

**UNITED
NATIONS**



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: 19 February 2008

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Order of: 19 February 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**ORDER CLARIFYING THE 4 FEBRUARY DECISION
OF THE TRIAL CHAMBER ON DEFENCE ACCESS TO
CONFIDENTIAL MATERIAL FROM THE *MILOŠEVIĆ*
CASE**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović for Franko Simatović

1. **TRIAL CHAMBER III** (“Trial Chamber”) of the 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 (“Tribunal”) issues this Order, clarifying its “Decision Reconsidering Conditions for the Defence Access to Confidential Testimony and Documents from the *Slobodan Milošević* case”, rendered on 4 February 2008 (“4 February Decision”).

2. On 20 December 2003 and 11 March 2005, Trial Chamber III, seised at that time of the proceedings in the *Slobodan Milošević* case, issued the “Decision on Defence Motion Filed by the Defence of Franko Simatović (IT-03-69-PT) for Access to Transcript and Documents”¹ and “Decision on Motion of Defence of Jovica Stanišić for Variance of Protective Measures Pursuant to Rule 75(G)(i)”² (“*Milošević* Decisions”). In the *Milošević* Decisions the Trial Chamber ordered that the Defence of Jovica Stanišić and the Defence of Franko Simatović were to have access to non-public testimony and exhibits pertaining to crimes and events related to charges against the two Accused from the Bosnia and Herzegovina and Croatia parts of the *Milošević* case.

3. The *Milošević* Decisions imposed the requirement that the Prosecution was to seek the consent of the witnesses who testified confidentially prior to such disclosure. The Trial Chamber further ordered that in the event that such consent was not given, the Prosecution was to redact the portions of the testimony that might reveal the identity of any protected person prior to disclosure.³

4. On 1 February 2008, the Prosecution filed the “Prosecution Report on Compliance with the Decisions of 20 October 2003 and 11 March 2005 in *Milošević* for Disclosure of Closed-Session Transcripts and Under-seal Exhibits” (“First Prosecution Report”), whereby it informed the Trial Chamber that it had complied with the *Milošević* Decisions. In particular, the Prosecution reported that it had sought the consent of 54 witnesses from the *Milošević* case and to have redacted their closed-session transcripts and under-seal exhibits where they declined to provide their consent.⁴ The Trial Chamber was further informed that the Prosecution was unable to locate 5 of the 54 witnesses, and that it had disclosed a redacted version of their testimony to the Defence while awaiting assistance in locating them.⁵

¹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Defence on Defence Motion Filed by the Defence of Franko Simatović (IT-03-69-PT) for Access to Transcript and Documents, 20 October 2003.

² *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Motion of Defence of Jovica Stanišić for Variance of Protective Measures Pursuant to Rule 75(G)(i), 11 March 2005.

³ *Milošević* Decisions, p. 4 and p. 4 respectively.

⁴ First Prosecution Report, para. 3.

⁵ *Id.*

5. In the 4 February Decision, the Trial Chamber reconsidered the conditions upon which the access to confidential material from the *Milošević* case was predicated in the *Milošević* Decisions, and determined that consent of the witnesses was not required for disclosure of confidential material from the first proceeding to the parties of the second proceeding. Consequently, the Trial Chamber ordered that the Stanišić Defence and the Simatović Defence were to have access to non-public testimony and exhibits pertaining to crimes and events related to charges against the two Accused from the Bosnia and Herzegovina and Croatia parts of the *Milošević* case, regardless of the consent of the witnesses whose testimony is to be disclosed.⁶

6. On 5 February 2008, the Prosecution filed the “Prosecution Report pursuant to the 4 February 2008 Decision Reconsidering Conditions for the Defence Access to Confidential Testimony and Documents from the *Slobodan Milošević* case” (“Second Prosecution Report”), whereby it advised the Trial Chamber of its compliance with the 4 February Decision, in which decision, according to the Prosecution, “the Trial Chamber *proprio motu* ordered defence access to closed-session transcripts and under-seal exhibits of 54 relevant witnesses not listed in this case, but [who] testified in the *Milošević* trial.”⁷ The Prosecution further recalled that, with its First Prosecution Report, it had already informed the Trial Chamber that it had completed the disclosure for the 54 witnesses concerned and complied with the *Milošević* Decisions.⁸ The Prosecution also stated that, following its review of the material to be disclosed, there are currently no restrictions that would limit the access of the Defence to this material pursuant to Rule 70 of the Rules.⁹

7. On 15 February 2008, the Stanišić Defence filed the “Defence Response to Two Prosecution Reports on Compliance with Decisions on Access to *Milošević* Confidential Materials” (“Defence Response”), submitting that the Prosecution has not yet fully complied with the Decision, for two reasons.

8. First, the Stanišić Defence challenges the Prosecution’s interpretation of the *Milošević* Decisions and 4 February Decision, and submits that the Prosecution wrongly assumed that these Decisions only referred to confidential testimony of Prosecution witnesses in the *Milošević* case, rather than being applicable to confidential materials from both Prosecution and Defence witnesses in that case.

9. Second, the Stanišić Defence submits that it has received *non-redacted* version of confidential materials from the *Milošević* case only with regard to the witnesses who have given

⁶ 4 February Decision paras. 8 to 11.

⁷ Second Prosecution Report, para. 1.

⁸ Second Prosecution Report, para. 2.

⁹ Second Prosecution Report, para. 3.

their consent to such disclosure, while it has received *redacted* versions of confidential materials pertaining to the witnesses who have refused their consent. The Stanišić Defence recalls that the 4 February Decision has granted the Defence access to *non-redacted* versions of all non-public testimony and under-seal exhibits from the *Milošević* case, regardless of the witness' consent. The Stanišić Defence concludes therefore that, contrary to what is stated in the Second Prosecution Report, the Prosecution did not comply with the 4 February Decision.

10. Having considered the First Prosecution Report, the Second Prosecution Report and the Stanišić Response, the Trial Chamber deems it opportune to clarify the 4 February Decision.

11. The Trial Chamber notes that neither the wording of the *Milošević* Decisions nor the wording of the 4 February Decision justifies distinguishing between Prosecution witnesses and Defence witnesses from the *Milošević* case. Indeed, the above mentioned Decisions state that the Stanišić Defence and the Simatović Defence “shall have access to non-public testimony and exhibits pertaining to crimes and events related to charges against the two Accused from the Bosnia and Herzegovina and Croatia parts of the *Milošević* case”, without limiting in any way such disposition to the testimony of the Prosecution witnesses from the *Milošević* case.¹⁰ The Trial Chamber therefore reiterates that the statement in the Decision that “the Stanišić Defence and the Simatović Defence shall have access to non-public testimony and exhibits”¹¹ includes both Prosecution witnesses and Defence witnesses from the *Milošević* case.

12. The Trial Chamber further notes that the 4 February Decision clearly states that the consent of witnesses who testified in the *Milošević* case *does not* constitute a condition for the Stanišić Defence and the Simatović Defence having access to the confidential material from the *Milošević* case.¹² It follows that the Stanišić Defence and the Simatović Defence have been granted access to the non-redacted version of all closed-session testimony and under-seal exhibits pertaining to crimes and events related to charges against the two Accused, even if some of the witnesses who testified in the *Milošević* case were not contacted by the Prosecution or did not provide their consent.

¹⁰ 4 February Decision, para. 11 (i); *Milošević* Decisions, p. 4 and p. 4 respectively.

¹¹ 4 February Decision, para. 11 (i).

¹² 4 February Decision, paras 8 to 11.

13. For the foregoing reasons, pursuant to Rules 54, 70, and 75 of the Rules, the Trial Chamber hereby **REAFFIRMS** the 4 February Decision and **ORDERS** as follows:

(i) the Prosecution shall provide the Registry, no later than Friday 22 February 2008, with a list of the non-public testimony and exhibits from Prosecution witnesses and Defence witnesses in the *Milošević* case pertaining to crimes and events related to charges against the two Accused from the Bosnia and Herzegovina and Croatia parts of the *Milošević* case, insofar as a full disclosure has not yet been provided;

(ii) the Registry shall give the Stanišić Defence and the Simatović Defence access to the non-redacted version of all non-public testimony and exhibits considered in the 4 February Decision and in the present Order, as identified by the Prosecution.

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



Judge Patrick Robinson
Pre-Trial Judge

Dated this nineteenth day of February 2008

At The Hague

The Netherlands

[Seal of the Tribunal]