

**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-AR73.3

Date: 27 May 2011

Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. John Hocking

Decision: 27 May 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

CONFIDENTIAL

**DECISION ON APPEAL AGAINST "SCHEDULING ORDER
AND DECISION ON DEFENCE REQUESTS FOR
ADJUSTMENT OF SCHEDULING ORDER OF
16 FEBRUARY 2011"**

The Office of the Prosecutor:

Mr. Dermot Groome

Counsel for the Accused:

Mr. Wayne Jordash and Mr. Geert-Jan Knoops for Mr. Jovica Stanišić
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Mr. Franko Simatović

1. The Appeals Chamber of the 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 ("Appeals Chamber" and "Tribunal", respectively) is seised of the "Appeal Against 'Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011'" filed by counsel for Franko Simatović ("Simatović") on 3 May 2011 ("Appeal") against the "Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011" issued by Trial Chamber I of the Tribunal ("Trial Chamber") on 1 April 2011 ("Impugned Decision").¹ The Office of the Prosecutor ("Prosecution") filed its response on 13 May 2011² and Simatović filed a confidential reply on 17 May 2011.³

I. BACKGROUND

2. On 9 June 2009, the Prosecution began its opening statement in the present case⁴ and called its first witness to give evidence on 29 June 2009.⁵

3. On 2 August 2009, Mr. Zoran Jovanović, the lead counsel assigned to Simatović since 18 July 2003, passed away.⁶ On 11 September 2009, Mr. Mihajlo Bakrač and Mr. Vladimir Petrović were appointed as new lead counsel and co-counsel, respectively, for Simatović.⁷

4. On 15 October 2009, the Trial Chamber adjourned the trial, in the interests of justice, until 30 November 2009 to allow Simatović's newly assigned counsel time to adequately prepare for the continuation of the trial.⁸ The Trial Chamber further adopted a sitting schedule of two days per week between the weeks commencing 30 November 2009 and 14 December 2009.⁹ In addition, the

¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 1 April 2011.

² Prosecution Response to Appeal Against "Scheduling Order and Decision on Defence Request for Adjustment of Scheduling Order of 16 February 2011", 13 May 2011 (public with public Annex A and confidential Annex B) ("Response").

³ Defence Reply to Prosecution Response to Appeal Against "Scheduling Order and Decision on Defence Request for Adjustment of Scheduling Order of 16 February 2011", 17 May 2011 (confidential) ("Reply").

⁴ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 1444-1480 (9 June 2009).

⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 1581 *et seq.* (29 June 2009).

⁶ See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 2046 (26 August 2009). See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision of the Deputy Registrar, 11 September 2009 ("Registry Decision of 11 September 2009"), p. 1. The Appeals Chamber notes that on 27 August 2009, the Trial Chamber adjourned proceedings pending the appointment of a new Simatović defence team. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 2186 (27 August 2009). See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Scheduling Order, 11 September 2009, p. 1.

⁷ Registry Decision of 11 September 2009, p. 3. The Appeals Chamber notes that Simatović's initial co-counsel, Mr. Vladimir Domazet, requested that his assignment be withdrawn due to the breakdown of his relationship with Simatović. See Registry Decision of 11 September 2009, p. 2.

⁸ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Motion for Adjournment of Proceedings by the Simatović Defence, 15 October 2009 ("Decision of 15 October 2009"), paras 27, 30.

⁹ Decision of 15 October 2009, para. 30.

Trial Chamber prolonged the subsequent winter judicial recess until 18 January 2010 to enable Simatović's defence team "to further prepare the defence for Simatović."¹⁰

5. The Prosecution resumed its case on 30 November 2009 and called its last witness on 9 February 2011.¹¹ On 16 February 2011, the Trial Chamber issued a Scheduling Order indicating that any oral submissions by the parties pursuant to Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") would be heard in the first half of April 2011.¹² The Trial Chamber further ordered that, "[i]n the event there is a need for a Defence case, the Defence teams shall file their witness and exhibit lists pursuant to Rule 65 *ter* (G) of the Rules ["Rule 65 *ter* Lists"] no later than eight days after the Chamber's Rule 98 *bis* decision".¹³ On 25 February 2011, Simatović filed a request for the adjustment of the Scheduling Order, seeking, *inter alia*, a five-month period to prepare his defence case from the date of the Rule 98 *bis* decision.¹⁴

6. On 1 April 2011, the Trial Chamber issued the Impugned Decision, in which it stated that there was some merit in Simatović's submissions regarding the need for additional time but found that a delay of five months between the date of the Rule 98 *bis* decision and the commencement of the Defence case was not necessary to ensure the adequate preparation of Simatović's defence.¹⁵ Consequently, the Trial Chamber ordered, *inter alia*, that the Rule 65 *ter* Lists be filed no later than 6 June 2011 and that Stanišić's defence case commence on 15 June 2011.¹⁶

7. On 8 April 2011, Simatović sought certification to appeal the Impugned Decision.¹⁷ The Request for Certification was granted by the Trial Chamber on 26 April 2011.¹⁸

¹⁰ Decision of 15 October 2009, para. 27. *See also* Decision of 15 October 2009, para. 30.

¹¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 11223 (9 February 2011).

¹² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Scheduling Order, 16 February 2011 ("Scheduling Order"), p. 1.

¹³ Scheduling Order, p. 2 (emphasis omitted). Jovica Stanišić ("Stanišić") and Simatović are hereafter referred to collectively as the "Defence".

¹⁴ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Defence Request for Adjustment of the Scheduling Order of 16 February 2011, 25 February 2011 (public with confidential Annex), paras 25, 27. *See also* *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution Response to Defence Request for Adjustment of the Scheduling Order of 16 February 2011, 11 March 2011 ("Prosecution Response to Adjustment Request").

¹⁵ Impugned Decision, p. 2.

¹⁶ Impugned Decision, p. 3.

¹⁷ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Request for Certification to Appeal Under Rule 73(B) Against the Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 8 April 2011 ("Request for Certification"), paras 3, 18 (p. 6). *See also* *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Prosecution Response to Defence Request for Certification to Appeal Scheduling Order, 15 April 2011 ("Prosecution Response to Certification Request").

¹⁸ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Request for Certification to Appeal Against the Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 26 April 2011 ("Certification Decision"), para. 10.

8. On 5 May 2011, the Trial Chamber pronounced its decision pursuant to Rule 98 *bis* of the Rules.¹⁹ The Trial Chamber found that Simatović has a case to answer on all counts of the indictment and denied his motion for acquittal.²⁰

II. STANDARD OF REVIEW

9. Trial Chamber decisions regarding the scheduling of trial are discretionary.²¹ The Appeals Chamber recalls that an interlocutory appeal of such decisions is not a *de novo* review of the Trial Chamber's decision but is limited to establishing whether a Trial Chamber has abused its discretion by committing a "discernible error".²² The Appeals Chamber will overturn such discretionary decisions only where these are found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.²³

III. DISCUSSION

1. Arguments of the parties

10. Simatović submits that the Trial Chamber abused its discretion in requiring that Rule 65 *ter* Lists be submitted by 6 June 2011 and that the Stanišić defence case commence on 15 June 2011, thereby denying Simatović adequate time to prepare his defence case.²⁴ Simatović argues that the Trial Chamber failed to consider a number of relevant factors in assessing the time required for such preparation.²⁵ In particular, Simatović argues, the Trial Chamber failed to consider the fact that his present defence team had neither the time nor the facilities to prepare "any segment" of his defence case in the period between its appointment and the close of the Prosecution case.²⁶

11. Simatović emphasizes that his defence case "almost does not exist" due to the late appointment of his counsel who "were oriented towards preparing for [the] Prosecution case:

¹⁹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 11463 *et seq.* (5 May 2011). This oral decision is hereafter referred to in its totality as the "Rule 98 *bis* Decision".

²⁰ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 11488 (5 May 2011).

²¹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.7 Decision on Appeal from Decision on Motion for Further Postponement of Trial, 31 March 2010 ("Karadžić Decision of 31 March 2010"), para 13 and references cited therein.

²² *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.5, Decision on Gotovina Defence Appeal Against 12 March 2010 Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia, 14 February 2011 ("Gotovina Decision of 14 February 2011"), para. 14; *Karadžić Decision of 31 March 2010*, para.13; *Augustin Ngirabatware v. The Prosecutor*, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("Ngirabatware Decision"), para. 8.

²³ *Gotovina Decision of 14 February 2011*, para. 14; *Karadžić Decision of 31 March 2010*, para.13; *Ngirabatware Decision*, para. 8.

²⁴ Appeal, paras 7, 26.

²⁵ Appeal, paras 16-22.

becoming acquainted with and analysing [...] the presented material and preparing for cross-examination of the witnesses for the Prosecution.”²⁷ As a result, Simatović asserts that necessary investigations have not been conducted, defence witnesses have not been identified and expert reports have not been prepared.²⁸ Simatović also claims that his present counsel have not received any materials pertinent to his defence case from his previous defence team and contends that no handover of duties was carried out between the teams.²⁹

12. Simatović asserts that all adjournments of proceedings during the Prosecution case were granted solely to enable Simatović to respond to the Prosecution case adequately.³⁰ In this context, Simatović alludes to the volume of materials disclosed by the Prosecution one month after the appointment of new counsel, which, according to Simatović, comprised approximately “60000 documents, with several hundred thousand pages of materials, and several hundred hours of video and audio recordings.”³¹ Simatović avers that extensive disclosure continued throughout the Prosecution case.³² He argues that his present counsel could not fully focus on preparing his defence case even after the Prosecution concluded its presentation of evidence due to ongoing procedural issues and the preparation for the hearing pursuant to Rule 98 *bis*, which continued until 7 April 2011.³³

13. Simatović argues that the Trial Chamber should have provided reasons to justify the limited time allocated for the preparation of his defence case and contends that the Impugned Decision affects his fundamental right to a fair trial.³⁴ He submits that, despite the “particularities of the situation”, the Trial Chamber failed to adequately consult the parties on the time required to prepare the defence case.³⁵ Consequently, Simatović requests that the Appeals Chamber reverse the

²⁶ Appeal, para. 16.

²⁷ Appeal, para. 11. *See also* Appeal, paras 16, 19.

²⁸ Appeal, paras 11, 19. Simatović submits that, according to available information, several potential witnesses for his defence are currently overseas, for which reason the additional time is required to prepare his defence. *See* Appeal, para. 22.

²⁹ Appeal, paras 11, 18.

³⁰ Appeal, para. 20; Reply, para. 4. Conversely, Simatović submits that no adjournment was requested from or granted by the Trial Chamber for the purpose of preparing his defence case. *See* Appeal, para. 20; Reply, para. 4.

³¹ Appeal, para. 11; Reply, paras 3, 6. The Appeals Chamber observes that these are the same materials that were disclosed to Simatović when Mr. Jovanović was lead counsel between 2003 and 2009. *See* Reply, para. 3.

³² Appeal, para. 11; Reply, para. 3. *See also* Appeal, para. 21. Simatović emphasizes that the Prosecution “disclosed an additional 112,000 pages and at least 50 hours of various audio and video recordings approximately, after October 2009.” *See* Reply, para. 3.

³³ Appeal, para. 17. Simatović also claims that he will only be able to ascertain whether his defence case needs to be presented and whether the indictment against him remains in full force after the Rule 98 *bis* Decision is issued on 5 May 2011. *See* Appeal, para. 17.

³⁴ Appeal, paras 12-13, 24. In support of his submissions, Simatović alludes to two reports by the President of the Tribunal to the United Nations Security Council which anticipate the allocation of additional time to Simatović to prepare his defence after the close of the Prosecution case-in-chief. *See* Appeal, para. 25.

³⁵ Appeal, para. 23.

Impugned Decision and order the Defence case to commence five months after the pronouncement of the Rule 98 *bis* Decision.³⁶

14. In its Response, the Prosecution takes no position with respect to the determination of the Appeal but “seeks to set out several relevant considerations, and to provide further context to certain statements and generalizations contained in Simatović’s Appeal.”³⁷ According to the Prosecution, Simatović’s assertion that he was unable to prepare his defence case until after the Rule 98 *bis* Decision was issued lacks any legal or factual basis.³⁸ The Prosecution further notes that accommodations for Simatović’s unique situation were made through the course of the trial. In particular, the Prosecution indicates that a series of adjournment requests were granted and additional supplemental funding was allocated to Simatović’s new counsel due to their inability to access the work completed by Mr. Jovanović during the pre-trial stage, which included the analysis of materials relevant to the defence strategy and the defence case as a whole.³⁹

15. The Prosecution further suggests that Simatović exaggerates his lack of preparedness, notes that Simatović’s Pre-Trial Brief was filed in 2005 and suggests that this document formed the cornerstone of Simatović’s defence case.⁴⁰ The Prosecution also observes that Simatović’s current co-counsel, Mr. Petrović, was a legal assistant assigned to Simatović’s defence team since 2008 and that, in this capacity, he worked closely with Simatović and was involved in all aspects of the defence preparations.⁴¹ The Prosecution contends that the conduct of Simatović’s defence counsel at trial demonstrates the existence of a defence theory and suggests ongoing defence investigation efforts and the identification of prospective defence witnesses.⁴²

³⁶ Appeal, para. 27.

³⁷ Response, para. 10. *See also* Response, para. 1.

³⁸ Response, para. 12, *referring to* Prosecution Response to Adjustment Request, paras 4-6; Prosecution Response to Certification Request, fn. 5.

³⁹ Response, paras 13-14, Annex B, para. 4, *referring, inter alia, to* Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, Decision on Request for Review of OLAD Decision on Remuneration for the Prosecution Phase of Trial Proceedings with Annexes, 19 May 2010 (confidential) (“Decision of 19 May 2010”), paras 62-69. *See also* Response, Annex A. The Prosecution asserts that Simatović also benefited from a reduced court schedule due to the ill-health of Stanišić. *See* Response, para. 15, *referring, inter alia, to* Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-T, Third Decision Amending Modalities for Trial, 17 September 2010 (“Decision of 17 September 2010”).

⁴⁰ Response, para. 16(a).

⁴¹ Response, para. 16(b). *See also* Response, Annex B, paras 1-3. Prior to his death, Mr. Jovanović requested, in an email to the Registry, that Mr. Petrović be assigned as co-counsel in June 2009 (“Correspondence”). Significantly, the Correspondence indicates that “Mr. Petrovic [*sic*] also actively worked on Prosecutor’s documents for trial which included witness statements, proposed trial exhibits and other documents. Mr. Petrovic [*sic*] also participated in the work on defence expert reports which are essential for the prospective defence case in this matter.” *See* Response, Annex B, para. 1.

⁴² Response, para. 16(c)-(f).

16. The Prosecution submits that Simatović's Appeal implicates the fair trial rights of both Stanišić and the Prosecution.⁴³ It suggests that Stanišić is ready to proceed on the basis of the schedule set out in the Impugned Decision.⁴⁴ The Prosecution contends that it is important that the Defence produce their 65 *ter* Lists at the same time to enable the Prosecution to plan its cross-examinations and approach to the Defence cases and to avoid Simatović gaining any undue strategic advantage.⁴⁵ In addition, the Prosecution submits that Stanišić has the right to know which witnesses Simatović intends to call when he presents his case.⁴⁶ Finally, the Prosecution observes that, as a practical matter, Simatović is entitled to file for amendment to his Rule 65 *ter* Lists at any time, upon a showing of good cause.⁴⁷

17. In his Reply, Simatović contends that his Pre-Trial Brief "looks more like a repeated not guilty plea, than a hint of a meaningful defence strategy, and as such it is useless for the new defence team."⁴⁸ Simatović avers that his current lead counsel has been forced to start preparations for his defence case "practically from scratch."⁴⁹ He believes that his previous lead counsel "had no strategy, no documents, had made no investigation, no analysis of the evidence disclosed, no expert reports, no hand-over materials."⁵⁰ Simatović submits that the appointment of Mr. Petrović as co-counsel "contributed to the extent that his knowledge of the case helped the trial to continue in a very short term" but insists that "this contribution was not, nor could it have been, a substitute for the rights and obligations of the Lead Counsel."⁵¹ Simatović insists that Mr. Petrović's contribution cannot eliminate the fundamental problems that his defence team faces.⁵²

18. Simatović maintains that the defence work conducted under his previous lead counsel is no longer relevant to his case and contends that the Prosecution misrepresents the readiness of his current defence team.⁵³ He emphasizes the disparity between the time and resources allocated to the Prosecution and his defence team to prepare for trial and claims that it is impossible for a small defence team to work simultaneously on the Prosecution case and prepare his own defence.⁵⁴ Simatović underscores his desire for a fair trial and suggests that his Appeal will not affect the

⁴³ Response, para. 17.

⁴⁴ Response, para. 7, referring to *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, T. 11452-11453 (12 April 2011).

⁴⁵ Response, paras 17-18.

⁴⁶ Response, para. 17.

⁴⁷ Response, para. 19.

⁴⁸ Reply, para. 5.

⁴⁹ Reply, para. 6.

⁵⁰ Reply, para. 6.

⁵¹ Reply, para. 6.

⁵² Reply, para. 6. Simatović further contends that the Prosecution is not in a position to judge how and why Mr. Jovanović drafted the Correspondence or his motives for doing so. See Reply, para. 9.

⁵³ Reply, paras 7, 10-11.

⁵⁴ Reply, para. 12.

position of Stanišić, since Stanišić himself requested additional time for preparation, a request which was only partially approved.⁵⁵

B. Analysis

19. The Appeals Chamber recalls that Trial Chambers enjoy considerable discretion in the conduct of the proceedings before them, including the scheduling of trials.⁵⁶ However, this discretion finds its limitation in the obligations imposed on Trial Chambers by Articles 20 and 21 of the Tribunal's Statute to ensure that a trial is fair and expeditious.⁵⁷

20. In the Impugned Decision, the Trial Chamber considered that there was "some merit" in Simatović's submissions regarding the need for additional time for preparing his defence case but concluded that a delay of five months between the date of the Rule 98 *bis* Decision and the commencement of the Stanišić defence case was "not necessary to ensure adequate preparation" of Simatović's defence case.⁵⁸ Despite making this finding, the Trial Chamber scheduled the Defence case to commence without explicitly considering Simatović's ability to prepare his defence case within the allotted time.⁵⁹

21. The Trial Chamber has an obligation to provide reasons for its decision and the Appeals Chamber underscores the importance of this duty.⁶⁰ However, the Appeals Chamber recalls that, in reviewing the Impugned Decision, it is not limited to the text of the order issued by the Trial Chamber and may look to relevant decisions and transcripts in order to determine whether the Trial Chamber gave the issues involved due consideration.⁶¹ Moreover, the Appeals Chamber observes that, in the Certification Decision, the Trial Chamber indicated that "an interlocutory appeal on this issue would require an evaluation of the Impugned Decision *in the context of the entire relevant procedural history.*"⁶²

⁵⁵ Reply, paras 12-13, referring to *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Stanišić Request for the Trial Chamber to Amend its 16 February 2011 Scheduling Order, 16 March 2011 (public with confidential Annex A). Although Simatović refers to "Simatović" rather than "Stanišić", the Appeals Chamber understands this to be a typographical error.

⁵⁶ See *supra*, para. 9.

⁵⁷ See *Ngirabatware* Decision, para. 22.

⁵⁸ Impugned Decision, p. 2.

⁵⁹ Cf. *Ngirabatware* Decision, para. 24.

⁶⁰ Cf. *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004 ("*Milošević* Decision of 20 January 2004"), para. 7; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial, 13 October 2009 ("*Karadžić* Decision of 13 October 2009"), para. 20.

⁶¹ See *Milošević* Decision of 20 January 2004, para. 7; *Karadžić* Decision of 13 October 2009, para. 20.

⁶² Certification Decision, para. 9 (emphasis added).

22. The Appeals Chamber notes that since the appointment of new counsel on 11 September 2009, the Trial Chamber has consistently demonstrated its commitment to closely monitor the development of proceedings and signalled its willingness to consider adapting the trial schedule "if it is convinced of the necessity to do so to ensure that Simatović receives a fair trial."⁶³ The Trial Chamber granted adjournments over the course of the Prosecution case,⁶⁴ prior to the Rule 98 *bis* hearing,⁶⁵ and for the preparation of the defence case.⁶⁶ In this context, the Appeals Chamber emphasizes that it is for the defence to make realistic use of the time available for preparation and to find a proper balance between the apportioning of tasks.⁶⁷

23. The Appeals Chamber further considers that the appointment of Mr. Petrović as Simatović's co-counsel ensured a degree of continuity between Simatović's past and present defence teams given that Mr. Petrović had worked as a legal assistant in Simatović's defence team since 2008. The Appeals Chamber further notes that Simatović benefited from the allocation of exceptional supplemental funding and also enjoyed a reduced court schedule as a result of Stanišić's ill-health.⁶⁸

24. In light of these considerations, the Appeals Chamber considers that the Trial Chamber acted with appropriate sensitivity in response to the concerns raised by Simatović. The Appeals Chamber is therefore not persuaded that the time limits imposed by the Impugned Decision violated Simatović's right to a fair trial.⁶⁹ Nonetheless, the Appeals Chamber recalls that the Trial Chamber has a continuing obligation to ensure a fair trial of the accused. As part of that obligation, the Trial Chamber may consider allowing additional adjournments in the future or the amendment of the Rule 65 *ter* Lists, if it is persuaded that such measures are warranted.

⁶³ Decision of 15 October 2009, para. 27. *See also Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Motion Requesting Issuance of Order to Prosecution Regarding the Order of Witnesses, 24 November 2009, paras 15-17, 19; Decision of 17 September 2010, paras 6, 8, Annexes A and B.

⁶⁴ *See supra*, para. 4.

⁶⁵ *See* Scheduling Order, pp. 1-2.

⁶⁶ *See* Impugned Decision, pp. 2-3.

⁶⁷ *Cf. Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005, para. 52.

⁶⁸ Decision of 19 May 2010, paras 62-69; Decision of 17 September 2010.

⁶⁹ The Appeals Chamber considers Simatović's argument premised on the principle of inequality of arms to be ill-founded; the issue is not whether the parties had the same amount of time to prepare their respective cases, but rather if either party and in particular the accused, is put at a disadvantage when presenting its case. *See Ngirabatware* Decision, para. 28 and references cited therein.

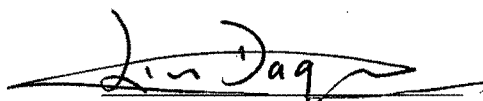
IV. DISPOSITION

25. For the foregoing reasons, the Appeals Chamber

DISMISSES the Appeal.

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

Dated this 27th day of May 2011,
At The Hague,
The Netherlands.



Judge Liu Daqun
Presiding

[Seal of the Tribunal]