



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: 8 May 2008

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Pedro David  
Judge Michèle Picard

**Registrar:** Mr. Hans Holthuis

**Order of:** 8 May 2008

**PROSECUTOR**

**v.**

**JOVICA STANIŠIĆ  
AND  
FRANKO SIMATOVIĆ**

***PUBLIC***

**ORDER ESTABLISHING A PROCEDURE FOR THE  
MONITORING OF AND REPORTING ON THE  
ACCUSED STANIŠIĆ'S ABILITY TO ATTEND COURT  
IN PERSON AND/OR TO PARTICIPATE IN THE  
COURT PROCEEDINGS VIA THE VIDEO-  
CONFERENCE LINK**

**The Office of the Prosecutor**

Mr. Dermot Groome  
Ms. Doris Brehmeier-Metz  
Mr. Gregory Townsend  
Mr. John Docherty

**Counsel for the Accused**

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić  
Mr. Zoran Jovanović and Mr. Vladimir Domazet for Franko Simatović

**TRIAL CHAMBER III** (“Trial 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 (“Tribunal”),

**NOTING** the Trial Chamber’s Decision on Future Course of the Proceedings issued on 9 April 2008 which stated: “the Trial Chamber considers it necessary to establish a system that will enable the Accused to participate in the proceedings from the UNDU on days that he is too unwell to attend court” and that “[t]he Accused must attend court if he is able to do so. If he does not, in spite of being able to do so, he will be taken to waive his right to be present in court”<sup>1</sup>,

**NOTING** that the trial of this matter commenced on Monday, 28 April 2008,

**NOTING** the Trial Chamber’s Order of 29 April 2008 reiterating that the trial would proceed with the video-conference link and establishing a regime for monitoring the health of the Accused Stanišić during the use of such facility,

**NOTING** that, to date, there have been four days of hearing in the trial and the Accused Stanišić has not attended the court proceedings in this matter in person since the trial commenced nor has he participated in the proceedings through the video-conference link established by the Registry,

**NOTING** the submissions of the Prosecutor and the response from counsel for the accused, Jovica Stanisić, filed confidentially on 5 and 7 May 2008 respectively,

**CONSIDERING** the overriding need to ensure that both accused in this case receive a fair and expeditious trial and that the health condition of the Accused Stanišić is a factor that persistently interferes with the right to a fair and expeditious trial, warranting derogation from the right to be present in court<sup>2</sup>,

**CONSIDERING** that the Trial Chamber has found the present procedures for reporting the absence of an accused from court for medical reasons to be wholly unsatisfactory, as has been clearly evidenced by the testimony of Dr. Falke, the current Medical Officer of the United Nations Detention Unit, given in closed session on 28 April 2008<sup>3</sup>, in that the decision not to transport an accused who does not feel well enough to attend court is made and communicated to the Chamber before the accused is examined by a medical practitioner and, further, that even once the accused

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<sup>1</sup> Decision on Future Course of Proceedings, 9 April 2008, paras 14 & 15.

<sup>2</sup> *Ibid.*, para. 15.

<sup>3</sup> Hearing, 28 April 2008, T. 912-913.

has been examined, the form and procedure used to report the findings of that examination principally, if not exclusively, reflect the subjective determination by the accused of his condition,

**FOR THE FOREGOING REASONS,**

**INSTRUCTS** the Registrar to set in place a regime for the daily monitoring of and reporting on the health of the Accused Jovica Stanišić as set out in this Order, including strict adherence to the time-limits set out herein.

Unless otherwise determined by the Trial Chamber, the following procedures shall be applicable and, for the purposes of this Accused, shall replace the existing forms and procedures:

1. The Commanding Officer, Deputy Commanding Officer or any other authorised officer of the United Nations Detention Unit (“Commanding Officer”) shall remind the Accused of the court schedule for the day and that the normal arrangements are in place for his transport to court.
2. If the Accused indicates that he is too unwell to attend court in person, the Commanding Officer is to remind him of his right to be present in person, ask him if he waives his right to attend and offer him the opportunity to communicate with counsel.
3. If the Accused waives his right to attend, he shall sign a formal waiver document. The Commanding Officer shall immediately inform the Trial Chamber and forward the signed waiver to the Trial Chamber.
4. The Trial Chamber shall state at the beginning of the court session that the Accused is not present and that a waiver has been obtained and will then proceed with the trial in the absence of the Accused.
5. If the Accused does not waive his right to attend in person, the Commanding Officer is to remind him that, if he is too ill to attend court, he can participate in the proceedings via the video-conference link.
6. If the Accused indicates that he intends to participate in the proceedings via the video-conference link, the Commanding Officer will notify the Trial Chamber immediately and the Accused will be examined before the start of each session and monitored as per the Trial Chamber’s Order of 29 April 2008.
7. The Trial Chamber shall state at the beginning of the court session that the Accused is participating via the video-conference link and shall indicate the applicable sitting schedule to be used.

8. If the Accused indicates to the Commanding Officer that he is also too ill to participate in the proceedings via the video-conference link, the Commanding Officer shall inform the Trial Chamber immediately.
9. Where, pursuant to paragraph (2) above, the Accused has indicated that he is too unwell to attend court in person or, pursuant to paragraph (8) above, has indicated that he is also too unwell to participate in the proceedings via the video-conference link, the Medical Officer of the United Nations Detention Unit shall be called to examine the Accused and report to the Trial Chamber before the time scheduled for commencement of the court proceedings that day. In view of the significance that the conclusions of the Trial Chamber may have for the fairness of the proceedings, the examination should, as much as possible, be performed by the Medical Officer himself or by another qualified doctor ("Medical Officer").
10. Following the examination, the Medical Officer will make a report as to whether the Accused is or is not well enough to attend court; and, if not, whether he is well enough to participate in the proceedings via video-conference link. The Medical Officer must provide a report which is as detailed as possible, specifying where appropriate specific symptoms of the Accused and identifying those symptoms which have been described to the Medical Officer by the Accused and those which have been observed directly by the Medical Officer.
11. Although the Trial Chamber appreciates that the diagnosis will, in most cases, be influenced by information given by the Accused, the Trial Chamber makes it clear that what it wants is the Medical Officer's objective diagnosis and not, as is reflected in the form currently in use at the United Nations Detention Unit, the subjective determination by the Accused of his condition.
12. In describing the symptoms of the Accused, the Medical Officer shall take into account, *inter alia*, the primary concern of the Trial Chamber which is to determine whether the Accused is capable of effective participation in the proceedings against him. In that regard, the Trial Chamber must be satisfied that the Accused has a broad understanding of the nature of the trial process and the general thrust of what is said in court. In particular, it must be satisfied that the Accused is able to instruct his counsel effectively.
13. The Trial Chamber shall determine whether (a) the Accused is well enough to participate in the proceedings, either in person or via the video-conference link, in which case he shall be deemed to have waived his right to be present and the trial will continue in his absence or (b) the Accused is too unwell to participate in the proceedings in either way, in which case the proceedings shall be adjourned.

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



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Judge Patrick Robinson  
Presiding Judge

Dated this eighth day of May 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**