



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-AR65.4
Date: 18 June 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 18 June 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON EXTREMELY URGENT REQUEST TO SET ASIDE THE STAY OF THE
DECISION OF 26TH MAY 2008 ON PROVISIONAL RELEASE PURSUANT TO RULE
65(G)(III) OF THE RULES**

Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz
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Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović and Mr. Vladimir Domazet for Franko Simatović

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THE APPEALS 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 (“Appeals Chamber” and “International Tribunal,” respectively),

NOTING the “Decision on Defence Appeal of the Decision on Future Course of Proceedings,” issued on 16 May 2008, in which the Appeals Chamber granted the request of Jovica Stanišić (“Stanišić”) to adjourn his case for a minimum of three months and to reassess his state of health before determining when the trial should commence;¹

NOTING the “Decision on Provisional Release,” issued on 26 May 2008 (“Impugned Decision”), in which Trial Chamber III (“Trial Chamber”) granted Stanišić and Franko Simatović (“Simatović”) (collectively, “Accused”) provisional release and ordered the Impugned Decision to be stayed in accordance with Rule 65(E) of the Rules of Procedure and Evidence (“Rules”), following the Prosecution’s submission that it intended to file an appeal should the Trial Chamber grant provisional release to the Accused;²

BEING SEIZED OF the “Extremely Urgent Request to Set Aside the Stay of the Decision of 26th May 2008 on Provisional Release Pursuant to Rule 65(G)(III) of the Rules,” filed on 27 May 2008 (“Request to Set Aside Stay”), in which Stanišić requests the Appeals Chamber to set aside the stay of the Impugned Decision, or in the alternative, to limit the Prosecution’s time limit for filing an appeal to two days and to expedite the resolution of the Appeal;³

NOTING that in support of his request, Stanišić submits that the Appeals Chamber has the discretion under Rule 65(G)(iii) of the Rules to set aside a Trial Chamber’s stay of its provisional release decision in exceptional circumstances and that the gravity of his medical condition constitutes an exceptional circumstance;⁴

¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of the Proceedings, 16 May 2008, para. 22.

² *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Provisional Release, 26 May 2008 (“Impugned Decision”), para. 67. See also, *Prosecutor v. Jovica Stanišić and Franko Simatović*, IT-03-69-T, Partly Confidential and Ex Parte Prosecution Response to Jovica Stanišić’s “Extremely Urgent Defence Motion for Immediate Provisional Release for Purposes of Medical Treatment” and Franko Simatović’s Oral Application for Provisional Release with Public Annexes A and B and Confidential and Ex Parte Annexes C through F, 21 May 2008, para. 39(iii).

³ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Extremely Urgent Request to Set Aside the Stay of the Decision of 26th May 2008 on Provisional Release Pursuant to Rule 65(G)(III) of the Rules, 27 May 2008 (“Request to Set Aside Stay”), paras 13 and 19-20.

⁴ Request to Set Aside Stay, paras 9-13.

NOTING the “Prosecution’s Response to Jovica Stanišić’s ‘Extremely Urgent Request to Set Aside the Stay of the Decision of 26th May 2008 on Provisional Release Pursuant to Rule 65(G)(III) of the Rules’ With Confidential Annexes A and B,” filed partly confidentially on 27 May 2008 (“Prosecution Response”), in which the Prosecution accepts Stanišić’s interpretation of Rule 65(G)(iii) but asserts that the extraordinary relief available under this provision does not apply under the circumstances of this case and accordingly requests the Appeals Chamber to deny the Request to Set Aside Stay;⁵

NOTING the “Prosecution Motion Pursuant to Rule 115 for Submission of Additional Evidence, and for a Stay of Provisional Release Pending Its Decision” (“Rule 115 Motion of 28 May”),⁶ filed on 28 May 2008, in which the Prosecution seeks submission of two documents in support of the Prosecution Response and its Appeal⁷ against the Impugned Decision;

CONSIDERING that pursuant to Rule 65(G) of the Rules, “[w]here the Trial Chamber orders a stay of its decision to release the accused pending an appeal by the Prosecutor, the accused shall not be released until either: (i) the time-limit for the filing of an appeal by the Prosecutor has expired, and no such appeal is filed; (ii) the Appeals Chamber dismisses the appeal; or (iii) the Appeals Chamber otherwise orders”;

CONSIDERING that Stanišić is receiving treatment for his health condition at the United Nations Detention Unit (“UNDU”);

FINDING that there is no evidence to suggest that Stanišić’s current health condition can not be adequately treated in the UNDU, warranting his immediate release pending the Appeals Chamber’s disposition of the Appeal;

⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Prosecution’s Response to Jovica Stanišić’s “Extremely Urgent Request to Set Aside the Stay of the Decision of 26th May 2008 on Provisional Release Pursuant to Rule 65(G)(III) of the Rules” With Confidential Annexes A and B, 27 May 2008, paras 4, 11, and 12 (“Prosecution Response”). The Appeals Chamber notes that paragraph 12 of the Prosecution Response is erroneously labeled as paragraph 9.

⁶ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Prosecution Motion Pursuant to Rule 115 for Submission of Additional Evidence, and for a Stay of Provisional Release Pending Its Decision, 28 May 2008 (“Rule 115 Motion of 28 May”).

⁷ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Confidential and Partly Ex Parte Prosecution Appeal of the Trial Chamber’s “Decision on Provisional Release” Together with Annexes, Confidential Annexes, and Confidential and Ex Parte Annexes and Motion for Leave to Exceed Word Limit, 27 May 2008 (“Appeal”). The Appeals Chamber notes that a public redacted version of the Appeal was filed on 28 May 2008.

CONSIDERING that pursuant to Rule 65(F) of the Rules, when a Trial Chamber grants a stay of its decision to provisionally release an accused, the Prosecution must file any appeal not later than one day from the rendering of that decision;

CONSIDERING that, as required under Rule 65(F), the Prosecution filed its Appeal on 27 May 2008, one day after the Trial Chamber rendered the Impugned Decision, which is a day earlier than the deadline requested by Stanišić;

CONSIDERING that both Stanišić and Simatović promptly filed their respective Responses to the Appeal on 29 May 2008⁸ and that the Prosecution filed its Consolidated Reply on 30 May 2008;⁹

CONSIDERING that the Appeals Chamber is accordingly in the position to expeditiously resolve the Appeal on its merits;

FINDING that, in light of the outcome of the present decision, the Appeals Chamber is not required to decide on the admissibility of the Rule 115 Motion of 28 May in reaching this decision;

ON THE BASIS OF THE FOREGOING,

DISMISSES the Request to Set Aside Stay.

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

Done this 18th day of June 2008,

At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]

⁸ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Defence Response to “Prosecution Appeal of Trial Chamber’s Decision on Provisional Release” and Defence Response to “Prosecution Motion Pursuant to Rule 115,” 29 May 2008 (“Stanišić Response”); *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Confidential Defence Response to Confidential and Partly Ex Parte “Prosecution Appeal of the Trial Chamber’s ‘Decision on Provisional Release’ Together with Annexes, Confidential Annexes, and Confidential and Ex Parte Annexes and Motion for Leave to Exceed Word Limit,” 29 May 2008 (“Simatović Response”).

⁹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Confidential and Partly Ex Parte Prosecution’s Consolidated Reply to Defence Responses to Prosecution’s Appeal of Trial Chamber’s “Decision on Provisional Release” Together with Annexes, Confidential Annexes, and Confidential and Ex Parte Annexes and Motion for Leave to Exceed Word Limit, 30 May 2008 (“Prosecution Consolidated Reply”). The Appeals Chamber notes that the Prosecution filed a public redacted version of its Consolidated Reply on 6 June 2008.