



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: 17 August 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 August 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON STANIŠIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE DURING SUMMER RECESS”
OF 21 JULY 2011**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

The Government of the Republic of Serbia
Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 7 July 2011, the Stanišić Defence filed a request for provisional release during the summer recess ("Request").¹ Annexed to the Request, the Stanišić Defence submitted the guarantees of the Government of the Republic of Serbia dated 30 June 2011 ("Serbian Guarantees") and a personal guarantee and waiver of doctor-patient privilege by the Accused ("Accused's Personal Guarantee and Waiver").² On the same day, the Chamber decided that the deadline for responding to the Request would be shortened to 14 July 2011 and informed the parties accordingly through an informal communication. On 14 July 2011, the Prosecution responded ("Response"), opposing the Request.³ On the same day, the Prosecution filed an Addendum to its Response ("Addendum").⁴ On 15 July 2011, the Tribunal's Host State filed a letter pursuant to Rule 65 (B) of the Rules of Procedure and Evidence ("Rules"), stating that it did not oppose the Request.⁵ On 18 July 2011, the Stanišić Defence requested leave to reply, which the Chamber granted on the same day.⁶ On 19 July 2011, the Stanišić Defence replied to the Response and the Addendum ("Reply").⁷

II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.⁸ The Stanišić Defence further submits that during previous periods of provisional release, the Accused complied with the conditions of the health monitoring protocol and returned to the Tribunal without incident.⁹ The Stanišić Defence submits that provisional release is likely to improve the Accused's health and enable him to recover from the preceding trial schedule.¹⁰ With regard to the Accused's encounters with Witness Mile Bosnić, the Stanišić Defence submits that these appear to have been brief and accidental.¹¹ The Stanišić Defence contends that the witness's testimony does not support that the Accused discussed his case

¹ Urgent Stanišić Request for Provisional Release During the Summer Judicial Recess, 7 July 2011 (Confidential).

² Request, Confidential Annexes A and B.

³ Prosecution Response to Urgent Stanišić Request for Provisional Release During the Summer Judicial Recess, 14 July 2011 (Confidential).

⁴ Addendum to Prosecution Response to Urgent Stanišić Request for Provisional Release During the Summer Judicial Recess, 14 July 2011 (Confidential).

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 15 July 2011 (Confidential).

⁶ Stanišić Defence Application for Leave to Reply to the Prosecution's Response and Addendum to the Urgent Stanišić Request for Provisional Release During the Summer Judicial Recess, 18 July 2011 (Confidential); T. 12954.

⁷ Stanišić Defence Reply to the Prosecution's Response and Addendum to the Urgent Stanišić Request for Provisional Release During the Summer Judicial Recess, 19 July 2011 (Confidential).

⁸ Request, para. 7.

⁹ Request, para. 9; Reply, para. 6.

¹⁰ Reply, para. 6.

¹¹ Reply, paras 11, 13-14.

with the witness, only that they exchanged greetings.¹² The Stanišić Defence points out that the Prosecution failed to ask the witness for further details regarding the encounters during his testimony.¹³

3. The Stanišić Defence argues that provisional release would facilitate the ongoing preparation of the Defence case, as the Accused's condition has made it impossible for him to provide instructions regarding a large number of documents.¹⁴ According to the Stanišić Defence, progress was made during the Accused's previous provisional release and a grant of provisional release during the summer recess would allow the Defence to complete further essential tasks and thereby ensure the Accused's right under Article 21 (4) (b) of the Statute of the Tribunal to have adequate time and facilities for the preparation of his defence.¹⁵ The Stanišić Defence contends that the Appeals Chamber's jurisprudence requiring compelling humanitarian grounds for provisional release at the post-Rule 98 *bis* stage of the proceedings should not apply where provisional release is needed to ensure the Accused's rights under Article 21 of the Statute of the Tribunal.¹⁶

4. With regard to compelling humanitarian grounds, the Stanišić Defence contends that the Accused's 13-year-old son [REDACTED].¹⁷ In support of this contention, the Stanišić Defence submits a [REDACTED].¹⁸ The Stanišić Defence argues that a brief visit by the Accused would [REDACTED].¹⁹ The Stanišić Defence further submits that the Accused [REDACTED].²⁰

5. The Prosecution submits that there is an increased risk of flight following the Chamber's oral decision under Rule 98 *bis* of the Rules that there is evidence capable of supporting a conviction against the Accused.²¹ The Prosecution submits that Witness Mile Bosnić's testimony indicates that the Accused met the Witness on at least one occasion in or after 2003 while the Accused was on provisional release, in violation of the conditions of his provisional release, namely that he not have any contact with any potential witness.²²

6. The Prosecution further submits that the recent developments related to the Accused's [REDACTED] militate against granting provisional release, particularly for the long period of time

¹² Reply, paras 9, 12-14.

¹³ Reply, paras 9, 12.

¹⁴ Request, paras 11-12.

¹⁵ Ibid.

¹⁶ Request, paras 6, 13-14.

¹⁷ Request, para. 16; Reply, para. 7.

¹⁸ Request, Confidential Annex D.

¹⁹ Request, para. 16.

²⁰ Request, paras 10, 15.

²¹ Response, paras 5-6.

²² Addendum, paras 1-4.

requested.²³ The Prosecution points out that the Chamber has previously held that neither the preparation of the defence case nor the effect on the Accused's mental state constitute compelling humanitarian grounds.²⁴ The Prosecution finally argues that, while the Accused's absence may be difficult for his son, this applies to any family member of an incarcerated person and so cannot constitute compelling humanitarian grounds in the sense of the Tribunal's jurisprudence.²⁵ Moreover, according to the Prosecution, insofar as [REDACTED], these concerns would not be ameliorated by granting the Accused provisional release.²⁶

III. APPLICABLE LAW

7. The Chamber recalls and refers to the applicable law governing provisional release and provisional release procedures as set out in its previous decisions, including with regard to the post-Rule 98 *bis* stage of the proceedings.²⁷

IV. DISCUSSION

8. As to whether the Accused, if released, will return for trial, the Chamber recalls the discussion in its previous decisions.²⁸ The Chamber has not received information indicating a change of circumstances in this regard. In this respect, the Chamber has considered the post-Rule 98 *bis* stage of the proceedings. This change does not give rise to a reasonable fear that the Accused will attempt to abscond. Further, the Chamber considers and gives appropriate weight to the Serbian Guarantees. Consequently, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

9. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber recalls the analysis in its previous decisions.²⁹ The Chamber has not received information indicating a change of circumstances in this regard. In this respect, the Chamber has

²³ Response, paras 7-9.

²⁴ Response, para. 12.

²⁵ Response, para. 13.

²⁶ Ibid.

²⁷ See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential) ("Decision of 10 December 2010"), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential) ("31 March 2010 Decision"), paras 19-21; Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12.

²⁸ Decision on Urgent Stanišić Request for Provisional Release, 21 April 2011 (Confidential) ("Decision of 21 April 2011"), para. 10; Decision on Urgent Stanišić Motion for Provisional Release, 8 March 2011 (Confidential) ("Decision of 8 March 2011"), para. 7; Decision of 10 December 2010, para. 6; Decision on Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds (Confidential), 16 August 2010 ("16 August 2010 Decision"), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 22 July 2010 ("22 July 2010 Decision"), para. 6; 31 March 2010 Decision, paras 23-24.

²⁹ 31 March 2010 Decision, para. 26; see also 16 August 2010 Decision, para. 6 and 22 July 2010 Decision, para. 7.

considered Witness Mile Bosnić's testimony that on one occasion in or after 2003, at a meeting with a member of the Accused's Defence team, he briefly met and exchanged greetings with the Accused, who was passing by and who said that he was on leave and would return to The Hague.³⁰ The Chamber considers that this encounter appears to have been very brief and was apparently unplanned. Further, the Accused does not appear to have discussed his case with the witness. The information does not establish whether it was foreseeable to the Accused at the time of the encounter that Mile Bosnić was being or would be considered a potential Defence witness. The Chamber finds that the limited information before it in relation to this encounter does not give rise to a reasonable fear that the Accused, if released, would pose a danger to any victim, witness, or other person. Nor does the information establish that the Accused violated the conditions of a prior provisional release.

10. At the post-Rule 98 *bis* stage of the proceedings, a Chamber should not grant provisional release unless compelling humanitarian grounds are present that tip the balance in favour of allowing provisional release. The Stanišić Defence has argued that this requirement could conflict with the Accused's right to adequate time and facilities for the preparation of his defence. The Chamber has previously recognized that the Accused's presence in Belgrade would be convenient for the Defence's work.³¹ At the same time, the Chamber remains unconvinced that the Accused's presence in Belgrade, rather than in The Hague, is essential to providing input or instructions to the Defence.³² Consequently, the Chamber finds that provisional release is not required to ensure the Accused's rights under Article 21 (4) of the Statute.

11. In respect of the Accused's mental state, the Chamber considers that [REDACTED].³³ [REDACTED].³⁴ While the Chamber recognizes that provisional release may prove beneficial to the Accused's mental state, it is not convinced that this circumstance presents a compelling humanitarian ground which tips the balance in favour of provisional release.

12. With regard to the Accused's son, the Chamber has reviewed [REDACTED]. [REDACTED].³⁵ [REDACTED].³⁶ The Chamber accepts that the Accused's illness and detention have a strong negative impact on the [REDACTED]. In light of the Accused's son's age, [REDACTED] could constitute compelling humanitarian grounds which tip the balance in favour of the Accused's provisional release. However, [REDACTED]. [REDACTED]. [REDACTED].

³⁰ T. 12852-12853.

³¹ Decision of 21 April 2011, para. 13; Decision of 8 March 2011, para. 14.

³² Ibid.

³³ RMO Reports of 6, 10, 17, 25, and 31 May 2011, 7, 14, 22, and 29 June 2011, 5, 12, and 20 July 2011.

³⁴ Registry Submission of Medical Report, 14 July 2011.

³⁵ Request, Confidential Annex D.

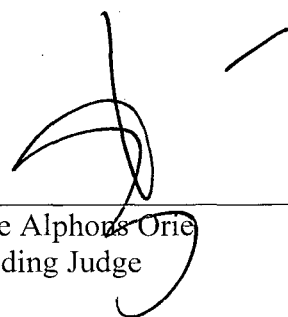
[REDACTED]. Under these circumstances, the Chamber is unable to determine whether the humanitarian grounds provided reach the required threshold of sufficiently compelling to tip the balance in favour of provisional release.

13. The Chamber further remains mindful of its obligation to avoid interruptions to the trial proceedings.³⁷ A sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the trial proceedings.³⁸ The Chamber has previously held that the existence of such a risk militates against granting provisional release.³⁹ The Accused's medical condition has remained stable for some time and the Accused returned from previous periods of provisional release without incident.⁴⁰ At the same time, the RMO has recently reported [REDACTED].⁴¹ On the basis of the RMO's recent reporting and given the Accused's medical history, the Chamber remains of the view that the risk of a sudden deterioration in his health is not insignificant. On balance, in the absence of compelling humanitarian grounds that tip the balance in favour of provisional release and in light of the risk of a sudden deterioration in the Accused's health, the Chamber finds that provisional release should be denied.

V. DISPOSITION

14. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber **DENIES** the Motion.

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



Judge Alphonse Orié
Presiding Judge

Dated this Seventeenth of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

³⁶ Request, Confidential Annex D.

³⁷ See 10 December 2010 Decision, para. 9 and previous decisions of this Chamber cited therein.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ RMO Reports of 6, 10, 17, 25, and 31 May 2011, 7, 14, 22, and 29 June 2011, 5, 12, and 20 July 2011; Decision of 21 April 2011, para. 12; Decision of 8 March 2011, para. 12; Decision of 10 December 2010, para. 10.

⁴¹ RMO Reports of 12 and 20 July 2011.