

IT-03-69-T
D 48662-D 48638
20 March 2013

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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: 20 March 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 20 March 2013

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ DEFENCE REQUEST FOR
CERTIFICATION TO APPEAL DECISION DENYING
EXTENSION OF TIME TO FILE REJOINDER MOTIONS**

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 8 November 2012, the Stanišić Defence (“Defence”) filed a Motion seeking an additional 16 weeks to file its request for a rejoinder case, excluding the period of the Tribunal’s Winter Recess, from 17 December 2012 to 4 January 2013 (“Original Motion”).¹ On 9 November 2012, the Prosecution filed its Response.² On the same date, the Chamber allowed, with reasons to follow, the Defence to file a reasoned request for a rejoinder case, containing all documentary evidence that the Defence intended to present in rejoinder evidence, by 15 November 2012, and denied the Motion in all other respects.³ On 17 January 2013, the Chamber issued the reasons for its 9 November 2012 Decision.⁴ On 24 January 2013, the Defence filed the present Request for Certification to Appeal (“Certification Request”) the Chamber’s 17 January 2013 Decision (“Impugned Decision”).⁵ On 6 February 2013, the Prosecution filed its Response opposing the Certification Request (“Response”).⁶

II. SUBMISSIONS OF THE PARTIES

2. In its Original Motion, the Defence submitted that it required a substantial amount of additional time within which to file its rejoinder motion to further investigate Serbian DB Annual Reports (“Annual Reports”), to determine which materials it should tender and which witnesses it should call to counter the extracts from personnel files that were admitted during the Prosecution rebuttal case, and to address some practical matters which necessitated an adjournment of the case.⁷ In its Impugned Decision, the Chamber noted that the Defence tendered excerpts from the Annual Reports from the bar table on 4 June 2012, at the end of the Defence case, and concluded that it was therefore foreseeable to the Defence that the Prosecution would tender excerpts of the same reports to contextualize those portions tendered by the Defence.⁸ In like manner, the Defence tendered in February 2012 excerpts of a number of the same personnel files admitted in rebuttal, while for some other personnel files the Defence was placed on notice on 8 May 2012 and 31 July 2012 that the Prosecution may seek to tender them into rebuttal.⁹ Finally, the Chamber considered that the

¹ Urgent Stanišić Defence Request for Extension of Time to File Rejoinder, 8 November 2012.

² Prosecution Consolidated Response to Urgent Defence Requests for Additional Time to File Rejoinder, 9 November 2012.

³ Decision on Defence Motions for Extension of Time to File Rejoinder Motions, 9 November 2012.

⁴ Reasons for Decision of 9 November 2012 regarding Defence Requests for Additional Time, 17 January 2013.

⁵ Stanišić Defence Request for Certification to Appeal the Trial Chamber Decision of 17 January 2013 regarding Defence Motions for Extension of Time to File Rejoinder Motions, 24 January 2013.

⁶ Prosecution Response to Stanišić Defence Request for Certification to Appeal the Trial Chamber Decision of 17 January 2013, 6 February 2013.

⁷ Original Motion, paras 8-17.

⁸ Impugned Decision, paras 10-11.

⁹ Impugned Decision, para. 12.

Defence should have apprised the Registry and/or the Chamber at the earliest possible opportunity, that is, once it was put on notice of the documents to be tendered in rebuttal which it suspected would require considerable investigative efforts, and not at the very last moment, that it would have insufficient resources to carry out such investigations.¹⁰

3. In its Certification Request, the Defence contends that the Impugned Decision significantly affects the fair and expeditious conduct of the proceedings and the ultimate outcome of the trial, “as the decision to grant inadequate time to investigate rebuttal evidence at this stage could be of significance at the judgement stage of the trial, particularly since the Trial Chamber may find any or all of the documents admitted in rebuttal to be of high probative value and rely on it to enter a conviction against Mr. Stanišić.”¹¹ The Defence further submits that being required to foresee what the Chamber might admit as rebuttal evidence on the basis of the mere possibility that the Prosecution might file a rebuttal motion is an impossibly stringent standard by which to determine the reasonable amount of time within which the Defence could ascertain the rejoinder evidence it would seek to present.¹²

4. Moreover, the Defence argues that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings, as the Appeals Chamber would otherwise only address the issue when the Judgement in this case is appealed.¹³ The Defence submits that by that point, the only remedy to address any irreparable prejudice to the Accused as a result of the Impugned Decision would be for the Appeals Chamber to resort to ordering a costly and time-consuming re-trial.¹⁴

5. In response, the Prosecution points out that the Defence fails to demonstrate how the Impugned Decision significantly affects the fair and expeditious conduct of the proceedings and the ultimate outcome of the trial, highlighting that there was a relatively small number of Prosecution exhibits admitted in rebuttal, the nature of the rejoinder evidence, and that some rejoinder evidence of the Defence was admitted.¹⁵ The Prosecution further argues that the Defence has not established that an immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings, as the Defence itself conceded that even if the requested period of adjournment were to be granted, it would not fully address the prejudice suffered by the Accused Stanišić by the late

¹⁰ Impugned Decision, para. 13.

¹¹ Certification Request, para. 6.

¹² Certification Request, paras 7-8.

¹³ Certification Request, para. 9.

¹⁴ Ibid.

¹⁵ Response, para. 5.

and piecemeal introduction of documents into evidence, including during the rebuttal stage of the proceedings.¹⁶

III. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law as set out in a previous decision.¹⁷

IV. DISCUSSION

7. The Chamber recalls that when determining whether to grant leave to appeal, it is not concerned with the correctness of its impugned decision. All considerations such as whether there was an error of law or abuse of discretion in the decision at stake are for the consideration of the Appeals Chamber after certification to appeal has been granted, and are therefore irrelevant to the decision for certification.¹⁸ The Chamber considers in this regard that the Defence argument contesting the standard of foreseeability as applied in the Impugned Decision goes to the merits thereof, and will therefore not consider this submission in resolving the Certification Request.

8. As regards the first prong of Rule 73(B) of the Rules of Procedure and Evidence (“Rules”), the Chamber considers that the Defence has not demonstrated how the Impugned Decision, assuming *arguendo* that an inadequate amount of time was granted for the Defence to file its rejoinder motion, involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Defence merely posits in a sweeping manner that “the Trial Chamber may find any or all of the documents admitted in rebuttal to be of high probative value and rely on it to enter a conviction against Mr. Stanišić.”¹⁹ The Chamber notes that the Impugned Decision does not pertain to the admission of the rebuttal evidence, and recalls that the Defence previously sought certification to appeal the Chamber’s three decisions admitting rebuttal evidence on the ground that the admission of such evidence “could lead to individual criminal responsibility for the Accused [Stanišić], particularly since the Trial Chamber found that they are of high probative value.”²⁰ The Chamber denied this Defence request, finding that the Defence failed to demonstrate how the rebuttal evidence specifically impacted upon the individual

¹⁶ Response, paras 6-8.

¹⁷ Decision on Stanišić Request for Certification to Appeal the Trial Chamber’s Decision on Defence Motion for Exclusion of Specified Exhibits and Admission of Various other Documents, 3 October 2012, para. 4.

¹⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused’s Application for Certification to appeal Decision on Adequate Facilities, 13 February 2009, para. 7; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for *Voir Dire* Proceeding, 20 June 2005, para. 4.

¹⁹ Certification Request, para. 6.

²⁰ Stanišić Defence Request for Certification to Appeal Three Trial Chamber Decisions on Prosecution Motions for Admission of Rebuttal Evidence, 7 November 2012, para. 6.

criminal responsibility of the Accused Stanišić in light of the context of the evidence's subject matter and the procedural circumstances from which it is submitted.²¹ The Chamber pointed out that "[t]o find that evidence is of high probative value does not necessarily mean that it will be given a significant weight when assessed against the totality of the evidence."²² This reasoning continues to apply to the present Defence argument concerning the probative value of the rebuttal evidence and its impact on the Chamber's determination of the individual criminal responsibility of the Accused Stanišić. The Chamber therefore dismisses the Defence argument in this respect, and finds that the first prong of Rule 73 (B) of the Rules has not been met.

V. DISPOSITION

9. For the foregoing reasons, pursuant to Rule 73(B) of the Rules of Procedure and Evidence, the Chamber **DENIES** the Certification Request.

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



Judge Alphons Orie
Presiding Judge

Dated this twentieth day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

²¹ Decision on Stanišić Defence Request for Certification to Appeal Three Trial Chamber Decisions on Prosecution Motions for Admission of Rebuttal Evidence, 6 December 2012, paras 6-7 ("6 December 2012 Decision").

²² 6 December 2012 Decision, para. 6.