

IT-04-79-P
D 13286 - D 13286
21 July 2005

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UNITED
NATIONS



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: 21 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: 21 July 2005

PROSECUTOR

v.

MIĆO STANIŠIĆ

**ORDER ON PROSECUTION'S MOTION TO STAY THE
DECISION ON PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Alan Tieger

Counsel for the Accused:

Mr. Branko Lukić

THIS 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 seized of a “Prosecution’s Motion To Stay The Decision On Provisional Release”, filed on 20 July 2005 (“Motion”),

NOTING the “Decision on Mićo Stanišić’s Motion For Provisional Release”, dated 19 July 2005, whereby the Trial Chamber granted the accused Mićo Stanišić (“Accused”) provisional release (“Trial Chamber Decision on Provisional Release”);

NOTING that in the Motion, the Prosecution, requests that the Trial Chamber’s Decision on Provisional Release be stayed allowing the Prosecution to file its application seeking leave to appeal pursuant Rule 65(F) of the Rules of Procedure and Evidence (“Rules”) if the stay is granted, or Rule 65(D), within seven days of the filing of the impugned decision;¹

NOTING that Rule 65 (E) of the Rules provides “The Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision, and shall make such an application *at the time of filing his or her response* to the initial application for provisional release by the accused” (emphasis added);

NOTING that the Prosecution has filed a “Prosecution Response to Defence’s Motion for Provisional Release” (“Response”), on 17 May 2005, and that in its Response, it did not apply for a stay of the decision of the Trial Chamber to release the Accused, as is required by Rule 65(E) of the Rules;

NOTING that in the Motion, the Prosecution submits *inter alia*, that it omitted to include a request for stay in its Response due to an oversight on its side and that it always intended to seek leave to appeal if the Accused was granted provisional release;²

CONSIDERING that the Motion originates from a failure on the part of the Prosecution to make an application for stay of the Trial Chamber’s decision at the time that it filed its Response to the initial application of the Accused for provisional release, as mandated for by Rule 65(E) of the Rules;³

NOTING that in the Motion, the Prosecution submits that Rule 65(E) of the Rules may be viewed as providing one way in which the Prosecutor may seek a stay pending appeal but not the sole way,

¹ Motion, para. 6.

² Motion, para. 3.

³ See, *Prosecutor v. Prlić et al.*, Case No.: IT-04-74-AR65.1, Decision on Motions for Reconsideration, Clarification, Request for Release and Applications For Leave to Appeal, 8 September 2004, para. 5.

and that a failure to make an application for stay in conformity with Rule 65(E) of the Rules does not foreclose a recognition of the application to stay the provisional release of the Accused as validly done, pursuant to Rule 127 (A)(ii) of the Rules;⁴

NOTING, however, the interrelationship between Rules 65(E), (F) and (G);

CONSIDERING that the deadline set forth in Rule 65 of the Rules may be varied by a Chamber in accordance to Rule 127 of the Rules upon good cause been shown;

CONSIDERING however, that the Prosecution should not rely upon Rule 127 of the Rules to circumvent the proper procedure to be followed to stay a decision for provisional release;⁵

CONSIDERING that the Trial Chamber is not satisfied that good cause has been shown in accordance to Rule 127 of the Rules, which would justify granting the present Motion, especially as there is no new or unexpected circumstance relied on, merely oversight;

HEREBY REJECTS the Motion.

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

Dated this twenty-first day of July 2005,

At The Hague

The Netherlands



Judge Kevin Parker

Presiding

[Seal of the Tribunal]

⁴ Motion, para. 5.

⁵ *Prosecutor v. Prlić et al.*, Case No.: IT-04-74-AR65.1, Decision on Motions for Reconsideration, Clarification, Request for Release and Applications For Leave to Appeal, 8 September 2004, para. 5.