

IT-03-69-T  
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07 November 2012

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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: 7 November 2012  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 7 November 2012

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**ORDER ISSUING A PUBLIC REDACTED VERSION OF THE  
CONFIDENTIAL DECISION ON THE STANIŠIĆ DEFENCE  
REQUEST FOR PROVISIONAL RELEASE OF 16 JULY 2012**

**Office of the Prosecutor**  
Mr Dermot Groome

**Counsel for Jovica Stanišić**  
Mr Wayne Jordash  
Mr Scott Martin

**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

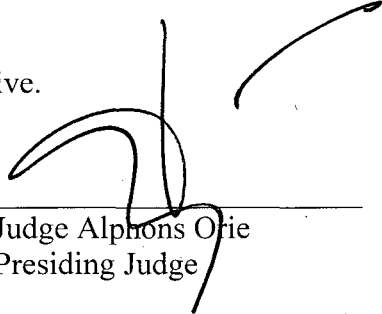
**The Government of the Kingdom of the Netherlands**

1. On 16 July 2012, the Chamber issued the confidential "Decision on the Stanišić Defence Request for Provisional Release" ("Decision"), in which it granted provisional release of the Accused Jovica Stanišić ("Accused") from 20 July to 4 October 2012.<sup>1</sup> On 24 August 2012, the Chamber amended the Decision so as to allow the Accused to travel outside of Belgrade on one day in August 2012 to visit his father's grave in Bačka Palanka in the Republic of Serbia ("Serbia") ("Decision on Conditions").<sup>2</sup> On 24 September 2012, the Chamber further amended the Decision, ordering the Accused to return on or before a date which the Chamber will set as soon as the scheduling of the closing arguments is finalized and which it will communicate to the Registry, the parties, Serbia, and the Dutch authorities ("Decision on Extension").<sup>3</sup>

2. Under the modalities of trial applicable at the time of the Decision, the United Nations Detention Unit Reporting Medical Officer was instructed to provide regular reports on the medical condition of the Accused which were to be filed confidentially, unless the Chamber indicated otherwise.<sup>4</sup> In accordance with these modalities, the Chamber finds that portions of the Decision should remain confidential and hereby issues a public redacted version. The confidentiality of the Decision on Conditions and the Decision on Extension can now be lifted.

3. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber **ISSUES** a public redacted version of the Decision and **LIFTS** the confidentiality of the Decision on Conditions and the Decision on Extension.

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



Judge Alphons Orie  
Presiding Judge

Dated this Seventh day of November 2012  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>1</sup> Decision on the Stanišić Defence Request for Provisional Release, 16 July 2012 (Confidential), para. 15.

<sup>2</sup> Decision on the Conditions of the Accused's Stanišić's Provisional Release, 24 August 2012 (Confidential).

<sup>3</sup> Decision on Stanišić Request for Extension of Provisional Release, 24 September 2012 (Confidential).

<sup>4</sup> Third Decision Amending Modalities of Trial, 17 September 2010, Annex B, para. 3. See also Order Cancelling Regular Medical Reporting, 17 August 2012.



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PROVISIONAL RELEASE**

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## I. PROCEDURAL HISTORY

4. On 11 June 2012, the Stanišić Defence (“Defence”) requested provisional release of the Accused Jovica Stanišić (“Accused”) for two periods (“Request”), first from the close of trial proceedings to the closing arguments (“First Period”) and second from the conclusion of closing arguments to the date of the judgement or for a period of three months, with the possibility of renewal or extension until the date of judgement (“Second Period”).<sup>5</sup> On 14 June 2012, 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 Request.<sup>6</sup> On 21 June 2012, the Defence filed an addendum to its Request, submitting guarantees provided by the Republic of Serbia (“Serbia”) which stated that Serbia would comply with any orders of the Chamber to ensure that the Accused would appear for trial (“Serbian Guarantees”).<sup>7</sup> On 25 June 2012, the Prosecution responded, opposing the Request (“Response”).<sup>8</sup> The Prosecution requested that the Chamber deny provisional release for the First Period and deny without prejudice as premature the request for provisional release during the Second Period.<sup>9</sup>

## II. SUBMISSIONS OF THE PARTIES

5. The Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.<sup>10</sup> The Defence submits that the Accused complied with a health monitoring protocol during previous periods of provisional release, from which he returned on schedule and without incident.<sup>11</sup> It further submits that the Accused’s health has stabilized and partially improved and that it is unlikely that travelling would negatively affect his condition.<sup>12</sup> The Defence argues that provisional release would have a positive impact on the Accused’s mental condition.<sup>13</sup> Finally, the Defence points to practice by other Chambers of the Tribunal whereby

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<sup>5</sup> Urgent Stanišić Defence Request for Provisional Release from the Close of Trial Proceedings until the Entry of Trial Judgement, 11 June 2012 (Confidential), paras 1-2, 26.

<sup>6</sup> Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Jovica Stanišić, 14 June 2012.

<sup>7</sup> Stanišić Defence Addendum to Stanišić Defence Request for Provisional Release from the Close of Trial Proceedings until the Entry of Trial Judgement, 21 June 2012 (Confidential).

<sup>8</sup> Prosecution Response to Urgent Stanišić Defence Request for Provisional Release from the Close of Trial Proceedings until the Entry of Judgement, 25 June 2012 (Confidential), paras 1-2, 5, 26.

<sup>9</sup> Response, paras 24-26.

<sup>10</sup> Request, para. 6.

<sup>11</sup> Request, para. 9.

<sup>12</sup> Request, paras 7-8, 11.

<sup>13</sup> Request, para. 10.

Accused were provisionally released for three months, with the possibility of renewal, from the conclusion of trial proceedings to the date of the judgement.<sup>14</sup>

6. The Prosecution submits that the risk of flight has increased as a result of the advanced stage of the case, the evidence against the Accused, and the proximity of the judgement, particularly in light of the seriousness of the crimes charged and the Accused's former position and ties to the Serbian authorities.<sup>15</sup> The Prosecution further submits that given the Accused's health, he should remain under the medical regime of the United Nations Detention Unit ("UNDU") [REDACTED].<sup>16</sup> The Prosecution expresses concern about the treatment the Accused received during his previous extended stay in Belgrade in 2008 and 2009.<sup>17</sup> The Prosecution submits that any beneficial effect of the Accused's release on his health is speculative and that the Accused has advanced no compelling humanitarian grounds in favour of his release.<sup>18</sup>

7. The Prosecution argues that the request for provisional release during the Second Period is premature in light of the Accused's unstable health and because the evidentiary portion of the proceedings is ongoing and Prosecution rebuttal evidence and final submissions by the parties are pending.<sup>19</sup> The Prosecution further submits that provisional release for an indefinite period pending judgement is excessive and would undermine the Tribunal's credibility and standing among victims and witnesses.<sup>20</sup> The Prosecution argues that if provisionally released, the Accused's health should be carefully monitored and any period of provisional release should be limited to a month.<sup>21</sup>

### III. APPLICABLE LAW

8. The Chamber recalls and refers to the applicable law governing the provisional release of an Accused as set out in a previous decision.<sup>22</sup>

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<sup>14</sup> Request, paras 13-18.

<sup>15</sup> Response, paras 6-11.

<sup>16</sup> Response, paras 14-15.

<sup>17</sup> Response, para. 17.

<sup>18</sup> Response, paras 20-24.

<sup>19</sup> Response, para. 25.

<sup>20</sup> Response, paras 12-13.

<sup>21</sup> Response, para. 17.

<sup>22</sup> See Decision on the Stanišić Defence Request for Provisional Release during the Winter Recess, 19 December 2011 (Confidential), paras 6-7.

#### IV. DISCUSSION

9. At the outset, the Chamber considers in relation to the Second Period that whether the criteria of Rule 65 (B) of the Rules will be fulfilled and whether provisional release will be appropriate depends on future developments, including developments in relation to the health of the Accused. Further, the potential admission of evidence in the Defence case through the pending bar table motions, or in rebuttal and rejoinder, as well as the parties' final submissions, could also affect the Chamber's assessment regarding the Rule 65 (B) criteria. Under these circumstances, the Chamber finds that the Request in relation to the Second Period is premature and should be denied without prejudice.

10. Regarding the First Period, as to whether the Accused, if released, will return for trial and whether he will pose a danger to any victim, witness, or other person, the Chamber recalls the discussions in its previous decisions.<sup>23</sup> The Chamber has not received information indicating a change of circumstances in this regard. In this respect, the Chamber has considered the advanced stage of the proceedings and accords due weight to the Serbian Guarantees. The Chamber is satisfied that the Accused, if provisionally released, will appear for trial and that he will not pose danger to any victim, witness, or other person.

11. The Chamber now turns to whether provisional release would be appropriate. The Prosecution has failed to substantiate its position that provisional release would undermine the Tribunal's credibility and standing among victims and witnesses.

12. Provisional release may be beneficial to the Accused's mental condition.<sup>24</sup> The Chamber remains mindful of its obligation to avoid interruptions to the trial.<sup>25</sup> The Accused's presence in court will be required for closing arguments and for the delivery of judgement. A sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the remainder of the trial.<sup>26</sup> The existence of such a risk militates against granting provisional release.<sup>27</sup>

13. On 10 April 2012, the Chamber granted provisional release, finding that the Accused's health was comparatively stable, although the risk of a sudden deterioration was not insignificant.<sup>28</sup>

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<sup>23</sup> Decision on the Stanišić Defence Request for Provisional Release, 10 April 2012 (Confidential) ("10 April 2012 Decision"), para. 7 and decisions cited therein.

<sup>24</sup> See 10 April 2012 Decision, para. 8 and decisions cited therein.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> 10 April 2012 Decision, paras 12-13.

According to the Reporting Medical Officer (“RMO”), during the subsequent provisional release, the Accused was unwell [REDACTED], but remained fit to travel and returned without incident.<sup>29</sup> Since May 2012, the RMO has reported that [REDACTED].<sup>30</sup> In late May and throughout June 2012, the RMO reported that [REDACTED].<sup>31</sup> On 13 July 2012, the RMO reported that [REDACTED].<sup>32</sup> According to the RMO, [REDACTED].<sup>33</sup>

14. Based on the RMO’s recent reporting, the Chamber finds that the Accused’s health is at present comparatively stable. The RMO reports do not suggest that provisional release would obstruct the Accused’s medical treatment. The Chamber will invite the RMO to consult the Accused’s treating doctors and provide further information in this respect.

15. Given the Accused’s medical history, the risk of a sudden deterioration of his health cannot be ruled out. In previous decisions, the Chamber developed a strict set of conditions for monitoring, treating, and reporting on the Accused’s health outside of the UNDU in order to address the risks posed by the Accused’s medical condition while on provisional release.<sup>34</sup> Given the Accused’s current condition and the length of the break in the proceedings, the Chamber considers that the frequency of the reporting can be reduced.

16. This set of conditions relied in part on the submission of a personal guarantee and waiver of doctor-patient privilege by the Accused (“Personal Guarantee and Waiver”).<sup>35</sup> Provided the Defence again submit a Personal Guarantee and Waiver, the Chamber finds that it would be able to impose conditions which, in light of the comparatively stable state of the Accused’s health, would reduce the risk of a serious disruption to the remainder of the trial. On balance, the Chamber finds that provisional release would be appropriate.

17. The Chamber now turns to the duration of provisional release. The Chamber considers that it has cancelled the hearing of a Chamber witness,<sup>36</sup> that there are presently no further witnesses scheduled to testify, and that on 11 July 2012, the Chamber rescheduled the parties closing

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<sup>29</sup> RMO reports of 11, 19, 25 April, 4 May 2012.

<sup>30</sup> RMO reports of 4, 11, 16, 25 May, 1, 8, 15, 20, 29 June, 4, 13 July 2012.

<sup>31</sup> Ibid.

<sup>32</sup> RMO report of 13 July 2012.

<sup>33</sup> RMO reports of 4, 11, 16, 25 May, 1, 8, 15, 20, 29 June, 4, 13 July 2012.

<sup>34</sup> See e.g. Decision on Urgent Stanišić Request for Provisional Release, 21 April 2011, para.16; Decision on Urgent Stanišić Motion for Provisional Release, 8 March 2011 (Confidential), paras 12, 17; Decision on Stanišić Renewed Request for Provisional Release, 16 December 2010 (Confidential), paras 6-7; Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), paras 11-12, 14; Decision on Urgent Stanišić Request for Provisional Release, 11 October 2010 (Confidential), paras 13-15.

<sup>35</sup> Ibid.

<sup>36</sup> On 25 June 2012, the Chamber decided to hear a Chamber witness in the week of 9 July 2012, see Scheduling Order, 25 June 2012. On 6 July 2012, the Chamber cancelled the hearing of the Chamber witness and informed the parties accordingly in an informal communication.

arguments for 9 to 11 October 2012.<sup>37</sup> As matters stand, the Accused's presence at the Tribunal is not required until the closing arguments. However, there are several pending Defence motions to tender evidence from the bar table and there is a possibility of further rebuttal and rejoinder evidence, which may include requests to call witnesses.<sup>38</sup> Should a request to call a witness in rebuttal or rejoinder be granted, the Chamber will recall the Accused from provisional release. Under these circumstances, the Chamber considers that the Accused's provisional release is appropriate until the closing arguments.

## V. DISPOSITION

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

**DENIES** the Request in respect of the Second Period without prejudice;

**GRANTS** the Request in respect of the First Period and:

1. **INVITES** the Defence to file a Personal Guarantee and Waiver prior to the Accused's provisional release;
2. **INSTRUCTS** the RMO to:
  - (a) conduct a medical examination of the Accused in the week prior to each period of provisional release;
  - (b) report to the Chamber no later than 5 p.m. on 19 July 2012 on the medical condition of the Accused, identifying in particular any symptoms which might suggest a deterioration or potential deterioration in the Accused's condition and/or his ability to travel and addressing specifically whether the provisional release of the Accused would in any way obstruct the Accused's medical treatment;
  - (c) put questions to the Accused by telephone once every three weeks 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 on the medical condition of the Accused within two days of the aforementioned telephone interviews;

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<sup>37</sup> Scheduling Order, 11 July 2012.

<sup>38</sup> See T. 19887- 19890.



3. **ORDERS:**

- (a) that, provided the Defence has filed a Personal Guarantee and Waiver by the Accused, the Accused be transported to Schiphol airport in the Netherlands by the Dutch authorities on, or on the first practicable day after, **20 July 2012**;
- (b) that, at Schiphol airport, the Accused be provisionally released into the custody of officials of the Government of Serbia to be designated prior to his release in accordance with operative paragraph 7(a) hereof (“Designated Officials”), 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 Designated Officials, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport on or before **4 October 2012** and that the Dutch authorities then transport the Accused back to the UNDU; and
- (d) that the Accused provide the addresses at which he will be staying in Belgrade to the Ministry of Justice of Serbia (“Ministry of Justice”) and the Registrar of the Tribunal (“Registrar”) before leaving the UNDU; 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 city of Belgrade;
  - (ii) to surrender his passport and any other valid travel documents to the Ministry of Justice;
  - (iii) 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 7(b) hereof, unless admitted to a medical institution;
  - (iv) 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;
  - (v) 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;
  - (vi) not to discuss his case with anyone, including the media, other than his counsel;
  - (vii) not to seek direct access to documents or archives or to destroy any evidence;

- (viii) 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:
- (ix) to return to the Tribunal on or before the date specified above in operative paragraph 3(c) hereof;
- (x) to comply strictly with any further order of the Chamber varying the terms of or terminating provisional release; and
- (xi) to comply with the reporting and treatment regime set out in operative paragraphs 2 and 4-6 hereof;
4. **INSTRUCTS** the Medical Service of the UNDU to be available, to the extent possible, for consultation regarding the treatment the Accused should receive, if contacted by an institution treating the Accused during the period of provisional release, as in operative paragraph 6(e) hereof;
5. **ORDERS** that the Accused, during the period of provisional release:
- (a) arrange with the Registrar 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;
6. **REQUIRES** that the Government of Serbia ensure, to the fullest extent possible, that any institution treating the Accused or to which the Accused is admitted during the period of provisional release, including the Military Medical Hospital in Belgrade:
- (a) reports to the Registrar as soon as possible regarding 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 a medical institution, allows the member of the police appointed under operative paragraph 7(c) hereof and any person(s) making an unannounced visit pursuant to operative paragraph 3(d)(iv) hereof to verify at any time that the Accused is present at the institution;

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

- (a) by designating officials of the Government of Serbia into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and to his place of residence, as well as upon his return, 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 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;

8. **INSTRUCTS** the Registrar 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 until such time as the Chamber and the Registrar have been notified of the name of the Designated Officials into whose custody the Accused is to be provisionally released;
- (c) facilitate the examination of the Accused by the RMO as outlined in operative paragraphs 2(c)-(d) 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 5(c), 6(a)-(c), and 6(e) hereof; and
- (e) provide to the Chamber, without delay, the reports and notifications set out in operative paragraphs 5(c) and 6(a)-(c) hereof; and

9. **REQUESTS** the authorities of all States through which the Accused will travel to:
- (a) hold the Accused in custody for any time that he will spend in transit at the airport; and
  - (b) arrest and detain the Accused pending his return to the UNDU, should he attempt to escape.

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

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Judge Alphons Orié  
Presiding Judge

Dated this Sixteenth day of July 2012  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**