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D 17740 - D 17733
22 July 2009

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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: 22 July 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza
Registrar: Mr John Hocking
Decision of: 22 July 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON URGENT STANIŠIĆ DEFENCE MOTION FOR PROVISIONAL
RELEASE DURING THE UPCOMING COURT RECESS

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Zoran Jovanović
Mr Vladimir Domazet

I. PROCEDURAL HISTORY

1. On 14 July 2009, the Stanišić Defence filed a motion seeking provisional release.¹ On 17 July 2009, the Prosecution filed its response to the Motion.² On the same day, the Kingdom of the Netherlands filed a letter stating its position on the relief sought in the Motion.³ On 20 July 2009, the Stanišić Defence filed an addendum to the Motion including the guarantees given by the government of the Republic of Serbia.⁴ On 21 July 2009, the Stanišić Defence asked for leave to reply to the Response.⁵

II. SUBMISSIONS

1. The Stanišić Defence

2. In its Motion, the Stanišić Defence requests that Jovica Stanišić (“Accused”) be granted temporary provisional release for “the duration of the court recess - 22 July 2009 until the recommencement of the trial”.⁶ The Stanišić Defence seeks provisional release under the same terms and conditions as prescribed by the Chamber in its recent decision regarding provisional release of Franko Simatović.⁷

3. The Stanišić Defence argues that the Accused, if provisionally released, will appear for trial.⁸ It submits that the Accused was granted provisional release on two prior occasions and that he complied with the stringent and demanding conditions imposed on him.⁹ It recalls that the Chamber at the time, took into account the Accused volunteering to cooperate with the Tribunal at an early stage, his demonstrated intent to surrender voluntarily as well as the character of the charges against him.¹⁰ The Stanišić Defence submits that the situation remains unchanged and that all the elements

¹ Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess with Annex, 14 July 2009 (“Motion”), paras 4, 15.

² Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 17 July 2009 (“Response”).

³ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release of Mr. Jovica Stanišić, 17 July 2009.

⁴ Stanišić Defence Addendum to Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess with Confidential Annex, 20 July 2009 (“Addendum”).

⁵ Defence Request for Leave to Reply to Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 21 July 2009.

⁶ Motion, para. 4.

⁷ Motion, paras 3-4. See Decision on Simatović Defence Motion for Provisional Release During the Upcoming Court Recess, 10 July 2009. See also Decision on Provisional Release, 28 July 2004 (“28 July 2004 Decision”); Decision on Prosecution’s Appeal Against Decision Granting Provisional Release, 3 December 2004; Decision on Provisional Release, 26 May 2008 (“26 May 2008 Decision”).

⁸ Motion, para. 8.

⁹ Motion, para. 7.

¹⁰ Motion, para. 9.

previously considered are equally applicable to the present Motion.¹¹ It points out that the Accused's "personal (family and friends) connections within Belgrade demonstrate the strong community ties that make flight impracticable, if not impossible".¹² Furthermore, the Republic of Serbia submitted written guarantees in relation to the Motion.¹³

4. The Stanišić Defence also argues that the Accused continues to pose no threat or danger to any victim, witness, or other person.¹⁴ It submits that there has been no evidence of instances in which the Accused, during the previous periods of provisional release, threatened or caused harm to victims or witnesses.¹⁵

5. Finally, the Stanišić Defence submits that the Accused, if provisionally released, will have ready access to a highly specialised team of multi-disciplinary experts at the Military Medical Academy in Belgrade ("VMA") which is familiar with the Accused's medical history.¹⁶

2. The Prosecution

6. Although the Prosecution acknowledges that the Accused did return to the United Nations Detention Unit ("UNDU") after having been provisionally released on previous occasions without incident,¹⁷ it opposes the Motion.¹⁸

7. The Prosecution recalls that the Accused has claimed that he is "unable to travel ten metres to sit in a chair in order to participate in abbreviated proceedings via video-link conference".¹⁹ As a consequence, he has refused to appear "for a single minute of the current trial proceedings".²⁰ The Prosecution points out that, at the same time, however, he applied for provisional release that, if granted, would entail a long journey.²¹

8. The Prosecution argues that the use by the Accused of self-reported physical and emotional conditions advanced by him as a reason not to appear for a single day at trial, as well as his overall behaviour, show that he is willing to obstruct the proceedings.²²

¹¹ Ibid.

¹² Motion, para. 10.

¹³ See Motion, paras 12-13 and Addendum, Annex, containing the actual text of such guarantees.

¹⁴ Motion, para. 11.

¹⁵ Ibid.

¹⁶ Motion, para. 14.

¹⁷ Response, para. 9.

¹⁸ Response, paras 1, 27.

¹⁹ Response, para. 4.

²⁰ Ibid.

²¹ Response, para. 5.

²² Response, para. 10.

9. The Prosecution also argues that the circumstances have changed materially since the time the Chamber granted the Accused provisional release in 2004 and 2008 and that the Chamber should therefore use its discretion to deny the Motion.²³ The Prosecution stresses that the Accused is charged with serious crimes and will likely face a lengthy prison sentence, if convicted.²⁴ Accordingly, the Prosecution submits that being aware of the substantive probability that the trial, which was interrupted before, will indeed continue now, the Accused has a higher incentive to abscond than in 2008.²⁵

10. The Prosecution further submits that it has concerns about the reliability of the treatment available in Belgrade which in the past was considered by court-appointed medical experts as suboptimal and incomplete.²⁶ Moreover, the Prosecution argues that, considering the health problems invoked by the Accused, there is a need for regular and transparent reporting on his medical condition.²⁷ This need, according to the Prosecution, cannot be properly met by the medical institutions in Belgrade, especially given that the Motion was filed so late and insufficient time has been given to the parties to review and respond to a suggested course of treatment.²⁸ The Prosecution points out that there is no reason to disturb the current treatment and risk deteriorating the Accused's condition or the objective reporting structure put in place by the Chamber.²⁹ It also concludes that in the absence of an objective reporting system, a self-reported deterioration of the Accused's health could cause unnecessary delay in the proceedings.³⁰

11. Alternatively, the Prosecution submits that, should the Chamber nevertheless decide to grant the Motion, it should take an extremely cautious approach to the conditions of the release.³¹ Accordingly, the Prosecution proposes that the Accused should be confined to in-patient treatment at the VMA for the duration of the provisional release, not to exceed one week.³² It also requests a stay of the decision pursuant to Rule 65 (E) of the Tribunal's Rules of Procedure and Evidence ("Rules").³³

²³ Response, para. 13.

²⁴ Ibid.

²⁵ Response, para. 18.

²⁶ Response, para. 15.

²⁷ Response, paras 14, 22.

²⁸ Response, paras 19-20, 23.

²⁹ Response, para. 16.

³⁰ Response, para. 24.

³¹ Response, para. 25.

³² Ibid.

³³ Response, paras 1, 26-27.

III. APPLICABLE LAW

12. Rule 65 of the Rules governs provisional release. It provides, in relevant parts:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

13. The conditions listed under Rule 65 (B) of the Rules are the minimum requirements necessary for granting provisional release. The Chamber always maintains the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.³⁴

14. According to the Appeals Chamber, when considering a provisional release motion at the at a late stage of proceedings, even when satisfied that sufficient guarantees to offset the risk of flight, a Trial Chamber should not exercise its discretion in favour of a grant of provisional release unless compelling humanitarian grounds were present which cause to tip the balance in favour of allowing provisional release.³⁵

IV. DISCUSSION

15. As to whether the Accused, if released, will return for trial, the Chamber considers the seriousness of the charges against him, as well as the current stage of the proceedings. Moreover, the Chamber gives due consideration to the fact that the Accused expressed his intent to voluntarily surrender to the Tribunal³⁶ and that in the course of previous periods of provisional release, he has

³⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; Decision on Prosecution Appeal on Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008, para. 5.

³⁵ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.7, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Petkovic dated 31 March 2008", 21 April 2008, paras 15, 17; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.9, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Stojić dated 8 April 2008", 29 April 2008, paras 14-15; *Prosecutor v. Popović et al.*, Case No. IT-05-AR65.4-6, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for Custodial Visit and Decision on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008, para. 24.

³⁶ See 28 July 2004 Decision, paras 19-20; 26 May 2008 Decision, para. 46.

generally been in compliance with the terms and conditions set by the Chamber.³⁷ Finally, the Accused has demonstrated his willingness to cooperate with the Prosecution by giving several interviews.³⁸ Furthermore, the Chamber takes into consideration, and gives appropriate weight to, the guarantees given by the Republic of Serbia.³⁹

16. The Chamber considers that the circumstances have changed materially compared to the period of the previous provisional release of the Accused insofar as the presentation of evidence has commenced. However, the Chamber is not persuaded by the Prosecution's argument that this change is such as to give rise to the reasonable fear that the Accused will not appear for trial.

17. For these reasons, the Chamber is satisfied that the Accused, if provisionally released, would appear for trial.

18. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber notes that there is no indication that the Accused interfered or would interfere with the administration of justice. As stated above, during previous periods of provisional release the Accused generally complied with the terms and conditions set by the Chamber.

19. For these reasons, the Chamber is satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

20. As set out above, the Chamber has the discretion not to grant provisional release even if it is satisfied that the conditions listed in Rule 65 (B) are met. In considering whether provisional release is appropriate in this case, the Chamber takes into account in particular the current stage of the trial proceedings, the length and the character of the break during which provisional release is requested, the Accused's health situation, and the Chamber's obligation pursuant to Article 20 of the Statute to ensure a fair and expeditious trial. The Chamber notes that there is no requirement set out in the case law for compelling humanitarian reasons at an early stage of the proceedings, as is the case here.

21. The trial in the present case has commenced with the presentation of Prosecution evidence. The Accused has as of yet not attended any court session, claiming that he is too unwell to do so.⁴⁰ He has not waived his right to be present in court and has declined to use the video-conference link,

³⁷ See 26 May 2008 Decision.

³⁸ See 28 July 2004 Decision, paras 16-18; 26 May 2008 Decision, para. 46.

³⁹ Addendum, Annex.

⁴⁰ See Absence from Court forms of 9, 10, 29, and 30 June, and 6, 7, 15, and 16 July 2009.

set up at the UNDU in order to facilitate his participation in the proceedings.⁴¹ During the Accused's time at the UNDU, his health has been monitored and the Chamber has received regular reports on his health situation. In its decision on the modalities for the trial, the Chamber concluded that regular and transparent reporting was necessary for the conduct of the trial, in particular in order for the Chamber to be in a position to determine the appropriate trial schedule.⁴²

22. The medical reports provided to the Chamber set out the Accused's health problems, including depression and pouchitis, for which the Accused is undergoing regular treatment at the UNDU. Based on the medical reports, the Chamber has on a number of occasions concluded that the Accused would be able to participate in the court proceedings and therefore decided to proceed with court sessions, in the absence of the Accused.⁴³

23. In light of the above, the Chamber considers that the continuity of the existing system of treatment and regular reporting by independent, court-appointed, non-treating doctors who are familiar with the Accused's condition is of the essence to ensure the fair and expeditious conduct of the proceedings in the present case. The Chamber also notes in this respect that in the past, there were instances of different degrees of non-compliance with the reporting duties imposed by the Chamber on the doctors treating the Accused in Belgrade.⁴⁴ In this regard, the Chamber considers that granting provisional release, especially where due to the late filing of the Motion no coherent system of treatment and reporting, verified by the Chamber, could be put in place, would endanger the prospects for an effective continuation of the proceedings after the summer recess. Therefore, the Chamber considers that the risks involved with regard to the regular and transparent medical reporting are serious factors militating against granting provisional release of the Accused.

24. The Chamber also considers that the Accused has failed to advance any arguments in favour of granting provisional release at this time, which would counter the concerns raised above. He has merely invoked the regular recess break in the trial proceedings.

25. Considering the foregoing, the Chamber finds that under the present circumstances provisional release of the Accused should not be granted.

⁴¹ See Non-Attendance in Court Forms Completed by the UNDU Officer of 9, 10, 29, and 30 June, and 6, 7, 15, and 16 July 2009. See also T. 1413-1415, 1482-1483, 1549, 1642-1643, 1732-1733, 1826-1827, 2016.

⁴² Decision on Start of Trial and Modalities for Trial, 29 May 2009, paras 13, 23, 25. See also Decision Amending Modalities for Trial, 9 June 2009.

⁴³ See Reasons for Denying the Stanišić Defence Request to Adjourn the Hearings of 9 and 10 June 2009 and Have Jovica Stanišić Examined by a Psychiatrist before the Start of Trial and for Decision to Proceed with the Court Session of 9 June 2009 in the Absence of the Accused, 2 July 2009; T. 1440-1442, 1483, 1559, 1642-1643, 1734, 1829, 1945-1946, 2015-2018.

⁴⁴ See T. 1316 *et seq.*

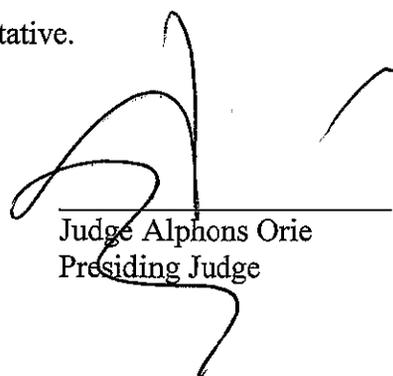
V. DISPOSITION

26. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber

DENIES leave to file a reply; and

DENIES the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-second day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]