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30 January 2012

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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: 30 January 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 30 January 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON THE STANIŠIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE DURING THE WINTER RECESS”
OF 19 DECEMBER 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 28 November 2011, the Stanišić Defence (“Defence”) requested provisional release for the Accused Jovica Stanišić (“Accused”) during the winter recess (“Request”), namely from 16 December 2011 to 9 January 2012, or for a lesser period as designated by the Chamber.¹ The Defence submitted that on 27 October 2011 it had requested guarantees from the Government of the Republic of Serbia (“Serbia”), and that it will file the guarantees (“Serbian Guarantees”) in the near future, upon receipt.² The Defence further requested that the Prosecution’s response time be reduced pursuant to Rule 127 of the Rules of Procedure and Evidence (“Rules”).³ On 28 November 2011, the Chamber notified the parties in Court that it expected the Prosecution to respond to the Request by 5 December 2011.⁴ On 1 December 2011, the Tribunal’s Host State filed a letter pursuant to Rule 65 (B) of the Rules, stating that it did not oppose the Request.⁵ On 5 December 2011, the Prosecution responded (“Response”), opposing the Request.⁶ On 6 December 2011, the Defence orally submitted that it was not seeking leave to reply.⁷ On 12 December 2011, by means of an informal communication, the Chamber instructed the Reporting Medical Officer (“RMO”) to address two questions regarding a change in the Accused’s medication. On 13 December 2011, the RMO submitted a report addressing the Chamber’s questions.⁸

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.⁹ The Defence submits that the Accused complied with the conditions of a health monitoring protocol during his two previous periods of provisional release and returned to the custody of the Tribunal on schedule.¹⁰ The Defence further submits that the Accused will again comply with any conditions of his provisional release and that he consents to undergo any medical tests necessary for the Chamber to be fully informed of his medical condition.¹¹ The Defence submits that medical professionals treating the Accused have not

¹ Stanišić Urgent Request for Provisional Release during the Winter Recess of 2011-2012, 28 November 2011 (Confidential), paras 1-2, 15.

² Request, paras 8, 14.

³ Request, para. 14.

⁴ T. 15148-15149.

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Jovica Stanišić, 18 November 2011 (Confidential).

⁶ Prosecution Response to Stanišić Urgent Request for Provisional Release during the Winter Recess of 2011-2012, 5 December 2011 (Confidential).

⁷ T. 15332-15333.

⁸ RMO Report of 13 December 2011.

⁹ Request, para. 7.

¹⁰ Request, para. 9.

¹¹ Ibid.

expressed any concerns regarding possible negative effects of travel on his health.¹² The Defence further submits that provisional release and interactions with his son would have a positive impact on the Accused's mental condition.¹³

3. The Prosecution argues that the absence of Serbian Guarantees increases the risk that the Accused will abscond or put victims, witnesses, and other persons in danger.¹⁴ According to the Prosecution, the risk of flight is further increased by the advanced stage of the proceedings.¹⁵ The Prosecution submits that the Chamber is required by Rule 65 (B) of the Rules to give Serbia the opportunity to be heard in relation to the requested provisional release.¹⁶

4. The Prosecution further submits that provisional release should be denied because of the Accused's medical condition.¹⁷ The Prosecution submits that the Accused will soon be put on new medication, which initially needs to be taken under medical supervision.¹⁸ While the exact date of the new treatment is unclear, it would reportedly start soon, and could cause temporary illness.¹⁹ The Prosecution notes that the Accused [REDACTED].²⁰ The Prosecution argues that the Accused's treating doctors in The Hague would be best placed to treat [REDACTED].²¹ The Prosecution submits that the results of additional medical tests and consultations requested on 20 October 2011 are not yet known.²² The Prosecution submits that the Accused [REDACTED].²³

5. The Prosecution notes that the Defence has not put forward any compelling humanitarian grounds which would weigh in favour of granting provisional release.²⁴ The Prosecution argues that the alleged benefits to the Accused's condition from provisional release are speculative and that provisional release to Belgrade, away from his usual medical regime, may in fact be detrimental to his health.²⁵

III. APPLICABLE LAW

¹² Request, paras 11-13.

¹³ Request, paras 10, 13.

¹⁴ Response, para. 11.

¹⁵ Response, paras 13-14.

¹⁶ Response, para. 12.

¹⁷ Response, para. 5.

¹⁸ Response, paras 6-7.

¹⁹ Ibid.

²⁰ Response, para. 7.

²¹ Ibid.

²² Response, para. 8.

²³ Response, para. 6.

²⁴ Response, para. 17.

²⁵ Ibid.

6. Rule 65 of the Rules provides the terms upon which provisional release of an Accused before the Tribunal may be granted. Pursuant to paragraph (B) of Rule 65 of the Rules, as amended on 28 October 2011:

Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement 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. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release.

7. The conditions listed under Rule 65 (B) of the Rules are the minimum requirements necessary for granting provisional release. 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.²⁶

IV. DISCUSSION

8. Under Rule 65 (B) of the Rules, the Chamber cannot order the release of the Accused until it has given Serbia an opportunity to be heard.²⁷ Serbia has not yet submitted its views on the Request. Serbia did not submit its views in relation to the Accused's previous request for provisional release prior to the Chamber's decision of 7 September 2011, in which the Chamber denied provisional release because of a lack of compelling humanitarian grounds.²⁸ However, Serbia renewed its provisional release guarantees in relation to all earlier requests.²⁹ The Defence has submitted that it expects to provide the Serbian Guarantees in the near future. On this basis, the Chamber anticipates that the submission of the Serbian Guarantees is forthcoming. Nevertheless, the present Request must be denied for other reasons, as set out below. Under these circumstances, the Chamber will, exceptionally, decide on the Request prior to the anticipated renewal of the Serbian Guarantees.

9. As to whether the Accused, if released, will return for trial and whether he will pose a danger to any victim, witness, or other person, the Chamber recalls the discussions in its previous

²⁶ *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.

²⁷ See also Decision on the Stanišić Request for Provisional Release During the Adjournment in Proceedings, 7 September 2011, para. 5.

²⁸ Ibid.

²⁹ See, for instance, Decision on Stanišić Defence Request for Provisional Release during Summer Recess, 21 July 2011 (Confidential) ("21 July 2011 Decision"); Decision on Urgent Stanišić Defence Request for Provisional Release, 21 April 2011 ("21 April 2011 Decision").

decisions.³⁰ The Chamber notes that it has not received information indicating a change of circumstances in this regard. In this respect, the Chamber has considered the advanced stage of the proceedings. The Chamber's prior findings on the criteria of Rule 65 of the Rules relied, in part, on the Serbian Guarantees. If the Serbian Guarantees are renewed prior to any period of provisional release, the Chamber would be satisfied that the Accused, if provisionally released, would not abscond and would appear for trial, and that he would not pose danger to any victim, witness, or other person.

10. Prior to the amendment of Rule 65 (B) of the Rules on 28 October 2011, Appeals Chamber case law held that a Chamber should not grant provisional release at the post-Rule 98 *bis* stage of the proceedings unless compelling humanitarian grounds are present that tip the balance in favour of allowing provisional release.³¹ Following the amendment of Rule 65 (B) of the Rules, the existence of sufficiently compelling humanitarian grounds is no longer a prerequisite for provisional release, but a factor that a Chamber may consider at its discretion at any stage of the proceedings.³²

11. The Chamber considers that provisional release and interactions with the Accused's son may be beneficial to his mental condition.³³ The Chamber further remains mindful of its obligation to avoid interruptions to the trial proceedings.³⁴ The Accused returned from previous periods of provisional release without incident.³⁵ Nonetheless, a sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the trial proceedings.³⁶ The Chamber has previously held that the existence of such risk militates against granting provisional release.³⁷

³⁰ Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), paras 6-7; Decision on Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds (Confidential), 16 August 2010, paras 5-6; Decision on Urgent Stanišić Defence Motion for Provisional Release, 22 July 2010, paras 6-7; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential), paras 23-28.

³¹ Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), para. 5 and authorities cited therein.

³² *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivo Petković, Valentin Ćorić, Bersislav Pušić*, Case No. IT-04-74-AR65.26, Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, 15 December 2011, para. 12; *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting Mićo Stanišić's Request for Provisional Release, 18 November 2011, para. 14.

³³ 21 April 2011 Decision para. 13; 8 March 2011 Decision, para. 8.

³⁴ See 21 July 2011 Decision, para. 13 and previous decisions of this Chamber cited therein.

³⁵ 21 July 2011 Decision, para. 13; RMO Report of 6 May 2011.

³⁶ *Ibid.*

³⁷ *Ibid.*

12. According to the RMO's reports, the Accused [REDACTED].³⁸ He also [REDACTED].³⁹ On 7 October 2011, the Accused [REDACTED].⁴⁰ [REDACTED].⁴¹

13. The RMO has further reported a change in the Accused's medication.⁴² According to the RMO, the first two doses of the new medication should be administered under medical supervision and may give rise to physical complaints.⁴³ On 5 December 2011, the Accused received the first dose of the new medication under medical supervision at Bronovo hospital.⁴⁴ The RMO initially reported [REDACTED].⁴⁵ On [REDACTED].⁴⁶ [REDACTED].⁴⁷ On 13, 14, and 15 December 2011, the Accused waived his right to be present in court due to illness.⁴⁸ On 16 December 2011, the RMO reported that [REDACTED].⁴⁹ According to the RMO, [REDACTED].⁵⁰ The Accused will receive the second dose of the medication on or about 19 December 2011.⁵¹ According to the RMO, [REDACTED].⁵² [REDACTED].⁵³

14. On the basis of these recent developments and given the Accused's medical history, the Chamber finds that the Accused's medical condition is, at present, unstable, with a considerable risk of sudden deterioration in his health. The Chamber is particularly concerned with the possible effects of the Accused's new medication, [REDACTED]. In this respect, the Chamber notes that [REDACTED].⁵⁴ Finally, the second dose is scheduled to be administered under medical supervision at Bronovo hospital on or about 19 December 2011. The Chamber considers that provisional release should not obstruct the treatment of the Accused.

15. On balance, in light of the risks of a sudden deterioration in the Accused's medical condition and the requirements of his treatment, the Chamber finds that provisional release would be inappropriate.

³⁸ RMO Reports of 7, 14, 20, 27 September, 4, 11, 17, 28 October, 4, 11, 25 November, 2, 9 and 16 December 2011.

³⁹ RMO Reports of 3, 10, 17, 23, 31 August, 7, 14, 20, 27 September, 4, 11, 17, 28 October, 4, 11, 25 November, 2, 9 and 16 December 2011.

⁴⁰ RMO Reports of 11, 17 and 28 October 2011; T. 14225.

⁴¹ RMO Reports of 11, 17 and 28 October 2011.

⁴² RMO Reports of 4, 11, 25 November and 2, 9, and 16 December 2011.

⁴³ Ibid.

⁴⁴ RMO Reports of 9 and 16 December 2011; T. 15330.

⁴⁵ RMO Reports of 9 and 16 December 2011.

⁴⁶ RMO Report of 16 December 2011.

⁴⁷ Ibid.

⁴⁸ T. 15578-15579, 15675, 15761; Absence Forms of 13, 14, and 15 December 2011; RMO Report of 16 December 2011.

⁴⁹ RMO Report of 16 December 2011.

⁵⁰ Ibid.

⁵¹ RMO Reports of 13 and 16 December 2011.

⁵² RMO Reports of 13 and 16 December 2011.

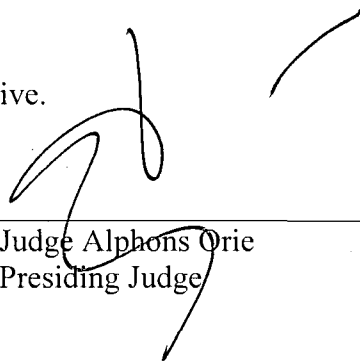
⁵³ RMO Reports of 9 and 16 December 2011.

⁵⁴ RMO reports of 31 May, 1, 8 June 2010; T. 5509.

V. DISPOSITION

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

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



Judge Alphons Orie
Presiding Judge

Dated this 30th of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]