

IT-03-69-T
D20955 - D20944
31 March 2010

20955
SMS

**UNITED
NATIONS**



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: 31 March 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 31 March 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

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 19 March 2010, the Stanišić Defence filed a motion seeking provisional release of Jovica Stanišić (“Accused”) during the adjournment of the proceedings in the present case.¹ In an annex to its motion, the Stanišić Defence submitted correspondence from the Republic of Serbia (“Serbia”) in response to the Stanišić Defence’s request for guarantees.²
2. On 19 March 2010, the Chamber ordered the Prosecution to file its response to the Motion, if any, by 22 March 2010.³ On 22 March 2010, the Prosecution opposed the Motion.⁴ That same day, the Prosecution also filed an addendum to its response.⁵ On 26 March 2010, a second addendum to the Response was filed by the Prosecution.⁶
3. On 23 March 2010, the Stanišić Defence filed an application requesting that the Reporting Medical Officer (“RMO”) be allowed to address certain submissions in the Response.⁷ On 25 March, the Prosecution filed a response to the Application.⁸
4. On 25 March 2010, the Stanišić Defence filed an addendum to the Motion, containing three annexes related to the guarantees provided by Serbia about the cooperation with the Tribunal and the facilities and treatment that could be provided by the Military Medical Academy (“VMA”).⁹
5. On 25 March, the Tribunal’s host state filed a letter stating its position on the relief sought in the Motion.¹⁰
6. For the sake of completeness, the Chamber shall retrace the procedural history of the following filings that preceded the Motion. On 26 February 2010, the Stanišić Defence requested

¹ Urgent Stanišić Defence Motion for Provisional Release with Public Annexes, 19 March 2010 (“Motion”).

² Annex to the Motion.

³ The Chamber informed the parties accordingly through an informal communication.

⁴ Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release, confidential, 22 March 2010 (“Response”). The Prosecution exceeded the word limit in the Response. The Chamber stresses that the proper procedure to be followed by the Prosecution should have been to seek leave to exceed the word limit *before* actually exceeding it in its Response.

⁵ Addendum to Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release, 22 March 2010 (“First Addendum to Response”).

⁶ Second Addendum to Prosecution Response to Stanišić Defence Fourth Motion for Provisional Release, 26 March 2010 (“Second Addendum to Response”).

⁷ Stanišić Defence Application for Leave to Request that the RMO Address the Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release, confidential, 23 March 2010 (“Application”).

⁸ Prosecution Response to Stanišić Defence Application for Leave to Request that the RMO Address the Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release, confidential, 25 March 2010 (“Response to Application”).

⁹ Addendum to Urgent Stanišić Defence Motion for Provisional Release with Public Annexes A-C, 25 March 2010 (“Addendum to Motion”).

¹⁰ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, confidential, 25 March 2010.

the Chamber that it be allowed to seek the medical opinion of the RMO on certain issues related to the Accused's health and ability to travel.¹¹ On 1 March 2010, the Prosecution responded opposing a number of the questions that the Stanišić Defence intended to ask the RMO and suggesting certain alternative questions.¹² The Chamber allowed both the Stanišić Defence and the Prosecution ("Parties") to file proposed questions for the RMO and provided the Parties with guidance as to the formulation of the said questions.¹³ The Parties filed their proposed questions on respectively 8 and 10 March 2010.¹⁴ On 11 March 2010, after having considered the proposed questions the Chamber issued an order containing a set of revised questions for the RMO ("Questions to RMO").¹⁵ On 15 March 2010, the RMO's answers to the questions were filed.¹⁶ On 17 March, the Stanišić Defence, in an informal communication, requested that the RMO be ordered to address question 4, of the Questions to RMO, in its entirety. That same day, the Chamber forwarded the informal communication of the Stanišić Defence, asking the RMO to provide a complete answer to questions 3(e) and 4 of the Questions to the RMO. On 19 March 2010, the RMO's additional answers were filed.¹⁷

II. SUBMISSIONS

1. The Stanišić Defence

7. In its Motion, the Stanišić Defence requests that the Accused be granted temporary provisional release for the duration of the current adjournment in the proceedings¹⁸ or any time deemed appropriate, under such terms and conditions that the Chamber considers adequate to best guarantee the efficient continuation of the proceedings after the adjournment.¹⁹

8. The Stanišić Defence submits that the relevant parts of the RMO's answers to the questions put to him can be summarised as follows:

¹¹ Stanišić Defence Request for Medical Opinion from Reporting Medical Officer, confidential, 26 February 2010.

¹² Prosecution Response to Stanišić Defence Request for Medical Opinion from Reporting Medical Officer, confidential, 1 March 2010.

¹³ Hearing of 5 March 2010, T. 3967-3969.

¹⁴ Revised Stanišić Defence Request for Medical Opinion from Reporting Medical Officer, confidential, 8 March 2010; Prosecution's Proposed Questions to be Addressed to the Reporting Medical Officer and Objections to the Questions Posed by the Stanišić Defence, confidential, 10 March 2010.

¹⁵ Order on Questions to Reporting Medical Officer, confidential, 11 March 2010 ("Order for RMO").

¹⁶ Registry Submission of Medical Report, confidential 15 March 2010; Registry Submission of Medical Report, confidential, 19 March 2010.

¹⁷ Registry Submission of Medical Report, 19 March 2010.

¹⁸ On 23 February 2010, the Chamber ordered that the court proceedings be adjourned from the week of 22 March 2010 until the week of 12 April 2010; see Decision on Urgent Simatović Defence Request for Adjournment, 23 February 2010, para. 22. On 8 March 2010, it further adjourned the proceedings during the week of 15 March 2010; see Hearing, 8 March 2010, T. 4079-4081.

¹⁹ Motion, paras 11 and 20.

- (a) The Accused's health condition is stable;
- (b) The Accused's mental and physical condition has clearly improved since the date of the previous decision on provisional release;
- (c) There are no medical issues preventing the Accused from travelling to Belgrade;
- (d) Considering the Accused's relatively stable physical condition, provisional release would not lead to a higher risk of deterioration of his physical condition;
- (e) The Accused's personal issues have a negative effect on his state of mind and successfully addressing his personal issues would improve his mental condition.²⁰

9. The Stanišić Defence submits that the criteria for granting provisional release pursuant to Rule 65(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules") which were found to be satisfied at the time of the decision on provisional release of 18 December 2009, i.e. that the Accused if provisionally released, will appear for trial and will not pose a threat or danger to any victim, witness, or other person, continue to remain satisfied as the circumstances have not changed.²¹ It points out that Serbia has confirmed that the guarantees it provided on 9 October 2009 remain valid and applicable.²²

10. The Stanišić Defence submits that the Chamber should be mindful of the general benefits of provisional release and give due weight to the fact that a period of release tends to boost an accused person's morale as well as his physical and mental health.²³ It argues that a short period of provisional release could have "inestimable health benefits" for the Accused.²⁴

11. Furthermore, the Stanišić Defence submits that the granting of a brief period of provisional release would be a "compassionate gesture" providing the Accused "a brief respite after a long period of serious illness whilst undergoing the stress of the trial proceedings".²⁵

12. In its Application, the Stanišić Defence contests the description of the Accused's health that is given in the Response. It submits that the Prosecution's descriptions are merely speculations and "hyperbolic assertions designed to scaremonger" which are not based on medical evidence.²⁶ The

²⁰ Motion, para. 7.

²¹ Motion, para. 10. See Decision on Urgent Stanišić Defence Motion for Provisional Release, 18 December 2009 ("18 December 2009 Decision").

²² Motion, para. 11.

²³ Motion, para. 18.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Application, para. 6.

Stanišić Defence, therefore, requests that the RMO be allowed to address the submissions set forth by the Prosecution in the Response and to provide his most up-to-date medical opinion.²⁷

2. The Prosecution

13. The Prosecution submits that “compelling factors” weigh in favour of the Chamber exercising its discretion by not granting provisional release even though the conditions of Rule 65(B) have been met.²⁸

14. The Prosecution stresses the effectiveness of the current medical regime provided to the Accused at the United Nations Detention Unit (“UNDU”). It explains that the Accused’s health has consistently improved since his return from Belgrade as a result of the treatment he has received at the UNDU and has led to a situation where the Accused is now able to follow the proceedings in person from the courtroom.²⁹ It submits, however, that despite the “kaleidoscopic medical regime” which is “finally effective”, the Accused’s medical conditions “make it foreseeable that at any time any of his ailments may flare up.” Moreover, the Prosecution holds that the risk of a negative impact on the trial proceedings caused by a deterioration of the Accused’s medical condition would be far greater in a situation where the Accused would be beyond the reach of the UNDU medical regime than if he would be in the UNDU.³⁰ The Prosecution’s proposition is that “there is simply insufficient evidence before the Chamber upon which it may conclude with any degree of certainty that provisional release would not risk the health of the Accused and thereby not risk a disruption in proceedings.”³¹

15. The Prosecution argues that the reasons given by the Stanišić Defence for the alleged need for the Accused to travel to Belgrade to resolve family related issues are subjective and contradictory. It submits that the reasoning given in the Motion describes Belgrade as a “nest of support and comfort”, whilst the Stanišić Defence has never before described Belgrade as such a place that could have a positive effect on the Accused’s psychological condition. Moreover, the Prosecution submits that what is now alleged by the Stanišić Defence is in contradiction with the “destructive psychosocial personal environment” that Dr. De Man described in an earlier report.³²

²⁷ Application, para. 7.

²⁸ Response, para. 4.

²⁹ Response, paras 7-9.

³⁰ Response, paras 10-15, 17.

³¹ Response to Application, para. 12.

³² Response, paras 18-24.

Furthermore, it argues that whilst the Accused may struggle with unresolved personal issues, his health condition is not dependent upon the resolution of these issues.³³

16. In addition, the Prosecution points out that the Stanišić Defence has provided the Chamber with “incomplete documentation”, because it did not submit the letter to the Serbian government requesting guarantees and the documentation that was provided by Serbia as a result of this request.³⁴ According to the Prosecution, the additional filing by the Stanišić Defence³⁵ did not remedy this situation as it argues that the most recent guarantees provided by the VMA, the Serbian Ministry of Defence and the Government of Serbia are not before the Chamber.³⁶ It contends that without the original and complete correspondence pertaining the guarantees provided by the VMA, it is “difficult if not impossible” for the Chamber to evaluate the willingness or ability of the VMA to monitor, treat, evaluate or report on the medical condition of the Accused.³⁷ The Prosecution submits that the Stanišić Defence should be ordered to provide the missing documentation and it requests that it be given the opportunity to make further submissions after having considered the content of the said documentation.³⁸

17. Furthermore, the Prosecution submits that as there is no indication that the persons in relation to whom the Accused wishes to resolve personal problems, are unwilling or unable to travel to The Hague. It thus submits that other means to meet with such persons that do not require travelling to Belgrade and being removed from the current medical care regime, are available to the Accused.³⁹

18. Finally, the Prosecution submits that there is no basis for the litigation in relation to the Motion to be confidential. Consequently, it submits that these filings should be public and it requests the Chamber to convert the status of the confidential filings into public.⁴⁰

III. APPLICABLE LAW

19. Rule 65 of the Rules governs provisional release. It provides, in relevant parts:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

³³ Response, paras 26-27.

³⁴ First Addendum to Response, paras 2-8.

³⁵ See Addendum to Motion.

³⁶ Second Addendum to Response, paras 2-3, 6.

³⁷ First Addendum to Response, paras 4-8.

³⁸ First Addendum to Response, paras 11-12.

³⁹ Response, paras 28-29.

⁴⁰ Second Addendum to Response, paras 4-6.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

20. The jurisprudence of the Tribunal does not grant accused the right of provisional release during either regular or extraordinary breaks in proceedings even if the Trial or Appeals Chamber is satisfied that the conditions listed in Rule 65 (B) are met.⁴¹ The conditions listed above under Rule 65 (B) of the Rules are the minimum requirements necessary for granting provisional release. Trial Chambers at all times retain the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.⁴²

21. The Chamber further recalls the law governing the provisional release procedure as set out in previous decisions of this Chamber.⁴³

IV. DISCUSSION

22. From the outset, the Chamber considers that it has been provided with the information needed to consider the issues before it. Therefore, the Chamber does not deem it necessary that the RMO be requested to provide further information on these issues. The Stanišić Defence's application requesting the RMO to provide such information, is thus not granted. In its First Addendum to Response and Second Addendum to Response, the Prosecution requested that the Stanišić Defence be ordered to provide the document wherein the Stanišić Defence requests the Serbian government to issue guarantees as well as additional documentation pertaining to the guarantees provided by the Serbian government. The Chambers notes that the Addendum to the Motion contains the letter by the Stanišić Defence requesting the said guarantees and the Prosecution's request pertaining to that document is thus moot. Furthermore, as stated above, the

⁴¹ See *Prosecutor v. Miodrag Jokić*, Case No. 01-42-PT, Order on Miodrag Jokić's Motion for Provisional Release, 20 February 2002, paras 17, 21. See e.g. *Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač*, Case No. IT-06-90-T, Decision on Motion for Provisional Release of Ivan Čermak, 27 February 2009, para. 10.

⁴² *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, and Vinko Pandurević* ("Prosecutor v. Popović et al."), Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; Decision on Prosecution Appeal on Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008, para. 5.

Chamber considers that it has sufficient information to decide on the Motion. Consequently, there is no need to order the Stanišić Defence to provide additional documentation,⁴⁴ nor is there a need for the Prosecution to make additional submissions in relation to the guarantees.

23. As to whether the Accused, if released, will return for trial, the Chamber considers the seriousness of the charges against him, as well as the current stage of the proceedings. Moreover, as in previous decisions, the Chamber gives due consideration to the fact that the Accused expressed his intent to voluntarily surrender to the Tribunal⁴⁵ and that in the course of previous periods of provisional release, he has generally been in compliance with the terms and conditions set by the Chamber.⁴⁶ Finally, the Accused has demonstrated his willingness to cooperate with the Prosecution by giving several interviews.⁴⁷ Furthermore, the Chamber takes into consideration, and gives appropriate weight, to the guarantees given by Serbia.⁴⁸

24. The Chamber notes that the circumstances of the case have changed compared to the previous application of provisional release of the Accused insofar as the presentation of evidence is further underway. The Chamber, however, does not consider that this change is such as to give rise to a reasonable fear that the Accused will attempt to abscond.

25. For these reasons, the Chamber is satisfied that the Accused, if provisionally released, would appear for trial.

26. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, especially in light of some facts recently brought to the Chamber's attention, the Chamber notes that the Prosecution has not specifically raised the issue of interfering with witnesses with respect to this Accused. As the Prosecution apparently has considered the link between those facts

⁴³ See e.g. 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.

⁴⁴ The Chamber, however, notes that it is common practice for a party to submit to the Chamber the documents that underlie the argumentation put forward in a Motion or that are referred to in the Motion, in the situation that the concerning documents have not previously been brought before the Chamber.

⁴⁵ Decision on Prosecution's Appeal Against Decision Granting Provisional Release, 3 December 2004; Decision on Provisional Release, 26 May 2008 ("26 May 2008 Decision"), para. 46; Decision on Simatović Defence Motion for Provisional Release During the Upcoming Court Recess, 10 July 2009; Decision on Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 22 July 2009 ("22 July 2009 Decision"), para. 15; Decision on Urgent Stanišić Defence Motion for Provisional Release, 3 November 2009 ("3 November 2009 Decision"), para. 21; Decision on Urgent Stanišić Defence Motion for Provisional Release, 18 December 2009 ("18 December 2009 Decision"), paras 23-24; See also Decision on Provisional Release, 28 July 2004 ("28 July 2004 Decision"), paras 19-20.

⁴⁶ See 26 May 2008 Decision; 22 July 2009 Decision, para. 15; 3 November 2009 Decision, para. 21.

⁴⁷ See 28 July 2004 Decision, paras 16-18; 26 May 2008 Decision, para. 46; 22 July 2009 Decision, para. 15; 3 November 2009 Decision, para. 21; 18 December 2009 Decision, para. 23.

and the Accused and his defence to be either too weak or not determinative for the decision on a possible provisional release, the Chamber sees no reason at present to *proprio motu* further address these facts for the purpose of establishing their possible effect on the repeated conclusions of the Chamber in respect to whether the Accused will pose a danger to any person. As the Chamber observed above, during previous periods of provisional release the Accused generally complied with the terms and conditions set by the Chamber.⁴⁹

27. For these reasons, the Chamber remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

28. In examining whether provisional release is appropriate in this case, the Chamber has on earlier occasions given particular consideration to its obligation to avoid unnecessary interruptions in the trial proceedings. In this regard, it has examined the totality of the circumstances, including the current stage of the proceedings, the length and character of the break during which provisional release is requested, the Accused's health situation, the medical care currently available to him at the UNDU and that potentially available to him at the VMA in Belgrade, as well as the importance for the health of the Accused that the efficient system of care and the elaborate reporting system set up in The Hague continues unhindered.

29. The Chamber notes that the medical reports continue to show steady improvement of the Accused's chronic health problems since the summer of 2009, whilst being treated in the UNDU.⁵⁰ The Chamber also notes that the Accused has been following the proceedings in court since the end of November 2009.⁵¹ His physical condition has been reported by the RMO as posing no impediment either to participating in the proceedings, subject to incorporating certain modalities set forth in various decisions of the Chamber, or to travelling as far as Belgrade as long as bathroom facilities would be readily available.⁵² The mental condition of the Accused is still considered as depressed and shows some fluctuation. Whilst his mental condition has clearly improved when

⁴⁸ Motion, pp. 12 and 15; Annex B to Urgent Stanišić Defence Motion for Provisional Release with Public and Confidential Annexes, 9 December 2009.

⁴⁹ See 22 July 2009 Decision, para. 18; 3 November 2009 Decision, para. 23; 18 December 2009 Decision, para. 25.

⁵⁰ Registry Submission of Medical Report, 15 March 2010 ("15 March 2010 Report"), p. 3; see further Report of Dr Eekhof to the Stanišić Defence of 2 December 2009, point 1; Hearing, 14 December 2009, T. 2624-2625. See e.g. the regular medical reports submitted to the Chamber on 28 July; 4, 11, 18, 25, 26, 27 August; 1, 8, 14, 15, 22 and 29 September; 6, 13, 20 and 27 October 2009; 3, 10, 17, 24, and 30 November 2009; 1, 7, 8 and 14 December 2009; 7, 13, 19, and 26 January 2010; 2, 9, 16, and 23 February 2010; 2, 9 16, and 23 March 2010; Gastroenterological reports submitted on 11 August, 10 September 2009 and 5 November 2009; Second Decision Amending Modalities for Trial, 1 September 2009 ("Second Modalities Decision"); Corrigendum to Second Decision Amending Modalities for Trial, 7 September 2009 ("Corrigendum to Second Modalities Decision").

⁵¹ Hearings held from 30 November until 9 March 2010.

⁵² *Ibid.*

compared to the situation in the first half of 2009, the psychiatrist treating the Accused, Dr. De Man, has observed deterioration in his most recent report.⁵³

30. In assessing the potential risk of a deterioration of the Accused's physical health, the Chamber *inter alia* considers the medical condition of the Accused during his last period of provisional release in Belgrade. The Accused was hospitalised at the VMA on 15 instances between 30 June 2008 and 4 May 2009.⁵⁴ Since the Accused returned to the UNDU, there has been no need for prolonged hospitalisation. In December 2009, however, the Accused experienced a recurrence of deep venous thrombosis in his left leg for which he was treated in the hospital and received "state of the art" treatment with anticoagulant.⁵⁵ In January 2010, the Accused complained about kidney stone attacks for which he was examined and received treatment.⁵⁶

31. The Chamber is concerned that while the RMO reports that the Accused's general mental and physical condition has "clearly improved" since 18 December 2009,⁵⁷ medical ailments such as the reported thrombosis and kidney stones attacks keep recurring in addition to the chronic conditions from which the Accused suffers. The Chamber therefore finds that the medical condition of the Accused constantly bears an unpredictable risk of deterioration. Even if a treatment regime could be secured in Belgrade on a level equal to the treatment regime available to the Accused whilst being 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. As a consequence, a deterioration occurring outside de UNDU could result in serious disruption of the trial proceedings. In the Chamber's opinion, the existence of such risk strongly militates against granting the Motion.

32. The Chamber notes that in relation to the effect that dealing with his personal issues could have on the Accused, the RMO submits that "a successful, even partial, outcome would diminish his distress and feeling of incapacity and therefore improve his mental state".⁵⁸ In light of the uncertainty of the outcome of such attempts, the Chamber considers the fact that the Accused is willing to address his personal problems to be only of limited weight when balancing the various arguments militating in favour and against granting the Motion. Moreover, an improvement of the

⁵³ Registry Submission of Expert Report, 1 March 2010; see further Hearing, 14 December 2009, T. 2624-2625, 2629. See psychiatric evaluation of the Accused submitted to the Chamber on 31 August, 28 October 2009. See also regular medical reports submitted to the Chamber on 28 July, 4, 11, 18, 25, 26, 27 August; 1, 8, 14, 15, 22 and 29 September; 6, 13, 20 and 27 October 2009; 3, 10, 17, 24, 30 November 2009; 1, 7, 8 and 14 December 2009; 7, 13, 19, and 26 January 2010; 2, 9, 16, and 23 February 2010; 2, 9 16, and 23 March 2010.

⁵⁴ See Dr Tarabar's report, 4 May 2009.

⁵⁵ See medical reports of 24 and 31 December 2009, and 7 January 2010.

⁵⁶ Medical report of 13 January 2010.

⁵⁷ 15 March 2010 Report, p. 3.

⁵⁸ 15 March 2010 Report, p. 5.

Accused's mental state, albeit a welcome development, would not affect the course of the trial as a positive impact on his mental state would not affect the Accused's current ability to follow the court hearings. It would thus not affect the proceedings which, as indicated above, is of particular concern to the Chamber.

33. The Chamber recalls its 22 July 2009 Decision stating 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".⁵⁹ The Chamber cannot take the risk that the health of the Accused may deteriorate during a stay in Belgrade, even if it were for a few days, which could lead to a situation where the Accused would not be able to travel back to The Hague for a period of several weeks or months, which as a consequence, would cause the trial proceedings to be seriously disrupted.

34. In view of all the present circumstances referred to above, balancing the reasons for granting provisional release advanced by the Defence and the possible impact granting the Motion may have on the future course of trial, including potentially risking undue interruptions in the proceedings and consequently disturbing the delicate equilibrium established since the Accused's return to the UN DU, the Chamber finds that provisional release of the Accused should not be granted.

V. DISPOSITION

35. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber

DENIES the Motion;

DECLARES moot those parts of the First Addendum to the Response that pertain to the document requesting guarantees from Serbia;

DENIES the remainder of the First Addendum to the Response;

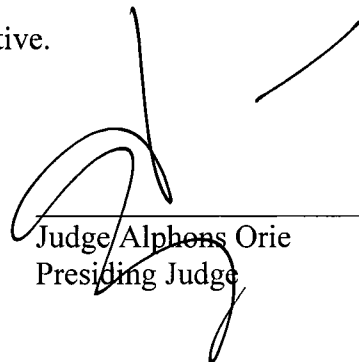
DEFERS its ruling on the request made in the Second Addendum to the Response to convert the status of the confidential filings in relation to the Motion to public;

⁵⁹ 22 July 2009 Decision, para. 23.

DENIES the remainder of the Second Addendum to the Response; and

DENIES the Application.

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



Judge Alphons Orie
Presiding Judge

Dated this thirty-first day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]