

UNITED
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18 November 2011

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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-08-91-T
Date: 18 November 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Burton Hall, Presiding
Judge Guy Delvoie
Judge Frederik Harhoff

Registrar: Mr. John Hocking

Decision of: 18 November 2011

PROSECUTOR

v.

MIĆO STANIŠIĆ AND STOJAN ŽUPLJANIN

PUBLIC

**DECISION GRANTING MIĆO STANIŠIĆ'S REQUEST
FOR PROVISIONAL RELEASE**

The Office of the Prosecutor

Ms. Joanna Korner
Mr. Thomas Hannis

The Government of the Republic of Serbia

via the Embassy of the Republic of Serbia
to the Netherlands, The Hague

**The Government of the Kingdom of
the Netherlands**

Counsel for the Accused

Mr. Slobodan Zečević and Mr. Slobodan Cvijetić for Mićo Stanišić
Mr. Dragan Krgović and Mr. Aleksandar Aleksić for Stojan Župljanin

I. INTRODUCTION

1. Trial Chamber II (“Trial Chamber”) of the 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 (“Tribunal”) is seised of “Mr. Stanišić’s motion for provisional release during the upcoming winter court recess”, filed by the Defence of Mićo Stanišić (“Defence”) on 28 October 2011 with confidential annexes (“Motion”). The Prosecution responded on 11 November 2011 (“Response”).¹ On 2 November 2011, the Government of the Kingdom of the Netherlands (“the Host Country” or “the Netherlands”) confirmed that it has no objection to the request for provisional release.² The Defence sought leave to reply and filed a proposed reply on 14 November 2011 (“Reply”).³

II. SUBMISSIONS

2. The Defence requests that Mićo Stanišić be granted temporary provisional release from 19 December 2011 to 30 January 2011 (“Requested Period”).⁴ The Defence submits that Mićo Stanišić surrendered voluntarily to the Tribunal within four days of being formally notified of the indictment; voluntarily co-operated with the Prosecution; always behaved respectfully towards the Trial Chamber; complied with the terms and conditions of his previous provisional releases; and poses no risk of flight, nor any danger to any victim, witness or other person.⁵

3. The Defence submits that granting provisional release would enable Mićo Stanišić to spend Orthodox Christmas and New Year with his family, who would otherwise not be able to visit him in The Hague due to financial constraints.⁶ The Defence further submits that since the Defence team will be in Belgrade during the Requested Period, Mićo Stanišić’s provisional release would enable the Defence to consult and work with him more efficiently than if he remained in detention in The Hague.⁷ Moreover, this would save the Tribunal the travel expenses that would otherwise be incurred in order for the Defence team to consult with Mićo Stanišić in The Hague.⁸

¹ Prosecution’s response to Stanišić’s motion for provisional release during the upcoming winter court recess, 28 Oct 2011.

² Correspondence from Host Country, 2 Nov 2011 (confidential).

³ Application for leave to file a reply and reply to the Prosecution’s response to Stanišić motion for provisional release during the upcoming winter recess, 14 Nov 2011.

⁴ Motion, paras 1-2.

⁵ *Ibid.*, para. 4.

⁶ *Ibid.*, para. 3.

⁷ *Ibid.*

⁸ *Id.*

4. The Defence acknowledges that Mićo Stanišić has twice been denied provisional release following the close of the Prosecution's case.⁹ It argues that, on both occasions, the Trial Chamber would have granted provisional release¹⁰ but for a requirement arising from Appeals Chamber's jurisprudence requiring an accused to show "sufficiently compelling humanitarian grounds" in support of an application for provisional release made at advanced stages of the proceedings.¹¹ The Defence submits that, following the recent amendment to Rule 65(B) of the Tribunal's Rules of Procedure and Evidence ("Rules"), the Trial Chamber should now exercise its discretion in favour of Mićo Stanišić and grant the request for provisional release.¹²

5. The Defence has provided a guarantee from the Government of the Republic of Serbia ("Serbia") in support of the request¹³ and attaches the personal undertaking of Mićo Stanišić to abide by all terms and conditions imposed on him by the Trial Chamber, should his request be granted.¹⁴

6. The Prosecution requests that the Trial Chamber exercise its discretion to deny the Motion asserting that Mićo Stanišić does not meet the requirements of Rule 65(B) and, in particular, that the risk of flight is too great.¹⁵ It submits that the current procedural stage of the case, that is, after the close of the Prosecution's case and the continuation of the proceedings after the Accused have had the opportunity to move for a motion of acquittal pursuant to Rule 98 *bis*, constitutes a material change in circumstances which requires a renewed and thorough assessment of Mićo Stanišić's risk of flight.¹⁶

7. The Prosecution submits that by deciding not to make a Rule 98 *bis* submission, Mićo Stanišić has accepted that evidence exists capable of supporting his conviction.¹⁷ The Prosecution asserts that Defence witnesses who have testified on behalf of Mićo Stanišić have actually "strengthened the evidence against him".¹⁸ It also contests that Mićo Stanišić was forthright or forthcoming during his interviews with the Prosecution.¹⁹ According to the Prosecution, this increased evidence of guilt creates a greater incentive for Mićo Stanišić to abscond before issuance

⁹ *Ibid.*, para. 14.

¹⁰ *Ibid.*

¹¹ *Id.*

¹² *Ibid.*, paras 5, 14.

¹³ *Ibid.*, para. 4(e), Annex B.

¹⁴ *Ibid.*, para. 4(f), Annex C.

¹⁵ Response, paras 1, 3, 12.

¹⁶ *Ibid.*, paras 4, 9.

¹⁷ *Ibid.*, para. 9, citing *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Mr. Perišić's motion for provisional release, 31 Mar 2010 ("*Perišić* Decision"), para. 20.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, para. 8.

of the final judgement.²⁰ The Prosecution further submits that there is no set of conditions that will adequately guarantee his presence at trial or remove the risk of danger to other persons if Mićo Stanišić is provisionally released.²¹ Moreover, the Prosecution submits that if the Accused were to abscond at this advanced stage of the case, the costs to the Tribunal of discontinuing or delaying the trial would be “immense” as would be its impact on witnesses and victims who have already testified in this case and the public perception of the Tribunal.²²

8. The Prosecution also contends that the Defence’s proffered reasons are insufficient to justify Mićo Stanišić’s provisional release.²³ It argues that the Defence has failed to show why his physical presence in Belgrade is required to assist the Defence team with the preparation of rebuttal witnesses and the final brief, and that this factor has been found to have little, if any, weight.²⁴ The Prosecution asserts that the Accused’s personal reasons put forward in support of release are not comparable with those of accused for whom other Trial Chambers have granted provisional release.²⁵

9. Should the Trial Chamber decide to grant the Motion, the Prosecution requests a stay of the decision pursuant to Rule 65(E).²⁶

10. In the Reply, the Defence argues that, should the Motion be granted, the Prosecution’s request for a stay pursuant to Rule 65(E) should be denied.²⁷ The Defence submits that such denial would not prejudice the Prosecution as it would still be able to appeal the decision on provisional release pursuant to Rule 65(D).²⁸ The Defence further submits that granting the Prosecution’s request for a stay would be unfair to Mićo Stanišić because there is a risk that by the time the Appeals Chamber determines any Prosecution appeal, the Requested Period would have elapsed and the matter rendered moot.²⁹

III. APPLICABLE LAW

11. Rule 65 governs provisional release at the Tribunal. On 28 October 2011, the amended paragraph (B) of this Rule entered into force and it now reads:

²⁰ *Ibid.*, para. 9.

²¹ *Ibid.*, paras 7, 11.

²² *Ibid.*, para. 12.

²³ *Ibid.*, para. 10.

²⁴ *Ibid.*, para. 10, citing *Perišić* Decision, para. 20.

²⁵ *Ibid.*

²⁶ *Ibid.*, para. 13.

²⁷ Reply, para. 3.

²⁸ *Ibid.*

²⁹ *Id.*

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.

Rule 65(C) provides that the Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate while Rule 65(H) authorises a Chamber to issue an arrest warrant if necessary to secure the presence of an accused who has been released.

12. When determining a request for provisional release, a Trial Chamber must address all relevant factors which a reasonable Trial Chamber is expected to take into account before coming to a decision and must include a reasoned opinion indicating its view on those relevant factors.³⁰ The determination of what constitutes “relevant factors” as well as the weight to be attributed to them depends upon the particular circumstances of each case given that “decisions on motions for provisional release are fact intensive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused”.³¹

13. With regard to appeals against decisions on provisional release, Rule 65(D) provides that any decision under Rule 65 by a Trial Chamber shall be subject to appeal, which, subject to paragraph (F), is to be filed within seven days of the filing of the impugned decision. Rule 65(E) further provides that the Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision. If a stay is granted, Rule 65(F) requires the Prosecutor to file the appeal no later than one day from the rendering of that decision. Any appeal under Rule 65 is required to be dealt with expeditiously, pursuant to the procedure set out in Rule 116 *bis*. Rule 65(G) stipulates that where a stay has been ordered by a Trial Chamber, the accused shall not be released until either the time-limit for filing the appeal has elapsed or a determination is made by the Appeals Chamber.

IV. DISCUSSION

14. The Trial Chamber has already twice in 2011, at a late stage of the proceedings, found that Mićo Stanišić fulfilled all the requirements for provisional release, other than the showing of

³⁰ Decision denying Mićo Stanišić’s request for provisional release during the upcoming summer court recess, 29 June 2011, (“Decision of 29 June 2011”) para. 14; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.4-6, Decision on consolidated appeal against decision on Borovčanin’s motion for a custodial visit and decisions on Gvero’s and Miličić’s motions for provisional release during the break in the proceedings, 15 May 2008, para. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution’s consolidated appeal against decisions to provisionally release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 Mar 2008, para. 7.

³¹ *Ibid.*

compelling humanitarian grounds,³² a precondition developed in Appeals Chamber jurisprudence. Respecting the precedential value of Appeals Chamber decisions, the Trial Chamber denied provisional release on both occasions.³³ However, the recent amendment of Rule 65(B) has converted the requirement of showing compelling humanitarian grounds from a *conditio sine qua non* when granting provisional release at advanced stages of proceedings to a discretionary consideration in granting such release. As the Motion does not raise this as a ground for provisional release, the Trial Chamber need not address this issue any further.

15. The Trial Chamber must next consider the two mandatory components of Rule 65, namely whether Mićo Stanišić will, if released, return to the United Nations Detention Unit (“UNDU”) to appear for the remainder of the trial and not pose a danger to any victim, witness or other person. The Trial Chamber understands that each application for provisional release must be assessed, *de novo*, on its merits and in the context of the circumstances existing at the time of taking the decision, and will proceed to do so.

16. The Trial Chamber has heard no objection regarding the provisional release from the Host Country, and is satisfied with the guarantee from Serbia, the State to which the Accused seeks to be released.

17. The Trial Chamber notes that Mićo Stanišić voluntarily surrendered to the Tribunal in 2005 and has since been provisionally released on several occasions.³⁴ On each occasion of his return to the UNDU, Serbia has placed on record that the Accused acted in accordance with the directions of the Trial Chamber and complied with all the measures set by the State.³⁵ The Trial Chamber is therefore satisfied that Mićo Stanišić has always abided by the terms and conditions of his provisional release and has no reason to believe that this would be any different should his current request for provisional release be granted.

³² Decision of 29 June 2011, para. 38; Decision denying Mićo Stanišić’s request for provisional release during the break after the close of the Prosecution case with separate declaration of Judge Guy Delvoie, 25 Feb 2011 (“Decision of 25 February 2011”), para. 30.

³³ For an overview of this jurisprudence, see Decision of 29 June 2011, paras 15-30.

³⁴ See *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-PT, Decision on Mićo Stanišić’s motion for provisional release, 19 Jul 2005; Order reinstating provisional release, 10 Jul 2008; Order reinstating provisional release, 12 Jun 2009; Decision granting Mr. Stanišić’s motion for provisional release during the winter recess, 11 Dec 2009; Decision granting Mićo Stanišić’s motion for provisional release during the court summer recess, 16 Jul 2010; Decision granting Mićo Stanišić’s motion for provisional release during the court winter recess, 3 Dec 2010.

³⁵ See State report on provisional release of Mićo Stanišić, 28 May 2009; State report on provisional release of Mićo Stanišić, 18 Jun 2009; State report on provisional release of Mićo Stanišić, 27 Aug 2009; State report on provisional release of Mićo Stanišić, 14 Sep 2009; State report on provisional release of Mićo Stanišić, 13 Jan 2010; State report on provisional release of Mićo Stanišić, 19 Jan 2010; State report on provisional release of Mićo Stanišić, 22 Jan 2010; State report on provisional release of Mićo Stanišić, 9 Aug 2010; State report on provisional release of Mićo Stanišić, 20 Aug 2010; State report on provisional release of Mićo Stanišić, 5 Jan 2011; State report on provisional release of Mićo Stanišić, 18 Jan 2011.

18. Mićo Stanišić was last granted provisional release from 21 December 2010 to 6 January 2011.³⁶ In the Decision of 25 February 2011 and the Decision of 29 June 2011, the Trial Chamber noted that, at the time of this provisional release, Mićo Stanišić was already fully aware of the Prosecution's case and the evidence against him.³⁷ Both Decisions were taken after the closing of the Prosecution's case-in-chief on 1 February 2011, and thus also after the Accused would have had the opportunity to move for a motion of acquittal pursuant to Rule 98 *bis*. On both occasions, the Trial Chamber was satisfied that Mićo Stanišić would appear for trial and would not pose a danger to any victim, witness or other person.³⁸

19. Moreover, the Trial Chamber does not share the Prosecution's view that by choosing not to make a submission pursuant to Rule 98 *bis*, Mićo Stanišić accepted that there is evidence supporting his conviction. A decision not to make such submissions may well be based on other grounds. This argument is therefore dismissed.

20. The Trial Chamber notes that Mićo Stanišić does not seek to be provisionally released to Bosnia and Herzegovina, where most of the victims of the alleged crimes he is charged with in the indictment are likely to reside, but to Belgrade in Serbia.

21. The Trial Chamber has also taken into consideration Mićo Stanišić's personal guarantee.

22. With regard to the Defence's argument that having Mićo Stanišić in Belgrade will mean that it will be more practicable for the Defence team to work and consult with him, the Trial Chamber recognises the practical advantage at this stage of the proceedings of having Mr. Stanišić located near his Defence team in Belgrade, particularly for reviewing the evidence for the preparation of the final trial brief.

23. In relation to the Prosecution's argument that witnesses called by the Defence bolstered the evidence against Mićo Stanišić, giving him a greater incentive to abscond before issuance of the final judgment, the Trial Chamber notes that it would be premature for it to pronounce its view on the substance of this argument. Moreover, The Trial Chamber recalls the continuing presumption of innocence afforded to the Accused at all stages of trial prior to the rendering of a final judgement.³⁹ It therefore dismisses this argument.

³⁶ Decision granting Mićo Stanišić's motion for provisional release during the court winter recess, 3 Dec 2010; Correspondence from Serbia, 30 Dec 2010.

³⁷ Decision of 29 June 2011, para. 35; Decision of 25 February 2011, para. 28.

³⁸ Decision of 29 June 2011, para. 35; Decision of 25 February 2011, paras 28, 30.

³⁹ See Article 21(3) of the Statute.

24. The Trial Chamber finds that, in the period since it issued its Decision of 29 June 2011, in which it found that Mićo Stanišić did not pose a risk of flight nor a danger to witnesses, victims or other persons, there have been no developments that adversely impact this assessment. Therefore, in light of the above and in the current circumstances, the Trial Chamber is satisfied that Mićo Stanišić, if provisionally released, will appear for trial and will not pose a danger to any victim, witness or other person. The Trial Chamber thus finds that all requirements of Rule 65(B) are met and will exercise its discretion in favour of granting the requested provisional release.

25. With regard to the Prosecution's request for the stay of this Decision, the Trial Chamber notes that the temporary provisional release of the Accused is scheduled to commence 20 working days from the date of this Decision and has been specifically timed to take place during the upcoming recess in the trial and religious holidays. After a thorough assessment of the interests and the risk at stake, the Trial Chamber finds it inappropriate to grant a stay, considering, moreover, that there will be sufficient time for the Prosecution to lodge an application for expedited appeal of the Decision, pursuant to Rules 65(D) and 116 *bis*. Accordingly, the Trial Chamber, denies the Prosecution's request for a stay.

V. DISPOSITION

26. For the above reasons and pursuant to Rules 65 and 126 *bis* of the Rules, the Chamber:

GRANTS the leave for Reply;

GRANTS the Motion;

DENIES the Prosecution's request for stay of this Decision;

ORDERS the provisional release of Mićo Stanišić subject to the following terms and conditions:

1. As soon as practicable, on or after 19 December 2011, Mićo Stanišić shall be transported to Schiphol airport by the designated authorities of the Netherlands;
2. At Schiphol airport, Mićo Stanišić shall be provisionally released into the custody of an official of Serbia, who shall accompany him for the remainder of his travel to Serbia and to his place of residence;
3. On his return, Mićo Stanišić shall be accompanied by an official of Serbia, who shall transfer custody of Mićo Stanišić to the authorities of the Netherlands at Schiphol airport on or before 9 January 2012 for his transport back to the UNDU;
4. During the period of his provisional release, Mićo Stanišić shall abide by the following conditions and the authorities of Serbia, including the local police, shall ensure compliance with such conditions:
 - i. to reside in his home at the address listed in Confidential Annex A attached to the Motion;
 - ii. to remain within the confines of the municipality of Belgrade;
 - iii. to surrender his passport to the Ministry of Internal Affairs of Serbia;
 - iv. to report each day, before 1 p.m., to the police in Belgrade at a local police station to be designated by the authorities of Serbia;
 - v. to consent to having the Ministry of Internal Affairs of Serbia verify with the local police regarding his presence and to the Ministry of Internal Affairs, or by a person designated by the Registrar of the Tribunal, to make occasional, unannounced visits upon him;

- vi. not to have any contact whatsoever, or in any way interfere, with any victim, witness or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- vii. not to discuss his case with anyone, including the media, other than with his Defence;
- viii. to continue to cooperate with the Tribunal;
- ix. to comply strictly with any requirements of the authorities of Serbia necessary to enable them to comply with their obligations under this Decision and their guarantees;
- x. to return to the Tribunal on or before 9 January 2012; and
- xi. to comply strictly with any further order of the Tribunal varying the terms of his provisional release or terminating his provisional release;

REQUIRES Serbia to assume responsibility as follows:

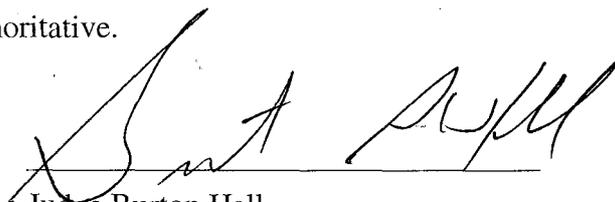
- a) to designate an official of its government into whose custody Mićo Stanišić shall be provisionally released and who shall accompany him from Schiphol airport to Serbia and to his place of residence, as well as to designate an official of its government who shall accompany Mićo Stanišić from his place of residence to Schiphol airport, where he shall be delivered into the custody of the authorities of the Netherlands, who will in turn transport him back to the UNDU;
- b) to notify, prior to the release of Mićo Stanišić from the UNDU, the Registrar of the Tribunal of the name of the official(s) designated pursuant to the previous subparagraph;
- c) for the personal security and safety of Mićo Stanišić while on provisional release;
- d) for all expenses concerning the transport of Mićo Stanišić from Schiphol airport to Belgrade and back;
- e) for all expenses concerning the security of Mićo Stanišić while on provisional release;
- f) to submit a written report to the Trial Chamber every week as to the compliance of Mićo Stanišić with the terms of this Decision;
- g) to arrest and detain Mićo Stanišić immediately should he breach any of the conditions of this Decision; and

h) to report immediately to the Trial Chamber any breach of the conditions set out above;

INSTRUCTS the Registrar of the Tribunal to consult with the Ministry of Justice of the Netherlands as to the practical arrangements for the provisional release of Mićo Stanišić and to continue to detain him at the UNDU in The Hague until such time as the Registrar has been notified of the name of the designated official of Serbia into whose custody Mićo Stanišić is to be provisionally released; and

REQUESTS the authorities of the Netherlands to ensure that Mićo Stanišić is transported, under guard, from the UNDU and released into the custody of the designated official of Serbia at Schiphol airport and similarly, to take custody of Mićo Stanišić from the designated official of Serbia, on or before 9 January 2012, and to escort him back to the UNDU under guard.

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



Judge Burton Hall
Presiding

Dated this 18th day of November 2011

At The Hague

The Netherlands

[Seal of the Tribunal]