



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: 27 May 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 27 May 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON URGENT PROSECUTION MOTION FOR
DISCLOSURE OF WITNESS DETAILS AND FOR
MODIFICATION OF THE SCHEDULING ORDER OF 1 APRIL
2011**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Wayne Jordash

Mr Scott Martin

Counsel for Franko Simatović

Mr Mihajlo Bakrač

Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 20 May 2011, the Prosecution requested the Chamber to require the Stanišić Defence to disclose to the Prosecution personal details of upcoming Defence witnesses (“Motion”).¹ Specifically, it sought an order for disclosure of full names, aliases or nicknames, dates of birth, places of birth, national identification numbers, fathers’ names, and current addresses (“Personal Details”) 30 days before the respective witness testifies or as soon as practicable thereafter.² The Prosecution further requested the Chamber to modify its Scheduling Order of 1 April 2011 (“Scheduling Order”) accordingly.³ Also on 20 May 2011, the Chamber informed the parties through an informal communication that it had decided to shorten the time for responses, setting 25 May 2011 as the deadline for any responses to the Motion.

2. On 25 May 2011, the Stanišić and Simatović Defence responded to the Motion, opposing it (“Stanišić Response” and “Simatović Response”, respectively).⁴

3. In its Scheduling Order, the Chamber ordered, *inter alia*, that the Defence’s Rule 65 *ter* lists be filed no later than 6 June 2011, that disclosure obligations pursuant to Rule 67 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) be carried out no later than 7 June 2011, and that the Defence case commence on 15 June 2011.⁵

II. SUBMISSIONS OF THE PARTIES

4. The Prosecution submits that it requires timely disclosure of the Personal Details for criminal and other background checks on the witnesses, which is important for conducting meaningful cross-examinations.⁶ It submits that background checks often involve correspondence with states, which is a process that takes considerable time.⁷ It recalls that the Defence was provided with the personal details of Prosecution witnesses well before the commencement of the

¹ Urgent Prosecution Motion for Disclosure of Witness Details and for Modification of the Scheduling Order of 1 April 2011, 20 May 2011, paras 1, 7.

² Motion, paras 1, 7. The Chamber notes that the Prosecution phrases its request somewhat differently in paragraph 1 of the Motion, where it asks for disclosure of the Personal Details of *all* witness scheduled to testify before the summer recess 30 days before *the first* witness testifies. The Chamber considers the request as phrased in paragraph 7 of the Motion, under the sub-heading ‘Relief sought’, to be determinative.

³ Motion, paras 1, 7.

⁴ Stanišić Response to Urgent Prosecution Motion for Disclosure of Witness Details and for Modification of the Scheduling Order of 1 April 2011, 25 May 2011; Simatović Defence Response to Urgent Prosecution Motion for Disclosure of Witness Details and for Modification of the Scheduling Order of 1 April 2011, 25 May 2011.

⁵ Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 1 April 2011.

⁶ Motion, paras 1, 5.

⁷ Motion, para. 5.

trial and that the principle of procedural equality among the parties would justify granting the Motion.⁸

5. The Stanišić Defence submits that if the Prosecution disagrees with the schedule set out in the Scheduling Order, it should have asked for reconsideration or sought a certificate to appeal it.⁹ Even if the Motion could be interpreted as a request for reconsideration, the Prosecution has failed to argue the necessary requirements for reconsideration.¹⁰ The Stanišić Defence further submits that there will be a period of ten days between the submission of its Rule 65 *ter* witness list and the testimony of the first witness.¹¹ The second witness to be called might not be in court until 21 June 2011, resulting in a preparation period of 15 days in relation to the second witness.¹² Finally, it submits that due to differing disclosure obligations between the Prosecution and the Defence, arguments on strict procedural equality are misplaced.¹³

6. The Simatović Defence submits that the Prosecution should have sought a certificate to appeal the Scheduling Order or asked for additional time before commencement of the Defence case.¹⁴

III. APPLICABLE LAW

7. According to Rule 65 *ter* (E) of the Rules, the Prosecution's list of witnesses shall be filed no later than six weeks before the Pre-Trial Conference. According to Rule 65 *ter* (G) of the Rules, the Defence's list of witnesses shall be filed after the close of the Prosecutor's case and before the commencement of the defence case.

8. Rule 67 of the Rules states, in relevant parts:

(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall:

(i) permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial; and

⁸ Motion, para. 6.

⁹ Stanišić Response, paras 4-6.

¹⁰ Stanišić Response, para. 7.

¹¹ Stanišić Response, para. 9.

¹² *Ibid.*

¹³ Stanišić Response, para. 12.

¹⁴ Simatović Response, paras 3-4.

(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial [...].

IV. DISCUSSION

9. At the outset, the Chamber notes that the Prosecution has not requested or argued for a reconsideration of the Scheduling Order. The Chamber understands the Motion as a request for an order to receive certain material from the Stanišić Defence. The Motion does not *per se* seek to challenge the date of the submission of the Stanišić Defence Rule 65 *ter* witness list, but focuses on the Prosecution receiving the Personal Details at a date prior to such filing. Under these circumstances, the Chamber does not interpret the Motion as a request for reconsideration of the Scheduling Order.

10. The Chamber notes that the information to be provided through the Stanišić Defence's Rule 65 *ter* submissions and that of the Personal Details significantly overlaps but that it may not be wholly congruent. For example, the Prosecution seeks national identification numbers of Defence witnesses, something which is not covered by the scope of Rule 65 *ter* (G). Such information may be covered by the Defence's disclosure obligations pursuant to Rule 67 (A) of the Rules, for example if there is a prior statement by the witness and the information is included in that statement. The Chamber finds that there is no disclosure obligation for information of the Personal Details not covered by Rules 65 *ter* (G) or 67 (A) of the Rules.

11. In relation to the timing of the disclosable Personal Details, the Chamber notes that the Rules set a minimum time of six weeks between provision of the Prosecution's Rule 65 *ter* lists and the Pre-Trial-Conference, whereas no such minimum time is found in the respective rule for submission of the Defence's Rule 65 *ter* lists. At the same time, the Chamber recognizes the practical problems for the Prosecution in relation to its preparations for any cross-examinations and the impact such problems may have on the expeditiousness of the trial. The Chamber is of the view that the issue of concern for the Prosecution is primarily related to those witnesses scheduled to appear in June and early July 2011. For witnesses appearing after the first sitting week of July 2011, the Prosecution will have had at least a 30-day notice of a number of details of the witnesses through review of the Stanišić Defence's Rule 65 *ter* witness list and any Rule 67 (A) disclosure.

12. For the witnesses appearing in the first four weeks of the Defence case, the notice period may be shorter. The Chamber considers that the Prosecution would get some indication of who the

witnesses will be by way of the Defence's notifications to the parties on the order of witnesses to be called. Such a notification system was agreed upon by the parties during the Prosecution's case and the Chamber expects that the parties will find a similar workable system for the Defence case.¹⁵ Nevertheless, especially at the beginning of the Defence case, or in a situation where the Stanišić Defence's Rule 65 *ter* witness list may not yet have been provided or where the Chamber has yet to give its Rule 73 *ter* decision, the Prosecution may have difficulties preparing fully for any cross-examinations with regard to the first witnesses to be called. At the same time, the Chamber considers that since during the first four weeks of the Defence case only a limited number of witnesses will testify, effective Prosecution preparations could be conducted in a shorter time. Similarly, requests to states could be sought on an urgent basis, in particular if the requests are limited in scope to only a number of witnesses. Under these circumstances, the Chamber is of the view that the dates set in the Scheduling Order give sufficient time for the Prosecution to prepare for any cross-examinations of Defence witnesses.

13. While there may not be a disclosure obligation for certain information, the Chamber is of the view that disclosure of the Personal Details would not be prejudicial to the Stanišić Defence. The Chamber finds that it is in the interest of an expeditious trial if the Prosecution can properly identify Defence witnesses in advance. In the Chamber's view, it would be appropriate if the Stanišić Defence were to provide the parties with the Personal Details information not covered by disclosure obligations, at the same time as discharging its disclosure obligations pursuant to Rule 67 (A) of the Rules.

¹⁵ The Chamber notes that at the beginning of the Prosecution's case, the parties contested the exact time of advance notice to be provided in relation to the testimony of witnesses. The Prosecution argued for two weeks and the Stanišić Defence for three weeks. Notwithstanding this disagreement, the parties found workable solutions. See Corrigendum to the Second Joint Submission of the Parties Regarding Agreement on Trial Procedures, 1 September 2009, Annex A, footnote 1.

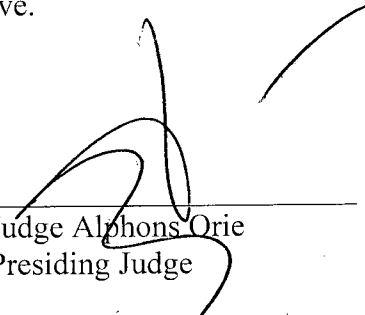
V. DISPOSITION

14. For the foregoing reasons, the Chamber

DENIES the Motion; and

INVITES the Stanišić Defence to provide the Prosecution and the Simatović Defence with the Personal Details, if available, not otherwise covered by disclosure obligations, at the same time as discharging its disclosure obligations pursuant to Rule 67 (A) of the Rules.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-seventh of May 2011
At The Hague
The Netherlands

[Seal of the Tribunal]