



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 September 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 September 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON STANIŠIĆ DEFENCE REQUEST
REGARDING THE STATUS OF FILINGS**

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

1. On 2 February 2011, the Stanišić Defence filed the “Urgent Stanišić Motion for Equality of Arms and Immediate Suspension of the Trial (Other than the Examination of Remaining Prosecution Witnesses) with Annexes A-K” (“Motion”). On 11 February 2011, the Registrar filed confidentially the “Registrar’s Submission Pursuant to Rule 33 Regarding Urgent Stanišić Motion for Equality of Arms and Immediate Suspension of the Trial” (“Registrar’s Submission”). While the Motion was filed publicly (with the exception of one annex), later submissions by the Stanišić Defence and the Registry were filed confidentially, following informal communications on 16 February 2011 between the Chamber, the Stanišić Defence, and the Registry.¹
2. On 10 March 2011, the Chamber filed its decision on the Motion (“Decision”),² in which it, *inter alia*, invited the Registry to make submissions on the status of filings related to the Motion.³
3. On 17 March 2011, the Registry submitted its “Submission Pursuant to Rule 33 (B) Regarding the Trial Chamber Decision of 10 March 2011” (“Registrar’s Submission on the Status of Filings”).
4. In an informal communication on 31 March 2011, the Chamber invited responses to the Registrar’s Submission on the Status of Filings by 17 April 2011. In another informal communication on 31 March 2011, the Stanišić Defence notified the Chamber that it would not file a response to the Registrar’s Submission on the Status of Filings. The Simatović Defence did not respond to the Registrar’s Submission on the Status of Filings.

II. SUBMISSIONS

5. The Stanišić Defence argues that the Registry’s funding of the Stanišić case and its impact on the fair trial rights of the Accused should be publicly known, so that it will “ensure accountability and a measure of consistency between other accused seeking adequate resources to facilitate a fair trial”.⁴ It therefore requests that the confidentiality of the Registrar’s Submission, the

¹ Namely, the Urgent Stanišić Application for Leave to Reply to Registrar’s Submission Pursuant to Rule 33 Regarding Defence Motion for Equality of Arms and Immediate Suspension of the Trial, 17 February 2011 (“Stanišić Request for Leave to Reply”); Stanišić Reply to Registrar Submission Pursuant to Rule 33 Regarding Defence Motion for Equality of Arms and Immediate Suspension of the Trial, 22 February 2011 (“Stanišić Reply”); Registrar’s Application for Leave to Reply, 28 February 2011 (“Registrar’s Application”); and Registrar’s Submission Pursuant to Rule 33 (B) Regarding the Stanišić Reply, 4 March 2011 (“Registrar’s Submission Regarding Stanišić Reply”).

² Decision on Stanišić Defence Motion for Equality of Arms and Immediate Suspension of Trial and on Association of Defence Counsel (ADC-ICTY) Motion for Leave to Appear as Amicus Curiae, 10 March 2011.

³ Decision, para. 23, p. 9.

⁴ Stanišić Reply, paras 2-3.

Stanišić Request for Leave to Reply, and the Stanišić Reply be lifted, or that public redacted versions be filed.⁵

6. The Registry submits, *inter alia*, that: (i) the Stanišić Defence should redact all references in the Motion to a certain confidential filing, in an unrelated matter, from the Simatović Defence (“Simatović Filing”);⁶ (ii) the confidential status of the Registrar’s Submission is appropriate because it addresses payments made to an individual defence team and also discusses the Simatović Filing;⁷ (iii) the Stanišić Reply should be redacted with regard to both the naming of Tribunal staff members and the Simatović Filing;⁸ and (iv) the filings related to the Association of Defence Counsel’s (ADC-ICTY) Motion for Leave to Appear as Amicus Curiae (“ADC-ICTY Motion”) could remain public.⁹ The Registrar’s Submission on the Status of Filings does not address the status of the additional filings by the Registry following the Stanišić Reply, namely, the Registrar’s Application and the Registrar’s Submission Regarding Stanišić Reply.

III. APPLICABLE LAW

7. Article 21 paragraph 2 of the Tribunal’s Statute provides that “[i]n the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to Article 22 of the Statute”. The Appeals Chamber has held that filings should be made on a confidential basis only in exceptional circumstances, when it would disclose information that might cause prejudice, concerns about safety, or serious embarrassment to a party or a witness, or where the very fact of filing might have the same result.¹⁰

IV. DISCUSSION

8. The Chamber considers that it is in the interests of a public trial to have matters relating to the funding of defence teams be made publicly available, particularly if this is done at the request of the defence team in question. The Motion was filed publicly, and it refers to the Simatović Filing and the President’s Decision thereon of 19 May 2010. The existence – but not the contents – of the Simatović Filing is in the public arena. The Chamber considers though that the Motion does not

⁵ Ibid.

⁶ Registrar’s Submission on the Status of Filings, paras 3-6.

⁷ Registrar’s Submission on the Status of Filings, para. 7.

⁸ Registrar’s Submission on the Status of Filings, para. 8.

⁹ Registrar’s Submission on the Status of Filings, para. 9.

¹⁰ See *Prosecutor v. Stakić*, Case no. IT-92-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 6; *Prosecutor v. Haradinaj et al.*, Case no. IT-04-84-A, Decision on Lahi Brahimaj Application for Provisional Release, 25 May 2009, para. 5; *Prosecutor v. Blagojević et al.*, Case no. IT-02-60-A, Decision on Prosecution Motion to Lift Confidential and *Ex Parte* Status of Appeals Chamber’s Decision of 2 December 2005, 11 July 2007.

reveal any details regarding the nature of the Simatović Filing or the President's Decision thereon. Consequently, it does not consider it necessary for the Stanišić Defence to redact references to these filings in the Motion.

9. Both the Motion and Annex J to the Motion include references to payments made by the Accused to his defence team. The Stanišić Defence has specifically requested for this information to remain publicly available.

10. In relation to the Stanišić Request for Leave to Reply and the Stanišić Reply, the Chamber considers that the names of Tribunal staff members (rather than their functional titles) should be redacted from the Annexes thereto.¹¹ Other than these redactions, the Chamber considers that both filings can be made public. The information contained in these filings poses no risk of prejudice, endangerment or embarrassment to a party or a witness. Similarly, the Chamber considers that the Registrar's Submission can be made public subject to the following redactions. The Chamber instructs the Registrar to redact any references in the Registrar's Submission to the content of the Simatović Filing, the content of the Prosecution's response to the Simatović Filing of 13 April 2010, and the content of the President's Decision on the Simatović Filing of 19 May 2010. The Registrar is further instructed to redact any references to names of Tribunal staff members contained in the Registrar's Submission.

11. The Registrar's Submission on the Status of Filings does not address the status of the Registrar's Application and the Registrar's Submission Regarding Stanišić Reply. The Stanišić Defence did not explicitly request these documents to be made publicly available. Absent a specific request to that effect, the Chamber considers that their status should remain confidential.

12. While mindful of the need to ensure a public trial, the Chamber notes that the Registrar's Submission on the Status of Filings does not concern matters relating to the funding of the Stanišić Defence; rather, it only concerns the status of filings. The Chamber is not seised with an application to lift the confidentiality of this filing, and believes it is neither practical nor necessary to instruct the Registry to do so. Lastly, the Chamber supports the Registry's submission that the filings related to the ADC-ICTY Motion remain public.

¹¹ See Article 28 (4) of CMSS Directive IT/121/Rev.2, which provides: "The Parties and Chambers shall refer to Tribunal staff members using their functional titles, and shall not publicly disclose any personal information relating to staff members, including but not limited to names, telephone numbers, e-mail address, home address, and passport numbers".

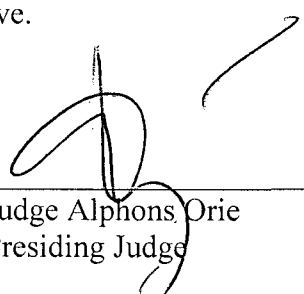
V. DISPOSITION

13. For the foregoing reasons, and in accordance with the above, the Chamber

REQUESTS the Stanišić Defence to file public redacted versions of the Stanišić Request for Leave to Reply and the Stanišić Reply by 5 October 2011; and

REQUESTS the Registry to file a public redacted version of the Registrar's Submission by 5 October 2011.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-third of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]