



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: 6 June 2012
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 6 June 2012

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING MIĆO STANIŠIĆ'S REQUEST FOR PROVISIONAL
RELEASE**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

The Government of the Republic of Serbia

via The Embassy of the Republic of Serbia to the
Kingdom of the Netherlands, The Hague

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

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. 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”) is seised of “Mr. Stanišić’s Motion for provisional release”, filed by the Defence of Mićo Stanišić (“Defence”) on 27 April 2012 with confidential annexes (“Motion”).
2. The Prosecution filed its response on 11 May 2012 (“Response”)¹ in which it opposes the Motion, and in the event the Trial Chamber grants provisional release, requests a stay of the Decision to enable the Prosecution to appeal.
3. The Defence sought leave to reply and filed a proposed reply on 18 May 2012 (“Reply”).²
4. The Defence has provided a guarantee from the Government of the Republic of Serbia (“Serbia”) in support of the Motion³ and attaches a personal undertaking of Stanišić whereby he undertakes to abide by all terms and conditions imposed on him by the Trial Chamber, should his request be granted.⁴
5. By way of letter dated 3 May 2012, the Government of the Kingdom of the Netherlands (“the Host Country” or “the Netherlands”), limiting itself to the practical consequences relating to such provisional release, confirmed that it has no objection to the request for provisional release.⁵

II. SUBMISSIONS

6. The Defence requests that Mićo Stanišić be granted temporary provisional release until the rendering of the Judgement in this case.⁶ The Defence further requests that provisional release be granted on the same terms and conditions which governed Stanišić’s previous provisional release, or other conditions set by the Trial Chamber.⁷ In support of its application, the Defence submits that Stanišić: surrendered voluntarily to the Tribunal within four days of being formally notified of the Indictment; voluntarily co-operated with the Prosecution; always behaved respectfully towards the

¹ Prosecution response to Stanišić’s motion for provisional release, 11 May 2012 (“Response”).

² Application for leave to file a reply and reply to the Prosecution’s response to Stanišić’s motion for provisional release, 18 May 2012 (“Reply”).

³ Confidential Annex B to the Motion.

⁴ Confidential Annex C to the Motion.

⁵ Letter of the Minister of Foreign Affairs dated 3 May 2012, confidential, p. 1. The letter was filed with the Tribunal on 8 May 2012.

⁶ Motion, paras 2, 13.

⁷ Motion, para. 13.

Trial Chamber; complied with the terms and conditions of his previous provisional releases; and poses no risk of flight, nor any danger to any victim, witness or other person.⁸

7. The Defence refers to other cases where provisional release has been granted to accused persons in the period pending judgement.⁹

8. The Defence acknowledges that Stanišić has twice been denied provisional release following the close of the Prosecution's case.¹⁰ It argues that, on both occasions, the Trial Chamber would have granted provisional release but for Appeals Chamber jurisprudence that required an accused to show "sufficiently compelling humanitarian grounds" in support of an application for provisional release made at advanced stages of the proceedings.¹¹ The Defence notes the subsequent amendment to Rule 65(B) of the Tribunal's Rules of Procedure and Evidence ("Rules") in October 2011, and submits that there have been no discernable changes to the circumstances that led the Trial Chamber to find that Stanišić met the requirements of Rule 65(B) and grant him provisional release in November 2011.¹²

9. The Prosecution requests that the Trial Chamber deny the Motion asserting that Stanišić fails to meet his burden of proving that he is not a flight risk under Rule 65(B), and that the grounds he puts forward are insufficient to address the risk that he will abscond.¹³ The Prosecution further submits that Stanišić does not merit release in the Trial Chamber's exercise of discretion, asserting that requesting release for an indefinite period following the evidentiary phase of trial proceedings would be detrimental to public confidence in the Tribunal and that the weight of evidence against Stanišić further militates against a favourable exercise of discretion.¹⁴

10. The Prosecution submits that the potential sentence faced by Stanišić given the underlying crimes of which he is accused is a substantial one and therefore results in a risk of flight.¹⁵ It notes that Stanišić did not file a Rule 98 *bis* motion and further submits that after the filing of the Prosecution's final trial brief and the presentation of its closing arguments, Stanišić would be confronted with the full weight of evidence against him and the cumulative strength of the Prosecution case, which would provide further incentive for him to abscond.¹⁶ The Prosecution considers that the current advanced stage of the proceedings militates against releasing Stanišić as the temporal proximity to the Judgement may increase an accused's risk of flight, depending on the

⁸ Motion, para. 3.

⁹ Motion, para. 3.

¹⁰ Motion, para. 11.

¹¹ Motion, para. 11.

¹² Motion, para. 12.

¹³ Response, para. 1.

¹⁴ Response, para. 2.

¹⁵ Response, para. 4.

¹⁶ Response, para. 5.

accused's perception of his prospects of conviction.¹⁷ The Prosecution also argues that this risk is compounded given the near completion of the Tribunal's mandate and reliance on States' enforcement capabilities to apprehend fugitives.¹⁸

11. In addition, the Prosecution submits that there are no conditions of release which can ensure Stanišić's return to the Tribunal and that his initial surrender to the Tribunal can no longer be considered indicative of future conduct. It contests Stanišić's assertion that he has always cooperated with the Prosecution and asserts that the fact that other accused have been provisionally released at this stage of the proceedings does not advance Stanišić's argument that he should also be provisionally released.¹⁹

12. The Prosecution further argues that even if Stanišić meets the conditions of Rule 65(B), the Chamber should not grant provisional release because Stanišić's request for indefinite release is not justified.²⁰

13. Should the Trial Chamber decide to grant the Motion, the Prosecution requests a stay of execution of the Decision to allow it to appeal the Decision.²¹

14. In its Reply, the Defence argues that nothing in the Response regarding Rule 65(B) is new or has any merit regarding the circumstances related to Stanišić;²² that granting provisional release to an accused who is presumed to be innocent should positively affect the administration of justice and public perception of the Tribunal;²³ and that at this stage of the proceedings, Stanišić would hear the final arguments of his defence team who would argue that the Prosecution case is unfounded and that Stanišić should be acquitted.²⁴ Finally, the Defence submits that should the Motion be granted, the Prosecution's request for a stay pursuant to Rule 65(E) should be denied.²⁵

¹⁷ Response, para. 6.

¹⁸ Response, para. 6.

¹⁹ Response, para. 7.

²⁰ Response, para. 8.

²¹ Response, para 13.

²² Reply, para. 3.

²³ Reply, para. 4.

²⁴ Reply, para. 4.

²⁵ Reply, para. 6.

III. APPLICABLE LAW

15. The applicable law on provisional release was set out in detail in this Trial Chamber's Decision of 18 November 2011 on a previous request from Stanišić for provisional release, and need not be repeated here.²⁶

IV. DISCUSSION

16. On two separate occasions in 2011, the Trial Chamber, at a late stage of the proceedings, found that Mićo Stanišić fulfilled all the requirements for provisional release, other than the showing of compelling humanitarian grounds, a precondition developed in Appeals Chamber jurisprudence.²⁷ Respecting the precedential value of Appeals Chamber Decisions, the Trial Chamber denied provisional release on both occasions. However, after having considered all relevant factors, and in light of the amendment of Rule 65(B), which converted the requirement of showing compelling humanitarian grounds from a *conditio sine qua non* when granting provisional release at advanced stages of proceedings to a discretionary consideration in granting such release, the Chamber, in the exercise of its discretion, granted provisional release to Stanišić for a limited period of time in December 2011-January 2012.²⁸

17. The Trial Chamber must consider the two mandatory components of Rule 65, namely whether (i) Mićo Stanišić will, if released, return to the United Nations Detention Unit ("UNDU") to appear for the remainder of the trial, and (ii) whether he will pose a danger to any victim, witness or other person. The Trial Chamber understands that each application for provisional release must be assessed *de novo*, on its merits and in the context of the circumstances existing at the time of taking the decision, and will proceed to do so.

18. The Trial Chamber notes that there is no objection to the provisional release in this instance from the Host Country, and is satisfied with the guarantee from Serbia, to which Stanišić seeks to be released.

19. The Trial Chamber notes that Stanišić voluntarily surrendered to the Tribunal in 2005 and has since been provisionally released on seven occasions.²⁹ On each occasion of his return to the

²⁶ Decision granting Mićo Stanišić's request for provisional release, 18 November 2011, paras 11-13 ("Decision of 18 November 2011").

²⁷ Decision denying Mićo Stanišić's request for provisional release during the break after the close of the Prosecution case with separate declaration of Judge Delvoie, ("Decision of 25 February 2011"), 25 February 2011, para. 30; Decision denying Mićo Stanišić's request for provisional release during the upcoming summer court recess, 29 June 2011, ("Decision of 29 June 2011"), para. 38.

²⁸ Decision of 18 November 2011, para. 26.

²⁹ Decision of 18 November 2011; Decision granting Mićo Stanišić's motion for provisional release during the court winter recess, 3 December 2010; Decision granting Mićo Stanišić's motion for provisional release during the summer

UNDU, Serbia has placed on record that he acted in accordance with the directions of the Trial Chamber and complied with all the measures set by the State. The Trial Chamber is therefore satisfied that Stanišić has always abided by the terms and conditions of his provisional release.

20. The Trial Chamber has no reason to believe that this would be any different should his current request for provisional release be granted. Stanišić was last granted provisional release from 19 December 2011 to 9 January 2012. In its Decisions of 25 February 2011, 29 June 2011, and 28 November 2011, the Trial Chamber considered that Stanišić was already fully aware of the Prosecution's case and the evidence against him, and accounted for the fact that the Prosecution's case-in-chief had concluded and that Stanišić had had the opportunity to move a motion of acquittal pursuant to Rule 98 *bis*. On each occasion, the Trial Chamber was satisfied that Stanišić would appear for trial and would not pose a danger to any victim, witness or other person.

21. The Trial Chamber has also taken into consideration Stanišić's personal guarantee.

22. In relation to the Prosecution's argument that the evidence against Stanišić gives him a greater incentive to abscond before issuance of the final judgment, the Trial Chamber notes that it would be premature for it to pronounce its view on the substance of this argument. Moreover, the Trial Chamber recalls the continuing presumption of innocence afforded to the Accused at all stages of trial prior to the rendering of a final judgement. It therefore dismisses this argument.

23. The Chamber notes that closing arguments having been concluded on 1 June 2012,³⁰ it is foreseeable that there will be no judicial activity requiring the presence of Stanišić in court until the Judgement is delivered.

24. Nevertheless, the Chamber is aware of the potential effect that the release of a person accused of crimes as serious as those with which Stanišić is charged in the Indictment could have on the victims. The Chamber recalls that the strict security measures imposed governing previous instances of provisional release were *inter alia* aimed at eliminating any potential negative effect on victims and witnesses. Further, the Trial Chamber notes that Stanišić does not seek to be provisionally released to Bosnia and Herzegovina, where most of the victims of the alleged crimes he is charged with in the Indictment are likely to reside, but rather to Belgrade in Serbia.

25. The Trial Chamber finds that, in the period since it issued its Decision of 18 November 2011, in which it found that Mićo Stanišić did not pose a risk of flight nor a danger to witnesses,

recess, 16 July 2010; Decision granting Mr. Stanišić's motion for provisional release during the winter recess, 11 December 2009; Order reinstating provisional release, 12 June 2009; Order reinstating provisional release, 10 July 2008; *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Mićo Stanišić's motion for provisional release, 19 July 2005.

³⁰ Hearing, 1 June 2012, T. 27668.

victims or other persons, there have been no developments that adversely impact this assessment. Therefore, in light of the above and in the current circumstances, the Trial Chamber is satisfied that Mićo Stanišić, if provisionally released under particular terms and conditions, for a prescribed period of time, will appear for trial and will not pose a danger to any victim, witness or other person. The Trial Chamber thus finds that all requirements of Rule 65(B) are met and will exercise its discretion in favour of granting the requested provisional release.

26. With respect to the length of the provisional release, the Chamber notes that the date for the rendering of the Judgement in this case is yet to be set. Therefore, it does not consider it appropriate to grant provisional release for an otherwise undetermined period until the rendering of the Judgement as requested in the Motion. The Chamber, having assessed the circumstances at the present time, and as much as can be foreseen, how those circumstances may evolve over time, decides that the period of provisional release shall be set at three months. This period may be extended for additional periods of time upon further application by the Accused, until the Judgement is rendered.

27. Before the expiry of the current provisional release period the Accused may move for extension of his provisional release in accordance with the procedure set out in Annex I to the present Decision. The Chamber will then assess again, considering any documentation presented by Stanišić and submissions of the parties, whether the requirements of Rule 65(B) have been fulfilled and whether the provisional release should be extended for Stanišić and on what conditions.

28. In its determination of this matter, the Chamber has referred to recent Appeals Chamber jurisprudence, issued in light of the amendment to Rule 65(B), related to cases where an accused requested provisional release until the rendering of the Judgement.³¹

29. The Trial Chamber considers that the Prosecution's request for a stay of this Decision is appropriate in the circumstances bearing in mind the expedited appeals procedure provided for by Rule 116 *bis*. Accordingly, the Trial Chamber, grants the Prosecution's request for a stay.

V. DISPOSITION

30. For the above reasons and pursuant to Rules 65 and 126 *bis* of the Rules, the Chamber:

³¹ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.26, Decision on Prosecution appeal of decision on provisional release of Jadranko Prlić, 15 December 2011, where the Appeals Chamber upheld a Trial Chamber decision granting an accused provisional release for a three month period, which could be extended, upon later application by the accused, if the Trial Chamber remained satisfied that the requirements of Rule 65(B) continued to be fulfilled. The Appeals Chamber found that this régime did not, in effect, grant the accused indefinite provisional release, and nor was it an abuse of the Chamber's discretion under Rule 65(B).

GRANTS leave for the Defence to Reply and notes the contents of the Defence's Reply;

GRANTS the Motion;

ORDERS that Mićo Stanišić be provisionally released for a period of three calendar months from the date of this Decision subject to the following terms and conditions:

1. As soon as practicable Mićo Stanišić shall be transported to Schiphol Airport by the designated authorities of the Netherlands;
2. At Schiphol Airport, Mićo Stanišić shall be provisionally released into the custody of an official of Serbia, who shall accompany him for the remainder of his travel to Serbia and to his place of residence;
3. 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 at the address listed in confidential Annex A attached to the Motion;
 - 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 verify with the local police regarding his presence and to the Ministry of Internal Affairs, or by a person designated by the Registrar of the Tribunal, to make occasional, unannounced visits upon him;
 - vi. not to have any contact whatsoever, or in any way interfere, with any victim or witness or 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 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 comply strictly with any further order of the Tribunal varying the terms of his provisional release or terminating his provisional release;

- xi. to file, in the event he wishes to extend his period of provisional release, a Motion in accordance with the procedure set out in Annex I for extension of his provisional release;
4. On his return, Mićo Stanišić shall be accompanied by an official of Serbia, who shall transfer custody of Mićo Stanišić to the authorities of the Netherlands at Schiphol Airport for his transport back to the UNDU;

REQUIRES 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 he 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 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 the security of Mićo Stanišić while on provisional release;
- f) to submit a written report to the Trial Chamber every two weeks 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;

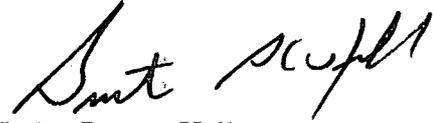
INSTRUCTS the Registrar of the Tribunal to consult with the Ministry of Justice of the Netherlands as to the practical arrangements for the provisional release of Mićo Stanišić and to continue to detain him at the UNDU in The Hague until such time as the Registrar has been notified of the name of the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

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 the date of his return to the Netherlands, and to escort him back to the UNDU under guard; and

STAYS the execution this Decision until the time-limit for the filing of an appeal by the Prosecution according to Rule 65(F) has expired and, in the event of an appeal, until the Appeals Chamber has determined the matter.

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



Judge Burton Hall
Presiding

Dated this 6th day of June 2012

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEX I**DIRECTIONS ON THE FILING OF MOTIONS FOR AN EXTENSION OF PROVISIONAL
RELEASE**

1. The Chamber is not in a position to render a Decision on a new motion for provisional release ("New Motion") before the date set for the Accused's return to the Tribunal unless it is filed pursuant to the following guidelines:
2. Any New Motion shall be filed by counsel for the Accused pursuant to Rule 65(B) of the Rules no sooner than 30 days and no later than 20 days before the date set for the Accused's return to the Tribunal;
3. The Prosecution shall have seven days from the day of filing of the New Motion to respond;
4. The Chamber will not accept any reply to the said response;
5. The Chamber shall endeavour to render a Decision on the New Motion as soon as possible before the date set for the Accused's return to the Tribunal.