

IT-03-69-PT
017265-017258
09 JUNE 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: 9 June 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 9 June 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

DECISION AMENDING MODALITIES FOR TRIAL

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

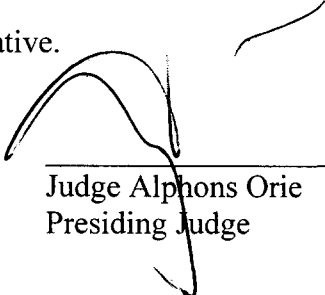
Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Zoran Jovanović
Mr Vladimir Domazet

1. On 29 May 2009, the Chamber issued its Decision on the Start of Trial and Modalities for Trial.¹ During the Pre-Trial Conference on 2 June 2009, the Chamber invited the parties to further address the Modalities set out in the Annex to that Decision.² The Prosecution asked for a clarification as to paragraph 3 of the Modalities and whether the United Nations Detention Unit (UNDU) Reporting Medical Officer and gastroenterologist referenced in that paragraph would have any responsibility with respect to the treatment of Mr Stanišić.³ The Stanišić Defence proposed that reporting by a psychiatrist should be added to the regular medical reporting to the Chamber.⁴ The Prosecution supported this proposal.⁵
2. With regard to the question by the Prosecution, the Chamber informed the parties that the discussions with the Registry about making a distinction between treating physicians and physicians reporting to the Chamber, were ongoing.⁶ Such discussions are still ongoing. However, in anticipation of the conclusion of these discussions the Chamber will make one adjustment in the first sentence of paragraph 3 of the Modalities.
3. Upon suggestion by the Stanišić Defence, and supported by the Prosecution, the Chamber will modify the Modalities to include regular reporting by a psychiatrist.
4. The changes of the Modalities are highlighted in Annex A to this Decision. The new operative Modalities are attached as Annex B to this Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this ninth of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ Decision on Start of Trial and Modalities for Trial, 29 May 2009.

² T. 1383. See also Invitation to Parties to Comment on Modalities for Trial, 24 April 2009; Prosecution Submissions Regarding Trial Modalities, 4 May 2009; Defence for Stanišić's Response to Trial Chamber's Invitation to Comment on Modalities for Trial, 4 May 2009; Simatović Defence Comments Pursuant to Trial Chamber Invitation of 24 April 2009, 4 May 2009.

³ T. 1384.

⁴ T. 1384-1386.

⁵ T. 1387-1388.

⁶ T. 1387.

ANNEX A

(Changes from the Modalities of 29 May 2009 marked in bold and strike-through)

Modalities for the trial in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*

1. As set out in the Scheduling Order for Recommencement of Trial of 24 April 2009, the Chamber will only hold hearings in the present case two days a week. The daily hearings will be divided into sessions of 1 hour and 15 minutes, with breaks lasting 30 minutes. Mr Stanišić can at all times address the Chamber if he has a need for additional breaks. Whenever and insofar as the courtroom schedule of the Tribunal allows this, the hearings will be conducted on consecutive days and in a manner as to avoid long interruptions of the presentation of evidence. The hearings will also take place in the afternoon in order to facilitate any determination of the medical status of Mr Stanišić prior to the hearing.
2. The schedule set out in item 1 is valid for the first three months of the trial, although the Chamber may further extend it. In addition, the Chamber will make any adjustments to this schedule that it deems fit, in particular taking into account the Judges' trial schedule and the health of Mr Stanišić. The Chamber may invite submissions of the parties with regard to any such adjustments.
3. During Mr Stanišić's detention at the United Nations Detention Unit ("UNDU"), the UNDU Reporting Medical Officer **or an independent medical expert** will submit a written report to the Chamber on the medical condition of the Accused once a week, so as to allow for adjustments in the schedule set out in item 1, if necessary. In addition, Mr Stanišić is to be examined at least once every four weeks by a gastroenterologist who will report in writing to the Chamber on the Accused's medical condition after each examination. **Mr Stanišić is also to be examined by a psychiatrist who will report in writing to the Chamber on the Accused's medical condition once every eight weeks.** If the Chamber considers it necessary, based on the regular reporting set out above, it will request that ~~a~~ **any other** medical specialist, ~~for example a psychiatrist,~~ examine Mr Stanišić and report in writing to the Chamber. All the reports referred to in this item should be filed publicly, unless the Chamber indicates otherwise.
4. Mr Stanišić will be physically present in court during the court hearings. As all accused before the Tribunal, Mr Stanišić may waive his right to be present in court. If he waives this right due to illness, Mr Stanišić is to follow the procedure set out by the Registry, including filling out the form for waiving the right as will be provided to him by the staff of the UNDU.

5. In order to further accommodate Mr Stanišić, the Chamber will allow him, if he opts to, not to be present in court but instead follow the proceedings via a video-conference link from the UNDU. For this purpose, an observation room with toilet facility has been arranged at the UNDU in close vicinity to Mr Stanišić's cell. Mr Stanišić should inform the staff of the UNDU of this decision at the earliest possible time. The staff of the UNDU should convey this message to the Chamber, via the Court Officer, before the start of the hearing on any particular day. A video-conference link will allow Mr Stanišić to follow the proceedings, to see the witnesses at all times, to make a statement pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence if he chooses to do so, and to otherwise address the court. The Chamber and the parties in the courtroom will also be able to see Mr Stanišić at the video-conference link. A telephone line will allow Mr Stanišić to communicate with his counsel in the courtroom and a member of the Defence team may be present with Mr Stanišić at the UNDU. Mr Stanišić will also have access to eCourt and Livenote transcript in the observation room.

6. On each court day, the Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall remind Mr Stanišić of the court schedule for the day and that the normal arrangements are in place for his transport to court. If Mr Stanišić indicates that he is too unwell to attend court in person, the Commanding Officer is to remind him of his right to be present in court, ask him if he waives his right to attend and offer him the opportunity to communicate with counsel. The Commanding Officer shall also inform Mr Stanišić that he may make use of the video-conference link from the UNDU, should he opt not to physically attend court.

7. If Mr Stanišić does not waive his right to be physically present and does not opt to participate in the proceedings via video-conference link from the UNDU but claims that he is too ill to go to court, he shall be medically examined before the court session. The Reporting Medical Officer at the UNDU or an independent medical expert shall familiarize him- or herself with the medical condition of Mr Stanišić and submit, through the Court Officer, a written report to the Chamber. This report will be filed publicly unless the Chamber indicates otherwise. The Reporting Medical Officer at the UNDU or the independent medical expert shall also be ready to report orally to the Chamber at the beginning of the court session. The Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall inform the Chamber, through the Court Officer, about the above as soon as possible, including that Mr Stanišić is or has been medically examined. At the beginning of the court session, Defence Counsel shall confirm to the Chamber that Mr Stanišić has not waived his right to be present. The Chamber shall then, if it deems necessary, hear the

Reporting Medical Officer or the independent medical expert in court or through the video-conference link on the medical condition of Mr Stanišić. The Chamber may also seek further information about the condition of Mr Stanišić from other sources, as it deems fit.

8. Upon hearing the Reporting Medical Officer or the independent medical expert the Chamber shall determine that either:

(a) Mr Stanišić is well enough to participate in the proceedings, either in person or, if he elects, via video-conference link, in which case Mr Stanišić shall be deemed to have waived his right to be present and the trial will continue in his absence, unless the Chamber uses its discretion to adjourn the proceedings taking into account Mr Stanišić's health problem; or

(b) Mr Stanišić is too unwell to participate in the proceedings in either way, in which case the Chamber shall adjourn the proceedings until the next scheduled court session.

ANNEX BModalities for the trial in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*

9. As set out in the Scheduling Order for Recommencement of Trial of 24 April 2009, the Chamber will only hold hearings in the present case two days a week. The daily hearings will be divided into sessions of 1 hour and 15 minutes, with breaks lasting 30 minutes. Mr Stanišić can at all times address the Chamber if he has a need for additional breaks. Whenever and insofar as the courtroom schedule of the Tribunal allows this, the hearings will be conducted on consecutive days and in a manner as to avoid long interruptions of the presentation of evidence. The hearings will also take place in the afternoon in order to facilitate any determination of the medical status of Mr Stanišić prior to the hearing.

10. The schedule set out in item 1 is valid for the first three months of the trial, although the Chamber may further extend it. In addition, the Chamber will make any adjustments to this schedule that it deems fit, in particular taking into account the Judges' trial schedule and the health of Mr Stanišić. The Chamber may invite submissions of the parties with regard to any such adjustments.

11. During Mr Stanišić's detention at the United Nations Detention Unit ("UNDU"), the UNDU Reporting Medical Officer or an independent medical expert will submit a written report to the Chamber on the medical condition of the Accused once a week, so as to allow for adjustments in the schedule set out in item 1, if necessary. In addition, Mr Stanišić is to be examined at least once every four weeks by a gastroenterologist who will report in writing to the Chamber on the Accused's medical condition after each examination. Mr Stanišić is also to be examined by a psychiatrist who will report in writing to the Chamber on the Accused's medical condition once every eight weeks. If the Chamber considers it necessary, based on the regular reporting set out above, it will request that any other medical specialist examine Mr Stanišić and report in writing to the Chamber. All the reports referred to in this item should be filed publicly, unless the Chamber indicates otherwise.

12. Mr Stanišić will be physically present in court during the court hearings. As all accused before the Tribunal, Mr Stanišić may waive his right to be present in court. If he waives this right due to illness, Mr Stanišić is to follow the procedure set out by the Registry, including filling out the form for waiving the right as will be provided to him by the staff of the UNDU.

13. In order to further accommodate Mr Stanišić, the Chamber will allow him, if he opts to, not to be present in court but instead follow the proceedings via a video-conference link from the UNDU. For this purpose, an observation room with toilet facility has been arranged at the

UNDU in close vicinity to Mr Stanišić's cell. Mr Stanišić should inform the staff of the UNDU of this decision at the earliest possible time. The staff of the UNDU should convey this message to the Chamber, via the Court Officer, before the start of the hearing on any particular day. A video-conference link will allow Mr Stanišić to follow the proceedings, to see the witnesses at all times, to make a statement pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence if he chooses to do so, and to otherwise address the court. The Chamber and the parties in the courtroom will also be able to see Mr Stanišić at the video-conference link. A telephone line will allow Mr Stanišić to communicate with his counsel in the courtroom and a member of the Defence team may be present with Mr Stanišić at the UNDU. Mr Stanišić will also have access to eCourt and Livenote transcript in the observation room.

14. On each court day, the Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall remind Mr Stanišić of the court schedule for the day and that the normal arrangements are in place for his transport to court. If Mr Stanišić indicates that he is too unwell to attend court in person, the Commanding Officer is to remind him of his right to be present in court, ask him if he waives his right to attend and offer him the opportunity to communicate with counsel. The Commanding Officer shall also inform Mr Stanišić that he may make use of the video-conference link from the UNDU, should he opt not to physically attend court.

15. If Mr Stanišić does not waive his right to be physically present and does not opt to participate in the proceedings via video-conference link from the UNDU but claims that he is too ill to go to court, he shall be medically examined before the court session. The Reporting Medical Officer at the UNDU or an independent medical expert shall familiarize him- or herself with the medical condition of Mr Stanišić and submit, through the Court Officer, a written report to the Chamber. This report will be filed publicly unless the Chamber indicates otherwise. The Reporting Medical Officer at the UNDU or the independent medical expert shall also be ready to report orally to the Chamber at the beginning of the court session. The Commanding Officer, Deputy Commanding Officer or any other authorized officer of the UNDU shall inform the Chamber, through the Court Officer, about the above as soon as possible, including that Mr Stanišić is or has been medically examined. At the beginning of the court session, Defence Counsel shall confirm to the Chamber that Mr Stanišić has not waived his right to be present. The Chamber shall then, if it deems necessary, hear the Reporting Medical Officer or the independent medical expert in court or through the video-conference link on the medical condition of Mr Stanišić. The Chamber may also seek further information about the condition of Mr Stanišić from other sources, as it deems fit.

16. Upon hearing the Reporting Medical Officer or the independent medical expert the Chamber shall determine that either:

- (a) Mr Stanišić is well enough to participate in the proceedings, either in person or, if he elects, via video-conference link, in which case Mr Stanišić shall be deemed to have waived his right to be present and the trial will continue in his absence, unless the Chamber uses its discretion to adjourn the proceedings taking into account Mr Stanišić's health problem; or
- (b) Mr Stanišić is too unwell to participate in the proceedings in either way, in which case the Chamber shall adjourn the proceedings until the next scheduled court session.