



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-04-79-PT
Date: 19 July 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Order of: 19 July 2005

PROSECUTOR

v.

MIĆO STANIŠIĆ

**DECISION ON MIĆO STANIŠIĆ'S
MOTION FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Anna Richterova

Counsel for the Accused:

Mr. Branko Lukić

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 a “Defence Motion for Provisional Release” (“Motion”) filed on 19 April 2005 by Mićo Stanišić (“Accused”). The Accused submitted, *inter alia*, the following factors in support of his motion for provisional release: his voluntary surrender to the Tribunal, he is not charged with genocide and faces only the prospect of a short prison term, improved cooperation of the authorities of Serbia and Montenegro with the Tribunal, guarantees for the Accused from the governments of Serbia and Montenegro¹ and the Republic of Serbia², the Accused’s personal guarantee to abide by all conditions of provisional release³, possible lengthy pre-trial detention, the lack of danger to victims and witnesses posed by his release, and his co-operation with the Prosecution of the Tribunal.⁴

2. On 17 May 2005 the Prosecution filed a “Prosecution Response to Defence’s Motion for Provisional Release” (“Response”). In the Response, the Prosecution submitted that the Motion relies upon mischaracterisations of the Accused’s role, his alleged intent, the gravity of the charges and the penalty which he can expect to receive if he is convicted, and questions the motivation for the surrender of the Accused and raises the possibility that he will interfere with potential witnesses.

3. On 1 July 2005, the Chamber issued an “Order Requesting Additional Information and Staying the Consideration of Mićo Stanišić’s Motion for Provisional Release” (“Chamber’s Order”), calling on the Accused to provide the Chamber with further information on the circumstances of surrender of the Accused and the following information: (1) the Accused’s previous and present family, residential and employment affiliation, where applicable to the Republic of Serbia and Republika Srpska; (2) whether there was an arrest warrant and order to surrender against the accused issued by the authorities of the Republic of Serbia and Republika Srpska; (3) whether the Accused was taken into custody by the authorities of the Republika Srpska or the Republic of Serbia before his transfer to the Tribunal and the place and circumstances of his surrender and arrest; and (4) details of the intentions of the Accused with respect to residence and employment if released pending trial. On 7 July 2005, the Accused filed a “Defence Motion in Compliance with the Chambers Order Requesting Additional Information and Staying the Consideration of Mićo

¹ Annex A attached to Motion.

² Annex B attached to Motion.

³ Annex C attached to Motion.

⁴ Motion, paras 7-27.

Stanišić's Motion for Provisional Release" ("Additional Information"), in response to the Chamber's Order.

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

5. The Accused is charged with individual criminal liability under 7(1) of the Statute for allegedly instigating or aiding and abetting the aforementioned crimes, as well as participating in a joint criminal enterprise, the common purpose of which was to permanently remove and ethnically cleanse Bosnian Muslims, Bosnian Croats and other non-Serbs from the SAO.⁶ In his capacity as Minister of the newly established Serbian Ministry of Internal Affairs ("RS MUP") in Bosnia and Herzegovina, the Accused is also charged with superior responsibility pursuant to Article 7(3) of the Statute for the crimes of his subordinates.⁷

II. LAW

6. Pursuant to Rule 65(A) of the Rules, an accused may not be released once detained, except upon an order of a Chamber. Under Rule 65(B) of the Rules, release may be ordered by a Chamber, after giving the host country and the State to which the accused seeks to be released the opportunity to be heard, but *only if* the Chamber is satisfied that the accused will appear for trial, and if released, will not pose a danger to any victim, witness or other person. Once the Chamber is satisfied on these two points, it may, in the exercise of its discretion, order the release of the accused.⁸ That discretion must be exercised in light of all the circumstances of the case.⁹

7. 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 host country on 27 April 2005 informed the Tribunal that it had no objection to the

⁵ Indictment, 24 February 2005.

⁶ *Ibid*, paras-6-7, 15.

⁷ At his initial appearance on 17 March 2005, the Accused pleaded not guilty to all the counts of the Indictment.

⁸ *The Prosecutor v. Kovačević*, Case No.: IT-97-24-T, Decision on Defence Motion for Provisional Release, 20 January 1998, para. 7; *The Prosecutor v. Ojdanić*, Case No.: IT-99-37-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005, para. 6; *The 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.

⁹ *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.

Accused's provisional release, and (b) the Republic of Serbia and Montenegro and the Republic of Serbia provided governmental guarantees in favour of the Accused's provisional release.¹⁰

III. DISCUSSION

Whether the Accused, if released, will appear for trial

8. The Appeals Chamber has indicated *a non-exhaustive set of factors* which a Trial Chamber should take into consideration when assessing *whether an accused will appear for trial*. They are: whether the applicant is charged with serious criminal offences so that, if convicted, he is likely to face a long prison term; the circumstances in which he surrendered; the degree of co-operation given to the authorities concerned; whether the relevant government has given guarantees that it would ensure the presence of the accused for trial and guarantees the observance of the conditions set by the Trial Chamber upon his provisional release; whether the accused held very senior positions, so far as it is relevant to the weight to be attached to governmental guarantees; the existence of a Law on Co-operation with the Tribunal; whether the applicant has given a personal guarantee to abide by the conditions set by the Trial Chamber should he be released; the likelihood whether, in light of the circumstances prevailing at the time of the decision and, as far as foreseeable, when the accused will be expected to return for trial, the relevant authorities will re-arrest the accused should he decline to surrender; and whether the accused has agreed to be interviewed by the Office of the Prosecutor.¹¹

The gravity of the crimes charged

9. The Chamber notes that the Accused is charged with persecutions on political, racial and religious grounds, extermination, murder, torture, inhumane acts, deportation and forcible transfer as *crimes against humanity*, and murder, torture and cruel treatment, as *violations of the laws of customs of war*. The gravity of the crimes charged has a bearing on the determination whether the possibility of a lengthy sentence would constitute an incentive for an accused to flee.¹² It is evident that the more severe the sentence which an accused faces, the greater is his incentive to flee.¹³ While the Accused is not charged with genocide¹⁴, the Accused is alleged to have committed crimes of considerable gravity while in a very senior position so that, if found guilty, he is likely to serve a

¹⁰ See, Annex A and B attached to Motion.

¹¹ *Prosecutor v. Šainović and Ojdanić*, Case No.: IT-99-37-AR65, Decision on Provisional Release, 30 October 2002, para 6.

¹² *The 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.

¹³ *The 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, *The Prosecutor v. Brđanin*, Case No.: IT-99-36-T, Decision on Motion by Radoslav Brđanin for Provisional Release, 25 July 2000, para. 16.

long prison sentence. It follows that the seriousness of the offences charged and the likelihood of a long sentence in part in this case militate against the provisional release of the Accused. However, these are not the sole factors relevant to the outcome of an application for provisional release and should be taken into account with other factors.¹⁵

The circumstances of surrender

10. In the Motion, the Accused stated that he was informed of the Indictment, on 7 March 2005, by the President of Republika Srpska, Dragan Cović, and the Minister of Interior of Republika Srpska, Mr. Darko Matijasević. He stated that he immediately made arrangements to surrender to the Tribunal. A couple of days later, on 11 March 2005, the Accused was transferred to the seat of the Tribunal, in The Hague.¹⁶ As anticipated earlier, the Motion failed to make clear the material circumstances of the Accused's surrender. The Motion provided no information whether there was a warrant of arrest and order for surrender against the Accused, his place of residence and employment at the time, whether he surrendered voluntarily, was arrested or taken into custody by the authorities of Republika Srpska or the Republic of Serbia and what occurred after he was informed of the Indictment in Republika Srpska.¹⁷ The Prosecution's submission added nothing in this respect.¹⁸ In the absence of clear information on the circumstances of the Accused's surrender, the Accused was ordered to provide the Chamber with additional information.¹⁹ In compliance with the Chamber's Order, the Accused has now specified that he was in Belgrade, Republic of Serbia, when informed of the Indictment on 7 March 2005 by the Minister of Interior of Republika Srpska. He submitted that this took place in the presence of Mr. Loncar, Minister for Local Administration of the Republic of Serbia. He stated that he immediately proposed that he should be transferred to the Tribunal but as there were no practical arrangements in place for his transfer at that time, he was transferred to The Hague by the authorities of the Republic of Serbia on 11 March 2005.²⁰ The Chamber also notes, a statement by the Accused, filed in support of his motion, which was taken by the Agency for Security and Information of the Republic of Serbia on the date the Accused was informed of the Indictment.²¹ The statement documents the Accused's presence in Belgrade on 7

¹⁴ Motion, para. 7.

¹⁵ *The 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 26.

¹⁶ Motion, para. 10.

¹⁷ The Chamber is aware that the guarantee provided by Serbia and Montenegro recites that the Accused surrendered "into the custody of the Tribunal on his own free will on March 11, 2005", but that does not purport to deal with what occurred between 7 and 11 March 2005.

¹⁸ Response.

¹⁹ Chamber's Order.

²⁰ Additional Information, para. 3.

²¹ Annex IV attached to Additional Information.

March 2005, before authorities of the Republic of Serbia, and the Accused's willingness to be transferred to The Hague.²²

11. The additional information submitted by the Accused offers no support for the Prosecution's concern that no coercive measures may have been used to ensure his transfer to the Tribunal,²³ and confirms that the surrender was voluntary. Although it is to be noted that the Accused's surrender was conditional to him receiving, *inter alia*, a government guarantee from the Republic of Serbia in support of his provisional release, this is not a basis for doubting the voluntariness of his surrender. Further, the Chamber notes that the guarantee provided by Serbia and Montenegro seemingly correctly recites that the Accused surrendered "into the custody of the Tribunal on his own free will on March 11, 2005".²⁴

Government guarantees

12. Pursuant to the case-law of this Tribunal, the Chamber is bound to evaluate governmental guarantees offered in light of the circumstances of each particular case²⁵ and the personal circumstances of the Accused,²⁶ including notably any position held in the government by the Accused prior to his arrest.²⁷

13. The governmental guarantees presented in support of the Motion in this case are from the government of the Republic of Serbia issued on 10 March 2005,²⁸ and from the Council of Ministers of Serbia and Montenegro issued on 24 March 2005.²⁹ The authorities of Serbia and Montenegro undertake various obligations. These include the obligation of the Ministry of Interior of the Republic of Serbia and the State Security Agency of the Republic of Serbia to secure that the Accused reports daily to a police station and to inform the Tribunal immediately should the Accused fail to present himself; the obligation of the Ministry of Interior of the Republic of Serbia to arrest the Accused if he tries to escape or, indeed, if he violates any of the terms and conditions of his temporary release and to inform the Tribunal of such fact; as well as the undertaking of the Government of the Republic of Serbia to honour all orders issued by the Chamber so that the Accused will appear for trial before the Tribunal when required.

²² The Accused's submissions regarding the circumstances of his surrender also reflect comments he made at the Status Conference on 6 July 2005 (T. 29-32).

²³ Response, paras 23-25.

²⁴ Annex A attached to Motion.

²⁵ See, *The Prosecutor v. Mrkšić*, Case No.: IT-95-13/1-AR65, Decision on Appeal Against Refusal to Grant Provisional Release, 8 October 2002, para 9.

²⁶ *The Prosecutor v. Šainović and Ojdanić*, Case No.: IT-99-37-AR65, Decision on Provisional Release, 30 October 2002, para. 7.

²⁷ *The Prosecutor v. Šainović and Ojdanić*, Case No.: IT-99-37-AR65, Decision on Provisional Release, 30 October 2002, para 7.

14. Indicative of the reliability of the governmental guarantees is the degree of co-operation between the state authorities providing the guarantees and the Tribunal. In this regard, the Chamber observes that in the recent months the number of indictees that have surrendered from Serbia and Montenegro to the custody of the Tribunal has increased. This is generally seen as an improvement of co-operation between the governments and the Tribunal, weighing in favour of the reliability of the government guarantees provided.³⁰

15. The position of the Accused prior to his arrest is another factor taken into account when evaluating the reliability of governmental guarantees. A *ratio* behind this is that the authorities of the country which has provided a governmental guarantee, might not want to arrest an accused should he be released and refuse to re-appear for trial, because of fear that the accused will reveal confidential information which he possesses by virtue of his senior position in that country prior to his arrest. The Chamber observes that in the instant case the Accused was Minister of the RS MUP in Bosnia and Herzegovina from 1 April 1992 until at least 31 December 1992.³¹ As mentioned earlier the guarantees in question are from Council of Ministers of Serbia and Montenegro and the government of the Republic of Serbia, a country of which the Accused is a citizen and where the Accused wishes to reside if granted pre-trial release. According to the additional information submitted, the Accused moved with his family from Sarajevo in Bosnia and Herzegovina to Belgrade in 1994 and from the year 2000 was the manager of a company he himself founded.³² There is no information to suggest that the Accused has held a senior position in the government of the Republic of Serbia prior to his transfer to The Hague.

Co-operation of the Accused

16. As for an accused's willingness to be interviewed as evidence of his co-operation with the Tribunal, in the Motion, the Accused declared that, as he had not yet seen the supporting materials provided by the Prosecution, he is not yet in a position to consider being interviewed.³³ At best, this suggests an extremely cautious attitude by the Accused. There is no indication of cooperation with the Prosecution, or lack thereof, at this stage. This issue cannot be taken further at this early stage of the proceedings.

²⁸ Annex A attached to Motion.

²⁹ Annex B attached to Motion.

³⁰ See, *The Prosecutor v. Ojdanić*, Case No.: IT-99-37-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005, para. 19.

³¹ See *supra*, para. 4.

³² Additional Information, para. 3.

³³ Motion, para. 23.

Other factors

17. The potential duration of pre-trial detention is another factor relied on by the Defence in support of its Motion.³⁴ In the Response, the Prosecution correctly submits that the duration of pre-trial detention is an uncertain element in this case. Further, it is stressed that this may affect the exercise of a Chamber's discretion, if, and only if, the Chamber is first satisfied that an accused, if released, will appear for trial and will not pose a threat to any victims, witnesses or other persons.³⁵ The Chamber notes that the Accused has been in pre-trial detention since his transfer to The Hague on 11 March 2005. In view of the relatively brief period that the Accused has spent in pre-trial detention and as it is at present not possible to make any firmer estimation of the probable period of detention of the Accused pending the commencement of the trial, other than that a trial is not likely to commence before 2007,³⁶ the Chamber is not in a position to give any significant weight to this additional factor at this stage.

Whether if released, the Accused will pose a danger to any victim, witness or other person

18. The Prosecution argues in its submission that, by virtue of his senior position in 1992 and 1994 in Republika Srpska the Accused retains the necessary contacts and means to locate prospective witnesses and their families and could use a variety of means of intimidation.³⁷ However, there is no evidence that the Accused has, in fact, ever sought to contact or intimidate victims or witnesses, and there is no evidence that he intends to do so if released. Additionally, it is to be observed that the Accused is alleged to have committed crimes from 1 April to 31 December 1992 in areas within Bosnia and Herzegovina.³⁸ The prospective witnesses and victims in his case are therefore likely to be located in these areas and not in Serbia and Montenegro, where the Accused has been residing with his family in Belgrade since 1994.³⁹ On 15 September 1994, the Accused became a citizen of Serbia and Montenegro and has been self-employed in a retail company he himself founded in Belgrade in the year 2000.⁴⁰ As anticipated earlier, there is no information indicating the Accused's connections or contacts and means to locate prospective witnesses in Bosnia and Herzegovina or elsewhere.

³⁴ Motion, paras 25-26.

³⁵ Response, para. 29.

³⁶ Status Conference, 6 July 2005, T. 33-34.

³⁷ Motion 26-27.

³⁸ See *supra*, para. 4.

³⁹ Additional Information, para. 3.

⁴⁰ Additional Information, para. 3 and Annex III attached to Additional Information.

IV. CONCLUSION

19. In view of the foregoing, the Accused has now sufficiently persuaded the Chamber that he will appear for trial, and, will not pose a threat to any victim, witness or other person if released. Further, having regard to all relevant factors and having weighed the competing considerations, the Chamber is satisfied that it is justified in exercising its discretion in favour of the Accused.

20. Accordingly, pursuant to Rule 65 of the Rules, the Chamber **GRANTS** the Motion and,

I. **ORDERS** as follows:

1. the Accused shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
2. at Schiphol airport, the Accused shall be provisionally released into the custody of an official of the government of Serbia and Montenegro to be designated prior to release, who shall accompany the Accused for the remainder of his travel to Serbia and Montenegro and to his place of residence;
3. on his return, the Accused shall be accompanied by a designated official of the government of Serbia and Montenegro, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by Order of the International Tribunal, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague;
4. during the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the governments of Serbia and Montenegro and the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
 - a) reside in his home in Belgrade in the following address: Milisava Dakica Street No. 1a;⁴¹
 - b) provide details of his residence in Belgrade to the Ministry of Internal Affairs of the Republic of Serbia and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague;
 - c) to remain within the confines of the municipality of Belgrade;

⁴¹ Additional Information, paras. 3, 5.

- d) to surrender his passport to the Ministry of Internal Affairs of the Republic of Serbia;
- e) to report each day to the police in Belgrade at a local police station to be designated by the authorities of the Republic of Serbia;
- f) to consent to having the Ministry of Internal Affairs of the Republic of Serbia check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the same Ministry or by a person designated by the Registrar of the International Tribunal;
- g) not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- h) not to discuss his case with anyone, including the media, other than with his counsel;
- i) to continue to cooperate with the Tribunal;
- j) to agree to be interviewed if called on by the Prosecution;
- k) to comply strictly with any requirements of the authorities of Serbia and Montenegro and the Republic of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
- l) to return to the Tribunal at such time and on such date as the Tribunal may order;
and
- m) to comply strictly with any further Order of the Tribunal varying the terms of or terminating his provisional release;

II. **REQUIRES** the governments of the Serbia and Montenegro and the Republic of Serbia to assume responsibility as follows:

1. by designating an official of the government of Serbia and Montenegro into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and Montenegro and to his place of residence, and notifying, as soon as practicable, the Chamber and the Registrar of the Tribunal of the name of the designated official;
2. for the personal security and safety of the Accused while on provisional release;

3. for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
4. for all expenses concerning accommodation, other than at his residence in Belgrade, and security of the Accused while on provisional release;
5. at the request of the Tribunal, or the parties, to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;
6. to submit a written report to the Chamber every month as to the compliance of the Accused with the terms of this Order;
7. to arrest and detain the Accused immediately if he should breach any of the conditions of this Order; and
8. to report immediately to the Chamber any breach of the conditions set out above;

III. **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in The Netherlands as to the practical arrangements for his release and to continue to detain the Accused at the United Nations Detention Unit in The Hague until such time as the Chamber and the Registrar have been notified of the name of the designated official of the government of Serbia and Montenegro into whose custody the Accused is to be provisionally released;

IV. **REQUESTS** the authorities of all States through whose territory the Accused will travel,

1. to hold the Accused in custody for any time that he will spend in transit at the airport; and
2. to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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

Dated this nineteenth day of July 2005,
At The Hague
The Netherlands



Judge Kevin Parker

Presiding Judge

[Seal of the Tribunal]