



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: 22 July 2010
Original: English

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D22978-D22973
22 July 2010

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IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 22 July 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON URGENT STANIŠIĆ DEFENCE MOTION FOR
PROVISIONAL RELEASE**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

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

Government of The Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 11 June 2010, the Stanišić Defence requested the Chamber to instruct Dr Eekhof, the Reporting Medical Officer (“RMO”), to address six questions (“Request”), which related to the health of Jovica Stanišić (“Accused”) in view of a potential motion for provisional release.¹ On 25 June 2010, the Prosecution responded, not objecting to the Request.² On 28 June 2010, the Chamber granted the Request and invited the RMO to submit a report by 5 July 2010.³ On 2 July 2010, the RMO addressed the questions in a report on the health condition of the Accused.⁴

2. On 6 July 2010, the Stanišić Defence filed a motion seeking provisional release during the summer recess or any time deemed appropriate by the Chamber (“Motion”).⁵ On the same day, the Chamber set the deadline for the Prosecution to respond at 12 July 2010.⁶ On 9 July 2010, the Prosecution responded, requesting the Chamber to deny the Motion or in the alternative, to require the Accused to return from provisional release well in advance of the resumption of proceedings and to return immediately should his health deteriorate.⁷ On 9 July 2010, 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 Motion.⁸ On 20 July 2010, the Stanišić Defence filed an Addendum to the Motion, containing a waiver signed by the Accused (“Addendum”).⁹

II. SUBMISSIONS OF THE PARTIES

3. The Stanišić Defence submits that the Accused’s medical condition has markedly improved and is stable.¹⁰ It further submits that the Accused’s medical condition has ceased to be an impediment to attending court, that he has cooperated during the trial proceedings, and that he will return to the United Nations Detention Unit (“UNDU”) when instructed.¹¹ The Stanišić Defence submits that the Accused has instructed that the Motion serve as a waiver of his right to be present at trial in the unlikely event that illness would prevent his immediate return to the UNDU.¹² The

¹ Stanišić Defence Request for Medical Opinion from Reporting Medical Officer, 11 June 2010.

² Prosecution Response to Stanišić Defence Request for Medical Opinion from Reporting Medical Officer, 25 June 2010.

³ T. 5961-5962.

⁴ RMO Report Concerning the Health Condition of Mr Jovica Stanišić, 2 July 2010 (“RMO Report”).

⁵ Urgent Stanišić Defence Motion for Provisional Release, 6 July 2010.

⁶ T. 6116-6117.

⁷ Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release, 9 July 2010 (“Response”).

⁸ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 9 July 2010.

⁹ Addendum to Urgent Stanišić Defence Motion for Provisional Release Filed on 6 July 2010, 20 July 2010.

¹⁰ Motion, paras 3, 8-9.

¹¹ Motion, paras 3, 9-10.

¹² Motion, para. 10.

Stanišić Defence argues that provisional release could be revoked prior to the end of the recess where necessary, so that the Accused may recover from any illness before court proceedings resume.¹³ The Stanišić Defence further submits that the Republic of Serbia (“Serbia”) has reaffirmed its guarantees of 9 October 2009 and that the Military Medical Academy has provided guarantees for the provision of medical services and of periodical medical reports.¹⁴ The Stanišić Defence finally submits that a short period of provisional release, during which the Accused could be with his family, will assist his ongoing recovery.¹⁵

4. The Prosecution submits that there are insufficient assurances that the medical regime in Belgrade would be an adequate substitute for the complex infrastructure of monitoring, evaluation and treatment in place at the UNDU, which is required to keep the Accused’s condition stable.¹⁶ The Prosecution further submits that the recently reported kidney stone problems and severe allergic reaction to medication demonstrate the fragility of the Accused’s condition and that removing the Accused from the current regime could risk a deterioration of his condition, which could delay the proceedings.¹⁷ The Prosecution also submits that if the Accused’s condition deteriorates during a provisional release, the appropriate lawful course would not be a waiver of his right to be present, but an adjournment of the proceedings until the Accused was able to return.¹⁸ The Prosecution finally submits that alternatives to provisional release for the Accused to have face-to-face contact with his family could be explored.¹⁹

III. APPLICABLE LAW

5. The Chamber recalls the applicable law governing provisional release and provisional release procedures as previously set out by this Chamber.²⁰

IV. DISCUSSION

6. As to whether the Accused, if released, will return for trial, the Chamber recalls its discussion in the “Decision on Urgent Stanišić Defence Motion for Provisional Release” of 31

¹³ Ibid.

¹⁴ Motion, para. 6, Annexes A-C.

¹⁵ Motion, paras 3, 8.

¹⁶ Response, paras 6, 8-9.

¹⁷ Response, paras 6-9.

¹⁸ Response, para. 11.

¹⁹ Response, para. 10.

²⁰ See Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12; Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010, paras 19-21.

March 2010 (“31 March 2010 Decision”).²¹ Further, the Chamber considers and gives appropriate weight to the renewed guarantees given by Serbia.²² The Chamber also considers that, while the presentation of evidence has continued since the 31 March 2010 Decision, this change does not give rise to a reasonable fear that the Accused will attempt to abscond. For these reasons, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

7. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber recalls its discussion in the 31 March 2010 Decision.²³ As the Chamber has not received information indicating a change of circumstances in this respect since the 31 March 2010 Decision, it remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

8. In examining whether provisional release is appropriate in this case, the Chamber remains mindful of its obligation to avoid unnecessary interruptions in the trial proceedings.²⁴ In the 31 March 2010 Decision, the Chamber found that the medical condition of the Accused constantly bore an unpredictable risk of deterioration.²⁵ The RMO reports that since 31 March 2010, the Accused’s general mental and physical condition has clearly improved.²⁶ According to the RMO, provisional release, including travelling to Belgrade, would not increase the risk of deterioration of the Accused’s physical state.²⁷ The Chamber further notes that the Accused has in recent months made successful efforts to attend court proceedings. However, since 31 March 2010, the Accused has experienced two periods of kidney stone problems.²⁸ According to the RMO, these problems will recur at unpredictable moments in future, as treatment is limited by the Accused’s other ailments.²⁹ Further, in the same period, the Accused suffered an allergic reaction to one of his medications.³⁰ The RMO reports that this medication has since been discontinued, as a result of which his colitis symptoms are slowly increasing.³¹ As a result of the Accused’s medical complications, the Chamber was unable to hear the scheduled witness testimony in the week of 7 June 2010 and on 5 July 2010.³² Based on the information from the RMO contained in the report of 2 July 2010, as well as in other RMO reports on developments in the Accused’s condition since 31

²¹ 31 March 2010 Decision, paras 23-24.

²² Motion, para. 6, Annex A.

²³ 31 March 2010 Decision, para. 26.

²⁴ 31 March 2010 Decision, para. 28.

²⁵ 31 March 2010 Decision, para. 31.

²⁶ RMO Report, p. 1.

²⁷ RMO Report, pp. 1-2.

²⁸ Ibid; T. 6102.

²⁹ RMO Report, p. 2.

³⁰ RMO Report, pp. 1-2; T. 5509.

³¹ RMO Report, p. 2.

³² T. 5509, 5514-5515, 5596-5600, 5682-5683, 6102-6103.

March 2010,³³ the Chamber finds that the medical condition of the Accused continues to bear an unpredictable risk of deterioration.

9. The Chamber has previously held that the continuity of the existing system of treatment of the Accused is of the essence to ensure the fair and expeditious conduct of the proceedings in the present case.³⁴ The Chamber further recalls that even if a treatment regime could be secured in Belgrade on a level equal to that available to the Accused in the UNDU, the occurrence of a sudden deterioration of the Accused's health may affect the possibility of the Accused to return to The Hague.³⁵ As a consequence, the Chamber previously held that a deterioration occurring outside the UNDU could result in serious disruption of the trial proceedings.³⁶ In the present Motion and the Addendum, the Accused waives his right to be present at trial in case illness were to prevent his return to The Hague. The Chamber appreciates that in waiving his right to be tried in his presence, of Article 21 (4) (d) of the Statute of the Tribunal, the Accused expresses his cooperative attitude towards the continuation of the trial. A free and unequivocal waiver of the right to be present at trial, done with full knowledge, need not, depending on the circumstances, violate the Accused's right to be present at trial.³⁷ However, a significant deterioration in the Accused's condition during provisional release could prevent his return to The Hague for an extended period of time. The Chamber considers that the Accused's anticipatory waiver would be a legally unsatisfactory resolution of the present situation, in which the Accused is objectively at risk of being unable to attend trial for a significant period of time. The Chamber further notes in this respect that during such period the Accused would be in Belgrade, where he may have only a limited ability to effectively participate in the proceedings or instruct counsel. In the longer term, the genuinely voluntary nature of such a waiver, induced by a continuing medical condition of the Accused, could be called into question. Consequently, the Chamber remains convinced that, in spite of the Accused's waiver, a deterioration occurring outside the UNDU could result in serious disruption of the trial proceedings. The Chamber recalls that the existence of such risk strongly militates against granting provisional release.³⁸

³³ See e.g. RMO Reports on Health Condition of Mr Jovica Stanišić filed on 26 May 2010, 2 June 2010, 3 June 2010, 4 June 2010, 5 July 2010, 14 July 2010.

³⁴ Decision on Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 22 July 2009, para. 23; 31 March 2010 Decision, para. 33.

³⁵ 31 March 2010 Decision, paras 31, 33.

³⁶ Ibid.

³⁷ See *Prosecutor v. Tihomir Blaškić*, IT-95-14-AR108 bis, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 59; *Protais Zigiranyirazo v. the Prosecutor*, ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006, para. 14; *Ferdinand Nahimana et al. v. the Prosecutor*, ICTR-99-52-A, Judgement, 28 November 2007, paras 95-109, 116.

³⁸ 31 March 2010 Decision, paras 31, 33.

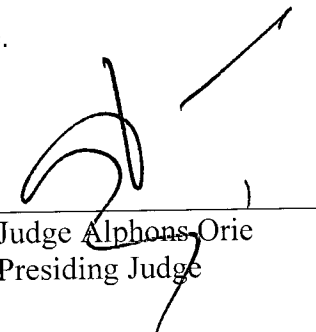
10. The RMO further reports that although the Accused has made progress in addressing his personal family-related problems by telephone, some of those problems could be more effectively resolved by face-to-face meetings.³⁹ According to the RMO, even a partially successful outcome in this respect would diminish the Accused's distress and feeling of incapacity, thus improving his mental and physical state.⁴⁰ The Chamber accepts that such face-to-face meetings with family may assist the Accused in addressing his personal problems, but considers that the possibility of such contact being facilitated within the UNDU should be further explored instead.

11. In balancing the reasons for granting provisional release advanced by the Defence and the possible impact that granting the Motion may have on the future course of the trial, as set out above, the Chamber finds that the Motion should not be granted.

V. DISPOSITION

12. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber **DENIES** the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this Twenty-second day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

³⁹ RMO Report, p. 1.

⁴⁰ RMO Report, p. 2.