



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-08-91-PT
Date: 30 June 2009
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Ole Bjørn Støle
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 30 June 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ & STOJAN ŽUPLJANIN

PUBLIC

**DECISION ON STOJAN ŽUPLJANIN'S
MOTION FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused:

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Igor Pantelić for Stojan Župljanin

I. INTRODUCTION

1. This Trial Chamber (“Chamber”) of the 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 (“Tribunal”) is seized of “Stojan Župljanin’s Motion for Provisional Release” (“Motion”) filed publicly by the defence for Stanišić Župljanin (“Defence”) on 14 May 2009 with confidential annexes. Stanišić Župljanin (“Accused”) seeks “temporary provisional release” pursuant to Rule 65 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) on compassionate grounds and out of “necessity for preparation of his personal defence”. In support of the Motion, the Defence puts forth the following factors: the health and advanced age of the Accused’s parents; the necessity for the preparation of his defence, especially in the pre-trial stage; the lack of substantial risk that the Accused will not appear for trial, if released; State guarantee; and his personal guarantee and undertaking to comply by all conditions imposed by the Chamber.¹

2. On 21 May 2009, the Prosecution filed the “Prosecution Response to Stojan Župljanin’s Motion for Provisional Release with Annexes” (“Response”). In its Response, the Prosecution submits, first, that there is a substantial risk that the Accused will not appear for trial if released, based on: the circumstances of the arrest of the Accused; the degree of co-operation given by Republika Srpska; the degree of co-operation given by the Accused to the Prosecution; the post-arrest conduct of the Accused; and, second, that the Defence fails to establish that the Accused will not pose a danger to victims, witnesses or other persons, if released; and finally, that the circumstances of the Accused are wholly distinct from those of his co-accused.² In conclusion, the Prosecution asserts that the Defence does not address the factors relevant for the determination of an application for provisional release by a Trial Chamber.³

3. The Defence sought leave to reply under Rule 126*bis* with “Motion for Leave to Reply and Reply to the Prosecution’s Response to Stojan Župljanin’s Motion for Provisional Release”, filed on 28 May 2009 (“Reply”). Leave to file such reply is hereby granted. The Accused did not respond substantively to the issues raised by the Prosecution in its Response.⁴

¹ Motion, p. 3.

² Response, p. 3 – 5.

³ Response, p. 2.

⁴ Reply, para 5.

4. At the Status Conference of 9 June 2009, the pre-trial Judge indicated to the Accused that the Motion would be denied by the Trial Chamber and that a written and reasoned decision would follow shortly.⁵ The Trial Chamber now issues its written Decision.

II. APPLICABLE LAW

5. Pursuant to Rule 65(A) of the Rules, an accused may not be provisionally released once detained, except upon an order of a Chamber. Under Rule 65(B) of the Rules, a Trial Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness or other person, and after having given the host country and the State to which the accused seeks to be released the opportunity to be heard.⁶ Once the Chamber is satisfied on these two points, it may, in the exercise of its discretion, order the release of the accused.⁷ The Appeals Chamber has indicated a non-exhaustive set of factors which a Trial Chamber should take into consideration when assessing whether or not an accused will appear for trial.⁸ The burden of proof on the balance of probabilities is a substantial one and is placed upon the accused with respect to both prongs of the provisional release inquiry.⁹

6. The Chamber considers that the requirement of giving the host country and the State to which the accused seeks to be released the opportunity to be heard is formally met, in view of the fact that: (a) the Government of Republika Srpska has provided a guarantee in support of the Motion; and (b) the host country on 19 May 2009 informed the Tribunal that it had no objection to the provisional release of the Accused.¹⁰

⁵ Status Conference, 9 June 2009, T. 34.

⁶ *Prosecutor v. Popović et al.*, Case No. 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 Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings ("Borovčanin Decision"), 15 May 2008, para. 7; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on Provisional Release, 26 May 2008 ("Stanišić and Simatović Decision"), para. 37.

⁷ *Prosecutor v. Kovačević*, Case No. IT-97-24-T, Decision on Defence Motion for Provisional Release, 20 January 1998, para. 7; *Prosecutor v. Ojdanić*, Case No. IT-99-37-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005, para. 6; *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-PT, Decision on Ivan Čermak and Mladen Markač's Motions for Provisional Release, 29 April 2004, para. 8.

⁸ *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37-AR65, Decision on Provisional Release, 30 October 2002, para 6 ("Šainović Decision"); *Stanišić and Simatović Decision*, para 39.

⁹ *Ibid.*, para. 8. See also *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Order on Provisional Release of Valentin Corić, 30 July 2004, para. 14.

¹⁰ Annex B to Motion and Confidential Letter from the Ministry of Foreign Affairs, filed confidentially on 20 May 2009.

III. DISCUSSION

A. Whether the Accused, if released, will appear for trial

7. The Trial Chamber must take account of all relevant factors in its consideration of a motion for provisional release. The Defence only addresses the following factors: personal and State guarantees; good conduct since arrest; lack to intent to flee or to contact witnesses; and no interference with the administration of justice.¹¹ The Motion fails to address other factors, some of which are addressed in the Prosecution's Response, including the seriousness of the charges against the Accused and the likelihood of a long sentence, if convicted; the circumstances of arrest; and lack of co-operation with the Prosecution. The Chamber will address these and all other factors it considers relevant to this Motion.

8. The Accused is alleged to have committed crimes of considerable gravity while in a sufficiently senior position,¹² so that, if found guilty, he is likely to serve a lengthy prison sentence.¹³

9. The Accused did not voluntarily surrender himself to the custody of the Tribunal upon learning of the indictment against him; instead he evaded arrest for nearly nine years despite numerous search operations; adopted false identities to move between countries and disregarded the pleas of his own family to surrender.¹⁴ He was finally arrested on 11 June 2008 from Pančevo, Republic of Serbia, at which time the Accused continued to deny his true identity.¹⁵ The Trial Chamber has evaluated the personal guarantee of the Accused in light of his conduct prior to arrest.¹⁶

10. The Trial Chamber attaches substantial weight to these circumstances and finds that Župljanin has not satisfied the Chamber that he will appear for trial, if provisionally released.

¹¹ Motion, pp 2 – 3.

¹² The Accused is charged in the Indictment with crimes of persecutions on political, racial and religious grounds, extermination, murder, torture, cruel treatment, inhumane acts, deportation and forcible transfer (inhumane acts) as violations of laws and customs of war and crimes against humanity under Articles 3 and 5 of the Statute, allegedly committed from 1 April 1992 to 31 December 1992 in the areas, within Bosnia and Herzegovina, designated as the Serbian Autonomous Regions.

¹³ *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decision Denying Provisional Release, 2 December 2004, para 25; *Prosecutor v. Limaj et al*, Case No. IT-03-66-AR65.2, Decision on Haradin Bala's Request for Provisional Release, 31 October 2005, para. 25; *See also, Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on Motion by Radoslav Brđanin for Provisional Release, 25 July 2000, para. 16.

¹⁴ Response, para 13 and Annex B to the Response.

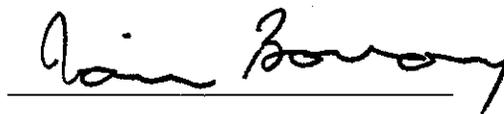
¹⁵ Response, paras 12 and 14; Annex C to the Response.

¹⁶ Annex A to the Motion.

11. Given that the Trial Chamber finds that the first of the two mandatory requirements of Rule 65(B) is not met, it need not address either the second requirement of Rule 65(B) or the exercise of its discretion in respect of the additional factors raised by the Accused.

IV. CONCLUSION

12. For the foregoing reasons, pursuant to Rule 65 of the Rules, the Chamber **DENIES** the Motion for provisional release.



Judge Iain Bonomy

Presiding

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

Dated this thirtieth day of June 2009

At The Hague

The Netherlands

[Seal of the Tribunal]