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15 October 2009

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UNITED
NATIONS



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-T
Date: 15 October
2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 15 October 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON MOTION FOR ADJOURNMENT OF
PROCEEDINGS BY THE SIMATOVIĆ DEFENCE**

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 Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 14 September 2009, newly appointed lead and co-counsel for Franko Simatović, Mihajlo Bakrač and Vladimir Petrović (“Simatović Defence”), filed a “Defence Motion Requesting Adjournment of Trial Proceedings” (“Adjournment Motion”), seeking that the proceedings in the present case be adjourned for a period of six months or, alternatively, for a shorter initial period with several ensuing adjournment periods until 12 April 2010, and that the deadlines for all pending Defence submissions in response and/or reply be postponed until 15 November 2009.¹

2. On 2 August 2009, Zoran Jovanović who had been appointed lead counsel for Simatović by the Registrar of the Tribunal on 18 July 2003, passed away.² On 27 August 2009, Vladimir Domazet who had been appointed co-counsel by the Deputy Registrar of the Tribunal (“Deputy Registrar”) on 27 February 2008, filed the “Request of Franko Simatović for Adjournment of Proceedings” (“Simatović Adjournment Motion”), wherein Simatović requested “that the trial be adjourned, until such time when [his] right to a professional defence is fulfilled”.³ The Chamber thereafter cancelled the hearings scheduled during the weeks of 31 August and 7 September 2009 and informed the Parties, in a scheduling order issued on 11 September 2009, that a hearing would be scheduled on 14 September 2009 to discuss various housekeeping matters.⁴

3. On 11 September 2009, the Deputy Registrar assigned Bakrač and Petrović as lead counsel and co-counsel for Simatović, respectively.⁵

4. At the hearing held on 14 September 2009, the Chamber informed the Parties that no hearings would be scheduled pending the issuance of a decision on the Adjournment Motion.⁶

5. On 18 September 2009, the Prosecution filed its “Prosecution Response to Simatović Defence Motion Requesting Adjournment of Trial Proceedings” (“Prosecution Response”), requesting:

- a. That an adjournment of six months be denied.
- b. That the Trial Chamber grant an initial adjournment for a reasonable period of time as determined by the Chamber given all the circumstances before it.

¹ Adjournment Motion, paras 23-25.

² Decision of the Deputy Registrar of the Tribunal, 11 September 2009 (“11 September Decision”), p. 1.

³ Simatović Adjournment Motion, para. 14.

⁴ Scheduling Order, 11 September 2009, p. 1.

⁵ 11 September Decision, p. 3.

⁶ Hearing of 14 September 2009, T. 2192-2193.

c. That the requests for three adjournments of i) 8 to 18 January 2010, ii) 1 to 28 February 2010 and iii) 15 March to 11 April 2010 be denied without prejudice.⁷

6. On 24 September 2009, the Simatović Defence filed an urgent “Addendum to Defence Motion Requesting Adjournment of Trial Proceedings and Request to Submit Reply to ‘Prosecution Response to Simatović Defence Motion Requesting Adjournment of Trial Proceedings’” (“Addendum to Adjournment Motion and Request to Reply”), providing additional information as to the future composition of the Simatović Defence team and the progress made in obtaining case-related documents. The Simatović Defence also amended the relief it had requested in the Adjournment Motion and no longer primarily sought that the proceedings be suspended for six months but for a longer period of eight months.⁸ Additionally, the Simatović Defence sought leave to reply to the Prosecution Response.⁹

7. On 29 September 2009, the Chamber informally notified the Parties, via electronic correspondence, that the Simatović Defence was allowed to file a reply no later than 2 October 2009 and that the Prosecution was allowed to respond to the Addendum to Adjournment Motion also no later than 2 October 2009, if it so wished.

8. On 2 October 2009, the Simatović Defence filed a confidential “Defence Reply to ‘Prosecution Response to Simatović Defence Motion Requesting Adjournment of Trial Proceedings’” (“Simatović Reply”), providing further information as to its position on the number of Prosecution witnesses scheduled to testify as well as to the manner in which pre-trial preparations were conducted.¹⁰

9. Also on 2 October 2009, the Prosecution filed the “Prosecution Response to Simatović Defence Addendum to Motion Requesting Adjournment of Trial Proceedings” (“Prosecution Response to Addendum”), wherein the Prosecution primarily argued that it had provided the Simatović Defence with two search tools which had eliminated the need for the Simatović Defence to physically read every document disclosed by the Prosecution.¹¹

10. On 8 October 2009, the Simatović Defence filed a “Second Addendum to Defence Motion Requesting Adjournment of Trial Proceedings” (“Second Addendum to Adjournment Motion”), detailing the material that was handed over by Domazet during a meeting on 7 and 8 October 2009

⁷ Prosecution Response, para. 22.

⁸ Addendum to Adjournment Motion and Request to Reply, paras 6-13.

⁹ Addendum to Adjournment Motion and Request to Reply, para. 14.

¹⁰ Simatović Reply, paras. 4, 6-10, 12-15, annexes 1-2.

¹¹ Prosecution Response to Addendum, paras 2-3.

in the form of 7 CDs.¹² The Simatović Defence further submitted that during this meeting, Domazet had stated that he was in possession of certain case related notes but that, given the fact that “they are worthless for the purposes of this Defence”, he did not deem it necessary to disclose them.¹³

II. SUBMISSIONS

A. Simatović Defence

11. The Simatović Defence arguments for an adjournment centre around three main issues: i) the formation of a new defence team; ii) the complexity of the present case; and iii) the difficulty in obtaining the documents that had been gathered and kept by former lead counsel.

12. The Simatović Defence first argues that the passing away of Jovanović has led to the formation of an entirely new defence team. Not only is Bakrač “completely new to the case” but, in the Simatović Defence submission, “all the other Defence team members are new to the case at hand”.¹⁴ In its Addendum to the Adjournment Motion and Request to Reply, the Simatović Defence clarified that it did not intend to alter the team composition beyond seeking the appointment of a new legal assistant, a new investigator and the termination of the assignment of former co-counsel, Domazet, after the one-month transition period as decided by the Registry.¹⁵ The Simatović Defence stresses, however, that the capacity of the support staff should be viewed in light of the fact that Jovanović had performed a considerable amount of the case preparation himself.¹⁶

13. The Simatović Defence also contends that the present case is of great complexity, in that the material, geographical and temporal scope of the Indictment is broad, that the case is ranked at level III complexity according to the Registry “Trial Legal Aid Policy”¹⁷, that 11 other cases tried before the Tribunal and relevant to the present case need to be examined, that over 3,500 documents are on the Prosecution’s list of exhibits presented pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”)¹⁸, and that over 100,000 pages have been disclosed with over 100 witnesses on the Prosecution’s list of witnesses.¹⁹

¹² Second Addendum to the Adjournment Motion, paras 6-8.

¹³ Second Addendum to the Adjournment Motion, para. 9.

¹⁴ Adjournment Motion, paras 6-7.

¹⁵ Addendum to the Adjournment Motion and Request to Reply, para. 6.

¹⁶ Addendum to the Adjournment Motion and Request to Reply, para. 7; Simatović Reply, paras 6-9.

¹⁷ Defence Counsel-Trial Legal Aid Policy, 1 May 2006, Section D.

¹⁸ The Simatović Defence had first submitted that there were approximately 5,000 exhibits on the Prosecution’s Rule 65 *ter* list of exhibits, see Adjournment Motion, para. 11. The Prosecution then contended that while the current sequential numbering of Rule 65 *ter* documents exceeded 5,000, the actual number of proposed documents was approximately 3,500, see Prosecution Response, para. 5. Given the Prosecution Response, the Simatović Defence

14. Finally, the Simatović Defence submits that it is currently still attempting to locate case-related documents and that some were found both in Belgrade and in The Hague.²⁰ The Simatović Defence contends that there has been no handover in this case and that the sole material that Domazet provided on 7 and 8 October 2009 were 7 CDs, along with an accompanying letter and the corresponding list of materials.²¹ The Simatović Defence contends that the pre-trial preparations were conducted exclusively and entirely by Jovanović,²² and that it has not been able to locate any notes produced by him.²³

B. Prosecution

15. While the Prosecution opposes the principal request for a six-month adjournment and any further adjournment period after the winter recess,²⁴ it relies on the Chamber's discretion to determine an initial adequate adjournment period that would allow the Simatović Defence to become familiar with the case and the work of former defence team.²⁵

16. In the Prosecution Response, the Prosecution argues that certain "corrections" are required in relation to the information provided by the Simatović Defence in support of the Adjournment Motion as to the size of the Prosecution case, the composition of the Simatović Defence team and its level of preparedness.²⁶

17. The Prosecution further notes that it has undertaken a number of steps in order to facilitate Bakrač's orientation to the case and to the materials disclosed by the Prosecution, including the provision of various disclosure logs.²⁷ The Prosecution further commits itself to ensure that the witness schedule be notified well in advance.²⁸ In addition, the Prosecution submits that it will re-disclose to the current Simatović Defence team all the material disclosed since the commencement of pre-trial preparations in the present proceedings.²⁹ The Prosecution finally suggests that

then noted that the 3,500 documents, which were reduced from 5,000, actually represent 31,700 pages of material, see Addendum to the Adjournment Motion and Request to Reply, para. 10.

¹⁹ Adjournment Motion, paras 8-13.

²⁰ Adjournment Motion, para. 13; Addendum to the Adjournment Motion and Request to Reply, para. 8.

²¹ See para. 8 *supra*.

²² Simatović Reply, paras 6-9.

²³ Simatović Reply, para. 10.

²⁴ Prosecution Response, paras 16-21.

²⁵ Prosecution Response, paras 2-3.

²⁶ Prosecution Response, paras 5-12.

²⁷ Prosecution Response, paras 13-14, Annex A.

²⁸ Prosecution Response, Annex A, para. 9.

²⁹ Prosecution Response to Addendum, para. 5.

Simatović himself may assist the Simatović Defence with the knowledge he has acquired from his years of access to the documents.³⁰

III. APPLICABLE LAW

18. Articles 20 (1) and 21 (4) (c) of the Statute of the Tribunal protect the rights of an accused to be tried expeditiously and without undue delay. Article 21 (4) (b) of the Statute provides that an accused shall have “adequate time and facilities for the preparation of his defence”.

19. In deciding whether to grant a motion for adjournment filed by one of the parties, Trial Chambers generally assess if the interests of justice warrant the requested adjournment or if there exists a valid reason for doing so.³¹

IV. DISCUSSION

A. Simatović Adjournment Motion

20. As noted earlier, the Simatović Adjournment Motion sought an adjournment of the trial until such time that his right to a professional defence was fulfilled. After initially cancelling the hearings scheduled for the weeks of 31 August and 7 September 2009, the Chamber adjourned the proceedings pending its decision on the Adjournment Motion. New lead counsel and co-counsel were thereafter assigned by the Deputy Registrar on 11 September 2009. The Chamber thus considers that the Simatović Adjournment Motion has become moot and shall therefore only examine the arguments set forth in the Adjournment Motion.

B. Adjournment Motion

21. In deciding upon the Adjournment Motion, the Chamber has considered all the arguments raised therein, as well as in the aforementioned subsequent filings, and particular attention was given to the following, while bearing in mind the complexity of the case as an underlying factor: i) the formation of the new defence team; ii) the difficulty in obtaining the documents that had been gathered and kept by former lead counsel; iii) the current pace of the proceedings; and iv) the offer of assistance from the Prosecution.

³⁰ Prosecution Response to Addendum, para. 4.

³¹ For the “interests of justice” test, see *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on Defence Motion for Adjournment, 10 March 2003, p. 2; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Decision on Adjourning the Trial, 15 January 2001, p. 2; for the “valid reason” test, see *Prosecutor v. Zejnil Delalić, Zdravko Mucić, aka Pavo, Hazim Delić, Esad Landžo, aka “Zenga”*, Case No. IT-96-21-T, Decision on the Applications for Adjournment of the Trial Date, 3 February 1997, para. 30.

22. First, the Chamber wishes to clarify what seems to be a misunderstanding between the Parties as to the number of scheduled Prosecution witnesses in the present case. While the Prosecution submits that it seeks to present 100 witnesses, 64 of whom will actually appear in court,³² the Simatović Defence argues that 90 witnesses are to be presented by the Prosecution, 8 of whom are sought to be presented pursuant to Rule 92 *quater*.³³ The Chamber refers the Parties to the consolidated “Amended Consolidated Witness List” filed by the Prosecution on 5 June 2009, the Chamber’s oral decision of 6 July 2009 as well as the Chamber’s written decision of 8 September 2009.³⁴ In this respect, the number of witnesses that the Prosecution currently seeks to present totals 101 and may be broken down as follows:

- 42 witnesses to be presented as “92*ter*/*viva voce*” witnesses;
- 8 witnesses to be presented *viva voce*;
- 7 witnesses to be presented pursuant to Rule 92 *ter*;
- 8 witnesses to be presented as “94*bis*/*viva voce*” witnesses;
- 27 witnesses to be presented pursuant to 92 *bis*; and
- 9 witnesses to be presented pursuant to Rule 92 *quater*;

In total, 65 witnesses are therefore scheduled to appear in court. To date, the Chamber has heard five “92 *ter*/*viva voce*” witnesses and one witness who was heard on a purely *viva voce* basis.

23. With regard to the formation of an entirely new team, the Chamber observes that a new lead counsel with no prior knowledge of the present proceedings was assigned on 11 September 2009. The Chamber also notes that it would appear, based upon the information provided, that the former lead counsel conducted the majority of the trial preparations himself and, in doing so, involved the other Simatović Defence team members after their assignment in the later phase of the trial preparations to a minor extent. The Chamber regrets that the 11 September Decision wherein the Deputy Registrar required “the assignment of Mr. Domazet as a legal consultant to the Accused’s defence team for a minimum of thirty (30) days to assist in the transition of knowledge to Mr.

³² Prosecution Response, para. 5.

³³ Simatović Reply, para. 4.

³⁴ Annex A to Prosecution Submission of Amended Consolidated Witness List and Request for Permission to Present Additional Witnesses within Allotted Time, confidential, 5 June 2009; Hearing of 6 July 2009, T. 1821-1824; Decision on the Admission of the Written Evidence of Josip Josipović and [redacted] (Witness C-1230) pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence of the Tribunal, confidential, 8 September 2009.

Bakrač³⁵ appears not to have produced the intended effect. From the information available to the Chamber, it would appear that Domazet did not meet with the Simatović Defence until 7 or 8 October 2009, almost a month after the 11 September Decision. Notwithstanding these considerations, it is clear that Petrović, who is now co-counsel and who was assigned as legal assistant in the Simatović Defence team on 11 March 2008, and Ingrid Morgan, who was assigned as legal assistant in the Simatović Defence team on 18 October 2007, both remain on the Simatović Defence team. It is also apparent that Jovanović, in preparing for trial, communicated regularly with Simatović to devise the case strategy and to discuss documents and witnesses.³⁶ Further, pre-trial preparations were concluded prior to Jovanović passing away and important documents, such as the pre-trial brief, were filed.³⁷ Therefore, although acknowledging the impact of the sudden change in the lead counsel, the Chamber disagrees with the representation that an entirely new team has been formed and emphasises the existence of at least some continuity between the former and the present Simatović Defence teams. The Chamber would also note that Simatović may serve as an important link between the preparations conducted by the former lead counsel and the current defence team.

24. With regard to the difficulty in obtaining the case-related material that had been gathered and produced by the former lead counsel, the Chamber acknowledges, based on the information provided, the difficulty of the handover. The Chamber takes issue however with the representation that there has been a total absence of handover. By 2 October 2009, the Simatović Defence seems to have obtained most of the material created and collected by Jovanović that was found in five different locations.³⁸ In addition, during a meeting held on 7 and 8 October 2009, Domazet disclosed to the Simatović Defence 7 CDs as well as their accompanying notes.

25. The Chamber also wishes to emphasise the particular modalities under which this trial is currently proceeding. Pursuant to the “Second Decision Amending Modalities for Trial” issued on 1 September 2009 (“Second Modalities Decision”), the Chamber is sitting only two days per week until it decides otherwise, making “any adjustments to this schedule that it deems fit, in particular taking into account the Judges’ trial schedule and the health of Mr Stanišić”.³⁹ The Chamber considers that, irrespective of any adjournment period, this schedule will, once the hearings

³⁵ 11 September Decision, p. 4.

³⁶ See Simatović Adjournment Motion, para. 8: “Since 2003, I have worked, together with Mr. Zoran Jovanović, on all aspects of the case, including the preparation of the defence strategy, analysis, witness statements, and documents that the Prosecution intends to use, as well as defence witnesses and documents”.

³⁷ Defence Pre Trial Brief, 13 July 2007.

³⁸ Simatović Defence Reply, para. 12 (Jovanović’s office in Belgrade as well as three of his residences); Addendum to Adjournment Motion, para. 8 (Jovanović’s locker at the Tribunal).

³⁹ Second Modalities Decision, 1 September 2009, Annex B, paras 1-2; see also Corrigendum to Second Decision Amending Modalities for Trial, 7 September 2009, Annex B, paras 1-2.

recommence, allow the Simatović Defence to further refine its case preparations, by only sitting two afternoon sessions per week and working on the case for the three remaining days of the week.

26. Lastly, the Chamber gives due consideration to the Prosecution's offer to assist the current Simatović Defence team to smoothly transition into their new functions. The Chamber notes that already on 14 September, the Prosecution met with Bakrač to provide him with information as to the electronic disclosure system as well as with disclosure and exhibit logs to assist him in navigating the volume of relevant material in this case.⁴⁰ In addition, the Prosecution has undertaken, on a number of occasions, to give substantial notice of its witness schedule in order to ensure that the Simatović Defence has ample time to prepare for cross-examination.⁴¹ The Chamber is confident that the Prosecution will demonstrate flexibility and cooperation during this important phase of the proceedings, in the event that further reasonable accommodations need to be made.

27. In light of the above, the Chamber considers that the Simatović Defence has demonstrated that it is in the interests of justice to further adjourn the proceedings in order for the Simatović Defence to adequately prepare Simatović's representation in this trial. However, given the specific circumstances, the Chamber does not consider that the Simatović Defence has shown valid reasons to adjourn the proceedings for the entire requested period of eight months. In this respect, in addition to what is stated above, the Chamber notes that the hearings in this case have effectively been adjourned since 27 August 2009—save for a housekeeping hearing on 14 September 2009. The Simatović Defence has therefore, at this stage, already had more than one month to fully focus on their trial preparations. In addition, the Chamber notes that it is not at all uncommon for case preparations, however well-prepared, to be further enhanced throughout the Prosecution case. The Chamber therefore considers that the hearings shall not recommence until the week of 30 November 2009 for a period of three weeks before the winter recess, which in the present case will last until the week of 18 January 2010. Consequently, save for six afternoon sessions prior to the winter recess, the Simatović Defence will have four full months to further prepare the defence for Simatović. The Chamber will closely monitor how the proceedings develop, especially in view of the interrupted and disrupted preparations for the continuation of trial, and will consider adapting the aforementioned schedule if it is convinced of the necessity to do so to ensure that Simatović receives a fair trial.

⁴⁰ Prosecution Response, Annex A.

⁴¹ Hearing of 26 August 2009, T. 2055; Prosecution Response, Annex A, para. 9.

28. The Chamber now turns to the Simatović Defence request to postpone “the deadline(s) for all pending Defence submissions in response and/or reply” until 15 November 2009.⁴² The Chamber does not consider that the Simatović Defence has demonstrated valid reasons for such request to be granted pursuant to Rule 126 *bis* as a general principle. The Chamber notes that while there have been very few filings from the Prosecution or the Stanišić Defence since the 11 September Decision, a number of Prosecution motions are quite complex and would require a thorough knowledge of the case. For such filings, it is thus reasonable that the Simatović Defence be granted until 15 November 2009 to respond. These filings are:

- i) “Corrigendum to Prosecution Motion for Admission of Evidence of Miroslav Deronjić and Re-submission of Confidential Annex B to Prosecution Motion for Admission of Evidence of Witness B-161 Pursuant to Rule 92 *quarter* [sic] with Confidential Annexes”, partly confidential, 7 October 2009 (“Deronjić and Witness B-161 Corrigendum”); and
- ii) “Prosecution Submission of Addendum to Expert Report of Christian Nielsen Pursuant to Rule 94*bis* with Confidential Annex, partly confidential”, 18 September 2009 (“Nielsen Prosecution’s Addendum”);

29. In addition, three Prosecution’s filings were filed during the period between Jovanović’s death and the assignment of the Simatović Defence but would warrant an extension of time for the Simatović Defence to respond until 15 November 2009. These are:

- i) “Corrigendum to Prosecution Motion for Admission of Evidence of Milan Babić Pursuant to Rule 92 *quarter* [sic] with Confidential Annexes”, partly confidential, 3 August 2009 (“Babić Corrigendum”);
- ii) “Twelfth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex”, partly confidential, 12 August 2009 (“Twelfth 65 *ter* Motion”); and
- iii) “Thirteenth Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List with Confidential Annex”, partly confidential, 12 August 2009 (“Thirteenth 65 *ter* Motion”);

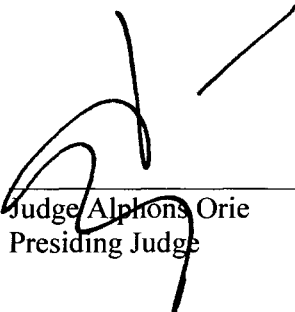
⁴² Adjournment Motion, para. 23.

V. DISPOSITION

30. For the foregoing reasons, the Trial Chamber **GRANTS** the Adjournment Motion filed on 14 September 2009 in part, **DECLARES** moot the Simatović Adjournment Motion filed on 27 August 2009 and **DECIDES** that:

- i) the hearings in the present case shall recommence during the week of 30 November 2009;
- ii) the regular winter judicial recess of the Tribunal scheduled between Monday 21 December 2009 and Friday 8 January 2010 shall be prolonged for the purposes of this case and hearings in these proceedings shall recommence during the week of 18 January 2010;
- iii) during the period between the week of 30 November 2009 and the week of 14 December 2009, the Chamber shall maintain a two day per week sitting schedule and shall revisit this schedule after 18 January 2010, if circumstances so allow and in accordance with the Second Modalities Decision; and
- iv) the Simatović Defence may respond to the following filings until 15 November 2009:
 - a. Deronjić and Witness B-161 Corrigendum;
 - b. Nielsen Prosecution's Addendum;
 - c. Babić Corrigendum;
 - d. Twelfth *65 ter* Motion; and
 - e. Thirteenth *65 ter* Motion
- v) the Prosecution shall file a updated list of its proposed witnesses reflecting paragraph 22 of the present decision.

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



Judge Alphons Orié
Presiding Judge

Dated this fifteenth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]