

IT-03-69-PT
D 17142 - D 17140
20 May 2009

17142
NB.



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: 20 May 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Pre-Trial Judge, Presiding
Judge Flavia Lattanzi
Judge Michèle Picard

Registrar: Mr John Hocking

Order of: 20 May 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON DEFENCE REQUEST FOR CERTIFICATION TO APPEAL THE
TRIAL CHAMBER'S "DECISION ON DEFENCE REQUEST FOR EXTENSION OF
TIME TO RESPOND TO SECOND PROSECUTION MOTION FOR JUDICIAL
NOTICE OF JUDICIAL FACTS"

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Zoran Jovanović
Mr Vladimir Domazet

1. On 23 April 2009, the Chamber issued its “Decision on Defence Request for Extension of Time to Respond to Second Prosecution Motion for Judicial Notice of Adjudicated Facts” (“Decision”). On 1 May 2009, the Stanišić Defence requested certification to appeal the Decision (“Request”). The Prosecution responded on 8 May 2009, submitting that the Request should be denied.

2. Rule 73 (B) of the Rules of Procedure and Evidence (“Rules”) requires two cumulative criteria to be satisfied to allow a Trial Chamber to grant a request for certification to appeal: 1) that the decision involved an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and 2) that, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Chamber emphasizes that certification is not concerned with whether the impugned decision was correctly reasoned or not, as this is a matter for appeal, be it an interlocutory appeal or one after the final judgement has been rendered.¹

3. In the Decision, the Chamber granted the Stanišić Defence an extension of the time to file a response to the Prosecution’s Second Motion for Judicial Notice of Adjudicated Facts of 12 December 2008. In this respect, the Chamber considered “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 Motion”.² The Chamber rejected the Stanišić Defence’s argument that “[Mr Stanišić’s] lack of ability to instruct counsel as to the proposed adjudicated facts by the Prosecution” would constitute good cause to justify an extension of time for filing of the response.³ In the Request, the Stanišić Defence limits its arguments to this part of the Decision (even if it requests certification to appeal the Decision in its entirety). In this respect, the Stanišić Defence argues as to why it does not share the Chamber’s reasons for coming to the conclusions it did and points to a failure of the Chamber to sufficiently explain its conclusions.⁴ This is a matter not to be dealt with in a request for certification and the Chamber will not further consider these arguments.

4. The Chamber considers that the Decision dealt with whether the Stanišić Defence should be granted further time pursuant to Rule 127 to respond to a Prosecution motion. The Decision addressed a procedural problem related to the conduct of the proceedings during the pre-trial phase of this case. The Chamber finds that that the Stanišić Defence has not

¹ See *Prosecutor v. 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.

² Decision, para. 13.

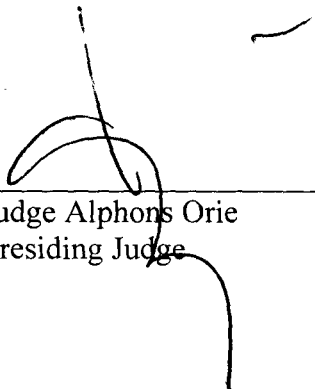
³ Decision, paras 2, 11.

demonstrated that this is an issue that significantly affect either the fair and expeditious conduct of the proceedings or the outcome of the trial.

5. Since the first limb of the test set out in Rule 73 (B) is not satisfied, the Chamber will not deal with the second limb.

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

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



Judge Alphons Orié
Presiding Judge

Dated this 20th day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]