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23 April 2009

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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-PT
Date: 23 April 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Flavia Lattanzi
Judge Michèle Picard

Acting Registrar: Mr John Hocking

Decision of: 23 April 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
and
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON DEFENCE REQUEST FOR EXTENSION OF TIME TO RESPOND TO
SECOND PROSECUTION MOTION FOR JUDICIAL NOTICE OF ADJUDICATED
FACTS

Office of the Prosecutor

Mr Dermot Groome
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Mr Wayne Jordash

Counsel for Franko Simatović

Mr Zoran Jovanović
Mr Vladimir Domazet

Procedural History

1. On 12 December 2008, the “Second Prosecution Motion for Judicial Notice of Adjudicated Facts” (“Prosecution Motion”) was filed. Defence of Jovica Stanišić (“Defence”) responded by filing “Defence Request for Extension of Time to Respond to Second Prosecution Motion for Judicial Notice of Adjudicated Facts” on 23 December 2008 (“Request”), whereby it requested the Chamber to grant an extension of time to file a response to the Prosecution Motion until such time as a date for commencement of the trial is fixed.¹ On 5 January 2009, the “Prosecution Response to Defence Request for Extension of Time to Respond to Second Prosecution Motion for Judicial Notice of Adjudicated Facts” was filed (“Response”), whereby the Prosecution opposed the Request or alternatively requested that extension of time be much shorter than requested by the Defence.²

Submissions

2. The Defence argues that there is good cause to justify an extension of time to file a response to the Prosecution Motion “because of the current physical and mental condition of [Jovica Stanišić] and his lack of ability to instruct counsel as to the proposed adjudicated facts by the Prosecution”.³ Moreover, the Defence submits that “in the Decision of the 26 May 2008, adjourning the proceedings for three to six months, the Trial Chamber concluded that the Accused may currently be unable to provide adequate instructions to his counsel”.⁴

3. Apart from the medical condition of Jovica Stanišić (“Accused”), the Defence submits that due to the amount and importance of the adjudicated facts included in the Prosecution Motion,⁵ in light of the resources available, the Defence requires more time to respond.⁶

4. The Prosecution submits that aside from the plain assertion, the Defence does not demonstrate further that the Accused is in fact not able to instruct counsel with regard to

¹ Request, para. 9.

² Response, paras 2, 13-14.

³ Request, para. 4.

⁴ Request, para. 4 referring to Decision on Prosecution Motion for Deposition Pursuant to Rule 71, 26 May 2008 (“26 May Decision”), para. 4.

⁵ The Defence draws the Trial Chamber’s attention to the fact that the Prosecution Motion included a 26 page Annex with 213 proposed adjudicated facts and furthermore, that the Prosecution referred to its previous (1 May 2007) adjudicated facts motion that “set out in great detail the judicial basis and legal requirements under Rule 94(B) amounting to 11 pages of argumentation”, Request, para. 6.

⁶ Request, para. 7. During the 11 March 2009 Status Conference, the Defence further clarified its submission by stating that: “[t]he basis is that we simply do not have sufficient time and sources to responsibly respond to an adjudicated facts motion containing 230 (sic) proposed adjudicated facts. That is the main foundation of the motion”, T. 1332.

adjudicated facts. Moreover, it asserts that none of the relevant Trial Chamber or Appeal Chamber's decisions mentions the possibility that the Accused lacks ability to instruct counsel.⁷

5. Moreover, the Prosecution asserts that the Defence fails to demonstrate the need for additional time especially in light of the fact that during the status conference on 12 November 2008, the Prosecution announced that such motion was in preparation and would certainly be filed prior to the court recess.⁸

Applicable Law

6. Pursuant to Rule 126*bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") a response to a motion shall be filed within fourteen days of the filing of the motion. However, Rule 127 (A)(i) allows the Trial Chamber to exercise its discretion to enlarge or reduce such time limit upon being satisfied that good cause to do so has been shown.

Discussion

7. On 10 March 2008, the Accused was found fit to stand trial.⁹

8. In its 26 May 2008 Decision, which did not deal directly with the issue of "adjourning the proceedings for three to six months", as suggested by the Defence, the Trial Chamber nevertheless held that:

[...] 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.*¹⁰

9. Although this comment apparently led the Defence to the understanding that the Accused was seen by the Chamber as unable to instruct Counsel, such assertion does not appear neither in the Appeals Chamber Decision on Defence Appeal of the Decision on Future Course of

⁷ Response, para. 7. See also T. 1334.

⁸ Response, para. 11.

⁹ Decision on Motion Re Fitness to Stand Trial, Confidential and *Ex Parte*, 10 March 2008.

¹⁰ Decision on Prosecution Motion for Deposition Pursuant to Rule 71, 26 May 2008, para. 4 (emphasis added).

Proceedings¹¹ nor in the Decision on Prosecution Motion for Re-assessment of Jovica Stanišić's Health.¹²

10. Accordingly, as it was already reiterated by the Trial Chamber during the 11 March 2009 Status Conference:

[...] at this moment, the procedural situation is that no unfitness to stand trial or unfitness to give instruction has been established. That may be different once we have received the other reports. But, of course, on the basis of the decisions taken by the Chamber until now, there's no good reason to accept that the illness prevents him from giving instructions. I do understand that you have not received instructions, that you have your own opinion about the reasons for that. I certainly take it that we'll pay further attention to it once we have received the other reports. But that is the procedural situation we find ourselves in at this moment.¹³

11. The Chamber finds that there is nothing in the latest reports submitted pursuant to the 17 December 2008 Decision that would suggest that the current medical condition of the Accused militates in favour of accepting the Defence position that the Accused lacks ability to instruct his Counsel.¹⁴ Therefore, the Chamber views the current situation in light of the Defence experiencing practical inconvenience rather than inability to receive instructions from its client. Furthermore, the Chamber draws attention to the fact that motions for taking judicial notice of adjudicated facts by their nature also include many elements of a purely legal character (e.g. whether a fact was fully and properly litigated before), not requiring any input from the Accused. The Trial Chamber finds that the practical inconvenience the Defence is experiencing in contacting its client is not of such character as to constitute a good cause for extension of time to respond as sought in the Request.

12. The Chamber notes that motions for taking judicial notice of facts, although generally resource-consuming, cannot be seen as automatically warranting longer time to respond to than the fourteen day limit prescribed by the Rules. The Defence fails to sufficiently substantiate how the Prosecution Motion constitutes such a burden to its resources as to warrant the relief sought.

13. Nevertheless, regardless of the fact that no good cause has been shown and having in mind the time that already lapsed from the filing of the Prosecution Motion as well as the fact that awareness of the Defence position may be useful in deciding on the relief sought in the Prosecution

¹¹ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008.

¹² Decision on Prosecution Motion for Re-Assessment of Jovica Stanišić's Health and Re-Commencement of Trial and Decision on Prosecution's Motion to Order Further Medical Reports on Jovica Stanišić's Health, 17 December 2008 ("17 December Decision").

¹³ Status Conference, 11 March 2009, T. 1331-1332.

¹⁴ Registry Submission Pursuant to Rule 33 (B) Concerning Psychiatric Expert Report, Confidential and *Ex Parte*, 19 March 2009; Registry Submission Pursuant to Rule 33 (B) Concerning Expert Report, Confidential and *Ex Parte*, 23 March 2009.

Motion, the Trial Chamber finds that it is appropriate under the current circumstances to grant the Defence a limited extension of time to respond to the Prosecution Motion.

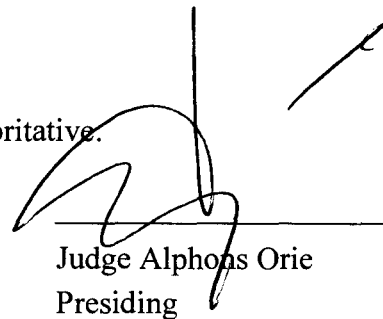
Disposition

14. For the foregoing reasons and pursuant to Rules 54, 126 *bis* and 127 of the Rules

GRANTS the Request in part; and

ORDERS the Defence to file its Response to the Second Prosecution Motion for Judicial Notice of Adjudicated Facts, if any, within 14 days of the filing of this decision.

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



Judge Alphons Orié
Presiding

Dated this twenty-third day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]