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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: 21 April 2011
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Michèle Picard
Judge Elizabeth Gwaunza
Registrar: Mr John Hocking
Decision of: 21 April 2011

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON URGENT STANIŠIĆ REQUEST FOR PROVISIONAL RELEASE

Office of the Prosecutor

Mr Dermot Groome

The Government of the Republic of Serbia

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

Government of the Kingdom of the Netherlands

Counsel for Jovica Stanišić

Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. Procedural history

1. On 13 April 2011, the Stanišić Defence filed an urgent motion seeking provisional release of Jovica Stanišić (“Accused”) during the period between the end of the Rule 98 *bis* oral hearings and the beginning of the Defence case, or for a shorter period as designated by the Chamber.¹ On the same day, the Chamber decided that the deadline for responses would be shortened to 18 April 2011 and informed the parties accordingly through an informal communication. On 18 April 2011, the Prosecution filed its response, opposing the Motion.² Also on 18 April 2011, 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.³ On 19 April 2011, the Stanišić Defence submitted guarantees of the Government of the Republic of Serbia dated 14 April 2011 (“Serbian Guarantees”).⁴ The Stanišić Defence also submitted a personal guarantee by the Accused to comply with any conditions ordered by the Chamber and a waiver of his doctor-patient privilege in relation to any treatment sought and received during the provisional release (“Accused’s Personal Guarantee and Waiver”).⁵

II. Submissions by the parties

2. The Stanišić Defence requests that the Motion be dealt with on an urgent basis and argues that good cause exists to shorten the time for filing responses.⁶

3. The Stanišić Defence submits that the requirements of Rule 65(B) of the Rules are met.⁷ It refers to the Chamber’s previous determinations that the Accused poses no danger to victims or witnesses and that there is no risk that he will abscond.⁸ The Stanišić Defence argues that there has been no material change since the time of those determinations to warrant a different conclusion.⁹ The Stanišić Defence asserts that the six-month memorial service of the Accused’s late father represents a sufficiently compelling humanitarian ground in support of granting provisional release.¹⁰ Although provisionally released at the time, the

¹ Urgent Stanišić Request for Provisional Release, 13 April 2011, paras 2, 15; Corrigendum to Urgent Stanišić Request for Provisional Release, 15 April 2011. These two filings will collectively be referred to as “Motion”.

² Prosecution Response to Urgent Stanišić Motion for Provisional Release, 18 April 2011 (“Response”), paras 1, 29.

³ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Stanišić, 15 April 2011.

⁴ Stanišić Defence Submission of Documents Related to Its 13 April 2011 Urgent Request for Provisional Release, with Confidential Annexes A and B, 19 April 2011.

⁵ *Ibid.*

⁶ Motion, para. 16

⁷ Motion, para. 6.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Motion, para. 8.

Accused was unable to attend his late father's 40-day memorial service due to circumstances beyond his control.¹¹

4. The Stanišić Defence submits that the Accused complied minutely with the health monitoring protocol imposed by the Chamber during his two previous periods of provisional release and is again willing to observe any terms and conditions the Chambers considers appropriate and necessary.¹² Medical reports subsequent to earlier periods of provisional release have shown positive effects on the Accused's mental health and corresponding attitude towards the trial proceedings.¹³ The Stanišić Defence submits that, similarly, the opportunity to interact with family members, in particular the Accused's young son, and to pay proper respect to his late father by attending the six-month memorial service could reasonably be expected to have a positive impact on the Accused's mental condition.¹⁴ The Stanišić Defence further argues that provisional release would facilitate the effective preparation of the Defence case by enabling counsel to adopt flexible working arrangements which take account of the Accused's health condition and the demands of the Defence case preparations.¹⁵

5. The Prosecution argues that the Stanišić Defence has not demonstrated good cause to hear the Motion on an urgent basis and shorten the time for responses.¹⁶

6. The Prosecution argues that the post-98 *bis* stage constitutes a material change of circumstances, from previous determinations with regard to provisional release by the Chamber.¹⁷ The Prosecution further argues that there is a substantial risk of flight at this time.¹⁸ For this reason, the Prosecution requests the Chamber to deny provisional release, or alternatively, carefully balance the reasons set forth by the Stanišić Defence in light of an increased risk of flight by the Accused.¹⁹

7. The Prosecution submits that attending the six-month memorial service of the Accused's late father does not represent a sufficiently compelling humanitarian ground in support of provisional release.²⁰ With regard to the Stanišić Defence's remaining arguments supporting provisional release – to facilitate the preparation of the Defence case and the prospective improvement of the Accused's health by provisional release, including through

¹¹ Ibid.

¹² Motion, para. 9.

¹³ Motion, para. 10.

¹⁴ Ibid.

¹⁵ Motion, para. 11.

¹⁶ Response, para. 5.

¹⁷ Response, paras 11-12.

¹⁸ Response, paras 12-13.

¹⁹ Response, para. 14.

the possibility to interact with family members – the Prosecution argues that these were considered by the Chamber in its decision of 8 March 2011.²¹ Since the Chamber in that decision did not consider that they constituted compelling humanitarian grounds justifying provisional release, they should not be given any weight by the Chamber when considering the Motion.²²

III. Applicable law

8. The Chamber recalls and refers to the applicable law governing provisional release and provisional release procedures as set out in its previous decisions, including with regard to the post-Rule 98 *bis* stage of the proceedings.²³

IV. Discussion

9. With regard to the shortening of the deadline for responses to the Motion, the Chamber considers that applying the standard time limit of fourteen days following the filing of the Motion would render moot part of the requested relief. This urgency stems from the relatively late filing of the Motion. The Chamber expects the Defence to keep in mind the fourteen-day response time set out in Rule 126 *bis* of the Rules when filing future requests for provisional release, if any.

10. The Chamber is satisfied that the Accused, if provisionally released, would appear for trial. The Chamber recalls the discussion in its previous decisions²⁴ and notes that it has not received information indicating a change of circumstances and accords due weight to the received Serbian Guarantees. The Chamber is also satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person. The Chamber recalls the analysis in its decision of 31 March 2010²⁵ and notes that there is no information before it indicating a change of circumstances.

²⁰ Response, para. 15.

²¹ Response, paras 17-18.

²² Response, para. 18.

²³ See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (“10 December 2010 Decision”), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (“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.

²⁴ Decision on Urgent Stanišić Motion for Provisional Release, 8 March 2011 (“8 March 2011 Decision”), para. 7; 10 December 2010 Decision, para. 6; Decision on Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds, 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.

²⁵ 31 March 2010 Decision, para. 26. See also 16 August 2010 Decision, para. 6 and 22 July 2010 Decision, para. 7.

11. The Chamber recognizes the significance to the Accused of attending his late father's memorial service, in particular considering that he was unable to attend the 40-day memorial service in December 2010 due to circumstances beyond his control. The Chamber gives this factor due weight in its consideration of the Motion. The Chamber further remains mindful of its obligation to avoid interruptions to the trial proceedings.²⁶ A sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the trial proceedings.²⁷ The Chamber has previously held that the existence of such a risk militates against granting provisional release.²⁸

12. The Chamber finds that the Accused's medical condition has remained comparatively stable for some time.²⁹ However, given the Accused's medical history, both recent and before, the Chamber is of the view that the risk of a sudden deterioration of his health is still not insignificant. In view of the Accused's Personal Guarantee and Waiver, the Chamber considers that it can impose conditions similar to those in previous decisions to reduce the risk of a serious disruption to the trial proceedings.

13. The Chamber has further considered that the period until the end of the Rule 98 *bis* stage in the present case is relatively short and that the Accused recently was granted provisional release. The Chamber is further mindful that previous periods of provisional release were beneficial to the Accused's mental condition, and that interactions with his son may positively affect his mental condition if provisionally released. The Chamber also recognises that provisional release would be convenient for the preparation of the Defence case but does not consider that the Accused's assistance to counsel in Belgrade, rather than in The Hague, is essential.

14. On balance, the Chamber grants provisional release for a short period of time in order for the Accused to attend the memorial service of his late father.

15. With regard to provisional release for the period following the Rule 98 *bis* stage, the Chamber considers that in its 15 February 2011 Motion, the Stanišić Defence requested provisional release for the same period. In its 8 March 2011 Decision, the Chamber denied this request, as the Stanišić Defence had not presented compelling humanitarian grounds justifying provisional release.³⁰ In the present Motion, the Stanišić Defence has put forward arguments which are repetitive of those which the Chamber previously considered. Therefore,

²⁶ See 8 March 2011 Decision, para. 9 and previous decisions of this Chamber cited therein.

²⁷ Ibid.

²⁸ Ibid.

²⁹ 8 March 2011 Decision, para. 12; 16 December 2010 Decision, paras 5-6; 10 December 2010 Decision, para. 10.

³⁰ 8 March 2011 Decision, paras 13-16.

in the absence of new arguments or a change of circumstances presented in the Motion, the Chamber denies provisional release for the period following the Rule 98 *bis* stage.

V. Disposition

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

1. **ORDERS** as follows:

- (a) that on **Wednesday 27 April 2011** (or the first practicable day thereafter), 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 the Republic of Serbia ("Serbia") to be designated prior to his release in accordance with operative paragraph (6)(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 **Tuesday 3 May 2011**, and that the Dutch authorities then transport the Accused back to the United Nations Detention Unit ("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 attend the memorial service of his father in Bačka Palanka municipality on 30 April 2011;
 - (ii) to surrender his passport and any other valid travel documents to the Serbian Ministry of Justice ("Ministry of Justice");
 - (iii) to provide the addresses at which he will be staying in Belgrade and to which he will be travelling in Bačka Palanka municipality on 30 April 2011 to the

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 at a local police station to be designated by the Ministry of Justice in accordance with operative paragraph 6(b) hereof, unless admitted to a medical institution and with the exception of 30 April 2011, when the Accused need not report to a local police station;
- (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 **Tuesday 3 May 2011**;
- (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)-(4) hereof;

2. **INSTRUCTS** the Reporting Medical Officer (“RMO”) to:

- (a) conduct a medical examination of the Accused with a view to his provisional release;
- (b) report to the Chamber no later than 12 p.m. on **Tuesday 26 April 2011** 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;

3. **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 5(e) hereof;
4. **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 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;
5. **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 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 6(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;

6. **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 a local police station in Belgrade to which the Accused is to report each day during the period of provisional release (with the exception of 30 April 2011), and notifying, as soon as practicable, the Chamber and the Registrar of the name and location of this police station;
- (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 weekly 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 should he breach any of the conditions of this Order; and

(j) by reporting immediately to the Chamber any breach of the conditions set out above;

7. **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 as outlined in operative paragraph 2(a) hereof, including by providing the UNDU and the Accused with the contact details necessary for this communication;

(d) provide to the Accused and to the Government of Serbia the contact details necessary for the communications set out in operative paragraphs 4(c), 5(a)-(c) and 5(e) hereof; and

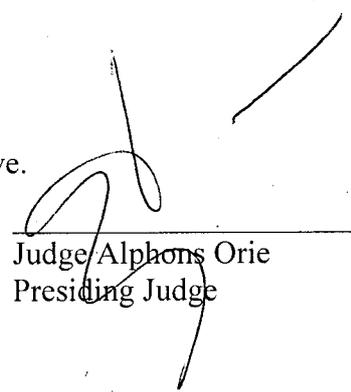
(e) provide to the Chamber, without delay, the reports and notifications set out in operative paragraphs 4(c) and 5(a)-(c) hereof; and

8. **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 Orie
Presiding Judge

Dated this twenty-first day of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]