

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-08-91-T
Date: 11 December 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 11 December 2009

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING MR. STANIŠIĆ'S MOTION FOR
PROVISIONAL RELEASE DURING THE WINTER
COURT RECESS**

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 and Mr. Dragan Krgović for Stojan Župljanin

TRIAL CHAMBER II (“Trial 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”);

BEING SEISED of “Mr. Stanišić’s motion for provisional release during the upcoming winter recess”, filed on 30 November 2009 with two confidential annexes (“Motion”), in which the Defence of Mićo Stanišić (“Defence”) “requests that he be granted temporary provisional release, to the address in Annex A, for the duration of the Winter Recess on the same terms and conditions under which he [was] on provisional release during the pre-trial phase, or under such conditions as the Trial Chamber deems appropriate to impose pursuant to Rule 65(C)”;¹

NOTING the Prosecution’s oral response on 1 December 2009 that it does not “object subject to the usual guarantees that should be given, [with the view that] it’s really not a matter for the Prosecution anymore because the trial has started”;²

NOTING the guarantee of the Government of the Republic of Serbia’s (“Serbia”), filed by the Defence on 1 December 2009, which provides, *inter alia*, that “[p]rovided [the Tribunal] renders a decision to grant provisional release to Accused Mićo Stanišić and his stay in the territory of the Republic of Serbia, [Serbia] takes upon itself an obligation to abide by all orders of the Trial Chamber [...] in order to enable appearance of the Accused before the [Tribunal] at any time”;³

RECALLING that Mićo Stanišić was first granted provisional release on terms and conditions as set out by the Trial Chamber in its Decision of 19 July 2005;⁴

RECALLING that Mićo Stanišić was recalled on 11 April 2008 and on 26 May 2009 for the specific purposes of attending court proceedings during the pre-trial phase of the case and that he was subsequently released by orders of reinstatement on 10 July 2008 and on 12 June 2009, respectively;⁵

¹ Motion, para. 2.

² Hearing, 1 Dec 2009, T. 3958.

³ Mr. Stanišić’s filing of guarantees in support of provisional release, 1 Dec 2009.

⁴ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Mićo Stanišić’s motion for provisional release, 19 Jul 2005 (“Decision of 19 July 2005”).

⁵ *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision following the Registrar’s submission regarding Mićo Stanišić’s legal representation with incorporated scheduling order and order recalling the Accused from provisional release, 11 Apr 2008; Order reinstating provisional release, 10 Jul 2008; *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Scheduling order for a status conference and order recalling the Accused from provisional release, 26 May 2009; and Order reinstating provisional release, 12 Jun 2009.

RECALLING that on 19 August 2009, the Trial Chamber terminated the provisional release of Mićo Stanišić and ordered him to return to the United Nations Detention Unit in the Netherlands (“UNDU”) to be present at the pre-trial conference and during trial;⁶

NOTING the Defence submissions that Mr. Stanišić “surrendered voluntarily to the Tribunal on 11 March 2005, within four days of being formally notified of the indictment”, “voluntarily co-operated with the OTP” and “has always behaved respectfully towards the Trial Chamber”;⁷

NOTING the Defence submissions that “Mr. Stanišić has always been in full compliance with the terms and conditions of his provisional release, including any variation to those terms and conditions” and that, “[a]s evidenced by his conduct while previously on provisional release, Mr. Stanišić poses no risk of flight, nor does he pose a danger to any victim, witness or other person, within the terms of Rule 65(B)”;⁸

NOTING the Defence submissions that “[f]or the majority of the recess period, Mr. Stanišić’s defence team will work from Belgrade” and that “it is important to the logical and efficient preparation for the resumption of trial proceedings for Mr. Stanišić to be present in Belgrade so that he can assist his counsel with day to day information and advice”;⁹

NOTING the Defence submission that “[t]he circumstances prevailing over the period that Mr. Stanišić was previously on provisional release have not changed so substantially as [to] preclude his eligibility for provisional release”;¹⁰

NOTING Mićo Stanišić’s personal undertaking “that, should the Trial Chamber approve provisional release during the winter recess, [he] will observe all the orders of the Trial Chamber and all the orders of the Republic of Serbia in enforcing this decision”;¹¹

CONSIDERING that pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”), the Trial Chamber may order provisional release “if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness, or other person” and that “[t]he Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate”;

⁶ Order scheduling pre-trial conference and commencement of trial with order terminating provisional release, 19 Aug 2009, p. 2.

⁷ Motion, paras 10 a, b and c.

⁸ Motion, paras 10 d and f.

⁹ Motion, para. 10 g.

¹⁰ Motion, para. 10 i.

¹¹ Motion, Annex B.

CONSIDERING that, while provisionally releasing Mićo Stanišić on all earlier occasions, the Trial Chamber was satisfied that he poses no danger to any victim, witness or other person and would present himself for trial, if released;¹²

CONSIDERING that Mićo Stanišić was on provisional release from 19 July 2005 to 19 August 2009, without incident, and that on both occasions when he was recalled, Mićo Stanišić complied with the orders of the Trial Chamber and presented himself for court as directed;¹³

CONSIDERING that the winter recess is scheduled from 22 December 2009 to 8 January 2010;

CONSIDERING that the Trial Chamber will not be sitting on 18 December 2009 or during the week of 12 January to 15 January 2010;¹⁴

PURSUANT TO Rule 65 of the Rules;

GRANTS the Motion; and

ORDERS the provisional release of Mićo Stanišić subject to the following terms and conditions:

1. As soon as practicable, on or after 18 December 2009, Mićo Stanišić shall be transported to Schiphol airport in the Netherlands by the designated authorities of the Government of the Kingdom of the Netherlands (“the Netherlands”);
2. At Schiphol airport, Mićo Stanišić shall be provisionally released into the custody of an official of Serbia, who shall accompany Mićo Stanišić for the remainder of his travel to Serbia and to his place of residence;
3. On his return, Mićo Stanišić shall be accompanied by an official of Serbia, who shall hand over the custody of Mićo Stanišić to the authorities of the Netherlands at Schiphol airport on or before 15 January 2010 for his transport back to the UNDU;
4. During the period of his provisional release, Mićo Stanišić shall abide by the following conditions and the authorities of Serbia, including the local police, shall ensure compliance with such conditions:
 - i. to reside in his home in Belgrade at the address listed in Confidential Annex A attached to the Motion;

¹² Decision of 19 July 2005, para. 19.

¹³ See example, State Report by the Government of Serbia, filed confidentially on 14 September 2009.

¹⁴ Hearing, 29 Oct 2009, T. 2321; and 11 Dec 2009.

- ii. to remain within the confines of the municipality of Belgrade;
- iii. to surrender his passport to the Ministry of Internal Affairs of Serbia;
- iv. to report each day, before 1 p.m., to the police in Belgrade at a local police station to be designated by the authorities of Serbia;
- v. to consent to having the Ministry of Internal Affairs of Serbia check with the local police about his presence and to the making of occasional, unannounced visits upon him by the said Ministry or by a person designated by the Registrar of the Tribunal;
- vi. to not have any contact whatsoever or in any way interfere with any victim, witness or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- vii. to not discuss his case with anyone, including the media, other than with his Defence;
- viii. to continue to cooperate with the Tribunal;
- ix. to comply strictly with any requirements of the authorities of Serbia necessary to enable them to comply with their obligations under this Decision and their guarantees;
- x. to return to the Tribunal on or before 15 January 2010; and
- xi. to comply strictly with any further order of the Tribunal varying the terms of or terminating his provisional release;

REQUIRES the Government of Serbia to assume responsibility as follows:

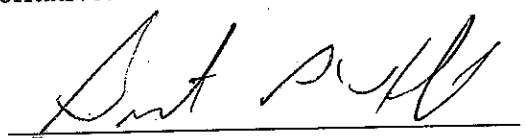
- a) to designate an official of its government into whose custody Mićo Stanišić shall be provisionally released and who shall accompany him from Schiphol airport to Serbia and to his place of residence as well as to designate an official of its government who shall accompany Mićo Stanišić from his place of residence to Schiphol airport, where Mićo Stanišić shall be delivered into the custody of the authorities of the Netherlands, who will in turn transport him back to the UNDU;
- b) to notify, prior to the release of Mićo Stanišić from the UNDU, the Trial Chamber and the Registrar of the Tribunal of the name of the official(s) designated pursuant to the previous sub-paragraph;
- c) for the personal security and safety of Mićo Stanišić while on provisional release;

- d) for all expenses concerning the transport of Mićo Stanišić from Schiphol airport to Belgrade and back;
- e) for all expenses concerning security of Mićo Stanišić while on provisional release;
- f) to submit a written report to the Trial Chamber every week as to the compliance of Mićo Stanišić with the terms of this Decision;
- g) to arrest and detain Mićo Stanišić immediately should he breach any of the conditions of this Decision; and
- h) to report immediately to the Trial Chamber any breach of the conditions set out above;

INSTRUCTS the Registrar of the Tribunal to consult with the Ministry of Justice of the Netherlands as to the practical arrangements for the provisional release of Mićo Stanišić and to continue to detain him at the UNDU in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of Serbia into whose custody Mićo Stanišić is to be provisionally released; and

REQUESTS the authorities of the Netherlands to ensure that Mićo Stanišić is transported, under guard, from the UNDU and released into the custody of the designated official of Serbia at Schiphol airport and similarly, to take custody of Mićo Stanišić from the designated official of Serbia, on or before 15 January 2009, to escort him back to the UNDU under guard.

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



Judge Burton Hall
Presiding

Dated this eleventh day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]