



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: 28 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:** 28 September 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**REASONS FOR DECISION PARTIALLY GRANTING THE  
STANIŠIĆ DEFENCE MOTION FOR SUSPENSION OF  
PROCEEDINGS AFTER THE SUMMER RECESS**

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## I. PROCEDURAL HISTORY

1. On 25 July 2011, the Stanišić Defence submitted a motion requesting the suspension of trial proceedings after the summer recess for a period of four months in order to prepare an effective defence (“Motion”).<sup>1</sup> On 28 July 2011, the Simatović Defence joined the Motion.<sup>2</sup> On 8 August 2011, the Prosecution responded to the Motion, not taking a position on the relief sought (“Response”).<sup>3</sup> On 10 August 2011, the Stanišić Defence sought leave to reply to the Response (“Application”).<sup>4</sup> On 12 August 2011, the Application was granted and the parties were informed through an informal communication.<sup>5</sup> On 15 August 2011, the Stanišić Defence replied to the Response (“Reply”).<sup>6</sup> On 16 August 2011, the Stanišić Defence informed the Chamber about a discrepancy in numbers between the Stanišić Defence and the Registry’s Conference and Language Services Section (“CLSS”) in relation to outstanding translations of Defence documents.<sup>7</sup> On the same day, the Chamber, through an informal communication, invited further submissions specifically on the issue of outstanding translations of Defence documents from the Registry and the Stanišić Defence by 18 August 2011. On 18 August 2011, the Registry filed a submission pursuant to Rule 33 (B) of the Tribunal’s Rules of Procedure and Evidence (“33 (B) Submission” and “Rules”, respectively).<sup>8</sup> On the same day, the Stanišić Defence filed its further submissions.<sup>9</sup>

2. On 22 August 2011, the Chamber partially granted the Motion, with reasons to follow, and announced that, as a result, the proceedings would be adjourned for four weeks from 5 September to 4 October 2011.<sup>10</sup>

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<sup>1</sup> Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 25 July 2011.

<sup>2</sup> Joinder to Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 28 July 2011.

<sup>3</sup> Prosecution Response to Stanišić’s Motion for Suspension of Proceedings After the Summer Recess, 8 August 2011, paras 2, 45.

<sup>4</sup> Stanišić Defence Application for Leave to Reply to the Prosecution Response to Stanišić’s Motion for Suspension of Proceedings After the Summer Recess, 10 August 2011. See also Corrigendum to Stanišić Defence Application for Leave to Reply to the Prosecution’s Response to Stanišić’s Motion for Suspension of Proceedings After the Summer Recess, 10 August 2011.

<sup>5</sup> In this communication, the Chamber set 15 August 2011 as the deadline to file the reply and requested that the Stanišić Defence verify with the Registry the exact number of outstanding translations and include the outcome of this verification in the reply. Further in this communication, the Chamber informed the parties that it was still considering the Motion but that the parties should be ready to proceed with the trial in the meantime.

<sup>6</sup> Stanišić Defence Reply to the Prosecution Response to Stanišić’s Motion for Suspension of Proceedings After the Summer Recess, 15 August 2011.

<sup>7</sup> See T. 13147-13148.

<sup>8</sup> Registry Submission Pursuant to Rule 33 (B) on Translation of Defence Documents, 18 August 2011.

## II. SUBMISSIONS

### A. Motion

3. The Stanišić Defence submits that a suspension of proceedings for four months is necessary to allow it a reasonable opportunity to review “voluminous disclosures of potentially material evidence and conduct adequate investigations into the new material”.<sup>11</sup> Specifically, it argues that it has not been provided with sufficient time and resources to be able to prepare an effective defence in light of three matters: (i) the volume of Prosecution disclosures; (ii) the Prosecution’s ongoing selection and admission of documents during the Defence case; and (iii) the investigative work required to meet the “new charges or material facts being led through” the admission of new documents during the Defence case.<sup>12</sup> The Stanišić Defence also requests to exceed the word limit in the Motion, considering that the issue at hand concerns the fundamental rights of the Accused and touches upon the fairness of the proceedings against him.<sup>13</sup>

4. The Stanišić Defence submits that in May and June 2011, the Prosecution disclosed over 22,000 relevant pages to the Stanišić Defence.<sup>14</sup> Furthermore, it submits that it received many hundreds of pages from the Registry since early June 2011, as a result of decisions granting access to confidential material of other cases.<sup>15</sup> According to the Stanišić Defence, previous adjournments granted by the Chamber were not sufficient for the required review and analysis of documents.<sup>16</sup> The Stanišić Defence points to the parties’ inequality in resources and states that without an adequate opportunity to respond to the Prosecution’s evidence, the Accused stands likely to be convicted on the basis of a lack of resources and equality of arms, rather than because he is actually guilty.<sup>17</sup>

5. The Stanišić Defence submits that the Prosecution documents admitted during the cross-examination of Defence witnesses amount to the addition of new charges or the introduction of

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<sup>9</sup> Stanišić Defence Response to the Invitation of the Trial Chamber for Further Submissions Regarding Stanišić Defence Motion for Suspension of Proceedings After the Summer Recess, 18 August 2011.

<sup>10</sup> T. 13393.

<sup>11</sup> Motion, para. 3.

<sup>12</sup> Motion, paras 4, 17.

<sup>13</sup> Motion, para. 7.

<sup>14</sup> Motion, paras 8, 16.

<sup>15</sup> Motion, para. 10.

<sup>16</sup> Motion, paras 13-15.

<sup>17</sup> Motion, para. 6.

material facts constituting fresh allegations.<sup>18</sup> Investigating and challenging this new evidence requires extensive work.<sup>19</sup>

6. Lastly, the Stanišić Defence submits that 4,695 pages from 799 documents on its Rule 65 *ter* exhibit list have been submitted to CLSS, but remain to be translated.<sup>20</sup> The lack of translations hampers the Defence’s preparations as Defence counsel are not in a position to fully grasp the content of such documents.<sup>21</sup> As a remedy, the Stanišić Defence requests that the Chamber order CLSS to provide English translations of all documents on the Stanišić Defence’s Rule 65 *ter* exhibit list before the resumption of the defence case.<sup>22</sup>

**B. Response**

7. The Prosecution submits that it defers to the Chamber’s discretion in scheduling matters but disputes some of the submissions made in the Motion.<sup>23</sup> It requests leave to exceed the word limit in order to fully respond to the many issues raised in the Motion.<sup>24</sup> The Prosecution submits that the Chamber already considered the Stanišić Defence’s need to review some of the material disclosed by the Prosecution between 2009 and 2011 in its previous decisions granting adjournments or scheduling hearings.<sup>25</sup> Moreover, it submits that disclosure of Rule 68 material should not merit the same considerations as Rule 66 (B) material when it comes to granting time to review the material.<sup>26</sup> The Prosecution submits that its tendering of documents during cross-examinations of Defence witnesses was proper and in line with Appeals Chamber jurisprudence.<sup>27</sup> Lastly, it submits that the identity of each and every direct perpetrator is not a material fact underpinning the charges and that the case law provides that the Prosecution, in the Indictment, must plead “material facts”, but not set out the evidence by which these facts will be proven.<sup>28</sup>

8. Regarding the outstanding translations, the Prosecution submits that the lack of translations hampers its preparations in a similar fashion.<sup>29</sup>

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<sup>18</sup> Motion, paras 17, 19.

<sup>19</sup> Motion, paras 19-20.

<sup>20</sup> Motion, para. 25.

<sup>21</sup> Motion, para. 26.

<sup>22</sup> Motion, para. 27.

<sup>23</sup> Response, para. 2.

<sup>24</sup> Response, para. 4.

<sup>25</sup> Response, paras 10-12.

<sup>26</sup> Response, paras 17-20.

<sup>27</sup> Response, paras 28, 32.

<sup>28</sup> Response, para. 40.

<sup>29</sup> Response, para. 44.

**C. Application and Reply**

9. The Stanišić Defence requests leave to extend the word limit in both the Application and the Reply. It disputes the Prosecution’s contention that material disclosed pursuant to Rule 66 (B) of the Rules merits different considerations than material disclosed under Rule 68.<sup>30</sup> Further, it argues that the Prosecution’s “introduction of new perpetrators” whose actions are alleged to give rise to criminal liability for the Accused, is an insertion of new factual allegations in support of existing counts.<sup>31</sup>

10. In relation to the number of outstanding translations, the Stanišić Defence submits that the latest figure is 4,337 pages.<sup>32</sup>

**D. 33 (B) Submission**

11. The Registry submits that, according to CLSS figures, 2,014 pages are pending translation.<sup>33</sup> Further, it submits that the number of pages already translated for the Stanišić Defence is virtually unprecedented at the Tribunal when compared to those of other Defence teams.<sup>34</sup> Lastly, it submits that the document submissions demonstrate that the Stanišić Defence continues to have difficulties in effectively prioritising its submitted documents.<sup>35</sup>

**III. APPLICABLE LAW**

12. 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”.

13. 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.<sup>36</sup>

<sup>30</sup> Reply, para. 9.

<sup>31</sup> Reply, paras 27-28.

<sup>32</sup> Reply, para. 32.

<sup>33</sup> 33 (B) Submission, paras 2, 4.

<sup>34</sup> 33 (B) Submission, para. 6, fn. 5.

<sup>35</sup> 33 (B) Submission, para. 7.

<sup>36</sup> See *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on Defence Motion for Adjournment, 10 March 2003, p. 2; *Prosecutor v. Krstić*, Case No. IT-98-33-T, Decision on Adjourning the Trial, 15 January 2001, p. 2.

#### IV. DISCUSSION

14. The Chamber considered the complexity and importance of the issue at hand and allowed the requested word limit extensions.

15. The Chamber considered that the Stanišić Defence sought the requested adjournment on the basis of three grounds: i) a large amount of disclosure of documents from the Prosecution and from other cases, necessitating time for review and possible investigations (“Disclosure Ground”); ii) admission of Prosecution documents during cross-examination of Defence witnesses, necessitating time to investigate and challenge this “new evidence” (“New Evidence Ground”); and iii) missing translations of Defence documents, hampering the Stanišić Defence in its preparations for the presentation of its evidence (“Translation Ground”). The Chamber will address these three grounds below.

16. In relation to the Disclosure Ground, the Chamber generally accepted the factual representations by the Stanišić Defence that the disclosure recently reached a level that caused the Stanišić Defence to address the Chamber. The Chamber was aware that a large amount of disclosed documents creates difficulties to the Stanišić Defence and may necessitate reviews and investigations. The Chamber considered the above when it made the determination whether an adjournment should be granted. At the same time, the Chamber considered that the Stanišić Defence may have contributed to these difficulties by filing some access requests or making some Rule 66 (B) requests at an advanced stage of the proceedings. Moreover, the Chamber previously granted adjournments in order to permit the Defence to review disclosed material.<sup>37</sup> The Stanišić Defence did not seek reconsideration or certification to appeal these decisions, something one would expect if it is of the view that time granted previously was inadequate. Finally, while acknowledging that excessive Rule 66 (B) requests could lead to a situation where the Chamber experiences undue pressure to grant further adjournments, the Chamber saw no reason at present to make a distinction when assessing the necessity to review and investigate between Rule 66 (B) and Rule 68 (i) documents.

17. In relation to the New Evidence Ground, the Chamber preferred to decide on any relief to be granted in a separate filing.<sup>38</sup> Accordingly, it considered in that filing all submissions made in the

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<sup>37</sup> See e.g. Decision on Stanišić Defence Motion for Adjournment of Proceedings, 25 January 2011; Scheduling Order and Decision on Defence Requests for Adjustment of Scheduling Order of 16 February 2011, 1 April 2011.

<sup>38</sup> See Guidance on the Admission into Evidence of Documents Tendered by the Prosecution During the Defence Case and Reasons for Decisions on Past Admissions of Such Documents, 26 August 2011 (“Guidance”).

context of the present litigation when coming to a decision whether additional time should be granted to the Stanišić Defence.<sup>39</sup>

18. In relation to the Translation Ground, the Chamber acknowledged the problems this issue presents for the Defence and the Prosecution. At the same time, it noted with concern that, despite several rounds of communications, the Stanišić Defence and CLSS could not agree on the exact number of pages that remained to be translated. The number provided by CLSS was significantly lower than that provided by the Stanišić Defence but ultimately the Chamber was not in a position to have a clear impression of the exact extent of the problem. Moreover, the Chamber considered that the Stanišić Defence's overall preparation did not appear to be as focused as it should be. This is evidenced by the sub-optimal system of prioritising documents when submitting them to CLSS, by the amount of documents submitted in total when comparing the number to other Defence teams before this Tribunal, and the Stanišić Defence's concession that it uses approximately only one third to one half of the documents it announces prior to a witness's testimony.<sup>40</sup> In this respect, the Chamber also considered the Stanišić Defence's submission that once new co-counsel was assigned, the Stanišić Defence would be ready to start its case on 15 June 2011, suggesting that there would be no further requests for lengthy adjournments on the grounds of having too little time to review material.<sup>41</sup> Under these circumstances, the Chamber did not consider it appropriate to give any orders to CLSS for completing outstanding translation by a certain date. It further considered that it did not have sufficient information in relation to documents not yet submitted for translations. The Chamber expects the Stanišić Defence to act diligently in selecting, prioritising, and submitting documents to CLSS. At this stage, the Chamber considered that any additional document submissions would not cause any specific problems in view of the above and in light of the current trial schedule.

19. Weighing all of the above, the Chamber found that the interests of justice warranted an adjournment of proceedings. In determining the amount of time to be granted, the Chamber was guided by its discussion as set out above and also considered that this trial is currently still proceeding with three sitting days per week, thereby already giving the Stanišić Defence further time to prepare.

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<sup>39</sup> In the Guidance, the Chamber held that "the Defence's submissions were not such as to exclude the evidence or grant other forms of relief at this stage", para. 16.

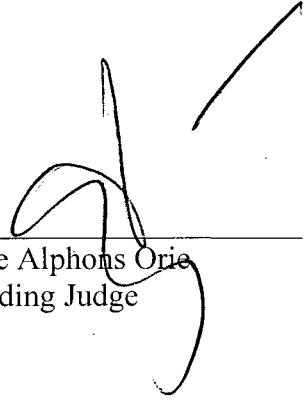
<sup>40</sup> This was stated at the out-of-court meeting between the parties and the Presiding Judge on 20 July 2011; see also T. 13550.

<sup>41</sup> See T. 11459.

## V. DISPOSITION

20. For the foregoing reasons, the Chamber **GRANTED** the Motion in part and **ORDERED** a four-week suspension of the proceedings.

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



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Judge Alphons Orie  
Presiding Judge

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

[Seal of the Tribunal]