



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: 26 May 2008

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Pedro David  
Judge Michèle Picard

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 May 2008

**PROSECUTOR**

*v.*

**JOVICA STANIŠIĆ  
AND  
FRANKO SIMATOVIĆ**

***PUBLIC***

**DECISION ON PROSECUTION MOTION FOR  
DEPOSITION PURSUANT TO RULE 71**

**The Office of the Prosecutor**

Mr. Dermot Groome  
Ms. Doris Brehmeier-Metz  
Mr. Gregory Townsend  
Mr. John Docherty

**Counsel for the Accused**

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić  
Mr. Zoran Jovanović and Mr. Vladimir Domazet 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”) is seized of the “Prosecution Motion for Deposition Pursuant to Rule 71”, filed on 20 May 2008 (“Prosecution Motion”) in which the Prosecution requests that witness C-001 be heard pursuant to Rule 71 of the Rules of Procedure and Evidence, namely by taking his deposition in the presence of the Defence and a presiding officer. On 23 May 2008, both counsel for the Accused Simatović (“Simatović Defence”) and counsel for the Accused Stanišić (“Stanišić Defence”) responded to the Motion.<sup>1</sup>

#### A. Submissions of the parties

2. According to the Prosecution, witness C-001 “believes he had a minor heart attack” during his recent trip to The Hague.<sup>2</sup> Presently, the Prosecution submits C-001 is in The Hague undergoing “medical treatment, with his blood pressure at extremely high levels”.<sup>3</sup> It further submits “C-001’s health is generally poor, and it is unclear whether he will be able to make another trip to the Tribunal in September when hearings in the case are expected to resume”.<sup>4</sup> Therefore, the Prosecution submits that “in light of the medical situation surrounding the re-commencement of trial, and in light of the medical situation faced by the witness, a deposition would be an appropriate method of ensuring this witness’s evidence is heard by the Chamber”.<sup>5</sup>

3. The Simatović Defence points out that the Prosecution did not submit any medical documentation to support its claims regarding the health condition of C-001.<sup>6</sup> It further submits that C-001 “is a very important Prosecution witness”, which means that there is “a strong interest that witness C-001 publicly testifies”.<sup>7</sup> The Stanišić Defence argues that the Prosecution has not identified reasons why C-001’s testimony is “sufficiently important” such that the Prosecution can deviate from the general principle that witnesses testify directly before the Trial Chamber pursuant to “Rule 90 (A)” of the Rules.<sup>8</sup> Like the Simatović Defence, the Stanišić Defence submits that the Prosecution did not adduce any evidence supporting its claim that C-001’s health is such that he will not be able to make another trip to The Hague, and that other remedies are available to the

<sup>1</sup> Defence Response to Prosecution Motion for Deposition Pursuant to Rule 71, dated 22 May and filed on 23 May 2008 (Simatović Response); Defence Response to “Prosecution Motion for Deposition Pursuant to Rule 71”, 23 May 2008 (Stanišić Response).

<sup>2</sup> Prosecution Motion, para. 5.

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

<sup>4</sup> Prosecution Motion, para. 5.

<sup>5</sup> Prosecution Motion, para. 7.

<sup>6</sup> Simatović Response, para. 5.

<sup>7</sup> Simatović Response, para. 6.

<sup>8</sup> Stanišić Response, paras 4 and 5.

Prosecution to hear the evidence of C-001.<sup>9</sup> Lastly, the Stanišić Defence submits that due to their client's current health condition, Jovica Stanišić will not be able to give adequate instructions regarding the cross-examination of witness C-001.<sup>10</sup>

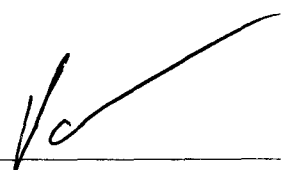
### **B. Discussion**

4. Despite the fact that Rule 90 (A) of the Rules as quoted by the Stanišić Defence has changed on 13 December 2000,<sup>11</sup> the Chamber considers that evidence should in principle be heard before the Trial Chamber. Witnesses may only be heard pursuant to Rule 71 if the requesting party can make a showing that the circumstances warrant it. Of great importance is the right of an Accused, pursuant to Rule 71 (C), to have his counsel present so to cross-examine the witness. The Prosecution has, as correctly observed by both Defence counsel, not proffered any evidence in support of its claim that witness C-001 may not be able to make another trip to The Hague. It also did not indicate why C-001's evidence could not be heard by other means at a time when the Accused Stanišić has recovered from his current medical condition, such as a video-link from the witness's place of residence. More importantly, the Chamber fails to see how the cross-examination of witness C-001 can be considered to be effective when the Accused Stanišić presently may not be able to give adequate instructions to his counsel.

### **C. Disposition**

For the foregoing reasons, the Trial Chamber **DENIES** the Prosecution Motion.

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



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Judge Patrick Robinson  
Presiding Judge

Dated this twenty-sixth day of May 2008

At The Hague

The Netherlands

**[Seal of the Tribunal]**

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<sup>9</sup> Stanišić Response, paras 7 and 8.

<sup>10</sup> Stanišić Response, paras 9-13.

<sup>11</sup> Prior to 13 December 2000, Rule 90 (A) read "Subject to Rules 71 and 71*bis*, witnesses shall, in principle, be heard directly by the Chamber."