



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: 29 May 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Pre-Trial Judge, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 29 May 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON DEFENCE REQUEST FOR CERTIFICATION TO APPEAL THE
TRIAL CHAMBER'S "DECISION ON PROSECUTION MOTION FOR
REVOCATION OF JOVICA STANIŠIĆ'S PROVISIONAL RELEASE AND RE-
ASSESSMENT OF HIS HEALTH"

Office of the Prosecutor

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1. On 24 April 2009, the Chamber issued its “Decision on Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of His Health” (“Impugned Decision”). On 1 May 2009, the Stanišić Defence requested certification to appeal the Decision (“Request”).¹ The Prosecution responded on 15 May 2009 (“Response”), submitting that the Request should be denied.²

2. Rule 73 (B) of the Tribunal’s 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.³

3. In the Impugned Decision, the Chamber found that the case could recommence *provided that* accommodating measures with regard to Mr Stanišić’s health situation are introduced.⁴ Accordingly, the Chamber decided to recommence the trial and revoked provisional release of the two Accused.⁵ In the Request, the Stanišić Defence presents a plethora of excerpts from recent medical reports describing Mr Stanišić’s ailments and seemingly concludes that the Chamber must have disregarded these aspects in its Impugned Decision.⁶ The Prosecution draws attention to the fact that the Request re-argues substantial factual matters and is thus in essence a motion to reconsider rather than a motion for certification for appeal.⁷ It also highlights that the Request fails to mention the important caveat in the Impugned Decision, namely that the decision to recommence trial was conditioned upon the introduction of accommodating measures.⁸

4. As the Prosecution correctly points out, the decision to recommence trial, which triggered the decision to revoke provisional release, was conditioned upon the introduction of

¹ Defence Request for Certification to Appeal the Trial Chamber’s “Decision on Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of his Health”, 1 May 2009.

² Prosecution Response to Stanišić Defence Motion for Certification to Appeal the Revocation of Provisional Release, 15 May 2009.

³ 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.

⁴ Decision, para. 20 [emphasis added].

⁵ *Ibid.*, para. 22.

⁶ Request, paras 7-8.

⁷ Response, paras 2, 10.

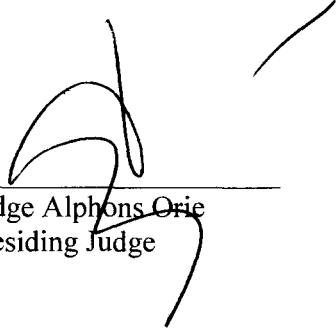
⁸ *Ibid.*, paras 4, 15-16.

accommodating measures. Accordingly, and keeping in mind that these accommodating measures in the form of trial modalities have not been finalised yet, the Chamber finds that it is premature to request certification for appeal of a decision with such an essential and unresolved caveat. The fair and expeditious conduct of the proceedings against the Accused Stanišić will depend greatly on the extent of accommodating measures that can be provided. Furthermore, due to this the Chamber considers that an immediate resolution by the Appeals Chamber at this stage would not materially advance the proceedings.

5. The Chamber accordingly finds that the Stanišić Defence has not demonstrated that this is an issue that, at this point, significantly affects either the fair and expeditious conduct of the proceedings or the outcome of the trial, and is not of the opinion that an immediate resolution by the Appeals Chamber would materially advance the proceedings.

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 Orie
Presiding Judge

Dated this twenty-ninth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]