

IT-03-69-T
D 36255-036252
28 November 2011

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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: 28 November 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 28 November 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ DEFENCE REQUEST FOR
CERTIFICATION TO APPEAL THE TRIAL CHAMBER'S
DECISION PARTIALLY GRANTING ITS MOTION FOR
SUSPENSION OF PROCEEDINGS**

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 5 October 2011, the Stanišić Defence requested certification to appeal the Chamber's oral decision of 22 August 2011, partially granting a Stanišić Defence motion for suspension of proceedings ("Request").¹ The Chamber provided the reasons for this oral decision on 28 September 2011 (collectively "Impugned Decision").² On 19 October 2011, the Prosecution responded to the Request ("Response").³ The Simatović Defence did not respond to the Request.

II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submits that the Impugned Decision will affect the ultimate outcome of the trial.⁴ It asserts that the four-week suspension granted in the Impugned Decision provided insufficient time for the Stanišić Defence to review a large quantity of documents.⁵ It argues that an interlocutory appeal is necessary to enable the Defence to satisfactorily deal with any outstanding material.⁶ According to the Stanišić Defence, there has not been an adequate opportunity to respond to all of the Prosecution's evidence, in particular that admitted during cross-examination of Defence witnesses, thereby undermining the potential for an effective defence.⁷ The Stanišić Defence submits that, if the Request is not granted, the Prosecution will continue introducing new documents into evidence during the cross-examination of Defence witnesses, which will inevitably lead to further delays in the proceedings and ineffective Defence examinations of witnesses.⁸ It submits that an immediate and longer adjournment could prevent interruptions to the trial and assist in safeguarding its fairness.⁹

3. The Prosecution does not take a position in relation to the Request, but requests that, if the Chamber were to grant the Request, the appeal be restricted to the matters dealt with in the Impugned Decision.¹⁰ The Prosecution notes that the Chamber, in the Impugned Decision, explicitly refrained from incorporating issues related to the admission of Prosecution documents

¹ Stanišić Defence Request for Certification to Appeal the Trial Chamber's Decision Partially Granting the Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 5 October 2011; T. 13393.

² Reasons for Decision Partially Granting the Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 28 September 2011.

³ Prosecution Response to the Stanišić Defence Request for Certification to Appeal the Trial Chamber's Decision Partially Granting the Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 19 October 2011.

⁴ Request, paras 5-7.

⁵ Request, paras 5-6.

⁶ Ibid.

⁷ Request, para. 6.

⁸ Request, para. 8.

⁹ Request, para. 9.

¹⁰ Response, paras 3, 9-10.

during the cross-examination of Defence witnesses, instead deferring those issues to a separate decision.¹¹

III. APPLICABLE LAW

4. Rule 73 (B) of the Tribunal's Rules of Procedure and Evidence ("Rules") requires that a Trial Chamber is satisfied of two cumulative criteria in order for it to grant a request for certification to appeal: 1) that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that in finding such an issue exists, it is the opinion of the Trial Chamber that an immediate resolution by the Appeals Chamber may materially advance the proceedings.

IV. DISCUSSION

5. At the outset, the Chamber clarifies that it explicitly chose to deal with the arguments related to the admission of Prosecution documents during cross-examination of Defence witnesses ("New Evidence") separately, and not in the Impugned Decision.¹² Accordingly, the Stanišić Defence's submissions seeking certification to appeal the Impugned Decision on New Evidence grounds are misplaced and will not be further considered. Notwithstanding this, the Chamber will consider whether the Impugned Decision meets the criteria of Rule 73 (B) of the Rules.

6. With respect to the first prong of Rule 73 (B), the Chamber considers that the Impugned Decision involves the issue of how much time the Stanišić Defence requires in order to review certain material necessary for an effective presentation of its case. This issue significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial, thus meeting the first prong of Rule 73 (B) of the Rules.

7. The Chamber further considers that granting certification to appeal at this stage may materially advance the proceedings as any prejudice, if found by the Appeals Chamber, could more appropriately be remedied during the trial as opposed to during an appeals procedure. Remedying a prejudice arising from the issue at hand during the first instance proceedings would have a positive effect on the expeditiousness of the overall proceedings. In this respect, the Chamber also notes that granting certification to appeal at this stage does not cause immediate further delays in the proceedings, as it does not, in itself, lead to a suspension of the proceedings.

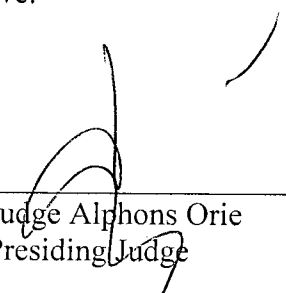
¹¹ Response, para. 8.

¹² See Impugned Decision, para. 17. This matter was then dealt with in the Chamber's Guidance on the Admission into Evidence of Documents Tendered by the Prosecution During the Defence Case and Reasons for Decisions on Past Admissions of Such Documents, 26 August 2011.

V. DISPOSITION

8. For the foregoing reasons, pursuant to Rule 73 (B) of the Rules, the Chamber **GRANTS** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-eighth of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]