



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 2008
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 8 February 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON “URGENT DEFENCE MOTION FOR
PROLONGATION OF PROVISIONAL RELEASE DUE
TO MEDICAL UNFITNESS OF ACCUSED TO BE
DETAINED”**

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović for Franko Simatović

TRIAL CHAMBER III (“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”);

BEING SEISED of the “Urgent Defence Motion for Prolongation of Provisional Release Due to Medical Unfitness of Accused to be Detained” with confidential annex (“Motion”), filed on 7 February 2008 by the Defence of Jovica Stanišić (“Defence”);

NOTING the “Additional Urgent Defence Motion for Prolongation of Provisional Release Due to Medical Unfitness of Accused to be Detained” with confidential annexes (“Additional Motion”), filed on 8 February 2008;

NOTING the “Prosecution Response to ‘Urgent Defence Motion for Prolongation of Provisional Release Due to Medical Unfitness of Accused to be Detained’”, filed on 8 February 2008;

NOTING that the Defence seeks a review of the Trial Chamber’s “Scheduling Order and Termination of Provisional Release” (“Order”), insofar as it pertains to the ordered return of the Accused, Jovica Stanišić, to The Hague on 11 February 2008;

CONSIDERING that the Defence submits that the Accused’s provisional release should be prolonged in view of the last medical update which, according to the Defence, shows that “it is questionable whether Mr. Stanišić is currently fit to be detained”;¹

NOTING Dr. Tarabar’s “Request for treatment and therapy for Mr. Stanišić”, (“Dr. Tarabar’s Report”) dated 5 February 2008, attached to the Motion as Confidential Annex I;

CONSIDERING that the Defence submits in its Motion that “without guarantees that the proper medical treatment as mentioned in annex I will be facilitated within the UNDU, the [A]ccused is not fit to be subjected to detention”;²

CONSIDERING that Dr. Tarabar states in his Report that he is “free to say how difficult it would be to provide proper medical treatment during his stay in prison facility”;³

CONSIDERING that Dr. Tarabar’s Report does not provide any satisfactory reason for the Accused not to be transferred to The Hague;

¹ Motion, para. 3.

² Motion, para. 6.

³ Dr. Tarabar’s Report, p. 1.

NOTING the Reports of Dr. Boro Đurić and Dr. Sidor Misović, attached to the Additional Motion as Confidential Annexes II and III, which show that the Accused is suffering from trombosis which is being treated;

CONSIDERING however that there is nothing in the Reports that finds that the Accused is not fit to travel to The Hague or to be detained in the UNDU;

CONSIDERING that the Trial Chamber is satisfied that adequate medical facilities can be provided for the Accused's conditions at the UNDU;

CONSIDERING that neither the Motion nor the Additional Motion disclose any reason for the Accused not to be transferred to The Hague on 11 February 2008;

CONSIDERING that the Trial Chamber deems it necessary to receive an independent medical report by a gastroenterologist and a psychologist, so as to be provided with the most recent medical update and an opinion on the Accused's fitness to stand trial, once he is transferred to the Hague;

HEREBY REAFFIRMS the Order terminating the Accused provisional release and requiring his transfer to The Hague on 11 February; and

ORDERS the Registry as follows:

- (i) all necessary measures are to be taken to ensure that the medical needs of the Accused are met during his stay in the UNDU;
- (ii) the UNDU Medical Unit shall receive all medical information on the Accused's health situation prior to his arrival, and in particular shall be provided with the following medical reports:
 - All medical reports, attached to the Motion and Additional Motion;
 - the medical reports attached to the "Second Stanišić Defence Motion on Fitness of the Accused to Stand Trial with Confidential and Partly *Ex Parte* Annexes", filed on 3 January 2008;
 - the medical reports attached to the "Prosecution Response to Second Stanišić Defence Motion on Fitness of the Accused to Stand Trial and Submission of Medical Reports", filed on 14 January 2008;

- the medical reports attached to the “Defence Submission of Outstanding Medical Reports and Explanation for Late Filing with Confidential and Partly *Ex Parte* Annexes”, filed on 23 January 2008;
- (iii) all medication prescribed by all doctors for the Accused is to be available at the UNDU pharmacy upon the arrival of the Accused;
- (iv) the Accused shall be examined by an independent gastroenterologist and an independent psychologist, within 10 days after his arrival at UNDU on 11 February 2008;
- (v) the gastroenterologist and the psychologist appointed by the Registry shall be provided with all medical reports listed under (ii) prior to the medical examination of the Accused;
- (vi) the gastroenterologist and the psychologist who will carry out this medical examination are to submit their reports to the Trial Chamber no later than 26 February 2008. In the reports they are to address, to the extent they can, the following issues:
- whether the Accused is able to understand the nature of the charges and proceedings against him, to include the consequences of a conviction on those charges;
 - whether the Accused is able to instruct his Defence counsel as to his defence of the charges;
 - whether the Accused is able to testify on his own behalf if he elects to do so;
 - whether the Accused is physically able to withstand full-time trial proceedings (approximately five hours per day, five days per week) or some lesser formula of scheduling.

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



Judge Patrick Robinson
Presiding

Dated this eight day of February 2008

At The Hague

The Netherlands

[Seal of the Tribunal]