

**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-T
Date: 6 September 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

**JOVICA STANIŠIĆ
and FRANKO SIMATOVIĆ**

PUBLIC

STANIŠIĆ DEFENCE REQUEST RELATED TO FINAL TRIAL BRIEF

The Office of the Prosecutor

Mr. Dermot Groome

Defence Counsel for Mr. Stanišić

Mr. Wayne Jordash
Mr. Scott Martin

Defence Counsel for Mr. Simatović

Mr. Mihajlo Bakrač
Mr. Vladimir Petrović

I. Introduction

1. On 6 September 6, 2012, the Prosecution filed a motion requesting, *inter alia*, that the Trial Chamber “modify the scheduling order on final trial briefs to require submissions two weeks after the last evidentiary decision in this case”.¹ The Stanišić Defence (“Defence”) adopts the procedural history in the Prosecution’s 6 September 2012 Motion and incorporates it by reference.²

II. Submissions

2. The Prosecution notes in its request that:

[e]ven if given the opportunity to file a supplemental final trial brief a party would be forced to make, at best, fragmented arguments that could only be understood by cross-referencing two documents and at worst some arguments originally advanced might have to be substantially amended or withdrawn creating confusion and resulting in a poorly articulated case.³

3. The Defence supports the Prosecution’s submissions that there could be innumerable complications with requesting that the parties file supplemental submissions to account for the outstanding decisions on the evidence, including rebuttal and rejoinder evidence.

4. The Prosecution has now indicated that it will seek to have entered into evidence approximately 75 documents.⁴ Depending on the Trial Chamber’s decision to the Prosecution’s rebuttal motion, the Defence anticipates that it will seek to tender evidence in rejoinder.⁵ If all 75 documents were entered into evidence, there is a realistic possibility that the Defence may need to respond with documents to rebut, leading to a situation where there are may be in excess of 100 - 150 additional exhibits entered into evidence pursuant to Rule 85(A)(iii) and (iv) of the Rules.

5. If these documents are ultimately admitted into evidence, both Defence and Prosecution will have to assess how each of these documents affects the rest of its case. In particular, the Prosecution indicated that it will seek to introduce more of the so-called DB personnel files into evidence during rebuttal.⁶ These create complex factual and legal issues,

¹ *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Prosecution’s Requests Related to Final Trial Briefs, 6 September 2012 (“6 September 2012 Motion”), para. 8.

² *Ibid*, paras 1-3.

³ 6 September 2012 Motion, para. 4.

⁴ 6 September 2012 Motion, para. 5.

⁵ The Defence is able to be reasonably certain

⁶ 6 September 2012 Motion, fn.4.

that will require analysis, cross-referencing and the compilation of relevant and comprehensive submissions. The story of the so-called Red Berets is at the heart of this case and their composition affects the view taken of the various crime bases and the linkage to the Accused. The Prosecution's case is, *inter alia*, that the Accused "directed and organised the formation of special units of the Republic of Serbia DB and other Serb Forces which were involved in the commission of crimes in Croatia and BiH during the Indictment period".⁷ In any event, the volume of evidence that has to be considered during these pleadings and subsequently if admitted inhibits the drafting process and the compilation of proper factual and legal submissions.

6. In addition, as outlined by the Prosecution, there is a body of evidence whose admissibility, remains at issue. In the time remaining, this body of evidence, if admitted, needs to be considered and implemented into the closing briefs. This needs time and resources, without which the parties may not be able to offer the type of assistance to the Chamber commensurate with our professional duties.

7. Accordingly, from a perspective of fairness to the parties, the Defence submits that the final trial brief deadlines should be stayed until two weeks after all these decisions are made and the Defence teams can adequately account for the entry of the totality of the documents into evidence.

8. The Defence notes that it will not affect the Accused's right to an expeditious trial, as the ultimate delay to filing the final trial brief on 21 September 2012, rather than filing supplemental submissions, is approximately the same. It is submitted that a delay to the filing, rather than this alternative, is that the parties will be able to expend their resources more efficiently and the Trial Chamber will receive more coherent and less fragmented submissions.

⁷ Third Amended Indictment, para. 15(b).

III. Relief Sought

9. For the reasons stated above, the Defence agrees with the Prosecution and requests that the Trial Chamber modify its 11 July 2012 Scheduling Order setting the deadline for submission of the parties' final trial briefs until two weeks after the final evidentiary decision in the case.

Respectfully submitted,

6 September 2012

Signature Lead Counsel

A handwritten signature in black ink, appearing to read 'WJ', with a horizontal line extending to the right and a small dot at the end.

Wayne Jordash

Word Count: 848