



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: 31 May 2007

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Frank Höpfel, Pre-Trial Judge  
**Registrar:** Mr. Hans Holthuis  
**Decision of:** 31 May 2007

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC FILING***

---

**DECISION ON SEVERAL APPLICATIONS TO MODIFY TERMS OF THE WORK PLAN  
AND ORDER FOLLOWING A RULE 65 TER CONFERENCE**

---

**The Office of the Prosecutor**

Ms. Doris Brehmeier-Metz  
Mr. Gregory Townsend

**Counsel for Jovica Stanišić**

Mr. Geert-Jan Alexander Knoops  
Mr. Wayne Jordash

**Counsel for Franko Simatović**

Mr. Zoran Jovanović

I, **Frank Höpfel**, Judge 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”) am seized of the “Prosecution and Defence joint application to modify terms of work plan”, filed jointly by the Prosecution and the Defence on 1 May 2007 (“Joint Motion”). Secondly, I am seized of the “Prosecution second application to modify terms of Work Plan”, filed on 17 May 2007 (“Prosecution Motion”). Thirdly, I am seized of the “Defence Motion to postpone deadline for filing response on Prosecution motions for admission of written evidence pursuant to Rule 92 *bis*, 92 *ter* and 92 *quater*”, filed on 29 May 2007 by counsel for the Accused Simatović (“Defence Motion”). Finally, this Order will deal with matters arising from a Conference held on 8 May 2007 pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”).

#### A. Joint Motion

1. On 19 January 2007, the Pre-Trial Judge issued an “Order establishing work plan”, to which a work plan was attached (“Work Plan”).<sup>1</sup> According to the Work Plan, the parties were to file a joint submission on 1 May 2007 setting out where agreement has been reached on matters of law and fact and what points have not been agreed upon and why. On 1 May 2007, the parties jointly requested to move the deadline for filing the aforementioned joint submission from 1 May 2007 to 15 June 2007.<sup>2</sup>
2. It should be noted that thus far, very little progress has been made on agreements on matters of law and fact. The parties are strongly encouraged to conduct further meetings in order to find and discuss common ground. Good cause has been shown to allow for the deadline to be moved from 1 May 2007 to 15 June 2007, and the Work Plan will be adjusted accordingly.

#### B. Prosecution Motion

3. According to the Work Plan, the Prosecution was to file a reasoned Motion requesting admission of written testimony in accordance with Rules 92 *bis*, 92 *ter* and 92 *quater* of the Rules by 21 May 2007 (“Rule 92 *bis* Motion”). On 17 May 2007, the Prosecution requested that the Work Plan be modified such that it may file a large part of its Rule 92 *bis* Motion on 21 May 2007, and that the remainder be filed by no later than 18 June 2007. The Prosecution estimated that on 21 May 2007, it could disclose the materials relating to approximately two-thirds of the witnesses that the Prosecution intends to introduce in accordance with Rules 92 *bis*, 92 *ter* and

<sup>1</sup> Order establishing a work plan, 19 January 2007.

<sup>2</sup> Prosecution and Defence joint application to modify terms of work plan, filed jointly by the Prosecution and the Defence on 1 May 2007.

92 *quater* of the Rules.<sup>3</sup> Counsel for the Accused Simatović filed a response to the Motion on 29 May 2007, indicating that it does not object to the Prosecution Motion if the Defence Motion is granted.<sup>4</sup> Counsel for the Accused Stanišić did not respond to the Motion. On 31 May 2007, the Prosecution sought leave to reply and replied to the Defence response.<sup>5</sup>

4. On 21 March 2007, the Pre-Trial Judge indicated that motions pursuant to Rules 92 *bis*, *ter* and *quater* are generally determined by the Trial Chamber that will hear the case, and that he was inclined to lift the aforementioned deadline of 21 May 2007 *proprio motu*.<sup>6</sup>
5. Granting the Prosecution Motion will not cause unfair prejudice to the Defence, as the Defence will have ample time to respond to the Prosecution's Rule 92 *bis* Motion prior to trial. Good cause has been shown to allow for the deadline to be moved from 21 May 2007 to 18 June 2007, and the Work Plan will be adjusted accordingly.

### C. Defence Motion

6. On 29 May 2007, counsel for the Accused Simatović filed a motion requesting an extension of three months to respond to the Prosecution's Rule 92 *bis* Motion.<sup>7</sup> On 31 May 2007, the Prosecution indicated that it intends to respond to the Defence Motion.<sup>8</sup> In order to avoid further delays in deciding scheduling matters, the Defence Motion will be decided without a Prosecution response. The Prosecution may file a motion for reconsideration if it believes this will assist the pre-trial process.
7. In view of the large number of Rule 92 *bis*, *ter* and *quater* materials to be reviewed by the Defence, there is good cause to allow for an extension of time for the Defence to respond. However, an extension of three months is disproportional to the task required of the Defence. Moreover, it should be noted that the Prosecution already filed two-thirds of its Rule 92 *bis* Motion on 21 May 2007; the final third of the Rule 92 *bis* Motion will be filed by 18 June 2007 (see above). Therefore, the Defence Motion will be granted in part. Counsel for the Accused Stanišić and counsel for the Accused Simatović will file a (single) response to (all parts of) the Prosecution's Rule 92 *bis* Motion by 9 July 2007.

---

<sup>3</sup> Prosecution Motion, para. 5.

<sup>4</sup> Defence Response on Prosecution second application to modify terms of work plan, 29 May 2007.

<sup>5</sup> Prosecution request for leave to reply and reply to "Defence response on Prosecution second application to modify terms of the Work Plan", 31 May 2007.

<sup>6</sup> Status Conference (21 March 2007), T. 625.

<sup>7</sup> Defence Motion to postpone deadline for filing response on Prosecution motions for admission of written evidence pursuant to Rule 92 *bis*, 92 *ter* and 92 *quater*, filed on 29 May 2007.

<sup>8</sup> Prosecution request for leave to reply and reply to "Defence response on Prosecution second application to modify terms of the Work Plan, 31 May 2007, para. 11.

8. According to the Work Plan, this case should be ready for Pre-Trial Conference on 9 July 2007, and it should be trial-ready by 16 July 2007. Due to the modification of the aforementioned deadlines, and in light of the official court recess from 30 July 2007 until 17 August 2007, this case will be ready for the Pre-Trial Conference on 20 August 2007; it will be ready for trial on 27 August 2007.

D. Rule 65 ter Conference

9. On 8 May 2007, a Rule 65 ter Conference was conducted by the Senior Legal Officer of Trial Chamber III. During that Conference, it became clear that certain clarifications by the Chamber will assist the pre-trial process.

*(i) Rule 65 ter exhibit list*

10. On 21 March 2007, a Status Conference was held wherein the Prosecution indicated its intention to re-disclose “all material in connection with our 65 ter exhibit list, simply to be on the safe side”.<sup>9</sup> Regarding the ‘re-disclosure’ of materials related to the Prosecution’s Rule 65 ter exhibit list, the Chamber instructed the Prosecution to indicate to the Defence which evidence it had already disclosed and which evidence it had not previously disclosed, in order to avoid unnecessary work for the Defence in reviewing these ‘re-disclosed’ materials.<sup>10</sup> However, in a letter of 4 May 2007 addressed to the Prosecution and copied to the Chamber, counsel for the Accused Jovica Stanišić indicated that the Prosecution had not satisfactorily set out which exhibits had been previously disclosed. The Prosecution responded to this letter on 16 April 2007, and communicated to the Defence that “in total, approximately 1.850 exhibits have already been disclosed”.<sup>11</sup> This was the extent to which the Prosecution informed the Defence which exhibits were previously disclosed.
11. On 8 May 2007, the Prosecution explained its view that the Chamber’s instruction to indicate to the Defence which exhibits had been previously disclosed “was not an order by the Pre-Trial Judge, but the Pre-Trial Judge’s request for the Prosecution to act as he wished”.<sup>12</sup> However, by merely quantifying the number of exhibits it has previously disclosed, the Prosecution has not sufficiently met its burden to indicate which evidence has been previously disclosed, and by doing so it appears the Prosecution has shifted its burden of presenting its exhibits in an organised way to the Defence. Therefore, in the interest of judicial economy, the Prosecution is

<sup>9</sup> Status Conference (21 March 2006), T. 636.

<sup>10</sup> Status Conference (21 March 2007), T. 636-638.

<sup>11</sup> Rule 65 ter Conference (8 May 2007), p. 364.

<sup>12</sup> Rule 65 ter Conference (8 May 2007), p. 364

hereby ordered to clearly indicate to the Defence, with due speed, which exhibits it has 're-disclosed' and which exhibits were not previously disclosed.

(ii) Deadline for filing of expert reports and Defence Pre-Trial Briefs

12. On 21 March 2007, the Prosecution observed that a deadline for disclosure of the Prosecution's Rule 94 *bis* expert reports is absent from the Work Plan.<sup>13</sup> Subsequently, the Prosecution requested the Pre-Trial Judge to indicate a deadline for the completion and disclosure of all its Rule 94 *bis* expert reports.<sup>14</sup> During the Status Conference held on 21 March 2007, the Prosecution indicated that all outstanding expert reports could be completed and filed by 1 July 2007.<sup>15</sup>
13. It is useful to set a deadline for the completion and filing of the Prosecution's Rule 94 *bis* expert reports. The Prosecution's proposal to file all outstanding expert reports by 1 July 2007 is accepted.
14. However, according to the Work Plan, the Defence Pre-Trial Briefs are scheduled to be filed on 18 June 2007.<sup>16</sup> The fact that the Defence may possibly only have the last expert report by 1 July 2007 directly affects the Defence's ability to respond to the full Prosecution case in their Pre-Trial Briefs. It will therefore be necessary to adjust the deadline for the Defence Pre-Trial Briefs. The Defence shall file their Pre-Trial Briefs by 16 July 2007. The Prosecution is strongly encouraged to file its expert reports as soon as possible, and it shall report to the Trial Chamber the day which it has disclosed its last expert report to the Defence.

E. Disposition

For the foregoing reasons,

The Joint Motion is **GRANTED**, the Prosecution Motion is **GRANTED**, the Prosecution's request for leave to reply is **GRANTED**, and the Defence Motion is **PARTLY GRANTED** to the extent that both counsel for the Accused are allowed to respond to the Prosecution's Rule 92 *bis* Motion by 9 July 2007. Furthermore, the Prosecution is **ORDERED** as follows:

- 1) the Prosecution will, with due speed, clearly indicate to the Defence which exhibits it has 're-disclosed' and which exhibits were not previously disclosed, and

<sup>13</sup> Status Conference (21 March 2007), T. 623.

<sup>14</sup> Rule 65 *ter* Conference (20 March 2007), page 343.

<sup>15</sup> Status Conference (21 March 2007), T. 623 and 624; *see* Rule 65 *ter* Conference (8 May 2007), pp. 374 and 375.

<sup>16</sup> Order establishing a work plan, 19 January 2007.

- 2) the Prosecution shall file all Rule 94 *bis* expert reports by 1 July 2007. When it has disclosed its last expert report to the Defence, it shall immediately notify the Chamber thereof.

Both counsel for the Accused will file their Pre-Trial Briefs by 16 July 2007. This case shall be ready for the Pre-Trial Conference on 20 August 2007; it shall be ready for Trial on 27 August 2007.

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



Judge Frank Höpfel  
Pre-Trial Judge

Dated this thirty-first day of May 2007  
At The Hague  
The Netherlands