



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-PT

Date: 8 February 2006

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 8 February 2006

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

**DECISION ON STANIŠIĆ DEFENCE'S MOTION FOR TEMPORARY
MODIFICATION OF PROVISIONAL RELEASE CONDITIONS**

The Office of the Prosecutor

Ms. Hildegard Uertz-Retzlaff
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Counsel for Jovica Stanišić

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Mr. Wayne Jordash

Counsel for Franko Simatović

Mr. Zoran Jovanović

Serbia and Montenegro

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 (“International Tribunal”),

BEING SEIZED OF the “Confidential Motion on the Temporary Modification of the Provisional Release Conditions Due to Medical Condition of the Accused”, filed on 23 November 2005 (“Motion”), in which the Defence of Jovica Stanišić (“Accused”) requests a modification of the conditions of the Accused’s provisional release in order to “remain outside the municipality of Belgrade for the purpose of receiving supplementary therapy at the Igalo Medical Centre for a period of three weeks”,¹

NOTING the Prosecution’s confidential “Response to Jovica Stanišić’s ‘Motion on the Temporary Modification of the Provisional Release Conditions Due to Medical Condition of the Accused’”, filed on 6 December 2005 (“Prosecution Response”), in which the Prosecution does not object to a variation of the terms of provisional release identical to those set out in the Trial Chamber’s Decision of 14 April 2005,² but does not concede that the Igalo Institute is the most appropriate place for the Accused to receive medical treatment,³

NOTING that the Trial Chamber’s “Decision on Provisional Release” of 28 July 2004 requires that the Accused “remain within the confines of the municipality of Belgrade”⁴ and “report each day to the police in Belgrade at a local police station to be designated by the Ministry of Justice”,⁵

NOTING the “Order on Stanišić Defence’s Motion for Temporary Modification of Provisional Release Conditions”, issued on 7 December 2005, in which the Trial Chamber directs the Governments of Serbia and Montenegro, the Republic of Serbia, and the Republic of Montenegro

(1) to provide the Trial Chamber with details on how the transfer of the Accused will be carried out (a) from Belgrade to Igalo Institute, and (b) from Igalo Institute back to Belgrade; and to provide information on arrangements made for an escort by a government authority during the Accused’s travel and, if necessary, for the delivery of the Accused into the custody of a different government authority,

(2) to indicate whether, during the treatment period of the Accused at Igalo Institute,

¹ Motion, para. 14.

² *Prosecutor v. Stanišić*, Case No. IT-03-69-PT, Decision on Defence’s Motion on the Temporary Modification of the Provisional Release Conditions Due to the Medical Condition of the Accused, 14 April 2005.

³ Prosecution Response, paras. 2–3.

⁴ *Prosecutor v. Stanišić*, Case No. IT-03-69-PT, Decision on Provisional Release, 28 July 2004 (“Decision on Provisional Release”), para. 43.

⁵ *Ibid.*

- (a) a local police station in Igalo, to which the Accused can report daily, can be designated,
- (b) the written report on the Accused's compliance with the conditions of his provisional release, which is to be submitted every two weeks, will come from the Ministry of Justice of the Republic of Montenegro,
- (c) the Accused will be able to be arrested and detained immediately if he should breach any of the conditions of his provisional release, and
- (d) the authorities will be in a position to report immediately to the Trial Chamber any breach by the Accused of the conditions of the provisional release order, and any temporary modifications to it.⁶

NOTING "Serbia and Montenegro's Submission Concerning the Temporary Modification of the Provisional Release Conditions Due to the Medical Conditions of the Accused", filed on 6 February 2006 ("Serbia and Montenegro Submission"), in which the President of the National Council of Serbia and Montenegro gives the following assurances in relation to the 7 December 2005 Order:

- (1) in co-ordination between the Ministries of Internal Affairs of the Republic of Serbia and the Republic of Montenegro, the Accused will be transferred by air from Belgrade to Tivat Airport in Montenegro, and will be accompanied during this part of the journey by a police escort from the Ministry of Internal Affairs of the Republic of Serbia; upon arrival, the Accused will be placed in the custody of representatives of the Ministry of Internal Affairs of the Republic of Montenegro, who will escort him from Tivat Airport to the Igalo Institute; and the same arrangements will apply for the return journey of the Accused to Belgrade,
- (2) during the treatment period of the Accused at Igalo Institute, the Ministry of Internal Affairs of the Republic of Montenegro will take all necessary measures in relation to the Accused, and the person responsible for the Accused will be the Head of the Herceg Novi Security Centre, Mr. Vojo Dragović,
- (3) the Accused will report daily to the police station in Herceg Novi,
- (4) the written report on the Accused's compliance with the conditions of his provisional release, which is to be submitted every two weeks, will come from the Ministry of Internal Affairs of the Republic of Montenegro,

⁶ *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Order on Stanišić Defence's Motion for Temporary Modification of Provisional Release Conditions, 7 December 2005 ("Order on Provisional Release Modification"), p. 2.

- (5) the Accused will be arrested and detained immediately if he should breach any of the conditions of his provisional release, and
- (6) the authorities of the Republic of Montenegro can report directly to the Trial Chamber any breach by the Accused of the conditions of his provisional release, as well as any other information requested by the Trial Chamber,⁷

NOTING the “Confidential Urgent Defence Request for a Final Decision on the Temporary Modification of the Provisional Release Conditions Due to the Medical Condition of the Accused”, filed on 7 February 2006 (“Defence Request”), in which the Defence informs the Trial Chamber that the Igalo Institute has indicated that the therapeutic programme of the Accused could commence on 13 February 2006, and in which the Defence requests the Trial Chamber to issue a decision allowing the Accused to stay at the Igalo Institute for a period of three weeks, starting 13 February 2006,⁸

NOTING that the Accused has been treated in the past at Igalo Institute, most recently in May 2005, and that Dr. Dino Tarabar, a Belgrade gastroenterologist who has treated the Accused in the past, supports sending the Accused for treatment at Igalo Institute for at least a three-week period,⁹

NOTING that this Trial Chamber has held that submissions relating to the Accused’s ill health and requesting substantive relief shall be made in public unless good cause is shown for filing them confidentially,¹⁰ and that the Motion and Defence Request ask for substantive relief in the form of the temporary modification of the Accused’s protective measures,¹¹

CONSIDERING that the vague reference in the Defence Request to “security reasons”¹² does not constitute good cause for this Decision or the Defence Request to be filed confidentially,

CONSIDERING the information provided in the Serbia and Montenegro Submission,

CONSIDERING that sufficient reasons have been shown to warrant a temporary modification of the conditions of the Accused’s provisional release,

⁷ Serbia and Montenegro Submission, paras. 1–5.

⁸ Defence Request, paras. 5, 8.

⁹ Motion, para. 6 and first attached document.

¹⁰ *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, [Confidential] Order on *Stanišić* Defence Application Requesting a Hearing on the Ill Health of the Accused, 2 December 2005, p. 2; Order on Provisional Release Modification, *supra* note 6, p. 2.

¹¹ Motion, para. 14.

¹² Defence Request, para. 7.

PURSUANT TO Rules 54 and 65 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY GRANTS the Motion and

(1) **ORDERS** as follows:

- (a) for a period of no more than four consecutive weeks (or 28 consecutive days) beginning on 11 February 2006, the Accused may leave the municipality of Belgrade for the Igalo Institute in Montenegro for the sole purpose of receiving medical treatment,
- (b) the Accused shall notify the Trial Chamber of the exact dates of his treatment at Igalo Institute as soon as they are known, and
- (c) during his period of temporary absence from the municipality of Belgrade, and for the entire duration of his treatment at Igalo Institute, the Accused shall report each day to the police station at Herceg Novi.

(2) **DIRECTS** the Governments of Serbia and Montenegro, the Republic of Serbia, and the Republic of Montenegro to assume responsibility, in light of the temporary modification of the provisional release conditions of the Accused, as follows:

- (a) by designating the officials who shall escort the Accused from (i) Belgrade to Tivat Airport; (ii) Tivat Airport to Igalo Institute; (iii) Igalo Institute to Tivat Airport; and (iv) Tivat Airport to Belgrade, and
- (b) by coordinating the delivery of the Accused into the custody of the designated officials, particularly at Tivat Airport, during the transfer of the Accused from (i) Belgrade to Igalo Institute and (ii) Igalo Institute to Belgrade.

(3) **DIRECTS** the Governments of Serbia and Montenegro and the Republic of Montenegro to assume responsibility, during the presence of the Accused in the Republic of Montenegro, as follows:

- (a) by ensuring the personal security and safety of the Accused,
- (b) by facilitating all means of cooperation and communication between the parties, at the request of the Trial Chamber or the parties, and by ensuring the confidentiality of any such communication,

- (c) by submitting a written report to the Trial Chamber every two weeks on the compliance of the Accused with his provisional release conditions as set forth in this Trial Chamber's Decision of 28 July 2004 and this present Decision,
- (d) by arresting and detaining the Accused immediately if he should breach any of his provisional release conditions as set forth in this Trial Chamber's Decision of 28 July 2004 and this present Decision, and
- (e) by reporting immediately to this Trial Chamber any breach of the Accused's provisional release conditions as set forth in this Trial Chamber's Decision of 28 July 2004 and this present Decision.

(4) **ORDERS** the Registrar of the International Tribunal

- (a) to serve this Order to the Governments of Serbia and Montenegro, the Republic of Serbia, and the Republic of Montenegro; and to re-serve to these Governments the Decision on Provisional Release of 28 July 2004 setting out the conditions of the provisional release of the Accused,¹³ and
- (b) to lift the confidential status of the Defence Reply.

This Decision does not affect the continuing application of the terms and conditions of the Accused's provisional release, as set forth in the Decision of 28 July 2004, except to the extent specified in paragraphs (1) through (3) above.

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



Judge Patrick Robinson
Presiding

Dated this eighth day of February 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ See Decision on Provisional Release, *supra* note 4.