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: 23 February 2010

Original: English

IN TRIAL CHAMBER I

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

Registrar: **Mr John Hocking**

Decision of: **23 February 2010**

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON URGENT SIMATOVIĆ DEFENCE REQUEST FOR ADJOURNMENT

Office of the Prosecutor

Mr Dermot Groome

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 11 February 2010, the Simatović Defence filed an "Urgent Defense Request for Adjournment" ("Second Simatović Adjournment Motion"), seeking that the proceedings in the present case be adjourned between 1 March and 12 April 2010 so that it "can adequately prepare for the continuation of the proceedings".[1]

2. On 12 February 2010, the Chamber informally notified the Parties, via electronic correspondence, that any responses to the Second Simatović Adjournment Motion should be filed no later than 15 February 2010.

3. On 15 February 2010, the Prosecution filed its "Prosecution Response to Simatović Urgent Request for Adjournment" ("Prosecution Response"), stating that it relied on the Chamber's discretion in ruling upon the Second Simatović Adjournment Motion but also drew the Chamber's attention to what it described as several important considerations.[2]

4. Also on 15 February 2010, the Stanišić Defence informally notified the Chamber and the other Parties, via email correspondence, that it did not oppose the Second Simatović Adjournment Motion.[3]

5. During the hearing of 17 February 2010, the Simatović Defence was granted leave to provide a reply and replied orally in the course of this hearing ("Simatović Reply").[4]

II. SUBMISSIONS

A. Second Simatović Adjournment Motion

6. The Simatović Defence first reiterates the arguments it had already exposed in its "Defence Motion Requesting Adjournment of Trial Proceedings" filed on 14 September 2009 ("First Simatović Adjournment Motion") in relation to the passing away of former lead counsel, the formation of a new defence team as well as to the insignificant volume of case-related work product and material handed over to the new defence team.[5] The Simatović Defence adds that while for the first two "linkage witnesses", it had to solely rely on material requested from the state authorities,[6]

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1 Second Simatović Adjournment Motion, paras 4, 17.
2 Prosecution Response, paras 1, 17.
3 See Hearing of 17 February 2010, T. 3492.
4 Hearing of 17 February 2010, T. 3292-3495.
5 Second Simatović Adjournment Motion, para. 7.
6 Second Simatović Adjournment Motion, para. 8.

most of the material it requested from Serbia, Croatia and Bosnia and Herzegovina has not been obtained yet.[7]

7. The Simatović Defence further contends that, due to the limited time available, it has not yet had time to examine the volume of documents disclosed by the Prosecution, start its searches through the Electronic Disclosure System, examine other cases with relevant geographical or temporal scopes or provide submissions on a number of pending procedural matters.[8] Rather, the Simatović Defence focused on preparing for the current witnesses.[9]

8. The Simatović Defence therefore argues that it "cannot keep the pace anymore with the demands set before it, especially in the situation where the Prosecutor will not be limited anymore concerning the nature of testimonies of his witnesses"[10]. It notes that the difficulties it has faced have also reflected in the cross-examination of the two "linkage witnesses".[11]

B. Prosecution Response

9. The Prosecution, while relying on the Chamber's discretion in ruling on the Second Simatović Adjournment Motion, wishes to draw the Chamber's attention to a number of factors in this respect.

10. The Prosecution first notes that the issues linked to the assignment of counsel in September 2009 have already been dealt with by the Chamber in an earlier decision and that the Simatović Defence merely reiterates arguments previously expressed in the First Simatović Adjournment Motion.[12]

11. The Prosecution further contends that "the mere fact that the Simatović Defence may be dissatisfied with the cross-examination is not a litmus test for determining whether fairness requires an additional adjournment".[13] In this respect, the Prosecution underlines the assistance it has provided to the Simatović Defence in the past months.[14]

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7 Second Simatović Adjournment Motion, para. 9.
8 Second Simatović Adjournment Motion, paras 11-12.
9 Second Simatović Adjournment Motion, para. 11.
10 Second Simatović Adjournment Motion, para. 13.
11 Second Simatović Adjournment Motion, para. 10.
12 Prosecution Response, paras 2-4.
13 Prosecution Response, para. 7.
14 Prosecution Response, para. 8.

12. The Prosecution also argues that the lack of responses to requests for assistance to States does not warrant the requested adjournment and that other measures may be envisioned, such as rescheduling or recalling witnesses, if necessary in light of the material received.[15]

13. Finally, the Prosecution submits that the Second Simatović Adjournment Motion should be assessed in light of the cumulative effect of all previous adjournments, various accommodations made by the Prosecution and the slow pace of trial.[16] In this regard, for the Prosecution, the Chamber must "assess whether such adjournments undermine the Chamber's ability to adjudicate the indictment based on the best possible evidence and whether such adjournments unfairly compromise the Prosecution's ability to meet its burden of proof".[17] The Prosecution adds that the slow pace of the case with a two-day sitting week provides the Parties with significant case preparation time not available in other cases.[18] The Prosecution also recalls that it continues to remain available to discuss any appropriate accommodation the Prosecution can undertake to facilitate the work of the Simatović Defence.[19]

C. Simatović Reply

14. The Simatović Defence submits that while it is grateful for the ongoing Prosecution's assistance, the Prosecution cannot complete the case preparations still to be done by the Simatović Defence. The Simatović Defence further argues that it did not submit its further request for an adjournment earlier as it only realises now the necessity of a further break in the proceedings to adequately prepare for the forthcoming linkage witnesses.[20]

III. APPLICABLE LAW

15. 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".

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15 Prosecution Response, paras 9-11, 14.
16 Prosecution Response, paras 12-16.
17 Prosecution Response, para. 12. The Prosecution argues more specifically that with the passage of time, recollection of witnesses may dissipate and others may pass away. See Prosecution Response, para. 13.
18 Prosecution Response, para. 15.
19 Prosecution Reponse, para. 16.
20 Hearing of 17 February 2010, T. 3292-3495.

16. 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.[21]

IV. DISCUSSION

17. The Chamber first wishes to recall its "Decision on Motion for Adjournment of Proceedings by the Simatović Defence" issued on 15 October 2009 ("First Simatović Adjournment Decision"), wherein it had considered those arguments set forth in the First Simatović Adjournment Motion and which related to the impact of the passing away of former lead counsel on the case preparation of the then newly-assigned Simatović Defence team.[22] The Chamber had considered that the totality of these factors warranted an adjournment period of almost four months in total and stated that it "w[ould] closely monitor how the proceedings develop, especially in view of the interrupted and disrupted preparations for the continuation of trial, and w[ould] consider adapting the aforementioned schedule if it is convinced of the necessity to do so to ensure that Simatović receives a fair trial"[23].

18. The Chamber notes that the Second Simatović Adjournment Motion does not provide any new circumstances not already presented in the First Simatović Adjournment Motion. Rather, the Simatović Defence seems to react to what it considers to have been two non-"efficient, economical, and relevant cross-examination[s]"[24] on its part.

19. The Chamber reiterates that it acknowledges the problems faced by the Simatović Defence following the passing away of the former lead counsel. However, it notes that there are avenues to address those issues and that the Simatović Defence does not describe, in the Second Simatović Adjournment Motion, whether it has explored these avenues. In particular, on the issue of the unanswered requests for assistance to States, the Simatović Defence has not informed the Chamber of the timing of these requests and why it has not sought the Chamber's assistance in obtaining a follow-up. In light of the Prosecution's renewed expression of availability to discuss any further accommodation with the Simatović Defence,[25] the Chamber also remains confident that the

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21 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 Simatović Adjournment Decision, paras 23-24.

23 First Simatović Adjournment Decision, para. 27.

24 Second Simatović Adjournment Motion, para. 10.

25 Prosecution Response, para. 16.

Prosecution will continue to demonstrate flexibility and cooperation, in the event that further reasonable accommodations are proposed by the Simatović Defence.

20. In addition, the Chamber further emphasises, as it had in its First Simatović Adjournment Decision,[26] that the slow pace of these trial proceedings allows the Simatović Defence to further refine its case preparations during the three weekdays when the Chamber is not sitting. The Chamber wishes to notify the parties that at this stage, it is still considering whether or not it would be appropriate and practically possible to increase the pace of trial. Until such time, however, the advantages of sitting two days per week as highlighted by the Chamber in the First Simatović Adjournment Decision still remain.

21. The Chamber nonetheless considers that it is in the interests of justice to further adjourn the proceedings in order for the Simatović Defence to continue to adequately prepare Simatović's representation in this trial. However, the Chamber does not consider that the Simatović Defence has shown valid reasons to adjourn the proceedings for the entire requested period of six weeks. The Chamber considers that a shorter period of three weeks will strike an adequate balance between the concerns raised by the Simatović Defence and the duty of the Chamber to ensure, in the interests of justice and of all parties concerned, that the trial continues to be conducted expeditiously and without undue delay.

V. DISPOSITION

22. For the foregoing reasons, the Trial Chamber **GRANTS** the Second Simatović Adjournment Motion in part and **ORDERS** that the hearings in the present case scheduled during the weeks beginning 22 March, 29 March and 5 April 2010 be cancelled.

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

Judge Alphons Orie
Presiding Judge

Dated this twenty-third day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

[26] First Simatović Adjournment Decision, para. 25.