

**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: 8 May 2012
Original: English

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08 May 2012

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IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 8 May 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON THE STANIŠIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE” OF 10 APRIL 2012**

Office of the Prosecutor
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Mr Wayne Jordash
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The Government of the Republic of Serbia
Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

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Mr Vladimir Petrović

The Government of the Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 27 February and 1 March 2012, the Stanišić Defence requested provisional release of the Accused Jovica Stanišić ("Accused") for the period of 30 March to 29 April 2012 ("Request").¹ On 6 March 2012, the Chamber invited the Republic of Serbia ("Serbia") to file, within ten days of receipt, its position regarding the Request ("Invitation").² On 12 March 2012, the Prosecution responded, opposing the Request and requesting a reasonable opportunity to respond to any Serbian submissions related to the Request ("Prosecution Request to Respond").³ On 16 March 2012, 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.⁴

2. On 21 March 2012, the Chamber noted that Serbia had not responded to the Invitation and again invited Serbia to set out its position regarding the Request, either in writing or at a hearing before the Chamber.⁵ On 22 March 2012, the Stanišić Defence filed an addendum to its Request.⁶ On 26 March 2012, Serbia submitted that the Serbian Government would discuss providing guarantees in relation to the Request by 30 March 2012 and, in case of a favourable decision, would submit such guarantees without delay.⁷ On 28 March 2012, in an informal communication, the Chamber invited the Reporting Medical Officer ("RMO") to provide specific information on the Accused's treatment in his next weekly medical report. On 2 April 2012, the Stanišić Defence submitted guarantees provided by Serbia, which stated that Serbia will comply with any orders of the Chamber to ensure that the Accused would appear for trial ("Serbian Guarantees").⁸

II. SUBMISSIONS OF THE PARTIES

3. The Stanišić Defence submits that the Accused poses no danger to victims or witnesses and that there is no risk that he would abscond.⁹ It further submits that the Accused complied with a

¹ Stanišić Request for Provisional Release during the Easter Holiday of 2012, 27 February 2012 (Confidential) ("Request of 27 February 2012"), paras 2, 22; Stanišić Defence Corrigendum to Request for Provisional Release during the Easter Holiday of 2012, 1 March 2012 ("Corrigendum"), para. 5.

² Invitation to the Republic of Serbia in relation to Requests for Provisional Release, 6 March 2012.

³ Prosecution Response to Stanišić Request for Provisional Release during the Easter Holiday of 2012, 12 March 2012 (Confidential) ("Response").

⁴ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Jovica Stanišić, 16 March 2011 (Confidential).

⁵ Order Scheduling a Hearing in relation to Requests for Provisional Release, 21 March 2012.

⁶ Stanišić Defence Addendum to Stanišić Request for Provisional Release during the Easter Holiday of 2012, 22 March 2012 (Confidential) ("Addendum").

⁷ The Republic of Serbia's Reply to Trial Chamber's Order for Scheduling a Hearing in relation to Requests for Provisional Release from 21 March 2012, 26 March 2012 (Confidential), paras 2-4.

⁸ Addendum to Stanišić Defence Request for Provisional Release during the Easter Holiday of 2012, 2 April 2012 (Confidential).

⁹ Request of 27 February 2012, para. 7.

health monitoring protocol during previous periods of provisional release, from which he returned on schedule and without incident.¹⁰ According to the Stanišić Defence, the Accused's current medical condition should not warrant concerns of sudden deterioration during provisional release, nor should the requirements of his treatment interfere with the requested provisional release.¹¹ The Stanišić Defence argues that provisional release would have a positive impact on the Accused's mental condition.¹²

4. The Prosecution submits that the risk of flight has increased as a result of the advanced stage of the case.¹³ It argues that the Accused's current state of health is fragile and uncertain and that he should remain under the medical regime at the United Nations Detention Unit in The Hague ("UNDU").¹⁴ The Prosecution further submits that provisional release could unnecessarily interfere with the Accused's treatment and the monitoring of his health.¹⁵ The Prosecution submits that if the Chamber were to consider granting provisional release, it should first seek further information as to whether the Accused's health would be negatively affected by travel and whether his health is at risk of deterioration.¹⁶

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing the provisional release of an Accused as set out in a previous decision.¹⁷

IV. DISCUSSION

6. On 2 April 2012, the Stanišić Defence submitted the Serbian Guarantees. As a result, the Chamber will not further discuss the parties' submissions and requests regarding the absence of such guarantees.¹⁸ Given that these guarantees are identical in substance to the guarantees provided by Serbia regarding previous requests for provisional release, the Chamber does not seek further submissions by the Prosecution.

7. 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

¹⁰ Request of 27 February 2012, para. 8.

¹¹ Request of 27 February 2012, paras 9-10, 12, 14.

¹² Request of 27 February 2012, paras 11, 14, 17; Addendum, paras 1-2.

¹³ Response, paras 16-18.

¹⁴ Response, paras 7-10, 21.

¹⁵ Response, paras 10-11.

¹⁶ Response, para. 12.

¹⁷ Decision on the Stanišić Defence Request for Provisional Release during the Winter Recess, 19 December 2011 (Confidential) ("19 December 2011 Decision").

decisions.¹⁹ The Chamber 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 and accords due weight to the Serbian Guarantees. The Chamber is satisfied that the Accused, if provisionally released, will appear for trial and that he will not pose danger to any victim, witness, or other person.

8. The Chamber considers that provisional release may be beneficial to the Accused's mental condition.²⁰ The Chamber further remains mindful of its obligation to avoid interruptions to the trial proceedings.²¹ A sudden deterioration of the Accused's health may affect his ability to return to The Hague and thereby disrupt the trial proceedings.²² The existence of such a risk militates against granting provisional release.²³

9. On 19 December 2011, the Chamber denied a request for provisional release of the Accused, finding that the Accused's medical condition was unstable, with a considerable risk of sudden deterioration in his health.²⁴ The Chamber was particularly concerned about the possible effects of the Accused's new medication and held that provisional release should not obstruct the treatment of the Accused.²⁵ Since 19 December 2011, the RMO has reported that the Accused received medical treatment to [REDACTED].²⁶ During this period, the Accused's [REDACTED].²⁷

10. On 9 March 2012, the RMO reported that the Accused had started a new medication for [REDACTED], which had not caused any demonstrable complications.²⁸ Two days after receiving the new medication, the Accused [REDACTED].²⁹ On 10 April 2012, the RMO reported that the Accused had received the second dose of his new medication on 2 April 2012, which appeared to reduce slightly the symptoms of [REDACTED].³⁰ The RMO did not report any medical complications resulting from the new treatment.³¹ The third dose of the new treatment is reportedly scheduled to take place eight weeks later.³²

¹⁸ See Request of 27 February 2012, paras 18-21; Corrigendum, paras 2-4; Response, paras 13-15, 24.

¹⁹ See 19 December 2011 Decision, para. 9 and decisions cited therein.

²⁰ See also 19 December 2011 Decision, para. 11 and decisions cited therein.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ 19 December 2011 Decision, paras 14-16.

²⁵ Ibid.

²⁶ RMO Reports of 27, 29 December 2011, 5, 13, 24, 30 January, 2, 10, 15, 24 February, 2, 9 March 2012.

²⁷ RMO Reports of 27, 29 December 2011, 5, 13, 24, 30 January, 2, 10, 15, 24 February 2012, 2, 9, 15, 23 March, 10 April 2012.

²⁸ RMO Report of 9 March 2012.

²⁹ Ibid.

³⁰ RMO Report of 10 April 2012.

³¹ Ibid.

³² RMO Reports of 15, 28 March, 10 April 2012.

11. Regarding the Accused's recurring problems with [REDACTED], the RMO reported on 15 March 2012 that, [REDACTED].³³ On 23 March 2012, the RMO reported that [REDACTED].³⁴ On 28 March and 10 April 2012, the RMO reported that [REDACTED].³⁵

12. Based on the RMO's recent reporting, the Chamber finds that the Accused's health is at present comparatively stable. The Accused does not appear to have suffered serious medical consequences following the first and second doses of his new medication. The third dose is scheduled to take place several weeks after the requested period of provisional release. Based on the RMO reports, the Chamber concludes that provisional release would not obstruct the Accused's medical treatment.

13. However, given the Accused's medical history, the risk of a sudden deterioration of his health is not insignificant. In previous decisions, the Chamber developed a strict set of conditions for monitoring, treating, and reporting on the Accused's health outside of the UNDU in order to address the risks posed by the Accused's medical condition while on provisional release.³⁶ This set of conditions relied in part on the submission of a personal guarantee and waiver of doctor-patient privilege by the Accused ("Personal Guarantee and Waiver").³⁷ Provided a similar waiver is submitted, the Chamber finds that it would be able to impose conditions which, in light of the comparatively stable state of the Accused's health, would reduce the risk of a serious disruption to the trial proceedings.

14. On balance, provided the Accused's health does not deteriorate significantly following this decision and prior to his release, the Chamber finds that provisional release would be appropriate.

V. DISPOSITION

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

DENIES the Prosecution Request to Respond;

³³ RMO Reports of 24, 30 January, 2, 10, 15, 24 February, 2, 9, 15, 28 March 2012

³⁴ RMO Report of 23 March 2012.

³⁵ RMO Report of 28 March, 10 April 2012.

³⁶ See e.g. Decision on Urgent Stanišić Request for Provisional Release, 21 April 2011, para.16; Decision on Urgent Stanišić Motion for Provisional Release, 8 March 2011 (Confidential), paras 12, 17; Decision on Stanišić Renewed Request for Provisional Release, 16 December 2010 (Confidential), paras 6-7; Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), paras 11-12, 14; Decision on Urgent Stanišić Request for Provisional Release, 11 October 2010 (Confidential), paras 13-15.

³⁷ Ibid.

GRANTS the Motion, in part, and:

1. **INVITES** the Stanišić Defence to communicate with the Accused with a view to filing a Personal Guarantee and Waiver prior to his release;
2. **INSTRUCTS** the RMO to:
 - (a) conduct a medical examination of the Accused;
 - (b) report to the Chamber no later than 2 p.m. on 11 April 2012 on the medical condition of the Accused, identifying in particular any symptoms which might suggest a deterioration or potential deterioration in the Accused's condition and/or his ability to travel, including specifically whether any serious medical complications have resulted from (or may be expected to result from) the administration of the second dose of his new medication;
 - (c) put questions to the Accused by telephone weekly on each Wednesday during the Accused's provisional release, with a view to identifying in particular any symptoms which might suggest a deterioration or potential deterioration in the Accused's condition and/or his ability to travel; and
 - (d) report to the Chamber weekly by no later than 12 p.m. on each Thursday during the Accused's provisional release on the medical condition of the Accused;
3. **ORDERS:**
 - (a) that, provided the Stanišić Defence have filed a Personal Guarantee and Waiver by the Accused, the Accused be transported to Schiphol airport in the Netherlands by the Dutch authorities on **the first practicable day after 11 April 2012;**
 - (b) that, at Schiphol airport, the Accused be provisionally released into the custody of officials of the Government of Serbia to be designated prior to his release in accordance with operative paragraph 7(a) hereof ("Designated Officials"), who shall accompany the Accused for the remainder of his travel to Serbia and to his place of residence;
 - (c) that, on his return, the Accused be accompanied by the Designated Officials, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport on or before **Thursday, 26 April 2012**, and that the Dutch authorities then transport the Accused back to the UNDU; and
 - (d) that the Accused provide the addresses at which he will be staying in Belgrade to the Ministry of Justice of Serbia ("Ministry of Justice") and the Registrar of the Tribunal ("Registrar") before leaving the UNDU, and that during the period of provisional

release, the Accused abide by the following conditions, and that the authorities of the Government of Serbia, including the local police, ensure compliance with such conditions:

- (i) to remain within the confines of the city of Belgrade;
 - (ii) to surrender his passport and any other valid travel documents to the Ministry of Justice;
 - (iii) to report each day before 1 p.m. to the police in Belgrade at a local police station to be designated by the Ministry of Justice in accordance with operative paragraph 7(b) hereof, unless admitted to a medical institution;
 - (iv) to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar;
 - (v) not to have any contact whatsoever or in any way interfere with any victim or potential witness or to otherwise interfere in any way with the proceedings or the administration of justice;
 - (vi) not to discuss his case with anyone, including the media, other than his counsel;
 - (vii) not to seek direct access to documents or archives or to destroy any evidence;
 - (viii) to comply strictly with any requirements of the authorities of the Government of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
 - (ix) to return to the Tribunal on or before **Thursday, 26 April 2012**;
 - (x) to comply strictly with any further order of the Chamber varying the terms of or terminating provisional release; and
 - (xi) to comply with the reporting and treatment regime set out in operative paragraphs 2 and 4-6 hereof;
4. **INSTRUCTS** the Medical Service of the UNDU to be available, to the extent possible, for consultation regarding the treatment the Accused should receive, if contacted by an institution treating the Accused during the period of provisional release, as in operative paragraph 6(e) hereof;
5. **ORDERS** that the Accused, during the period of provisional release:

- (a) arrange with the Registrar to return as soon as practicable to The Hague in case of any significant deterioration in his health, whether experienced personally or the symptoms of which are identified by medical practitioners;
 - (b) not seek treatment from or consult with any medical practitioner other than the Medical Service of the UNDU and his current treating specialists, unless in need of urgent medical attention or when acting on and in accordance with the specific advice of the Medical Service of the UNDU and/or his current treating specialists; and
 - (c) if required to seek urgent medical attention, or if specifically advised by the Medical Service of the UNDU and/or his current treating specialists to seek medical attention, notify the Registrar, directly or via counsel, as soon as possible of the name and address of any medical practitioner consulted and, if applicable, of the name and address of any institution where he has been or will be treated or to which he has been or will be admitted;
6. **REQUIRES** that the Government of Serbia ensure, to the fullest extent possible, that any institution treating the Accused or to which the Accused is admitted during the period of provisional release, including the Military Medical Hospital in Belgrade:
- (a) reports to the Registrar as soon as possible regarding the arrival, assessment, or admission of the Accused at the institution;
 - (b) reports to the Registrar as soon as possible on any treatment the Accused is to receive or has received;
 - (c) notifies the Registrar of the identity of all medical practitioners involved in the treatment of the Accused at and/or by the institution;
 - (d) allows the RMO, the Medical Service of the UNDU, the Accused's current treating specialists, and any other medical experts appointed by the Chamber, to examine the Accused at any time;
 - (e) to the extent possible, treats the Accused only in consultation with the Medical Service of the UNDU regarding the treatment the Accused should receive;
 - (f) treats the Accused with a view to his returning as soon as practicable to The Hague, where he can receive further treatment; and
 - (g) in the event that the Accused is admitted to the medical institution, allows the member of the police appointed under operative paragraph 7(c) hereof and any person(s) making

an unannounced visit pursuant to operative paragraph 3(d)(iv) hereof to verify at any time that the Accused is present at the institution;

7. **REQUIRES** the Government of Serbia to assume responsibility as follows:

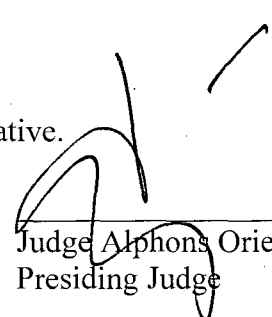
- (a) by designating officials of the Government of Serbia into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and to his place of residence, as well as upon his return, and notifying, as soon as practicable, the Chamber and the Registrar of the names of the Designated Officials;
- (b) by designating a local police station in Belgrade to which the Accused is to report each day during the period of provisional release, and notifying, as soon as practicable, the Chamber and the Registrar of the name and location of this police station;
- (c) in the event that the Accused is admitted to a medical institution, by appointing a member of the police to verify at least daily that the Accused is present at that institution, and by notifying, as soon as practicable, the Chamber and the Registrar of the name of this member of the police;
- (d) for the personal security and safety of the Accused while on provisional release;
- (e) for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- (f) for all expenses concerning accommodation, medical treatment and security of the Accused while on provisional release;
- (g) by not issuing any new passports or other documents which would enable the Accused to travel;
- (h) by submitting a weekly written report to the Chamber as to the compliance of the Accused with the terms of this Order;
- (i) by arresting and detaining the Accused immediately should he breach any of the conditions of this Order; and
- (j) by reporting immediately to the Chamber any breach of the conditions set out above;

8. **INSTRUCTS** the Registrar to:

- (a) consult with the Ministry of Justice of the Netherlands as to the practical arrangements for the release of the Accused;

- (b) continue to detain the Accused at the UNDU until such time as the Chamber and the Registrar have been notified of the name of the Designated Officials into whose custody the Accused is to be provisionally released;
 - (c) facilitate the examination of the Accused by the RMO as outlined in operative paragraphs 2(c)-(d) hereof, including by providing the UNDU and the Accused with the contact details necessary for this communication;
 - (d) provide to the Accused and to the Government of Serbia the contact details necessary for the communications set out in operative paragraphs 5(c), 6(a)-(c), and 6(e) hereof; and
 - (e) provide to the Chamber, without delay, the reports and notifications set out in operative paragraphs 5(c) and 6(a)-(c) hereof; and
9. **REQUESTS** the authorities of all States through which the Accused will travel to:
- (a) hold the Accused in custody for any time that he will spend in transit at the airport; and
 - (b) arrest and detain the Accused pending his return to the UNDU, should he attempt to escape.

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



Judge Alphons Orie
Presiding Judge

Dated this Eighth of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]