



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 November
2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 November 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON URGENT STANIŠIĆ MOTION FOR
PROVISIONAL RELEASE” OF 11 OCTOBER 2010**

Office of the Prosecutor

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The Government of the Republic of Serbia

Per: The Embassy of the Republic of Serbia to
the Kingdom of the Netherlands

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I. PROCEDURAL HISTORY

1. On 20 September 2010, the Stanišić Defence filed a motion seeking provisional release of Jovica Stanišić (“Accused”) to Belgrade for a period of seven days, with permission to travel to [REDACTED] to visit his seriously ill father (“Motion”).¹ On the same day the Prosecution responded, taking no position as to whether the Motion should be granted (“Response”).² The Prosecution requested, however, that the modalities for treating, monitoring, and reporting on the Accused’s health be clearly established prior to any provisional release.³ On 27 September 2010, the Tribunal’s Host State filed a letter pursuant to Rule 65 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) stating that it did not oppose the Motion.⁴

2. On 29 September 2010, by means of informal communications, the Chamber provided the parties with a tentative protocol for monitoring, treating, and reporting on the Accused’s medical condition outside of the United Nations Detention Unit (“UNDU”) in case provisional release would be granted, and requested that they make submissions by 1 October 2010. On the same day, in court, the Chamber invited the Stanišić Defence to include the tentative protocol in its discussions with the Republic of Serbia (“Serbia”) with regard to Serbia’s expected guarantees, and to consider filing a written waiver by the Accused of his doctor-patient privilege in relation to any medical consultations or treatment occurring during a potential period of provisional release.⁵ On 30 September 2010, the Stanišić Defence made informal submissions regarding the tentative protocol and the Chamber requested that these submissions be filed. On 1 October 2010 the Stanišić Defence filed its submissions, requesting two alterations to the tentative protocol, and provided a written waiver by the Accused of doctor-patient privilege in relation to any treatment received during a potential period of provisional release.⁶ On 11 October 2010, the Stanišić Defence submitted confirmation from Serbia that its guarantees of 9 October 2009 remain authoritative (“Serbian Guarantees”).⁷

¹ Urgent Stanišić Motion for Provisional Release, 20 September 2010 (Confidential). The Chamber notes that the Stanišić Defence request contained in paragraph 2 of the Motion has become moot.

² Prosecution Response to Stanišić Urgent Motion for Provisional Release, 20 September 2010 (Confidential).

³ Response, paras 6-7.

⁴ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 27 September 2010.

⁵ T. 7498-7500.

⁶ Stanišić Medical Submissions relating to 20th September 2010 Urgent Provisional Release Application, 1 October 2010 (Confidential), Annex A.

⁷ Stanišić Defence Submission of Confirmation of Guarantees Previously Issued by the Republic of Serbia (Confidential), 11 October 2010, Annex A; Urgent Stanišić Defence Motion for Provisional Release, 14 October 2009, Annex B.

II. SUBMISSIONS OF THE PARTIES

3. The Stanišić Defence submits, based on recent reports, that the Accused's medical condition has stabilised and that there are no identifiable factors pointing to a risk of sudden deterioration in his health.⁸ The Stanišić Defence affirms that the Accused is willing to abide by any conditions imposed by the Chamber for monitoring, treating, and reporting on his health outside of the UNDU.⁹ The Stanišić Defence further submits, on the basis of a recent psychiatric report, that provisional release could bring about a significant improvement in the Accused's psychiatric, psychological, and possibly physical functioning, and argues that this possibility itself constitutes a compelling humanitarian ground in favour of provisional release.¹⁰

4. The Stanišić Defence argues that the opportunity for the Accused to visit his father [REDACTED] constitutes a further compelling humanitarian ground in favour of provisional release.¹¹ It recognises the absence of [REDACTED].¹² Nonetheless, the Stanišić Defence submits [REDACTED].¹³ In addition, the Stanišić Defence submits that [REDACTED].¹⁴

5. The Prosecution accepts the Stanišić Defence's factual representations with regard to [REDACTED], and defers to the Chamber's discretion as to whether the Accused should be provisionally released on humanitarian grounds.¹⁵ The Prosecution requests that if the Chamber grants the Motion, the Accused be required to follow any instructions provided by the medical staff of the UNDU and to return immediately to the UNDU in The Hague should his health deteriorate during his provisional release.¹⁶

III. APPLICABLE LAW

6. The Chamber recalls the applicable law governing provisional release and provisional release procedures as set out in its previous decisions.¹⁷

⁸ Motion, paras 1, 6-8.

⁹ Motion, paras 15-16, 19.

¹⁰ Motion, paras 17-18.

¹¹ Motion, paras 1, 12-13.

¹² Motion, paras 11, 13.

¹³ Motion, paras 11, 13, Annex E.

¹⁴ Motion, para. 12.

¹⁵ Response, para. 4.

¹⁶ Response, paras 6-7.

¹⁷ See Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential) ("31 March 2010 Decision"), paras 19-21; Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12.

IV. DISCUSSION

7. As to whether the Accused, if released, will return for trial, the Chamber recalls the discussion in its previous decisions.¹⁸ Further, the Chamber considers and gives appropriate weight to the Serbian Guarantees. As the Chamber has not received information indicating a change of circumstances in this respect, it remains satisfied that the Accused, if provisionally released, would appear for trial.

8. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber recalls the analysis in its decision of 31 March 2010.¹⁹ As the Chamber has not received information indicating a change of circumstances in this regard, it remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

9. In assessing whether provisional release is appropriate in this case, the Chamber recalls that in its decision of 16 August 2010, [REDACTED].²⁰ [REDACTED].²¹ However, in the absence of [REDACTED], it remains difficult for the Chamber to accurately assess the urgency of the humanitarian grounds advanced by the Stanišić Defence.²² This difficulty notwithstanding, the Chamber remains persuaded that [REDACTED], and gives this due weight in its consideration of the Motion.

10. The Chamber remains mindful of its obligation to avoid unnecessary interruptions to the trial proceedings.²³ The Chamber recalls that the occurrence of a sudden deterioration of the Accused's health may affect his ability to return to The Hague.²⁴ Consequently, any such deterioration during a period of provisional release could result in serious disruption to the trial proceedings.²⁵ The Chamber has previously held that the existence of such a risk strongly militates against granting provisional release.²⁶

¹⁸ Decision on Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds (Confidential), 16 August 2010 ("16 August 2010 Decision"), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 22 July 2010 ("22 July 2010 Decision"), para. 6; 31 March 2010 Decision, paras 23-24.

¹⁹ 31 March 2010 Decision, para. 26; see also 16 August 2010 Decision, para. 6 and 22 July 2010 Decision, para. 7.

²⁰ See 16 August 2010 Decision, paras 9-10 and reports cited therein.

²¹ Motion, Annex E.

²² See also 16 August 2010 Decision, para. 10.

²³ 16 August Decision, para. 7; 22 July 2010 Decision, para. 8; 31 March 2010 Decision, para. 28.

²⁴ 16 August 2010 Decision, para. 8; 22 July 2010 Decision, para. 9; 31 March 2010 Decision, paras 31, 33.

²⁵ 16 August 2010 Decision, para. 8; 22 July 2010 Decision, para. 9; 31 March 2010 Decision, para. 33; Decision on Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 22 July 2009, para. 23.

²⁶ 16 August 2010 Decision, para. 8; 22 July 2010 Decision, para. 9; 31 March 2010 Decision, paras 31, 33.

11. In its decision of 16 August 2010, the Chamber noted that the Accused was suffering from worsening colitis symptoms and ongoing difficulties with kidney stones and that certain tests and consultations on the Accused's health were outstanding.²⁷ The Chamber concluded that the medical condition of the Accused bore an unpredictable risk of deterioration.²⁸ Under those circumstances, the Chamber denied the requested provisional release.²⁹ The Chamber noted that it might have been more inclined to exercise its discretion differently if a strict protocol for monitoring, treating, and reporting on the Accused's medical condition outside the UNDU could have been developed.³⁰

12. [REDACTED].³¹ [REDACTED].³² [REDACTED].³³ [REDACTED].³⁴ Based on the foregoing, the Chamber finds that the Accused's medical condition appears to be comparatively stable although, given his recent medical history, the risk of a sudden deterioration in his health remains.

13. In light of the risk of a serious disruption to the trial proceedings as identified above, the Chamber has, by means of informal consultations with the Registry and following submissions from the Stanišić Defence, developed a strict set of conditions for monitoring, treating, and reporting on the Accused's medical condition outside of the UNDU. These conditions include that a reporting medical practitioner designated by the Tribunal will perform the weekly medical examination of the Accused in Belgrade during the period of provisional release. The conditions further specify the circumstances under which the Accused may seek medical treatment in Belgrade and the manner in which he is to be treated. Through these conditions the Chamber aims to ensure, to the greatest extent possible, the continuity of the Accused's existing system of medical reporting and treatment, which, as the Chamber has previously stated, is of the essence in ensuring the fair and expeditious conduct of the proceedings.³⁵ The Accused has indicated his willingness to comply strictly with these conditions and has waived his doctor-patient privilege for this purpose, and Serbia has confirmed its guarantee to respect any orders given by the Chamber in relation to provisional release of the Accused.³⁶

²⁷ 16 August 2010 Decision, paras 7, 12.

²⁸ 16 August 2010 Decision, para. 7.

²⁹ 16 August 2010 Decision, para. 13.

³⁰ 16 August 2010 Decision, para. 12.

³¹ RMO reports of 17 August 2010, 18 August 2010, 24 August 2010, 1 September 2010, 7 September 2010, 14 September 2010, 21 September 2010, 29 September 2010, 5 October 2010.

³² Registry Submission of Expert Report, 10 September 2010, Report by Dr Siersema.

³³ RMO report of 5 October 2010.

³⁴ RMO report of 21 September 2010.

³⁵ 16 August 2010 Decision, para. 8.

³⁶ Stanišić Medical Submissions relating to 20th September 2010 Urgent Provisional Release Application, 1 October 2010 (Confidential), Annex A; Serbian Guarantees.

14. The Chamber considers that these conditions, in the context of the apparently comparatively stable state of the Accused's health, significantly reduce the risk of a serious disruption to the trial proceedings resulting from any deterioration in the Accused's medical condition outside of the UNDU. Under these circumstances, given [REDACTED], and considering that the Accused has not been able to visit him for approximately one and a half years, the Chamber will exceptionally allow the Accused the opportunity to visit his father. The Chamber stresses that its decision to grant provisional release under the present circumstances is of an exceptional character, as no concrete [REDACTED] findings have been presented which would indicate [REDACTED] as to definitively establish the urgency of the humanitarian grounds involved. In balancing the humanitarian grounds advanced in the Motion against the reduced risk of a serious disruption to the trial proceedings, the Chamber finds that provisional release should be granted.

V. DISPOSITION

15. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber **GRANTS** the Motion and:

1. **ORDERS** as follows:

- (a) that as soon as practicable on or after Friday 15 October 2010, the Accused be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- (b) that, at Schiphol airport, the Accused be provisionally released into the custody of officials of the Government of Serbia to be designated prior to his release in accordance with operative paragraph (7)(a) hereof, who shall accompany the Accused for the remainder of his travel to Serbia and to his place of residence;
- (c) that, on his return, the Accused be accompanied by the same designated officials of the Government of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol on or before Thursday 21 October 2010, and that the Dutch authorities then transport the Accused back to the UNDU in The Hague; and
- (d) that, during the period of provisional release, the Accused abide by the following conditions, and that the authorities of the Government of Serbia, including the local police, ensure compliance with such conditions:
 - (i) to remain within the confines of the municipality of Belgrade, and to travel outside of those confines only to meet with his father in [REDACTED];

- (ii) to surrender his passport and any other valid travel documents to the Ministry of Justice;
- (iii) to provide the addresses at which he will be staying in Belgrade and to which he will be traveling in [REDACTED] to the Serbian Ministry of Justice (“Ministry of Justice”) and the Registrar of the Tribunal before leaving the UNDU in The Hague;
- (iv) to report each day before 1 p.m. to the police in Belgrade or in [REDACTED] municipality at a local police station to be designated by the Ministry of Justice in accordance with operative paragraph 7(b) hereof, unless admitted to a medical institution;
- (v) to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar of the Tribunal;
- (vi) not to have any contact whatsoever or in any way interfere with any victim or potential witness or to otherwise interfere in any way with the proceedings or the administration of justice;
- (vii) not to discuss his case with anyone, including the media, other than his counsel;
- (viii) not to seek direct access to documents or archives or to destroy any evidence;
- (ix) to comply strictly with any requirements of the authorities of the Government of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
- (x) to return to the Tribunal on or before Thursday 21 October 2010;
- (xi) to comply strictly with any further Order of the Chamber varying the terms of or terminating provisional release; and
- (xii) to comply with the reporting and treatment regime set out in operative paragraphs (2)-(5) hereof;

2. **INSTRUCTS** the RMO to:

- (a) conduct a medical examination of the Accused on Wednesday 13 October 2010 with a view to his provisional release;
- (b) report to the Chamber no later than 12 p.m. on Thursday 14 October 2010 on the medical condition of the Accused, identifying in particular any symptoms which might

suggest a deterioration or potential deterioration in the Accused's condition and/or his ability to travel; and

- (c) brief in detail the reporting medical practitioner designated by the Tribunal in accordance with operative paragraph 3 hereof, on the Accused's medical condition;

3. **INSTRUCTS** a reporting medical practitioner designated by the Tribunal for this purpose to:

- (a) attend, if possible, the medical examination of the Accused on Wednesday 13 October 2010 and receive the briefing referred to respectively in operative paragraphs 2(a) and (c) hereof;
- (b) travel to Belgrade and, on Monday 18 or Tuesday 19 October 2010, conduct the weekly medical examination of the Accused; and
- (c) as soon as practicable after conducting this examination but no later than 12 p.m. on day following this examination, report to the Chamber on the medical condition of the Accused, identifying in particular any symptoms which might suggest a deterioration or potential deterioration in the Accused's condition and/or his ability to travel;

4. **INSTRUCTS** the Medical Service of the UNDU to be available, to the extent possible, for consultation regarding the treatment the Accused should receive, if contacted by an institution treating the Accused during the period of provisional release, as in operative paragraph 6(e) hereof;

5. **ORDERS** that the Accused, during the period of provisional release:

- (a) arrange with the Registry to return as soon as practicable to The Hague in case of any significant deterioration in his health, whether experienced personally or the symptoms of which are identified by the reporting medical practitioner designated by the Tribunal or other medical practitioners;
- (b) not seek treatment from or consult with any medical practitioner other than the Medical Service of the UNDU and his current treating specialists, unless in need of urgent medical attention or when acting on and in accordance with the specific advice of the Medical Service of the UNDU and/or his current treating specialists; and
- (c) if required to seek urgent medical attention, or if specifically advised by the Medical Service of the UNDU and/or his current treating specialists to seek medical attention, notify the Registrar, directly or via counsel, as soon as possible of the name and address of any medical practitioner consulted and, if applicable, of the name and address of any

institution where he has been or will be treated or to which he has been or will be admitted;

6. **REQUIRES** that the Government of Serbia ensure, to the fullest extent possible, that any institution treating the Accused or to which the Accused is admitted during the period of provisional release, including the Military Medical Hospital in Belgrade:

- (a) reports to the Registrar as soon as possible after the arrival, assessment or admission of the Accused at the institution;
- (b) reports to the Registrar as soon as possible on any treatment the Accused is to receive or has received;
- (c) notifies the Registrar of the identity of all medical practitioners involved in the treatment of the Accused at and/or by the institution;
- (d) allows the RMO, the reporting medical practitioner designated by the Tribunal under operative paragraph 3 hereof, the Medical Service of the UNDU, the Accused's current treating specialists, and any other medical experts appointed by the Chamber, to examine the Accused at any time;
- (e) to the extent possible, treats the Accused only in consultation with the Medical Service of the UNDU regarding the treatment the Accused should receive;
- (f) treats the Accused with a view to his returning as soon as practicable to The Hague, where he can receive further treatment; and
- (g) in the event that the Accused is admitted to the medical institution, allows the member of the police appointed under operative paragraph 7(c) hereof and any person(s) making an unannounced visit pursuant to operative paragraph 1(d)(v) hereof to verify at any time that the Accused is present at the institution;

7. **REQUIRES** the Government of Serbia to assume responsibility as follows:

- (a) by designating officials of the Government of Serbia into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and to his place of residence, and notifying, as soon as practicable, the Chamber and the Registrar of the names of the designated officials;
- (b) by designating local police stations in Belgrade and [REDACTED] municipality which are in contact with each other and to which the Accused is to report each day during the period of provisional release, and notifying, as soon as practicable, the Chamber and the Registrar of the names and locations of these police stations;

- (c) in the event that the Accused is admitted to a medical institution, by appointing a member of the police to verify at least daily that the Accused is present at that institution, and by notifying, as soon as practicable, the Chamber and the Registrar of the name of this member of the police;
- (d) for the personal security and safety of the Accused while on provisional release;
- (e) for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- (f) for all expenses concerning accommodation, medical treatment and security of the Accused while on provisional release;
- (g) by not issuing any new passports or other documents which would enable the Accused to travel;
- (h) by submitting a written report to the Chamber as to the compliance of the Accused with the terms of this Order;
- (i) by arresting and detaining the Accused immediately if he should breach any of the conditions of this Order; and
- (j) by reporting immediately to the Chamber any breach of the conditions set out above;

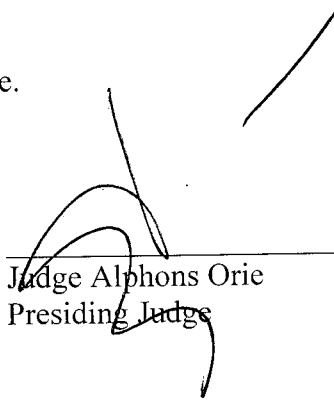
8. **INSTRUCTS** the Registrar of the Tribunal to:

- (a) consult with the Ministry of Justice of the Netherlands as to the practical arrangements for the release of the Accused;
- (b) continue to detain the Accused at the UNDU in The Hague until such time as the Chamber and the Registrar have been notified of the name of the designated officials of the Government of Serbia into whose custody the Accused is to be provisionally released;
- (c) facilitate the examination of the Accused by the RMO and the reporting medical practitioner designated by the Tribunal as outlined in operative paragraphs 2(a) and 3(b) hereof;
- (d) provide to the Accused and to the Government of Serbia the contact details necessary for the communications set out in operative paragraphs 5(c), 6(a)-(c) and 6(e) hereof; and
- (e) provide to the Chamber, without delay, the reports and notifications set out in operative paragraphs 5(c) and 6(a)-(c) hereof; and

9. **REQUESTS** the authorities of all States through which the Accused will travel to:

- (a) hold the Accused in custody for any time that he will spend in transit at the airport; and
- (b) arrest and detain the Accused pending his return to the UNDU in The Hague, should he attempt to escape.

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



Judge Alphons Orié
Presiding Judge

Dated this Twenty-third day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]