“2 July 2009 Reasons”), paras 1-10; Reasons for Decision Denying the Stanišić Defence Request to Postpone the Court Proceedings and Decision Proceeding with the Court Session of 29 June 2009 in the Absence of the Accused, 22 July 2009 (“22 July 2009 Reasons”), paras 1-13. See also Decision on Start of Trial and Modalities for Trial, 29 May 2009 (“Modalities Decision”), paras 1-5.

² Non-Attendance in Court Form, 30 June 2009; Absence from Court Form, 30 June 2009, pp. 1-2.

³ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, 30 June 2009 (“30 June 2009 RMO Report”).

⁴ Ibid.

⁵ T. 1643.

⁶ Ibid.

⁷ Non-Attendance in Court Form, 6 July 2009; Absence from Court Form, 6 July 2009, pp. 1-2.

⁸ Ibid.

⁹ T. 1732-1733.

On the same day, the RMO submitted a report, stating that the Accused's physical condition had remained unchanged.¹⁰ With regard to the mental health of the Accused, the RMO set out:

[The Accused's] mental state of mind is agitated and depressed. He is upset by the fact that his family problems were discussed in the Court. He is well oriented and shows no evident disturbance in memory. I visited him today and found no signs of disturbances of perception and judgement. These findings are in accordance with the conclusions stated by Dr. de Man, psychiatrist in his expert report dated 26 June 2009.¹¹

The RMO concluded that the Accused's health situation remained unchanged.¹² The RMO was not heard on this day since neither the parties nor the Chamber felt the need to question him.¹³ The Chamber decided to proceed with the court session scheduled for that day, in the absence of the Accused.¹⁴

4. On 7 July 2009, the Accused informed the Chamber that he was too unwell to attend court, that he did not waive his right to be present during the court session on that day, and that he did not wish to use the video-conference link.¹⁵ On the same day, the RMO submitted a report, reiterating in essence what had been set out in the 6 July 2009 RMO Report and adding "[i]n my opinion [the Accused's] mental state can be regarded as normal in view of his family circumstances and [t]here are no evident psychiatric reasons preventing him from participating in proceedings".¹⁶ After a short questioning of the RMO in court on the same day, the Chamber decided to proceed in the absence of the Accused.¹⁷

5. On 15 July 2009, the Accused informed the Chamber that he was too unwell to attend court, that he did not waive his right to be present during the court session on that day, and that he did not wish to use the video-conference link.¹⁸ On the same day, a medical officer temporarily replacing the RMO submitted a report stating that the physical condition of the Accused appeared to be relatively unchanged.¹⁹ With regard to the mental health, the medical officer stated:

Mentally [the Accused] shows clear signs of depression with a low voice, slow speech and movements, and flattened affect. He complains of simple 'inability' to attend, based primarily on

¹⁰ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, 6 July 2009 ("6 July 2009 RMO Report").

¹¹ Ibid. See 22 July 2009 Reasons, paras 8-9, 15.

¹² 6 July 2009 RMO Report.

¹³ T. 1733-1734.

¹⁴ T. 1734.

¹⁵ Non-Attendance in Court Form, 7 July 2009; Absence from Court Form, 7 July 2009, pp. 1-2; T. 1826-1827.

¹⁶ Medical Report by Dr Michael Eekhof, Reporting Medical Officer, 7 July 2009 ("7 July 2009 RMO Report").

¹⁷ T. 1827-1829.

¹⁸ Non-Attendance in Court Form, 15 July 2009; Absence from Court Form, 15 July 2009, pp. 1-2.

fatigue and his physical condition. Consistent with depressive illness and his medication regime he showed varying impairment in a range of higher functions – mild disorientation with regard to the day of the week, mild memory discrepancies, occasionally rambling answers. He did not however demonstrate particularly slowed thought, understood my questions and for specific questions gave relatively coherent answers. His judgement and perception appeared relatively unaffected.²⁰

The medical officer concluded that, in his opinion, the Accused was unfit to travel and to attend court in person but that he was fit to attend court via video-conference link for a maximum of 45 minutes.²¹ Upon questioning, the medical officer explained that he, as a temporary replacement for the RMO, had examined the Accused for the first time on that day.²² He also explained that he believed that the Accused's medication contributed to his current medical state, although he could not assess to what degree.²³ As far as he was aware, there had been no changes in the Accused's medication during the last one or two months.²⁴ With regard to his conclusion that the Accused was unfit to travel to the courtroom, the medical officer stated that he based this on his own observations, namely that the Accused was "unsteady on his feet, very slow to move, and presents [sic] physically as relatively frail".²⁵

6. Also on 15 July 2009, the Stanišić Defence requested, in light of the information provided by the medical officer in court and in the 15 July 2009 Report, that the court proceedings be adjourned.²⁶ The Prosecution opposed the request.²⁷ The Chamber denied this request orally and decided to proceed with the scheduled court hearing, in the absence of the Accused.²⁸

III. DISCUSSION

7. The Chamber reiterates that an accused who claims to be too unwell to attend court on a particular day also bears the burden of showing that this is indeed the case.²⁹ On 29 May 2009, the Chamber decided that the trial could commence pursuant to the modalities for trial, as set out in the Annex to the Modalities Decision. No party requested certification to appeal this decision nor did they request the Chamber to reconsider the decision in light of new circumstances that may have

¹⁹ Medical Report by Dr Mike Rowell, 15 July 2009 ("15 July 2009 Report").

²⁰ Ibid.

²¹ Ibid.

²² T. 1938.

²³ T. 1936.

²⁴ T. 1938-1939.

²⁵ T. 1939.

²⁶ T. 1944-1945.

²⁷ T. 1945.

²⁸ T. 1945-1946.

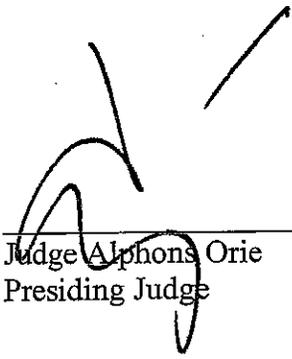
²⁹ See 2 July 2009 Reasons, para. 11; 22 July 2009 Reasons, para. 14.

arisen. On 9 and 29 June 2009, in circumstances materially similar to those present for the current decision, the Chamber decided to proceed with the scheduled court hearings in the absence of the Accused. The Chamber issued its reasons for these decisions on 2 July 2009 and 22 July 2009, respectively. No party requested reconsideration or certification to appeal these decisions. The additional material available to the Chamber on 15 July 2009, compared to that which was available at the time it pronounced its decision on 29 June 2009, consisted mainly of the four regular medical reports, as reviewed in paragraphs 2 to 5 above. As in previous decisions, the Chamber primarily considered the medical information contained in the reports, as opposed to the conclusions with regard to the Accused's ability to attend court. Although the reports indicated changes in the Accused's medical situation, the Chamber considered that these changes were minor and not of such a nature as to justify a different conclusion than that which it had adopted in its decisions on 29 May 2009, 9 June 2009, and 29 June 2009. The Chamber therefore concluded that the trial in the present case could proceed pursuant to the modalities for trial.

IV. CONCLUSION

8. Considering the health situation of the Accused, as described in the numerous medical reports submitted to the Chamber, and pursuant to the Chamber's obligation under Article 20 of the Statute, the Chamber found that the Stanišić Defence had not shown that the Accused was too unwell to attend the court session of 15 July 2009 and that, as a consequence, the court proceedings should be adjourned.

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



Judge Alphons Orié
Presiding Judge

Dated this fifteenth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]