

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: 7 September 2011
Original: English

IT-03-69-T
D33106 - D33103
07 September 2011

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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: 7 September 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THE STANIŠIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE
DURING THE ADJOURNMENT IN PROCEEDINGS**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Wayne Jordash
Mr Scott Martin

The Government of the Republic of Serbia

Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 24 August 2011, the Stanišić Defence (“Defence”) filed a request for provisional release during the four-week adjournment of court proceedings starting on 5 September 2011 (“Request”).¹ The Defence did not provide a submission by the Republic of Serbia (“Serbia”) guaranteeing that it would act in accordance with any conditions imposed by the Chamber upon the provisional release (“Guarantees of Serbia”).² The Defence submits that the Guarantees of Serbia will be provided as soon as it receives them, that Serbia had provided such guarantees for previous provisional release requests, and that there was no reason to anticipate that Serbia had changed its position.³ The Defence submits that the other requirements of Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) are fulfilled.⁴ The Defence acknowledges that Appeals Chamber case law requires the demonstration of compelling humanitarian grounds to justify provisional release in the post-Rule 98 *bis* stage of the proceedings and that a Trial Chamber has no ability to overrule this jurisprudence.⁵ The Defence does not put forward such compelling humanitarian grounds.⁶ Instead, the Defence submits that the requirement of compelling humanitarian grounds may violate the Accused’s fair trial rights under Article 21 of the Statute of the Tribunal.⁷

2. On 24 August 2011, the Chamber decided that the deadline for responding to the Request would be shortened to 29 August 2011.⁸ On 26 August 2011, the Prosecution responded to the Request.⁹ The Prosecution opposes the Request and submits that the Defence has not presented compelling humanitarian grounds justifying provisional release.¹⁰ The Prosecution further submits that recent developments in the Accused’s health and the risk of a sudden deterioration of the Accused’s condition militate against granting provisional release.¹¹

¹ Stanišić Urgent Request for Provisional Release during the Four Week Adjournment of Proceedings, 24 August 2011 (Confidential).

² Request, para. 7.

³ Ibid.

⁴ Request, para. 6.

⁵ Request, paras 2, 4, 14.

⁶ Request, para. 2.

⁷ Request, paras 10-12.

⁸ T. 13608-13609.

⁹ Prosecution Response to Stanišić Urgent Request for Provisional Release during the Four Week Adjournment of Proceedings, 26 August 2011 (Confidential) (“Response”).

¹⁰ Response, paras 1, 11.

¹¹ Response, paras 6-9.

3. On 31 August 2011, the Tribunal's Host State filed a letter pursuant to Rule 65 (B) of the Rules, stating that it did not oppose the Request.¹² On 6 September 2011, the Stanišić Defence informally notified the Chamber that it had not yet received the Guarantees of Serbia.

II. APPLICABLE LAW AND DISCUSSION

4. The Chamber recalls and refers to the applicable law governing provisional release and provisional release procedures as set out in its previous decisions, including with regard to the post-Rule 98 *bis* stage of the proceedings.¹³

5. Under Rule 65 (B) of the Rules, the Chamber cannot order the release of the Accused until it has given Serbia an opportunity to be heard. Serbia has not yet submitted its views on the Request. However, Serbia renewed its provisional release guarantees in relation to all previous requests.¹⁴ On this basis, the Chamber anticipates that the submission of the Guarantees of Serbia is forthcoming. Notwithstanding, the present Request must be denied for other reasons, as set out below. Under these circumstances, the Chamber will, exceptionally, issue its decision prior to the submission of the Guarantees of Serbia.

6. The Chamber recalls the discussions in its previous decisions as to whether the Accused, if released, will return for trial or will pose a danger to any victim, witness, or other person.¹⁵ The Chamber has not received information indicating a change of circumstances in this regard. If the Guarantees of Serbia are renewed prior to any period of provisional release, the Chamber would be satisfied, as it was in previous decisions, that the Accused, if provisionally released, would appear for trial and would not pose a danger to any victim, witness, or other person.

7. Pursuant to Appeals Chamber case law, a Chamber should not grant provisional release at the post-Rule 98 *bis* stage of the proceedings unless compelling humanitarian grounds are present that tip the balance in favour of allowing provisional release. The Defence has not presented any compelling humanitarian grounds. The Chamber has not received any other information indicating

¹² Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Jovica Stanišić, 31 August 2011 (Confidential).

¹³ See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential), paras 19-21; Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12. See also *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-AR65.2, Decision on Mićo Stanišić's Appeal Against Decision on his Motion for Provisional Release, 19 August 2011, paras 12-13.

¹⁴ See for instance, Decision on Stanišić Defence Request for Provisional Release during Summer Recess, 21 July 2011 (Confidential); Decision on Urgent Stanišić Defence Request for Provisional Release, 21 April 2011.

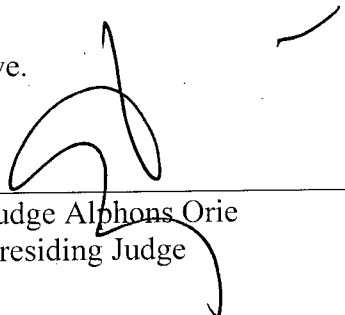
¹⁵ Decision on Stanišić Defence Request for Provisional Release during Summer Recess, 21 July 2011 (Confidential), paras 8-9 and decisions cited therein.

the existence of such grounds. In the absence of compelling humanitarian grounds, the Chamber finds that the Request for provisional release should be denied. Had compelling humanitarian grounds been demonstrated, the Chamber would have had to review the Accused's medical condition and consider whether provisional release would be appropriate in light of the risk of a sudden deterioration in the Accused's health, and if so, under what conditions the Accused should be provisionally released.

III. DISPOSITION

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

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



Judge Alphons Orié
Presiding Judge

Dated this Seventh of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]