



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 February 2011  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Order of:** 21 February 2011

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

**PUBLIC**

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**ORDER ISSUING PUBLIC REDACTED VERSIONS OF TWO  
CONFIDENTIAL DECISIONS OF 10 AND 16 DECEMBER 2010  
ON STANIŠIĆ MOTIONS FOR PROVISIONAL RELEASE**

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Mr Dermot Groome

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Mr Wayne Jordash  
Mr Geert-Jan Alexander Knoops

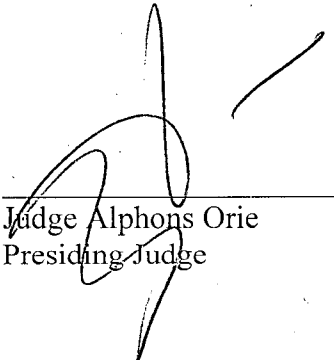
**The Government of the Republic of Serbia**  
*Per:* The Embassy of the Republic of Serbia  
to the Kingdom of the Netherlands

**Counsel for Franko Simatović**  
Mr Mihajlo Bakrač  
Mr Vladimir Petrović

**Government of the Kingdom of the Netherlands**

1. On 10 December 2010, the Chamber issued its confidential “Decision on Urgent Stanišić Motion for Provisional Release”, in which it granted provisional release from 17 to 23 December 2010 (“Decision of 10 December 2010”). On 16 December 2010, the Chamber issued its confidential “Decision on Stanišić Renewed Request for Provisional Release”, in which it granted an extended period of provisional release, from 17 to 28 December 2010 (“Decision of 16 December 2010”).
2. On 23 December 2010, Judge Prandler, sitting as Duty Judge, issued the confidential “Decision on Stanišić’s Urgent Request for Variation of Decision on Provisional Release”, in which the Accused was ordered, in light of a delay in his departure, to return to the Tribunal on or before 3 January 2011. On 31 December 2010, Judge Harhoff, sitting as Duty Judge, issued the confidential “Decision on Second Urgent Stanišić Request for Variation of Decision on Provisional Release”, in which the Accused’s request for an extension of provisional release was denied.
3. Under the current modalities of trial, the regular reports by the United Nations Detention Unit Reporting Medical Officer on the medical condition of the Accused should be filed confidentially, unless the Chamber indicates otherwise.<sup>1</sup> In accordance with these modalities, the Trial Chamber considers that parts of the Decision of 10 December 2010 and the Decision of 16 December 2010 should remain confidential and hereby issues public redacted versions of these decisions.

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



Judge Alphons Orié  
Presiding Judge

Dated this Twenty-first day of February 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>1</sup> Third Decision Amending Modalities of Trial, 17 September 2010, Annex B, para. 3.

**UNITED  
NATIONS**



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**IN TRIAL CHAMBER I**

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Judge Elizabeth Gwaunza

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**Decision of:** 10 December 2010

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

**PUBLIC REDACTED VERSION**

**DECISION ON URGENT STANIŠIĆ MOTION FOR  
PROVISIONAL RELEASE**

**Office of the Prosecutor**

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## I. PROCEDURAL HISTORY

1. On 24 November 2010, the Stanišić Defence filed a motion seeking provisional release of Jovica Stanišić (“Accused”) from 17 December 2010 to 8 January 2011, with authorization to attend his father’s memorial service [REDACTED] and to otherwise stay at his home in Belgrade (“Motion”).<sup>1</sup> Attached to the Motion, the Stanišić Defence submitted guarantees of the Government of the Republic of Serbia dated 18 November 2010 (“Serbian Guarantees”).<sup>2</sup> The Stanišić Defence also submitted a personal guarantee by the Accused to comply with any conditions ordered by the Chamber (“Accused’s Personal Guarantee”).<sup>3</sup> On 25 November 2010, the Chamber set the deadline for responses to the Motion at 1 December 2010.<sup>4</sup> On 1 December 2010, the Prosecution responded, taking no position as to whether the Motion should be granted (“Response”).<sup>5</sup> The Prosecution requested that any provisional release be of a limited duration and that the same conditions be put in place as during the Accused’s previous provisional release.<sup>6</sup> On 3 December 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.<sup>7</sup> On 6 December 2010, the Stanišić Defence requested that the Accused be authorized to visit his father’s grave and requested leave to reply to the Response.<sup>8</sup> On 7 December 2010, the Prosecution responded that it did not object to the Accused’s visit to his father’s grave if he were to be provisionally released, or to the request for leave to reply.<sup>9</sup> On the same day, the Chamber granted the Stanišić Defence request for leave to reply.<sup>10</sup> On 7 December 2010, the Stanišić Defence replied to the Response (“Reply”).<sup>11</sup>

2. The Chamber has informally consulted with the Registry with a view to identifying a doctor who has served as a reporting medical practitioner before this Chamber, who is familiar with recent developments in the Accused’s condition, and who would be available to conduct a medical examination of the Accused in Belgrade during the requested period of provisional release. On 10

<sup>1</sup> Urgent Stanišić Motion for Provisional Release, 24 November 2010. By means of informal communications, on 2 December 2010, the Chamber requested the Stanišić Defence for information regarding the location of the memorial service and on 3 December 2010, the Stanišić Defence informed the Chamber that the memorial service would be held in [REDACTED].

<sup>2</sup> Motion, Confidential Annex II.

<sup>3</sup> Motion, Confidential Annex III.

<sup>4</sup> T. 9542.

<sup>5</sup> Prosecution Response to Urgent Stanišić Motion for Provisional Release, 1 December 2010.

<sup>6</sup> Response, para. 20.

<sup>7</sup> Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 3 December 2010.

<sup>8</sup> Request for Leave to Reply to Prosecution Response to Stanišić Motion for Provisional Release, 6 December 2010 (“Request for Leave to Reply”).

<sup>9</sup> T. 9885.

<sup>10</sup> T. 9885.

<sup>11</sup> Reply to Prosecution Response to Stanišić Motion for Provisional Release, 7 December 2010.

December 2010, the Registry filed a submission, informing the Chamber that the reporting medical practitioners they consulted for this purpose were unavailable (“Registry Submission”).<sup>12</sup>

## II. SUBMISSIONS OF THE PARTIES

3. The Stanišić Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.<sup>13</sup> The Stanišić Defence argues that the elevated standard of compelling humanitarian grounds is not appropriate at the present stage of the proceedings.<sup>14</sup> The Stanišić Defence requests that the Accused be provisionally released from 17 December 2010 to 8 January 2011, in order to attend the forty-day memorial service of his father on 18 December 2010, to visit his father’s grave on 19 December 2010, to visit and mourn with his family, and to observe Orthodox Christmas in Belgrade on 7 January 2011.<sup>15</sup> The Stanišić Defence submits that the Accused’s presence during this period will be of substantial comfort to his family members, particularly his young son, and will have a positive impact on the Accused’s mental state.<sup>16</sup> The Stanišić Defence further submits that the continued general stability of the Accused’s health indicates that a sudden and serious decline in his health is unlikely.<sup>17</sup> The Stanišić Defence argues that any risk of a severe and serious decline in the Accused’s health can be effectively addressed by imposing similar conditions to those the Chamber imposed in its Decision on Urgent Stanišić Motion for Provisional Release of 11 October 2010 (“11 October 2010 Decision”), with which the Accused complied when he was last provisionally released.<sup>18</sup>

4. The Prosecution submits that it is nearing the end of its case and argues that the Chamber should take into account this advanced stage of the proceedings as well as the nature, quantity, and strength of the incriminating evidence presented against the Accused as factors weighing against the Motion, to the extent it does not present sufficiently compelling humanitarian grounds.<sup>19</sup> The Prosecution further submits that the Accused’s [REDACTED] symptoms worsened in October and November 2010, that he recently experienced [REDACTED].<sup>20</sup> The Prosecution argues that the grounds presented in the Motion must be carefully balanced against the ongoing risk of

<sup>12</sup> Registry Submission regarding Medical Experts, 10 December 2010.

<sup>13</sup> Motion, para. 6.

<sup>14</sup> Reply, paras 2-6.

<sup>15</sup> Motion, paras 1, 3-5, 12-13, 16; Reply, paras 15-16. The Trial Chamber notes that in the Request for Leave to Reply, the Stanišić Defence requested that the Accused be authorized to visit his father’s grave on 21 December 2010, but that this request was amended to 19 December 2010 in the Reply.

<sup>16</sup> Motion, paras 5, 11-12; Reply, paras 9-10, 14.

<sup>17</sup> Motion, para. 15; Reply, para. 11.

<sup>18</sup> Motion, paras 9-10, 14; Reply, para. 12.

<sup>19</sup> Response, paras 3-5.

<sup>20</sup> Response, paras 11-15.

deterioration to the Accused's health.<sup>21</sup> If the humanitarian grounds presented in the Motion are considered sufficiently compelling, any provisional release should last only a matter of days, being long enough to travel to the Republic of Serbia ("Serbia"), meet with his family, attend the ceremony, and travel back to the United Nations Detention Unit ("UNDU").<sup>22</sup>

### III. APPLICABLE LAW

5. The Chamber recalls the applicable law governing provisional release and provisional release procedures as set out in its previous decisions.<sup>23</sup> Further, according to the Appeals Chamber, when considering a provisional release motion at the post-Rule 98 *bis* stage of the proceedings, even when satisfied that sufficient guarantees exist to offset the risk of flight, a Chamber should not exercise its discretion in favour of a grant of provisional release unless compelling humanitarian grounds are present which tip the balance in favour of allowing provisional release.<sup>24</sup>

### IV. DISCUSSION

6. As to whether the Accused, if released, will return for trial, the Chamber recalls the discussion in its previous decisions.<sup>25</sup> The Chamber has not received information indicating a change of circumstances in this regard. Specifically, the Chamber has considered that the presentation of evidence has continued and that the Prosecution is nearing the end of its case. The Chamber finds that this change does not give rise to a reasonable fear that the Accused will attempt to abscond. Further, the Chamber considers and gives appropriate weight to the Serbian Guarantees. Consequently, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

<sup>21</sup> Response, paras 17-18.

<sup>22</sup> Response, paras 18-20.

<sup>23</sup> 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.

<sup>24</sup> *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 Petkovic dated 31 March 2008", 21 April 2008, paras 15, 17; *Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 21.

<sup>25</sup> 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

7. 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.<sup>26</sup> 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.

8. The Chamber notes that the requirement that the Defence demonstrate the existence of compelling humanitarian grounds which tip the balance in favour of provisional release applies in the post-Rule 98 *bis* stage of the proceedings. Therefore, at present, the Chamber must assess only whether provisional release is appropriate in the specific circumstances of the present case. In this context, the Chamber recognizes the significance to the Accused of attending his father's memorial service. The Accused further wishes to visit his father's grave on 19 December 2010 in furtherance of a religious tradition marking the day of the family's patron saint. The Chamber gives these factors due weight in its consideration of the Motion. The Accused has also expressed a wish to observe Orthodox Christmas in Belgrade on 7 January 2011. However, the Chamber notes that court proceedings are scheduled to resume on 10 January 2011. As a result, the Accused will have to return to the UNDU prior to 7 January 2010 to allow for sufficient time between his return to the UNDU and the resumption of court proceedings following the recess. The Chamber considers this with regard to the appropriate duration of the requested provisional release.

9. The Chamber remains mindful of its obligation to avoid unnecessary interruptions to the trial proceedings.<sup>27</sup> The Chamber recalls that the occurrence of a sudden deterioration of the Accused's health may affect his ability to return to The Hague.<sup>28</sup> Consequently, any such deterioration during a period of provisional release could result in serious disruption to the trial proceedings.<sup>29</sup> The Chamber has previously held that the existence of such a risk strongly militates against granting provisional release.<sup>30</sup>

10. The Chamber recalls that in its 11 October 2010 Decision, it found that the Accused's medical condition appeared comparatively stable, although the risk of a sudden deterioration in his health remained.<sup>31</sup> On 14 October 2010, the Reporting Medical Officer ("RMO") opined that

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Defence Motion for Provisional Release, 22 July 2010 ("22 July 2010 Decision"), para. 6; 31 March 2010 Decision, paras 23-24.

<sup>26</sup> 31 March 2010 Decision, para. 26; see also 16 August 2010 Decision, para. 6 and 22 July 2010 Decision, para. 7.

<sup>27</sup> See 11 October 2010 Decision, para. 10 and previous decisions of this Chamber cited therein.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> 11 October 2010 Decision, para. 12.

[REDACTED].<sup>32</sup> During his subsequent provisional release from 15 to 21 October 2010, the Accused was able to travel to Belgrade and return to the UNDU without any reported serious decline in his health.<sup>33</sup> Since 11 October 2010, the RMO has further reported that the Accused's general state is stable: [REDACTED].<sup>34</sup> [REDACTED].<sup>35</sup> [REDACTED].<sup>36</sup> [REDACTED].<sup>37</sup> Based on the foregoing, the Chamber finds that the Accused's medical condition has remained comparatively stable since 11 October 2010. However, given his recent medical history, [REDACTED], the risk of a sudden deterioration in his health cannot be ruled out.

11. In its 11 October 2010 Decision, the Chamber developed a strict set of conditions for monitoring, treating, and reporting on the Accused's medical condition outside of the UNDU.<sup>38</sup> Through these conditions the Chamber aimed to ensure, to the greatest extent possible, the continuity of the Accused's existing system of medical reporting and treatment, which is of the essence in ensuring the fair and expeditious conduct of the proceedings.<sup>39</sup> The Chamber previously held that these conditions, in the context of the comparatively stable state of the Accused's health, significantly reduced the risk of a serious disruption to the trial proceedings resulting from any deterioration in the Accused's medical condition outside of the UNDU.<sup>40</sup> The conditions specified the circumstances under which the Accused may seek medical treatment in Belgrade and the manner in which he is to be treated.<sup>41</sup> Further, as part of these conditions, the Chamber instructed a reporting medical practitioner to perform the weekly medical examination of the Accused in Belgrade during the period of provisional release.<sup>42</sup> The Chamber considers that such an examination will only be meaningful where the reporting medical practitioner is familiar with the recent developments in the condition of the Accused. Based on the Registry Submission, the Chamber notes that no such reporting medical practitioner is available to examine the Accused during the period of provisional release requested in the Motion.

<sup>32</sup> Registry Submission of Medical Report, 14 October 2010.

<sup>33</sup> See Registry Submission of Medical Report, 20 October 2010; RMO Report of 26 October 2010.

<sup>34</sup> Registry Submission of Medical Report, 14 October 2010; RMO Report of 26 October 2010; RMO Report of 4 November 2010; RMO Report of 1 December 2010. See also Registry Submission of Expert Reports, 10 November 2010 (Dr Oldenburg Report).

<sup>35</sup> Registry Submission of Medical Report, 14 October 2010; RMO Report of 26 October 2010; RMO Report of 4 November 2010; RMO Report of 9 November 2010; RMO Report of 17 November 2010; RMO Report of 23 November 2010; RMO Report of 8 December 2010.

<sup>36</sup> Registry Submission of Expert Reports, 10 November 2010 (Dr Oldenburg Report).

<sup>37</sup> RMO Report of 4 November 2010; Registry Submission of Expert Reports, 10 November 2010 (Dr Oldenburg Report); RMO Report of 17 November 2010; RMO Report of 23 November 2010; RMO Report of 1 December 2010; RMO Report of 8 December 2010.

<sup>38</sup> 11 October 2010 Decision, paras 13, 15.

<sup>39</sup> 11 October 2010 Decision, para. 13. See also 16 August 2010 Decision, para. 8 and decisions of this Chamber cited therein.

<sup>40</sup> 11 October 2010 Decision, para. 14.

<sup>41</sup> 11 October 2010 Decision, paras 13, 15 (5)-(6).

<sup>42</sup> 11 October 2010 Decision, paras 13, 15 (3).



12. The Accused's Personal Guarantees indicate that he is willing to comply with any conditions ordered by the Chamber. However, unlike the Accused's waiver of 30 September 2010, the Accused's Personal Guarantees do not expressly provide an unequivocal waiver of doctor-patient privilege.<sup>43</sup> The Chamber finds that an unequivocal waiver may be necessary for the proper functioning of the developed conditions for monitoring, treating, and reporting on the Accused's medical condition outside of the UNDU. However, the title of the Annex to the Motion suggests that such a waiver may have been intended.<sup>44</sup> The Chamber therefore finds it appropriate to give the Stanišić Defence an opportunity to clarify the waiver. The Chamber finds that, provided the waiver is clarified, the Chamber is able to impose conditions which, in spite of the unavailability of a reporting medical practitioner, and in light of the comparatively stable state of the Accused's health, will reduce, to a certain extent, the risk of a serious disruption to the trial proceedings resulting from any deterioration in the Accused's medical condition outside of the UNDU.

13. In balancing the humanitarian grounds advanced by the Stanišić Defence against the reduced risk of a serious disruption to the trial proceedings, the Chamber finds that provisional release should be granted. With regard to the duration of the provisional release, the Chamber considers that the memorial service is scheduled to be held on 18 December 2010 and that the Accused wishes to visit his father's grave on 19 December 2010. Further, no reporting medical practitioner is available to examine the Accused in Belgrade. Under these circumstances, the Chamber finds it appropriate that provisional release be granted for a period of 7 days, from 17 to 23 December 2010.<sup>45</sup>

## V. DISPOSITION

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

**INVITES** the Stanišić Defence to contact the Accused with a view to filing by Monday 13 December 2010 an unequivocal waiver of doctor-patient privilege with regard to any treatment received during the Accused's provisional release;

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<sup>43</sup> See Stanišić Medical Submissions Relating to 20th September 2010 Urgent Provisional Release Application (Confidential), 1 October 2010, Confidential Annex A.

<sup>44</sup> See Motion, Confidential Annex III, Personal Guarantee and Waiver of Confidentiality, dated 17 November 2010.

<sup>45</sup> The Chamber notes that as the Accused returns on 23 December 2010, this may practically affect the RMO's ability to submit a written report to the Chamber on the medical condition of the Accused for the week of 20-24 December 2010. The Chamber expects the RMO to either, where possible, examine and report on the Accused's medical condition upon his return on 23 December 2010, or to dispense with a report for the week of 20-24 December 2010 and examine and report on the Accused's medical condition in the week of 27-31 December 2010, as per the Third Decision Amending Modalities for Trial, 17 September 2010, Annex A (3).

**GRANTS** the Motion, and:

1. **ORDERS** as follows:

- (a) that on Friday, 17 December 2010 (or in case of unforeseen events, 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 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 Thursday 23 December 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 attend the memorial service of his father in [REDACTED] on 18 December 2010 and to visit his father's grave in [REDACTED] on 19 December 2010;
  - (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 travelling in [REDACTED] on 18 and 19 December 2010 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 and with the exception of 18 and 19 December 2010, on which days 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 Thursday 23 December 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)-(4) hereof;

2. **INSTRUCTS** the RMO to:

- (a) conduct a medical examination of the Accused on 14 December 2010 with a view to his provisional release; and
- (b) report to the Chamber no later than 12 p.m. on 15 December 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;

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 18 and 19 December 2010), 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 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) hereof;
- (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 being authoritative.

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Judge Alphons Orie  
Presiding Judge

Dated this Tenth day of December 2010  
At The Hague  
The Netherlands

**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: 16 December 2010  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 16 December 2010

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

**PUBLIC REDACTED VERSION**

**DECISION ON STANIŠIĆ RENEWED REQUEST FOR  
PROVISIONAL RELEASE**

**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

**Counsel for Franko Simatović**

Mr Mihajlo Bakrač  
Mr Vladimir Petrović

**Government of the Kingdom of the Netherlands**

## I. PROCEDURAL HISTORY

1. On 10 December 2010, the Chamber issued the Decision on Urgent Stanišić Motion for Provisional Release (“Decision of 10 December 2010”), granting provisional release from 17 to 23 December 2010.<sup>1</sup> On 13 December 2010, in Court, the Stanišić Defence requested that the Accused be granted a number of additional days of provisional release (“Renewed Request”).<sup>2</sup> The Stanišić Defence submitted, *inter alia*, that the Reporting Medical Officer, Dr Eekhof (“RMO”), was willing to travel to Belgrade during the period of provisional release.<sup>3</sup> On the same day, in informal communications, the Registry informed the Chamber that the RMO was not available, and the Chamber informed the parties accordingly in Court.<sup>4</sup> The Stanišić Defence then clarified that it had received the information from a nurse of the United Nations Detention Unit (“UNDU”).<sup>5</sup> On the same day, the Prosecution responded to the Renewed Request.<sup>6</sup> On 14 December 2010, the Stanišić Defence submitted that the RMO was willing to travel to Belgrade, but that the medical or administrative authority under which he was working would not permit him to do so.<sup>7</sup> On 15 December 2010, in informal communications, the Registry informed the Chamber that the RMO was not available to travel to Belgrade during the period of provisional release, but that he would be available to put questions to the Accused by telephone during that period.

## II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submitted that a number of additional days of provisional release would allow the Accused to spend more time with his family, and particularly with his son, who attends school on weekdays.<sup>8</sup> The Stanišić Defence further submitted that the RMO could put questions to the Accused by telephone and report to the Chamber on this basis.<sup>9</sup> The Stanišić Defence argued that, alternatively, instead of a reporting doctor, exceptionally, a treating doctor could perform a medical examination of the Accused in Belgrade and report any deterioration in the Accused’s condition to the Chamber.<sup>10</sup>

<sup>1</sup> Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), paras 13-14.

<sup>2</sup> T. 10238-10239, 10241.

<sup>3</sup> T. 10238.

<sup>4</sup> T. 10260.

<sup>5</sup> *Ibid.*

<sup>6</sup> T. 10239, 10241-10242.

<sup>7</sup> T. 10313-10314.

<sup>8</sup> T. 10239, 10343.

<sup>9</sup> T. 10344.

<sup>10</sup> T. 10238, 10241, 10343.



3. The Prosecution opposed any changes to the current medical reporting regime.<sup>11</sup> The Prosecution further referred to its earlier submissions.<sup>12</sup>

### III. APPLICABLE LAW

4. The Chamber recalls the applicable law governing provisional release and provisional release procedures as set out in its previous decisions.<sup>13</sup>

### IV. DISCUSSION

5. The Chamber considers that the guarantees provided by the Government of the Republic of Serbia ("Serbia") dated 18 November 2010 and the letter filed by the Tribunal's Host State on 3 December 2010 apply equally to the Renewed Request.<sup>14</sup> The Chamber recalls the discussion in the Decision of 10 December 2010 of the requirements of Rule 65 of the Tribunal's Rules of Procedure and Evidence ("Rules") and of the humanitarian grounds advanced in favour of provisional release.<sup>15</sup> The Chamber further recalls its discussion of the risk of a serious disruption of proceedings resulting from the Accused's medical condition and of the developed conditions for monitoring, treating, and reporting on the Accused's medical condition during provisional release.<sup>16</sup>

6. In the Decision of 10 December 2010, the Chamber considered with regard to the length of provisional release, *inter alia*, that no reporting medical practitioner was available to examine the Accused in Belgrade.<sup>17</sup> The Chamber has consistently drawn a distinction between the functions of treating physicians and those of Chamber-appointed reporting medical experts.<sup>18</sup> In light of this distinction, appointing a treating physician to report on the Accused's condition during provisional release would be inappropriate.<sup>19</sup> The RMO remains unavailable to travel to Belgrade. However, the RMO is available to put questions to the Accused by telephone and to report to the Chamber on the basis of the Accused's answers. The resulting report will in all likelihood be less thorough than a report based on a physical examination of the Accused. However, provided the Accused answers

<sup>11</sup> T. 10241-10242.

<sup>12</sup> T. 10239; see summary of Prosecution submissions in Decision of 10 December 2010, para. 4.

<sup>13</sup> See Decision of 10 December 2010, para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential), 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.

<sup>14</sup> See Urgent Stanišić Motion for Provisional Release, 24 November 2010, Confidential Annex II; Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 3 December 2010.

<sup>15</sup> Decision of 10 December 2010, paras 6-8.

<sup>16</sup> Decision of 10 December 2010, paras 9-13.

<sup>17</sup> Decision of 10 December 2010, para. 13.

<sup>18</sup> See T. 10240, 10343-10344.

<sup>19</sup> *Ibid.*

truthfully, the RMO will at least be able to recognize any serious deterioration in the Accused's condition. Under these circumstances and in light of the RMO's report of 15 December 2010 on the Accused's medical condition,<sup>20</sup> the Chamber finds it appropriate that the provisional release granted in its Decision of 10 December 2010 be extended to a period of 12 days, from 17 to 28 December 2010.

## V. DISPOSITION

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

**GRANTS** the Renewed Request, and:

1. **ORDERS** as follows:

- (a) that on Friday, 17 December 2010 (or in case of unforeseen events, 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 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 28 December 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:
  - (j) 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 [REDACTED] on 18 December 2010 and to visit his father's grave in [REDACTED] on 19 December 2010;
  - (ii) to surrender his passport and any other valid travel documents to the Ministry of Justice;

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<sup>20</sup> RMO Medical Report of 15 December 2010.

- (iii) (to the extent he has not already done so) to provide the addresses at which he will be staying in Belgrade and to which he will be travelling in [REDACTED] on 18 and 19 December 2010 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 and with the exception of 18 and 19 December 2010, on which days 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 28 December 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)-(4) hereof;

2. **INSTRUCTS** the RMO to:

- (a) put questions to the Accused by telephone on Wednesday 22 December 2010 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
- (b) report to the Chamber no later than 12 p.m. on Thursday 24 December 2010 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 pursuant to 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 the RMO 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;
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) (to the extent it has not already done so) 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) (to the extent it has not already done so) 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 18 and 19 December 2010), 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 written report to the Chamber every week 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) (to the extent it has not already done so) 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 interview with the Accused to be conducted by the RMO by telephone 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) (to the extent it has not already done so) 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;
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; and

**CLARIFIES** that the above orders and instructions replace those of the Decision of 10 December 2010.

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

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Judge Alphons Orie  
Presiding Judge

Dated this sixteenth day of December 2010  
At The Hague  
The Netherlands