



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 September
2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 8 September 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON URGENT STANIŠIĆ DEFENCE MOTION FOR
PROVISIONAL RELEASE ON HUMANITARIAN AND
COMPASSIONATE GROUNDS” OF 16 AUGUST 2010**

Office of the Prosecutor

Mr Dermot Groome

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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 Mihajlo Bakrač
Mr Vladimir Petrović

Government of The Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 10 August 2010, the Stanišić Defence filed a motion seeking provisional release of Jovica Stanišić (“Accused”) to Belgrade with permission to travel to [REDACTED] on a daily basis, for five days (excluding travel) or for a lesser period designated by the Chamber (“Motion”).¹ On the same day, the Chamber informed the parties in an informal communication that the deadline for Responses to the Motion would be 12 August 2010. On 11 August 2010, the Prosecution responded, taking no position on whether the Motion should be granted (“Response”).² The Prosecution also requested the Chamber to impose certain conditions if it were to grant provisional release and indicated that it understands the affirmation by the Republic of Serbia (“Serbia”) on 17 May 2010 of its 9 October 2009 guarantees to apply to the Motion.³ On 11 August 2010, the Stanišić Defence confirmed in an informal communication that it also considers the guarantees previously given by Serbia to apply to the Motion. On 13 August 2010, the Tribunal’s Host State filed a letter pursuant to Rule 65 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) stating that it did not oppose the Motion.⁴

II. SUBMISSIONS OF THE PARTIES

2. The Stanišić Defence submits that, if provisionally released, the Accused would return for trial and would not pose a danger to any victim, witness, or other person.⁵ The Stanišić Defence further submits that the Accused should be allowed to visit his [REDACTED] father, [REDACTED].⁶ In support of its contentions, the Stanišić Defence has provided [REDACTED].⁷ The Stanišić Defence asserts that the requested duration of provisional release is sufficiently short to reduce to a manageable degree any risk identified by the Chamber and that the Accused is willing to subject himself to any controlling or supervising conditions set by the Chamber.⁸ The Stanišić Defence argues that the Accused’s wish to see his father in the present circumstances is a serious and compelling humanitarian consideration, which constitutes a special circumstance justifying a

¹ Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds with Confidential Annex A, 10 August 2010.

² Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds, 11 August 2010.

³ Prosecution Response to Urgent Stanišić Defence Motion for Provisional Release on Humanitarian and Compassionate Grounds, 11 August 2010.

⁴ Letter of the Ministry of Foreign Affairs of The Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 13 August 2010.

⁵ Motion, paras 6, 8.

⁶ Motion, paras 3-4, 11-13.

⁷ Motion, Confidential Annex A.

⁸ Motion, paras 4, 14.

managed period of provisional release, irrespective of a conclusion that the Accused's medical condition bears an unpredictable risk of deterioration.⁹

3. The Prosecution accepts the Stanišić Defence's factual representations [REDACTED] and defers to the Chamber's discretion as to whether the Accused should be provisionally released on humanitarian and compassionate grounds.¹⁰

III. APPLICABLE LAW

4. The Chamber recalls the applicable law governing provisional release and provisional release procedures as previously set out by this Chamber.¹¹

IV. DISCUSSION

5. As to whether the Accused, if released, will return for trial, the Chamber recalls the discussion in its decisions of 31 March 2010 and 22 July 2010 ("22 July 2010 Decision").¹² Further, the Chamber considers that Serbia's guarantees, as affirmed on 17 May 2010, cover the territory and time period of the presently requested provisional release.¹³ The Chamber therefore considers Serbia to have been heard in relation to the Motion, as required by Rule 65 (B) of the Rules, and gives appropriate weight to the guarantees given by Serbia. As the Chamber has not received information indicating a change of circumstances in this respect, it remains satisfied that the Accused, if provisionally released, would appear for trial.

6. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber recalls the analysis in its decision of 31 March 2010.¹⁴ As the Chamber has not received information indicating a change of circumstances in this regard, it remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

⁹ Motion, paras 5, 14.

¹⁰ Response, paras 4-5.

¹¹ See Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12; Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 ("31 March 2010 Decision"), paras 19-21.

¹² 31 March 2010 Decision, paras 23-24; Decision on Urgent Stanišić Defence Motion for Provisional Release, 22 July 2010, para. 6.

¹³ See Urgent Stanišić Defence Motion for Provisional Release, 14 October 2009, Annexes B-C; Urgent Stanišić Defence Motion for Provisional Release, 6 July 2010, Annexes A-D.

¹⁴ 31 March 2010 Decision, para. 26. See also 22 July 2010 Decision, para. 7.

7. In assessing whether provisional release is appropriate in this case, the Chamber remains mindful of its obligation to avoid unnecessary interruptions to the trial proceedings.¹⁵ In the 22 July 2010 Decision, the Chamber considered that the Reporting Medical Officer (“RMO”) had reported a general improvement in the Accused’s mental and physical condition and that provisional release, including travelling to Belgrade, would not increase the risk of deterioration of the Accused’s physical state.¹⁶ The Chamber also considered that the Accused had suffered from kidney stone problems, an allergic reaction to medication, and increasing colitis symptoms.¹⁷ The Chamber concluded that the medical condition of the Accused continued to bear an unpredictable risk of deterioration.¹⁸ Since 22 July 2010, the RMO has reported that the Accused’s colitis symptoms are slowly worsening and that on 7 and 8 August 2010, the Accused suffered from another kidney stone, which passed following an ultrasound procedure.¹⁹ Further, the Accused has begun taking new medication and a consultation with a gastroenterologist, a CT scan, and further laboratory tests are planned.²⁰ In light of these recent developments, the Chamber finds that the medical condition of the Accused continues to bear an unpredictable risk of deterioration.

8. The Chamber has previously held that the continuity of the existing system of medical treatment of the Accused is of the essence in ensuring the fair and expeditious conduct of the proceedings in the present case.²¹ The Accused’s recent recurring kidney stone problems underscore the importance of the existing system of treatment in The Hague and the delicate equilibrium established since the Accused’s return to the United Nations Detention Unit (“UNDU”). The Chamber further recalls that the occurrence of a sudden deterioration of the Accused’s health may affect his ability to return to The Hague.²² As a consequence, a sudden deterioration occurring outside the UNDU could result in a serious disruption of the trial proceedings.²³ The existence of such risk strongly militates against granting provisional release.²⁴

9. [REDACTED].²⁵ [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰

¹⁵ 31 March 2010 Decision, para. 28; 22 July 2010 Decision, para. 8.

¹⁶ 22 July 2010 Decision, para. 8.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ RMO Weekly reports of 27 July 2010, 3 August 2010, and 10 August 2010.

²⁰ Ibid.

²¹ Decision on Urgent Stanišić Defence Motion for Provisional Release During the Upcoming Court Recess, 22 July 2009, para. 23; 31 March 2010 Decision, para. 33; 22 July 2010 Decision, para. 9.

²² 31 March 2010 Decision, paras 31, 33; 22 July 2010 Decision, para. 9.

²³ Ibid.

²⁴ Ibid.

²⁵ Motion, Confidential Annex A, p. 3.

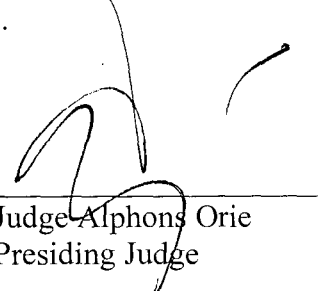
10. The Chamber notes that [REDACTED].³¹ Therefore, on the basis of the submissions presently before it, the Chamber has difficulty in determining that the humanitarian grounds advanced in the Motion have reached a level of urgency which would outweigh the discretionary factors militating against granting provisional release set out above.

11. In conclusion, in balancing the humanitarian and compassionate grounds for granting provisional release advanced by the Defence against the possible impact that granting the Motion may have on the future course of the trial, and particularly in the absence of clear information as to [REDACTED], the Chamber finds that the Motion should be denied. The Chamber notes that it may have been more inclined to exercise its discretion differently if the results of the planned consultation with the gastroenterologist, CT scan and laboratory tests had been known, and if a strict protocol could have been developed for monitoring, treating, and reporting on the Accused's medical condition while he is outside the UNDU, in which his current reporting and treating doctors could be involved, even if at a distance.

V. DISPOSITION

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

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



Judge Alphons Orie
Presiding Judge

Dated this Eighth day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁶ Motion, Confidential Annex A, p. 4.
²⁷ Ibid.
²⁸ Ibid.
²⁹ Motion, Confidential Annex A, p. 7.
³⁰ Motion, Confidential Annex A, p. 8.
³¹ The Chamber notes that the RMO weekly report of 27 July 2010 mentions [REDACTED], without a reference to any source or factual basis. As the [REDACTED], the Chamber will disregard this part of the RMO weekly report of 27 July 2010.