



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 July 2011  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 15 July 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**REASONS FOR THE CHAMBER'S DECISION OF 14 JUNE  
2011 PURSUANT TO RULE 73 TER OF THE RULES OF  
PROCEDURE AND EVIDENCE**

**Office of the Prosecutor**  
Mr Dermot Groome

**Counsel for Jovica Stanišić**  
Mr Wayne Jordash  
Mr Scott Martin

**Counsel for Franko Simatović**  
Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 6 June 2011, the Stanišić and the Simatović Defence filed their lists of witnesses pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup> The Stanišić Defence requested a total of 87 hours for the presentation of its defence case and the Simatović Defence requested 92.5 hours (“Requests”).<sup>2</sup>

2. On 14 June 2011, at the Pre-Defence Conference, the Chamber indicated it was inclined to grant the Stanišić and the Simatović Defence 70 hours each for the presentation of their cases.<sup>3</sup> On the same day, the Stanišić and the Simatović Defence made oral submissions in support of their Requests.<sup>4</sup> The Prosecution took no position with regard to the time to be allocated to the Defence.<sup>5</sup>

3. The Stanišić and the Simatović Defence both submitted that the amount of time requested for their cases was necessitated by the temporal and geographic scope of the Indictment, which covers a period of five years and territory in Bosnia-Herzegovina and Croatia.<sup>6</sup> The Stanišić and the Simatović Defence further submitted that the Prosecution had presented a large volume of evidence, including lengthy Rule 92 *ter* statements and numerous exhibits.<sup>7</sup> The Stanišić Defence submitted that it had only had time to take Rule 92 *ter* statements for a small number of its witnesses and that it hoped to take further Rule 92 *ter* statements in the coming months.<sup>8</sup> The Simatović Defence also submitted that it had not had sufficient time to prepare Rule 92 *ter* statements, but that, in its analysis, such statements would not save much time compared to eliciting the evidence *viva voce*.<sup>9</sup> The Simatović Defence argued that it would be fair to both Accused to give them each the same amount of time the Prosecution had used to present its case.<sup>10</sup> The Simatović Defence further indicated that it was considering calling up to 15 additional witnesses.<sup>11</sup>

<sup>1</sup> Stanišić Defence Submission pursuant to Rule 65 *ter* (G), 6 June 2011 (“Stanišić 65 *ter* (G) Submission”); Defence Submission pursuant to Rule 65 *ter* (G) with Annexes, 6 June 2011 (Confidential) (“Simatović 65 *ter* (G) Submission”).

<sup>2</sup> Stanišić 65 *ter* (G) Submission, Confidential Annex A; Simatović 65 *ter* (G) Submission, para. 5, Annex 1. On 7 June 2011, through informal communications, the Stanišić Defence provided further time estimates for two witnesses, which estimates had been missing from the Stanišić 65 *ter* (G) Submission.

<sup>3</sup> T. 11490-11491.

<sup>4</sup> T. 11491-11492, 11495-11503.

<sup>5</sup> T. 11504.

<sup>6</sup> T. 11491, 11495-11499.

<sup>7</sup> T. 11491, 11496-11497, 11499-11500.

<sup>8</sup> T. 11496-11498.

<sup>9</sup> T. 11500-11501.

<sup>10</sup> T. 11500, 11502-11503.

<sup>11</sup> T. 11500.

4. On 14 June 2011, pursuant to Rule 73 *ter* of the Rules, the Chamber granted the Stanišić Defence request to call 33 witnesses and the Simatović Defence request to call 20 witnesses.<sup>12</sup> The Chamber added that, should the Simatović Defence seek to call witnesses not listed on its Rule 65 *ter* (G) witness list, it should file a motion requesting their addition to the list.<sup>13</sup> The Chamber further decided, with written reasons to follow, that the Stanišić and the Simatović Defence would each be granted 70 hours for the presentation of their defence cases (“Decision of 14 June 2011”).<sup>14</sup>

## II. APPLICABLE LAW

5. Rule 65 *ter* (G) of the Rules provides that after the close of the Prosecution’s case and before the commencement of the defence case, the defence shall file a list of witnesses it intends to call, with, *inter alia*, a summary of the facts on which each witness will testify; an indication of whether the witness will testify in person or pursuant to Rules 92 *bis* or *quater* of the Rules; the total number of witness; the estimated length of time required for each witness; and the total time estimated for the presentation of the defence case.

6. Rule 73 *ter* (C) and (E) of the Rules provide that the Chamber, after having heard the defence, shall set the number of witnesses the defence may call and shall determine the time available to the defence for presenting evidence. Pursuant to Rule 73 *ter* (F) of the Rules, during a trial, the Chamber may grant a defence request for additional time to present evidence if this is in the interests of justice.

## III. DISCUSSION

7. In reaching its Decision of 14 June 2011, the Chamber considered the submissions of the Stanišić and the Simatović Defence. In light of the partial overlap between the Defence cases, and taking into account the relevant case law of the Appeals Chamber, the Chamber found that the Defence do not each have a right to the same amount of time the Prosecution used during its case.<sup>15</sup> The Chamber carefully examined the summaries of expected testimony and time estimates for each witness provided in the Rule 65 *ter* (G) witness lists. The Chamber also considered the parties’ use

<sup>12</sup> T. 11522.

<sup>13</sup> *Ibid.*

<sup>14</sup> T. 11522-11523. On 16 June 2011, by means of informal communications, the Chamber instructed the Stanišić and the Simatović Defence to file amended Rule 65 *ter* (G) witness lists in accordance with the Decision of 14 June 2011. On 24 June 2011, the Stanišić and the Simatović Defence filed amended witness lists, see Stanišić Defence Filing of Amended Rule 65 *ter* (G) (I) Witness List, 24 June 2011; Simatović Defence Witness List (Amended), 24 June 2011 (Confidential).

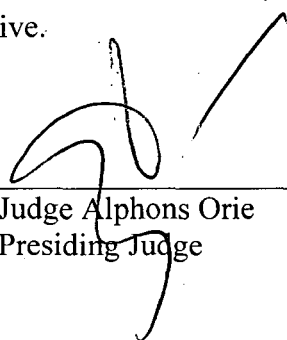
<sup>15</sup> See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.7, Decision on Defendants Appeal against “Décision portant Attribution du Temps à la Défense pour la Présentation des Moyens à Décharge”, 1 July 2008, paras 35, 39;

of time in Court during the Prosecution's case. The Chamber further considered that examination-in-chief should focus on the core issues in dispute between the parties.<sup>16</sup> The Chamber noted that the Stanišić Defence had not sought, but could still seek to reach an agreement with the Prosecution regarding any non-contentious facts about which a witness might otherwise be called to testify.<sup>17</sup>

8. With regard to the mode of testimony, the Rule 65 *ter* (G) witness lists indicated that almost all of the witnesses would be called to testify *viva voce*. The Stanišić and the Simatović Defence both submitted that they will seek to prepare additional Rule 92 *ter* statements for other witnesses. Experience from this case and others shows that presenting a witness statement under Rule 92 *ter* of the Rules enables the calling party to considerably shorten the time required for examination-in-chief.<sup>18</sup> Thus, the use of Rule 92 *ter* statements for defence witnesses currently listed as *viva voce* will in all likelihood shorten the time required for the defence to present its evidence. The Stanišić and the Simatović Defence may also consider presenting some of their proposed *viva voce* witnesses under Rule 92 *bis* of the Rules, where applicable.

9. In sum, based on the parties' submissions and the information provided in the Rule 65 *ter* (G) witness lists and considering the more efficient use of time which could be achieved through the use of agreed facts and the admission of statements under Rules 92 *ter* and 92 *bis* of the Rules, the Chamber concluded that the Stanišić and the Simatović Defence should each be granted 70 hours for the presentation of their defence cases. The Chamber will closely monitor how time is used during the defence cases. Should the Stanišić or the Simatović Defence assess during the presentation of their cases that they need additional time to present evidence, they can file a request before the Chamber in accordance with Rule 73 *ter* (F) of the Rules.

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



Judge Alphons Orie  
Presiding Judge

Dated this Fifteenth of July 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]

---

*Prosecutor v. Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 7.

<sup>16</sup> See also *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-T, 27 May 2009 Transcript, T. 17731.

<sup>17</sup> T. 11493-11495.

<sup>18</sup> See also *Prosecutor v. Gotovina et al.*, Case no. IT-06-90-T, 27 May 2009 Transcript, T. 17729-17730.