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24 April 2009

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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-PT
Date: 24 April 2009
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Pre-Trial Judge, Presiding
Judge Flavia Lattanzi
Judge Michèle Picard

Acting Registrar: Mr John Hocking

Decision of: 24 April 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ

PUBLIC

DECISION ON PROSECUTION MOTION FOR REVOCATION OF JOVICA
STANIŠIĆ'S PROVISIONAL RELEASE AND RE-ASSESSMENT OF HIS HEALTH
AND
REVOCATION OF FRANKO SIMATOVIĆ'S PROVISIONAL RELEASE

Office of the Prosecutor

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Government of the Republic of Serbia

Government of the Kingdom of the Netherlands

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Procedural History

1. On 16 May 2008, the Appeals Chamber instructed the Chamber to adjourn the proceedings in this case and to “reassess the Accused’s [Jovica Stanišić] state of health before determining when the trial should commence”.¹ Accordingly, the Chamber adjourned proceedings *sine die* on 20 May 2008.² On 26 May 2008, the Chamber granted provisional release to both Accused and established a comprehensive reporting procedure to monitor the health of the Accused Stanišić.³
2. On 17 December 2008, after having reassessed the Accused Stanišić’s health, the Chamber prolonged the adjournment of proceedings and instructed, *inter alia*, two independent court experts to submit further medical reports by 17 March 2009.⁴ On 19 and 23 March 2009 respectively, Dr de Man and Dr Siersema filed their reports pursuant to the December 2008 Re-Assessment Decision.⁵
3. On 6 April 2009, the Prosecution filed a motion for revocation of Mr Stanišić’s provisional release and re-assessment of his health.⁶ On 20 April 2009, the Stanišić Defence responded to the Motion, opposing it.⁷ On 22 April 2009, the Prosecution requested leave to reply and replied to the Stanišić Response.⁸ The Simatović Defence did not respond to the Motion.

Submissions

4. The Prosecution submits that the provisional release has not proven effective in the

¹ Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008 (“Appeals Chamber Decision”), para. 22.

² T. 1258.

³ Decision on Provisional Release, 26 May 2008, para. 68.

⁴ Decision on Prosecution Motion for Re-Assessment of Jovica Stanišić’s Health and Re-Commencement of Trial and Decision on Prosecution Motion to Order Further Medical Reports on Jovica Stanišić’s Health, 17 December 2008 (“December 2008 Re-Assessment Decision”), para. 38.

⁵ Registry Submission Pursuant to Rule 33 (B) Concerning Psychiatric Expert Report, 19 March 2009 (“De Man Report”); Registry Submission Pursuant to Rule 33 (B) Concerning Expert Report, 23 March 2009 (“Siersema Report”).

⁶ Prosecution Motion for Revocation of Jovica Stanišić’s provisional release and re-assessment of his health, 6 April 2009 (“Motion”), paras 4, 28.

⁷ Defence Response to Prosecution Motion of Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of his Health, 20 April 2009 (“Stanišić Response”).

⁸ Prosecution Request for Leave to Reply and Reply to Stanišić Defence Response to Prosecution Motion for Revocation of Jovica Stanišić’s Provisional Release and Re-Assessment of His Health, 22 April 2009 (“Prosecution Reply”).

case of Mr Stanišić.⁹ It quotes from the Stanišić Defence's application for provisional release which saw the "principal purpose of the provisional release [...] [in] provid[ing] for the optimum conditions of recovery" and "prevent[ing] further serious deterioration of health".¹⁰ It further argues that the Appeals Chamber adjourned the trial to allow Mr Stanišić to recuperate and to "secure the Accused's ability to fully exercise his right to be present at trial".¹¹ The Prosecution further draws attention to the fact that the Appeals Chamber agreed that the adjournment was "meant to facilitate Mr Stanišić's recovery and thereby to ensure that the trial can continue in the near future".¹²

5. The Prosecution submits that Dr de Man comes to the conclusion that Mr Stanišić, while still severely depressed, is not psychotic.¹³ It refers to Dr de Man's findings that Mr Stanišić could at all times communicate adequately, was well-oriented, and showed no signs of memory, perception, everyday judgment or thought disturbances.¹⁴

6. The Prosecution submits that Dr Siersema comes to the conclusion that Mr Stanišić's health condition has remained stable.¹⁵ It makes reference to Dr Siersema's findings that Mr Stanišić's treatment is suboptimal and incomplete and that the Accused could participate in a trial with minor accommodations.¹⁶

7. The Prosecution accordingly requests the Chamber to revoke Mr Stanišić's provisional release, to order that he be treated and evaluated at the Netherlands Institute of Forensic Psychiatry and Psychology, the Pieter-Baan-Centrum in Utrecht ("PBC"), to order that he receives any recommended and reasonable medical and psychiatric treatment as directed by the medical professionals treating him, and to order that his physical health be evaluated by Dr Siersema.¹⁷

8. At the outset, the Stanišić Defence requests leave to exceed the word limit in their response as "the issues are complex and all the Annexes [of the Motion] [...] need to be addressed".¹⁸ The Stanišić Defence concedes to the fact that the Accused has not been found

⁹ Motion, para. 4.

¹⁰ Ibid., para. 27; Extremely Urgent Defence Motion for Immediate Provisional Release for Purposes of Medical Treatment, 20 May 2008, para. 2.

¹¹ Motion, para. 5; Appeals Chamber Decision, para. 19.

¹² Motion, para. 5; Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 63.

¹³ Motion, para. 8.

¹⁴ Ibid.

¹⁵ Ibid., para. 9.

¹⁶ Ibid.

¹⁷ Ibid., para. 28.

¹⁸ Stanišić Response, para. 5.

legally unfit to stand trial but highlights that attention should instead be directed towards dealing with “likely practical consequences of the ongoing and recurring medical diagnoses”.¹⁹ It states that further medical reports are avoidable due to the two submitted expert reports already before the Chamber and that there are no further benefits with regard to admission of the Accused to the PBC.²⁰

9. The Stanišić Defence recalls that Dr Siersema found that the Accused’s mental condition has deteriorated and that this condition currently does not allow him to attend trial.²¹ It further submits that an assessment of the Prosecution’s treatment schemes by Mr Stanišić’s treating doctor will be provided to the Chamber in due course.²²

10. The Stanišić Defence therefore requests the Chamber to deny the Motion in its entirety, to lift the confidential nature of Dr de Man’s and Dr Siersema’s latest reports, and to lift the confidential nature of Annex E of the Motion.²³

11. In its reply, the Prosecution, after requesting leave to reply, opposes the Stanišić Defence’s request to exceed the word limit on the basis that the Stanišić Defence has not sufficiently explained the exceptional circumstances that would justify such a request.²⁴

12. The Prosecution further argues that the Stanišić Defence places undue weight on Dr Siersema’s comments about the Accused’s mental state, considering that Dr Siersema is a gastroenterologist and not a psychiatrist.²⁵

13. The Prosecution does not oppose the Stanišić Defence’s request to lift the confidential status of the reports of Dr de Man and Dr Siersema.²⁶ With regard to lifting the confidential status of Annex E of the Motion, the Prosecution does not oppose the request but will inform the Chamber once it has heard back from the provider of the information included in this Annex.²⁷

¹⁹ Ibid., para. 7.

²⁰ Ibid., paras 8, 11-13.

²¹ Ibid., para. 16.

²² Ibid., para. 24.

²³ Ibid., para. 36.

²⁴ Prosecution Reply, paras 2, 4-5, 16.

²⁵ Ibid., para. 8.

²⁶ Ibid., paras 15-16.

Discussion

14. While the Chamber is seized of the Motion, its task to reassess Mr Stanišić's health also stems from the December 2008 Re-Assessment Decision and the Appeals Chamber Decision. The Chamber found however in its December 2008 Re-Assessment Decision that Mr Stanišić's condition was not such as to "enable him [...] to endure the rigours of an ongoing trial in The Hague and still participate effectively in such trial".²⁸

15. The re-assessment of Mr Stanišić's health must come to a determination of whether he is able to endure the rigours of a trial and still participate effectively in such trial.

16. The Chamber received two independent expert reports of Dr de Man and Dr Siersema, as well as several reports by Dr Tarabar pursuant to the 2008 Re-Assessment Decision. The Chamber agrees with the Prosecution that diagnoses by and recommendations of the doctors should remain within the boundaries of their expertise. Accordingly, limited weight will be given to, for example, a gastroenterologist's comments about the mental health of the Accused.

17. Dr de Man opines in his report that Mr Stanišić, while certainly being mentally affected by his physical ailments, is cooperative and not psychotic.²⁹ Even though Mr Stanišić reportedly lacks energy and concentration to, for example, read or watch TV, he admits that some of his ailments have motivational reasons.³⁰ The report's quoted passages and descriptions of conversations with Mr Stanišić demonstrate his ability to engage in meaningful communications. The Chamber is of the view that mentally Mr Stanišić is not *unable* to effectively participate in the trial. Moreover, the seemingly increased rate of exhaustion could undoubtedly be accommodated in an adjusted trial regime.

18. Dr Siersema, even though he could not perform certain tests due to Mr Stanišić's refusal to cooperate, has known the Accused for some time and states that his physical conditions have more or less remained stable.³¹ Notably, Dr Siersema states that physical disorders as the ones present in Mr Stanišić do not prevent the vast majority of patients to live an (almost) normal life, and makes reference to the possibility of an adjusted trial regime for

²⁷ Ibid.

²⁸ December 2008 Re-Assessment Decision, para. 32.

²⁹ De Man Report, pp. 5-6.

³⁰ Ibid., p. 6.

³¹ Siersema Report, pp. 2-3.

the Accused.³² Dr Siersema confirms that Mr Stanišić reportedly suffers from increased numbers of stools per day; something which could also be accommodated in an adjusted trial regime.³³

19. The Chamber finds itself sufficiently assisted by the medical reports received from Dr de Man, Dr Siersema, and Dr Tarabar. Accordingly, it agrees with the Stanišić Defence that there would be no added benefit from having Dr Siersema, at this stage, examine Mr Stanišić again, or having Mr Stanišić admitted to the PBC for further evaluation and treatment.

20. On the basis of the foregoing and having considered the received reports, the Chamber is satisfied that Mr Stanišić is able to endure the rigours of a trial and to effectively participate in the trial provided that accommodating measures are introduced. The Chamber is mindful of Mr Stanišić's illnesses and inconveniences associated therewith and wants to draw particular attention to the fact that trial proceedings can be adjusted to accommodate the concerns of the Accused Stanišić. The Chamber will do its utmost to accommodate Mr Stanišić's health circumstances and will in due course inform the parties of its proposed modalities for an adjusted trial regime.

21. Even though there is some merit in the Prosecution's argument that the Stanišić Defence did not sufficiently justify its request to exceed the word limit, it would be inappropriate to simply disregard the Stanišić Response due to this technicality, in particular in light of the importance of the present decision. Exceptionally, the Chamber will not impose a duty on the Stanišić Defence to re-file its response within the word limit and grants the Stanišić Defence's request to exceed the word limit while already informing the parties of upcoming guidance with regard to separating 'requests for leave' from substantive filings.

Disposition

22. For the foregoing reasons and pursuant to Rules 54, 65 and 126 *bis* of the Rules, the Chamber

GRANTS the Motion in respect of revoking Jovica Stanišić's provisional release;

³² Ibid., p. 4.

³³ Ibid., p. 2.

DENIES the Motion in all other respects;

DECIDES that the trial in the present case shall recommence;

DEFERS its decision with respect to the lifting of the confidential status of Dr de Man's and Dr Siersema's latest reports as well as Annex E to the Motion;

GRANTS the Prosecution's request to reply;

GRANTS the Defence's request to exceed the word limit;

ORDERS Jovica Stanišić and Franko Simatović to return to the United Nations Detention Unit ("UNDU") by 4 May 2009;

ORDERS the Government of the Republic of Serbia to designate officials, including medical personnel if necessary, who shall accompany and deliver Jovica Stanišić and Franko Simatović from their places of residence into the custody of the Dutch authorities at Schiphol airport no later than 4 May 2009;

ORDERS the Government of the Republic of Serbia to notify, as soon as practicable, the Chamber and the Registrar of the Tribunal of the name of the designated officials;

ORDERS the Government of the Republic of Serbia to ensure the personal security and safety of the Accused until they are transferred into the custody of Dutch officials;

ORDERS the Government of the Kingdom of the Netherlands to ensure that the Accused remain in custody and are transported from Schiphol airport to the UNDU;

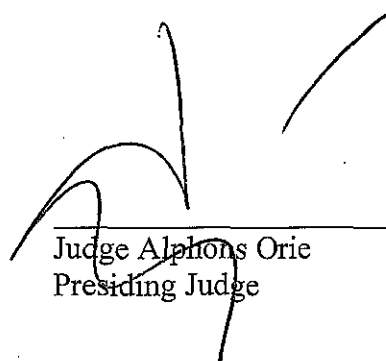
INSTRUCTS the Registrar of the Tribunal to consult with the Ministry of Justice of the Republic of Serbia and the Ministry of Justice of the Kingdom of the Netherlands as to the practical arrangements for the return of the Accused to the UNDU;

INSTRUCTS the Government of the Republic of Serbia, the Government of the Kingdom of the Netherlands, and the Registry of the Tribunal to communicate with each other in order to facilitate the orderly return of the Accused to the UNDU;

ORDERS the authorities of all states through which the Accused will travel to hold the Accused in custody for any time that they will spend in transit at an airport in their territories;

ORDERS the authorities of all states through which the Accused will travel to arrest and detain the Accused pending their return to the UNDU, should they attempt to escape.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-fourth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]