



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

IT-03-69-T
D29516-D29506
26 May 2011

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Case No. IT-03-69-T
Date: 26 May 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 26 May 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON URGENT STANIŠIĆ MOTION FOR
PROVISIONAL RELEASE” OF 8 MARCH 2011**

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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 15 February 2011, the Stanišić Defence filed a motion seeking provisional release of Jovica Stanišić (“Accused”) following the completion of the Prosecution case and until the beginning of the Defence case (“Motion”).¹ On 17 February 2011, the Tribunal’s Host State filed a letter pursuant to Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”), stating that it did not oppose the Motion.² On 22 February 2011, the Prosecution opposed the Motion (“Response”).³ On 25 February 2011, the Stanišić Defence submitted the guarantees of the Government of the Republic of Serbia dated 17 February 2011 (“Serbian Guarantees”) and also submitted a personal guarantee and waiver of doctor-patient privilege by the Accused (“Accused’s Personal Guarantee and Waiver”).⁴ Following leave from the Chamber,⁵ the Stanišić Defence replied on 1 March 2011 (“Reply”).⁶

II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.⁷ The Stanišić Defence further submits that the Accused complied with the conditions during his two previous periods of provisional release and that a medical monitoring protocol would safeguard against the unlikely occurrence of a sudden, serious decline in the Accused’s health.⁸ The Stanišić Defence argues that if the Accused is provisionally released he can be in Belgrade to provide his counsel with essential input and instructions to the preparation of his case.⁹ It submits that during the first year of trial and until the past few months, the Accused was unmotivated and unable to focus on the case or provide meaningful instruction.¹⁰ Although the Accused’s motivation and ability to participate have since increased significantly, his

¹ Urgent Stanišić Motion for Provisional Release, 15 February 2011 (Confidential), paras 1, 22.

² Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 17 February 2011 (Confidential).

³ Prosecution Response to Urgent Stanišić Motion for Provisional Release, 22 February 2011 (Confidential), para. 1. On 15 February 2011, by means of an informal communication, the Chamber set the deadline for responses to the Motion at 22 February 2011 pursuant to Rule 126 *bis* of the Rules.

⁴ Stanišić Defence Submission of Additional Documents related to its 14 February 2011 Urgent Request for Provisional Release, 25 February 2011 (Confidential), Confidential Annexes A and B.

⁵ On 24 February 2011, the Stanišić Defence requested leave to reply to the Prosecution’s Response, Stanišić Application for Leave to Reply to Prosecution Response to Urgent Stanišić Motion for Provisional Release, 24 February 2011 (Confidential), paras 2, 13. On the same day, by means of an informal communication, the Chamber granted the Stanišić Defence request for leave to reply and set the deadline for filing the reply at 1 March 2011.

⁶ Stanišić Reply to Prosecution Response to Urgent Stanišić Motion for Provisional Release, 1 March 2011 (Confidential).

⁷ Motion, para. 6.

⁸ Motion, paras 16, 19-20.

⁹ Motion, paras 2, 8-13.

¹⁰ Motion, paras 2, 9.

capacity to work remains limited to approximately five hours per day, three days per week.¹¹ The Stanišić Defence submits that since June 2009, the Prosecution has disclosed a huge quantity of material that urgently requires the Accused's input.¹² It further points to the demonstrable benefits to the Accused's mental condition following his previous periods of provisional release, also in light of his relationship with his son.¹³

3. The Prosecution submits that the Motion does not specify whether it applies to the pre- or post-Rule 98 *bis* period and that if the Stanišić Defence has decided not to present Rule 98 *bis* submissions, then it has accepted that there is a case to answer and the higher standard for provisional release post-Rule 98 *bis* would apply immediately.¹⁴ The Prosecution argues that neither the convenience of having the Accused in Belgrade nor the Accused's desire to spend time with his son constitute compelling humanitarian grounds.¹⁵ The Prosecution submits based on recent medical reports, that the Accused needs hands-on medical care and monitoring.¹⁶ During the previous period of provisional release, the Accused faced health challenges [REDACTED].¹⁷ The Prosecution submits that the Accused's relatively stable state is the result of the United Nations Detention Unit ("UNDU") medical regime, and that leaving it would create a risk of serious decline in the Accused's health, which would disrupt the Defence's preparation work.¹⁸ The Prosecution argues that Accused's presence in Belgrade is not necessary to assist his defence since the Defence can use a video-conference link.¹⁹

4. The Stanišić Defence replies that the pre-Rule 98 *bis* standard should apply since it has not decided yet whether to make such submissions.²⁰ The Accused's present treatment at the UNDU is limited to the self-administering of medicine and is therefore transferable to Belgrade.²¹ The Stanišić Defence further submits that the Accused tires within one hour and 15 minutes when giving instructions, which limits instruction and case discussion to two hours per day at the UNDU, as counsel is prevented by other trial-related work from waiting in the vicinity of the UNDU until the Accused has recovered.²² The use of a video-conference link would be subject to the same

¹¹ Motion, paras 2, 13.

¹² Motion, paras 10-13.

¹³ Motion, paras 17-18.

¹⁴ Response, paras 5, 7.

¹⁵ Response, paras 9-10.

¹⁶ Response, paras 19-20.

¹⁷ Response, para. 19.

¹⁸ Response, paras 17-19, 21.

¹⁹ Response, paras 11-13.

²⁰ Reply, para. 5.

²¹ Reply, para. 7.

²² Reply, para. 9.

limitation, whereas if the Accused is in Belgrade he could provide instruction for up to six hours a day, while counsel can complete other work.²³

III. APPLICABLE LAW

5. 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.²⁴

IV. DISCUSSION

6. The law provides for one standard to be applied before the Rule 98 *bis* stage of the proceedings and a different standard post Rule 98 *bis*. The Chamber has ordered that the oral submissions pursuant to Rule 98 *bis*, if any, be heard on 7, 8, 11 and 12 April 2011.²⁵ At the present stage, the Chamber is of the view that the Accused should be present during the Rule 98*bis* hearings and that it currently estimates the time between the hearing and the Chamber's decision to be short. Therefore the Chamber will assess the request for provisional release in two stages, first until the hearing on Rule 98*bis* ("First Period") and then for the period from the scheduled hearing until the start of the Defence case ("Second Period"). If no Rule 98*bis* submissions are made the Chamber will apply the post-Rule 98*bis* standard for the Second Period.

7. In relation to the First Period, the Chamber is satisfied that the Accused, if provisionally released, would appear for trial. The Chamber recalls the discussion in its previous decisions²⁶ and notes that it has not received information indicating a change of circumstances and that Serbia has again provided 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 2010²⁷ and notes that there is no information before it indicating a change of circumstances.

²³ Reply, paras 10-12.

²⁴ See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential) ("Decision of 10 December 2010"), para. 5; 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.

²⁵ Scheduling Order, 2 March 2011.

²⁶ Decision of 10 December 2010, para. 6; 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.

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

8. The Accused's presence in Belgrade would be convenient for the Defence preparations. At the same time, the Chamber is not convinced that the Accused's presence in Belgrade is essential to receiving input or instructions. The Chamber agrees that provisional release and his interactions with his son could have a positive impact on the Accused's mental condition.

9. The Chamber remains mindful of its obligation to avoid interruptions to the trial proceedings.²⁸ A sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the trial proceedings.²⁹ The Chamber has previously held that the existence of such a risk militates against granting provisional release.³⁰

10. In its Decisions of 10 and 16 December 2010, the Chamber found that the Accused's medical condition appeared comparatively stable, although the risk of a sudden deterioration in his health remained.³¹ To address this, the Chamber established a strict set of conditions for monitoring, treating, and reporting on the Accused's medical condition outside of the UNDU.³²

11. During his subsequent provisional release, the Accused travelled to Belgrade and returned in January 2011. As reported by Reporting Medical Officer ("RMO"), during his provisional release the Accused [REDACTED].³³ Since his return to the UNDU in January 2011, the Accused has continued to [REDACTED].³⁴

12. The Chamber finds that the Accused's medical condition has remained comparatively stable since 16 December 2010. However, given the Accused's medical history, both recent and before, and the Chamber is of the view that the risk of a sudden deterioration in his health is still not insignificant. In view of the Accused's Personal Guarantee and Waiver, the Chamber considers that it can impose similar conditions to reduce the risk of a serious disruption to the trial proceedings. On balance, the Chamber grants provisional release for the First Period, i.e. until the start of Rule 98 *bis* submissions.

²⁸ See 10 December 2010 Decision, para. 9 and previous decisions of this Chamber cited therein.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Decision on Stanišić Renewed Request for Provisional Release, 16 December 2010 (Confidential) ("Decision of 16 December 2011"), paras 5-6; Decision of 10 December 2010, para. 10.

³² Decision of 16 December 2011, paras 6-7; Decision of 10 December 2010, paras 11-12, 14.

³³ Registry Submission of Medical Report, 22 December 2010; Registry Submission of Medical Report, 29 December 2010; RMO weekly report of 5 January 2011. See also RMO weekly report of 11 January 2011; Registry Submission of Medical Report, 19 January 2011.

³⁴ RMO weekly reports of 5 January 2011, 11 January 2011, 18 January 2011, 25 January 2011, 1 February 2011, 10 February 2011, 15 February 2011, 23 February 2011, 1 March 2011; Registry Submission of Medical Report, 1 February 2011. See also Registry Submission of Medical Report, 19 January 2011.

13. In relation to the Second Period, the Chamber even when satisfied that the conditions of Rule 65 (B) are met, should exercise its discretion in favour of a grant of provisional release only if compelling humanitarian grounds tip the balance in favour of allowing provisional release.³⁵

14. The Chamber is 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 to be essential.

15. The Chamber remains concerned about the medical condition of the Accused. Further, it considers that monitoring during provisional release is a substitute and does not match the level of monitoring in the UNDU. Repeated and prolonged absences from The Hague by the Accused therefore give rise to an additional risk of disruptions to the trial proceedings.

16. The Chamber finds that these circumstances do not constitute compelling humanitarian grounds justifying provisional release. The Chamber therefore denies provisional release for the Second Period.

V. DISPOSITION

17. 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 **Friday, 11 March 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

³⁵ *Prosecutor v. Popović et al.*, Case nos IT-05-88-AR65.4, IT-05-88-AR65.5, IT-05-88-AR65.6, 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, paras 23-24; *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 13-15; *Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR65.8, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Prlić dated 7 April 2008", 25 April 2008, para. 14; *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 Petković dated 31 March 2008", 21 April 2008, paras 15, 17; *Prosecutor v.*

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 **Monday 4 April 2011**, 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;
 - (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 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 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;
 - (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 **Monday 4 April 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 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 10 March 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;
- (c) put questions to the Accused by telephone once a week on Wednesday during the Accused's provisional release, with a view to 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
- (d) report to the Chamber once a week no later than 12 p.m. on Thursday during the Accused's provisional release on the medical condition of the Accused;

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

Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić, 11 March 2008, para. 21.

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, 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 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;


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) and (c) 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 in French, the English version being authoritative.



Judge Alphonse Oriol
Presiding Judge

Dated this Twenty-sixth day of May 2011
At The Hague
The Netherlands

[Seal of the Tribunal]