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19 April 2013

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**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: 19 April 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 19 April 2013

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 5 FEBRUARY
2013**

Office of the Prosecutor
Mr Dermot Groome

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Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

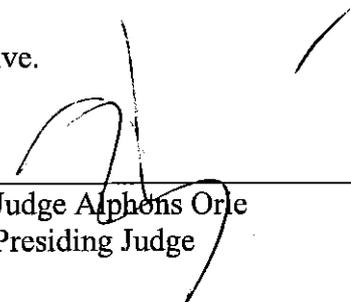
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1. On 5 February 2013, the Chamber issued the confidential "Decision on the Stanišić Defence Request for Provisional Release after Closing Arguments until Entry of Trial Judgement" ("Decision"), in which it granted provisional release of the Accused Jovica Stanišić ("Accused") from 7 February 2013 until the date of entry of the Trial Judgement.¹

2. Confidential reports on the medical condition of the Accused have been filed regularly by the United Nations Detention Unit Reporting Medical Officer. The Chamber considers that these confidential reports require that portions of the Decision should remain confidential and hereby issues a public redacted version.

3. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber **ISSUES** a public redacted version of the Decision.

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



Judge Alphens Orle
Presiding Judge

Dated this nineteenth day of April 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ Decision on the Stanišić Defence Request for Provisional Release after Closing Arguments until Entry of Trial Judgement, 5 February 2013 (Confidential), para. 15.



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**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC REDACTED VERSION

**DECISION ON STANIŠIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE AFTER CLOSING ARGUMENTS
UNTIL ENTRY OF TRIAL JUDGEMENT**

Office of the Prosecutor
Mr Dermot Groome

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Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

4. On 16 July 2012, the Chamber granted the provisional release of the Accused Jovica Stanišić (“Accused”) from the conclusion of trial proceedings to the closing arguments (“Decision”).² The Chamber denied without prejudice a request by the Stanišić Defence (“Defence”) to grant provisional release from the conclusion of arguments until the rendering of the trial judgement.³ On 10 January 2013, the Defence filed another request for provisional release from the close of trial proceedings until the rendering of the trial judgement (“Request”).⁴ On 16 January 2013 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 Request.⁵ On 24 January 2013, the Prosecution filed its response to the Request (“Response”).⁶ On 30 January 2013, the Defence filed an addendum to its Request including a guarantee (“Serbian Guarantee”) from the Republic of Serbia (“Serbia”).⁷

II. SUBMISSIONS OF THE PARTIES

5. The Defence submitted that the conditions for granting provisional release have been satisfied save for the guarantee of the Government of Serbia, which it anticipated would be provided shortly.⁸ The Defence contends that the Accused has complied with the conditions set by the Chamber while on provisional release and that he will do so again if granted provisional release on this occasion.⁹ The Defence underlines the fact that throughout the period of his provisional release since 20 July 2012, and according to his most recent medical report, [REDACTED].¹⁰ The Defence submits that provisional release would have a positive impact upon the Accused’s mental health, and points to previous examples in support of its contention.¹¹ The Defence also points to

² Order Issuing a Public Redacted Version of the Confidential Decision on the Stanišić Defence Request for Provisional Release of 16 July 2012, 7 November 2012; Decision on the Stanišić Defence Request for Provisional Release, 16 July 2012 (Confidential), paras 15 (3)(a) and (c).

³ Order Issuing a Public Redacted Version of the Confidential Decision on the Stanišić Defence Request for Provisional Release of 16 July 2012, 7 November 2012; Decision on the Stanišić Defence Request for Provisional Release, 16 July 2012 (Confidential), para. 6.

⁴ Stanišić Defence Request for Provisional Release after Closing Arguments until Entry of Trial Judgement, 10 January 2013 (Confidential).

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Jovica Stanišić, 16 January 2013.

⁶ Prosecution Response to Stanišić Defence Request for Provisional Release after Closing Arguments until entry of Trial Judgement, 24 January 2013 (Confidential).

⁷ Stanišić Defence Addendum to Stanišić Defence Request for Provisional Release after Closing Arguments until Entry of Trial Judgement, 30 January 2013 (Confidential with Confidential Annex).

⁸ Request, para. 7.

⁹ Request, para. 8.

¹⁰ Request, paras 9-11.

¹¹ Request, para. 12.

examples of provisional release having been granted pending the entry of the Trial Judgement in other cases before the Tribunal.¹²

6. In its Response, the Prosecution submits that prior to any decision being taken on the Request, the Chamber should order a comprehensive review of the Accused's health.¹³ The Prosecution contends that as the trial is at an advanced stage, the risk of the Accused failing to appear is the greatest it has been since the proceedings commenced and that this risk is compounded by the Tribunal's reliance on States' co-operation to apprehend fugitives.¹⁴ It further suggests that the guarantees that have previously been provided by Serbia have not been forthcoming as of yet, and are unlikely to be provided.¹⁵ In the event that the Chamber decides to grant provisional release, the Prosecution submits that it should be for an initial period of three months.¹⁶

III. APPLICABLE LAW

7. The Chamber recalls and refers to the applicable law governing provisional release as set out in its previous decisions.¹⁷

IV. DISCUSSION

8. As a preliminary matter, the Chamber notes that the Serbian Guarantee has been provided. As such, the Prosecution submissions on this issue are moot.

9. The Chamber recalls its discussion in previous decisions whereby it was satisfied that the Accused would appear before the Tribunal and would not pose a danger to any victim, witness or other person.¹⁸ The Chamber has not received any information indicating a change of circumstances in this regard. The Chamber further considers the Prosecution contention that the Accused is a flight risk given the late stage of the proceedings, to lack sound foundation. The Chamber also gives due weight to the Serbian Guarantee. The Chamber is therefore satisfied that the Accused, if

¹² Request, paras 14-18; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Jadranko Prlić's Motion for Provisional Release, 24 November 2011 (public with public and confidential annexes); *Prosecutor v. Mičo Stanišić & Župljanin*, Case No. IT-08-91-T, Decision Granting Mičo Stanišić's Request for Provisional Release, 6 June 2012.

¹³ Response, para. 2.

¹⁴ Response, para. 8.

¹⁵ Response, para. 9.

¹⁶ Response, para. 12.

¹⁷ Decision on Simatović Request for Provisional Release, 13 December 2011, paras 6-7 and the decisions cited therein.

¹⁸ Decision on Stanišić Defence Request for Provisional Release, 10 April 2012 (Confidential), para. 7 and decisions cited therein.

provisionally released, will appear for trial and will not pose a danger to any victim, witness, or other person.

10. In light of the frequency of reporting by the Reporting Medical Officer (“RMO”) as summarised below, the Chamber possesses adequate information regarding the Accused’s health in order to assist it in reaching a decision. As such, the Prosecution’s request for a “comprehensive review” of the Accused’s health is denied.

11. In the Decision, the Chamber expressed concerns that the risk of a sudden deterioration in the Accused’s health was not insignificant.¹⁹ A summary of the Accused’s medical reports in recent months is as follows: according to the RMO on 19 September 2012, [REDACTED].²⁰ On 31 October 2012, the RMO reported [REDACTED].²¹ According to the RMO report of 21 November 2012, [REDACTED].²² On 12 December 2012, the RMO reported [REDACTED].²³ The most recent report filed by the RMO states [REDACTED].²⁴ It further states [REDACTED].²⁵

12. Based on the RMO’s reporting, the Chamber finds that the Accused’s health is at present comparatively stable and that any difficulties that may arise are capable of being managed while he is on provisional release. The RMO reports do not suggest that provisional release would obstruct the Accused’s medical treatment. Furthermore, any previous concerns regarding potential disruption of the proceedings are offset to a great extent by the very late stage of the trial.

13. The Chamber does however wish to continue the set of conditions currently in operation 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. 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”).²⁶ Provided the Defence again submits 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 considers that provisional release would be appropriate.

¹⁹ Decision, 16 July 2012, para. 10.

²⁰ RMO report of 20 September 2012.

²¹ RMO report, 31 October 2012.

²² RMO report, 21 November 2012.

²³ RMO report, 12 December 2012.

²⁴ RMO report, 21 January 2013.

²⁵ RMO report, 21 January 2013.

²⁶ See for e.g. Decision on Stanišić Request for Provisional Release, 16 July 2012 (Confidential), paras 13, 15; 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.

14. As to the duration of the provisional release, the Chamber notes that as matters stand the Accused's presence is not required at the Tribunal until the date of entry of the judgement. The Chamber considers that given the anticipated date of entry of the judgement, within the not too distant future, provisional release until then is appropriate.

V. DISPOSITION

15. For the foregoing reasons, pursuant to Rule 65 (B) of the Rules, the Chamber **DENIES** the Prosecution request for a comprehensive medical review of the Accused and; **GRANTS** the Request 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 the provisional release;
 - (b) report to the Chamber no later than 5 p.m. on 6 February 2013 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;

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 7 February 2013;
- (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) the Accused to return to the Tribunal on or before a date which the Chamber will set as soon as it is able to project with greater clarity the date of the final judgement, and which it will communicate to the Registry, the parties, Serbia, and the Dutch authorities (“Return Date”);
- (d) 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 the Return Date and that the Dutch authorities then transport the Accused back to the UNDU; and
- (e) 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(e)(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.

Judge Alphons Orie
Presiding Judge

Dated this fifth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]