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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-T
Date: 23 May 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 May 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON URGENT STANIŠIĆ DEFENCE MOTION TO
OBTAIN ADEQUATE MEDICAL SERVICES OR FOR THE
RELEASE OF MR. STANIŠIĆ, AND ON REQUEST FOR
RENEWED DETERMINATION ON FITNESS TO BE
DETAINED AND TO PARTICIPATE IN THE TRIAL**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 2 March 2012, the Stanišić Defence (“Defence”) filed a motion, seeking adequate medical services for Jovica Stanišić (“Accused”) or his release, and requesting renewed determinations of the Accused’s fitness to be detained and to participate in the trial (“Motion”).¹ On 6 March 2012, the Defence supplemented its Motion with an Addendum (“Addendum”).² On 9 March 2012, the Registry filed a medical report on the psychiatric condition of the Accused (“9 March 2012 Report”).³ On 16 March 2012, the Prosecution responded to the Motion (“Prosecution Response”).⁴ On the same day, the Registrar’s Omnibus Submission Regarding Medical Services Provided to Mr. Stanišić, together with his response to the Motion was filed (“Submission”).⁵ On 23 March 2012, the Defence applied for leave to reply to the Submission, and to exceed the word limit (“Application”).⁶ On 29 March 2012, the Chamber granted the Application by means of an informal communication and set the deadline for filing a reply to 5 April 2012. On the same day, the Chamber requested that the Registry file a public redacted version of the Submission. Following further communication from the Registry, the Chamber requested, on 5 April 2012, that the Registry submit a confidential redacted version of its Submission. These two requests are hereby put on the record. On 3 April 2012, the Registry filed a report on the psychiatric condition of the Accused and the role of Dr. Petrović, as requested by the Chamber (“3 April 2012 Report”).⁷ On 5 April 2012, the Confidential Redacted Version of the Submission was filed.⁸ On the same day, the Defence filed its reply to the Submission (“Reply”).⁹

¹ Urgent Stanišić Defence Motion to Obtain Adequate Medical Services or For the Release of Mr. Stanišić and Request for Renewed Determination on Fitness to be Detained and to Participate in the Trial, 2 March 2012 (Public with Confidential Annexes), paras 1-2, 22, 29, 32.

² Stanišić Defence Addendum to Urgent Stanišić Defence Motion to Obtain Adequate Medical Services or For the Release of Mr. Stanišić and Request for Renewed Determination on Fitness to be Detained and to Participate in the Trial, 6 March 2012 (Confidential with Confidential Annex).

³ Registrar’s Submission of Medical Report, 9 March 2012 (Confidential).

⁴ Prosecution Response to Urgent Stanišić Defence Motion to Obtain Adequate Medical Services or For the Release of Mr. Stanišić and Request for Renewed Determination on Fitness to be Detained and to Participate in the Trial, 16 March 2012, paras 4, 25.

⁵ Registrar’s Omnibus Submission Regarding Medical Services Provided to Mr. Stanišić, 16 March 2012 (Confidential and *ex parte*). The Submission was made following the Invitation to the Registry to Make a Submission Pursuant to Rule 33(B) to Provide Responses to questions concerning Jovica Stanišić’s psychiatric treatment, 2 March 2012 (Confidential) (“Invitation”).

⁶ Stanišić Defence Application for Leave to Reply to Registrar’s Omnibus Submission Regarding Medical Services Provided to Mr. Stanišić, 23 March 2012 (Confidential).

⁷ Registrar’s Submission of Medical Report, 3 April 2012 (Confidential); see also Decision on Stanišić Defence Requests Relating to the Medical Condition of the Accused, 15 March 2012 (Confidential) (“15 March 2012 Decision”), paras 9-10.

⁸ Confidential Redacted Version of the Registrar’s Omnibus Submission Regarding Medical Services Provided to Mr. Stanišić, 5 April 2012 (Confidential).

⁹ Stanišić Defence Reply to Registrar’s Omnibus Submission Regarding Medical Services Provided to Mr. Stanišić, 5 April 2012 (Confidential).

II. SUBMISSIONS OF THE PARTIES

2. The Defence requests (1) that the Accused receive adequate medical services, or he be released in order to receive these services independently, (2) that the Chamber undertake an investigation into past and present medical care provided to the Accused, (3) that a hearing to reassess his fitness to be detained and to participate in the trial be scheduled, and a corresponding order for funding of experts allowing the Chamber to arrive at a fair assessment of modalities of detention and trial be issued, (4) that leave to exceed the word limit be granted, and (5) that Dr. de Man's report on assessment of the Accused's mental health be disclosed.¹⁰

3. Having reviewed Dr. Petrović's assessment of the Accused's psychiatric treatment, including her letter of 1 February 2012, where she indicated that the Accused's psychotherapy has been insufficient, the Defence submits that the Registry has not taken any steps to remedy the situation, and that if these steps are not taken, the Accused should be released in order to receive such services independently.¹¹ It further submits that the Registry should undertake a *bona fides* investigation into past failures, and report the results thereof to the Chamber, and that the Chamber should, in any event, conduct its own enquiry on the issue.¹² The Defence submits that failure to provide sufficient medical services contravenes numerous internationally recognised standards, including those set up by the United Nations General Assembly Resolution 44/111, the Universal Declaration of Human Rights, and the case law on Article 3 of the European Convention on Human Rights.¹³

4. According to the Defence, the letter of 1 February 2012, as well as previous correspondence of Dr. Petrović and the 14 October 2011 report by Dr. de Man, clearly indicate that the psychiatric treatment of the Accused is, and has been, inadequate.¹⁴ Failure to provide the Accused with psychotherapy could have a psychosomatic effect on his physical condition.¹⁵ Referring to its difficulties with obtaining all medical records of the Accused, the Defence submits that the Registry might have tried to conceal from the Accused the evidence of its failures.¹⁶ The Defence further considers that disparities between the Reporting Medical Officer ("RMO") Report of 2 March 2012 and previous RMO reports, call for a comprehensive scrutiny.¹⁷ Given the above, a hearing to

¹⁰ Motion, paras 1-3, 22, 27, 29-32.

¹¹ Motion, paras 13, 22, 25, Annex A.

¹² Motion, paras 22, 30.

¹³ Motion, paras 23-24.

¹⁴ Motion, paras 25-27.

¹⁵ Motion, para. 28, Annex A, p.1.

¹⁶ Motion, paras 5-15, 27.

¹⁷ Addendum, paras 3-4.

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assess the Accused's continued fitness to be detained and to stand trial should be conducted, with a view to ascertaining the conditions of detention and the modalities for trial.¹⁸

5. The Prosecution supports any measure that the Chamber deems necessary to ensure that the Accused receives adequate medical care, and it takes no position with regard to the assessment of his current medical regime.¹⁹ Furthermore, the Prosecution objects to releasing the Accused from custody, noting that it is unnecessary, and it could cause a deterioration of his condition.²⁰ The Prosecution further considers that, as indicated by Dr. Petrović in her letter of 1 February 2012, the Accused was treated "for the first time in his life when he came to the detention unit", and that even accepting the Defence complaints about the shortcomings in his treatment, the medical services that the Accused has received at the United Nations Detention Unit ("UNDU") are superior to anything he has availed himself of in the past.²¹

6. The Prosecution submits that the Defence has failed to produce any evidence suggesting that the Accused's fitness has diminished below the standards required to stand trial, or that information available to the Chamber is insufficient to assess his fitness.²² Focusing only on Dr. Petrović's assessment, the Defence has ignored all recent RMO reports which do not call into question the Accused's fitness to stand trial.²³ Absent some indication from the RMO that the Accused's fitness has diminished or that the current modalities for trial are insufficient, there is no need to reconsider either of them.²⁴ The Prosecution also submits that the 2 March 2012 RMO report's conclusion, that the Accused had a "mild depressive complaint", is not at odds with Dr. de Man's reports, which indicate that his depression is "more or less in remission".²⁵ In view of Dr. de Man's observations, the RMO weekly reports, and the active participation of the Accused in his trial, the Prosecution considers that the Accused exceeds the minimum threshold for fitness to stand trial.²⁶ Lastly, the Prosecution requests leave to exceed the word limit, in order to fully respond to the Motion.²⁷

7. The Registrar requests that the Chamber dismiss the Motion as far as the allegations of inadequate medical care are concerned, as the regular RMO and medical experts' reports demonstrate that the medical treatment provided to the Accused has been adequate.²⁸ The Registrar

¹⁸ Motion, para. 29.

¹⁹ Prosecution Response, paras 2, 5-6, 23.

²⁰ Prosecution Response, paras 3, 8-10, 23.

²¹ Prosecution Response, paras 11-12.

²² Prosecution Response, paras 13-14.

²³ Prosecution Response, paras 16-17.

²⁴ Prosecution Response, paras 15-16, 21.

²⁵ Prosecution Response, para. 17.

²⁶ Prosecution Response, paras 18-20.

²⁷ Prosecution Response, paras 4, 25.

²⁸ Submission, paras 21, 23, 29.

considers that in view of the evidence on that matter, the Motion borderlines frivolous.²⁹ The Registrar contacted Dr. Petrović, who observed that the statement made in her letter of 1 February 2012, should not have been read in isolation, and that the overall treatment of the Accused has been adequate.³⁰ The Registrar further submits that the UNDU's compliance with the requirements for the material conditions of detention, including the provision of medical services, is consistently confirmed by the International Committee of the Red Cross.³¹ The Registrar takes no position with respect to the Defence's request for a hearing to reassess the Accused's fitness, but notes that his fitness has regularly been assessed by the RMO and the court appointed medical experts, and disclosed in their weekly and quarterly reports.³² Lastly, the Registrar submits that irrespective of certain confusion as to the title and role of Dr. Petrović, the actual role of Dr. Petrović as a counsellor has remained unchanged, and that the Registry has taken immediate steps to clarify the situation.³³

8. In its Reply, the Defence claims that medical records present Dr. Petrović as a treating psychiatrist of the Accused, and that the summaries of her meetings with the Accused represent the type of records one would expect from the Medical Officer, if he were the treating psychiatrist.³⁴ It further submits that the regime imposed by the Chamber prohibits the Parties from contacting the RMOs, except through the Chamber, and that therefore the Registrar's communication with the RMO, to which reference is made in the Submission, should be given to the Chamber.³⁵ The current situation deprives the Accused and the Chamber of any opportunity to test the reliability of the claims to adequacy of treatment.³⁶ The Defence acknowledges receipt of the medical records from the Registry, noting that the concerns it had raised with the Registry on 22 February 2012 in respect of these records, remain unanswered.³⁷ Further, it submits that Dr. Petrović's assertion made in her letter of 1 February 2012 needs to be properly explained, and that the insufficiency of medical services provided to the Accused warrant a hearing.³⁸ The Defence invites the Registrar to withdraw the allegations made in respect of Counsel's professional conduct, noting that the Defence

²⁹ Submission, paras 20-21.

³⁰ Submission, para. 17.

³¹ Submission, para. 25.

³² Submission, para. 27.

³³ Submission, paras 5-8, 29; see also Invitation.

³⁴ Reply, paras 3-12.

³⁵ Reply, para. 14.

³⁶ Reply, para. 15.

³⁷ Reply, paras 18-19.

³⁸ Reply, paras 22, 28.

is duty-bound to investigate and seek clarification with respect to its client's medical care.³⁹ Lastly, the Defence requests that all the filings made in relation to this Decision be made public.⁴⁰

III. APPLICABLE LAW

9. Rule 54 of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that a Trial Chamber may issue such orders, summonses, subpoenas, warrants, and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

10. Rule 35 of the Rules Governing Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules Governing Detention") states the following:

(A) The medical officer shall report on a regular basis to the Commanding Officer in relation to any medical condition of detainees which is relevant for the administration of the Detention Unit and any treatment they are receiving. The Commanding Officer shall inform the Registrar accordingly.

(B) The medical officer shall report immediately to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention.

(C) The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.

IV. DISCUSSION

11. The Chamber grants leave to exceed the word limit, as requested by the Defence and the Prosecution, having regard to the subject matter of the Motion.⁴¹ In view of the Registry's submission of the 9 March 2012 Report and the 3 April 2012 Report, the Chamber will not further consider the Defence's request for urgent disclosure of Dr. de Man's report.⁴² Furthermore, following the Defence's request, the Chamber hereby invites the Registry and the Defence to submit public (redacted) versions of all their filings made in respect of the present decision.

³⁹ Reply, paras 23, 25, 27. The Chamber takes note of the current dispute between the Defence and the Registry regarding the alleged misconduct of Defence Counsel, but it notes that it has not been seized of this matter.

⁴⁰ Reply, para. 29.

⁴¹ Motion, paras 3, 31; Prosecution Response, para. 25.

⁴² See *supra*, para. 2.

12. The Chamber will first consider whether the medical services provided to the Accused at the UNDU are adequate. The Chamber specifies that in the present decision, the term “medical services” refers to psychiatric care and treatment of the Accused, as this appears to be the focus of the Motion. According to Dr. de Man, due to the instability of his depression, the Accused has been treated with medication.⁴³ According to the RMO Reports of 4 and 16 May 2012, his anti-depression medication was discontinued and new medication, which would better suit his needs, was prescribed to be administered shortly.⁴⁴ Furthermore, Dr. Petrović holds monthly consultations with the Accused, and the Medical Officer (“MO”) meets the Accused regularly to discuss his mental state.⁴⁵ The Accused has also been treated by Dr. Westendorp, Dr. Lefrandt, and Dr. de Boer, psychiatrists.⁴⁶ According to Dr. de Man, no changes in the Accused’s psychiatric care are recommended in order to not disturb “the equilibrium in his mental condition,” but at times of great stress, the monthly consultation sessions with Dr. Petrović may not suffice.⁴⁷ The Chamber further notes, in accordance with the Rules Governing Detention, that if Dr. Petrović reports to the MO the need to increase the frequency of her sessions with the Accused, the Commanding Officer and the Registry would adequately address such request. Also, the Chamber considers that the RMO Report of 2 March 2012 is not inconsistent with the previous RMO reports, and that any divergence from the previous reports is not such as to justify the additional medical examinations the Defence seeks. Based on the foregoing, the Chamber considers that the medical services provided to the Accused are not shown to be inadequate. Accordingly, the Chamber finds no justification for releasing the Accused from detention.

13. In order to clarify the situation relating to the psychiatric treatment received by the Accused, the Chamber requested Dr. de Man and the Registry to provide answers to several questions concerning the role of Dr. Petrović.⁴⁸ In view of the Registrar’s Submission, and the 3 April 2012 Report by Dr. de Man, the Chamber is satisfied that any possible confusion with regard to the psychiatric treatment of the Accused and the role of Dr. Petrović has now been resolved. In view of its findings above, the Chamber considers that there is no need for any further enquiry into the medical care provided to the Accused, as demanded by the Defence.

14. With regard to the Defence’s request for a hearing to reassess the Accused’s fitness and the modalities for trial, the Chamber wishes to underline that it has always acknowledged the

⁴³ 3 April 2012 Report, p. 4.

⁴⁴ RMO Report of 4 May 2012, para. 5, RMO Report of 16 May 2012, para. 6.

⁴⁵ 3 April 2012 Report, p. 4; Submission, para. 3.

⁴⁶ Submission, paras 4, 18.

⁴⁷ 9 March 2012 Report, p. 4; 3 April 2012 Report, p. 4.

⁴⁸ See Invitation, paras 4-5; 15 March 2012 Decision, paras 9-10.

importance of monitoring the Accused's medical regime, and securing the continuity thereof.⁴⁹ The current modalities for trial provide for weekly medical reports by the RMO, and quarterly expert gastroenterologists and expert psychiatric reports.⁵⁰ The Chamber considers that the frequency of the medical reports allows it to effectively monitor the medical situation of the Accused.

15. According to Dr. de Man, the Accused's general psychiatric condition is reasonable, with his depression "more or less in remission".⁵¹ The RMO reports conclude that although the Accused's depression is significant, it has been stable for the last few months.⁵²

16. Relying on the reports of Dr. de Man and the RMO, the Chamber considers that there has been a relative improvement with regard to the Accused's depression, and his current condition is comparatively stable.⁵³ The Chamber will continue to monitor the health situation of the Accused through the reports provided for in the modalities for trial. At this moment, the Chamber does not see any reason to hold a hearing to reassess the fitness of the Accused to be detained or to participate in the trial. Consequently, it is not necessary to decide on a funding order for the Defence to instruct experts.

17. Lastly, the Defence objected to the Registry's communication with the RMOs without a previous request to the Chamber, and requested that the Chamber issue an order to produce all the communication in question. Whilst still endorsing the practice set out earlier, the Chamber considers that in the present situation, the Registry's communication with the RMOs was necessary to provide accurate information in response to the Chamber's queries.⁵⁴ Leaving aside whether any records of such communication exist, and also whether the position of the Registrar is in this respect similar to that of the parties, the Defence has not demonstrated that an order for disclosure of the communication would be necessary to examine the Motion.

⁴⁹ See Decision on the Stanišić Defence Request for Provisional Release, 10 April 2012 (Confidential), paras 12-13, and decisions cited therein, and Public Redacted Version of the Confidential "Decision on the Stanišić Defence Request for Provisional Release" 10 April 2012, 8 May 2012, paras 12-13, and decisions cited therein.

⁵⁰ Third Decision Amending Modalities for Trial, 17 September 2010.

⁵¹ 9 March 2012 Report, p. 3.

⁵² RMO Reports of 2, 9, 16, 23, and 29 December 2011, 5, 13, 18 and 27 January 2012, 2, 10, 15 and 24 February, 2, 9, 15, 23, and 28 March, 10, 11, 19, and 25 April, 4, 11, and 16 May 2012.

⁵³ See also Stanišić Defence Request for Provisional Release, 10 April 2012 (Confidential), para. 12, where the Chamber has come to the conclusion that the overall health condition of the Accused was stable, and Public Redacted Version of the Confidential "Decision on the Stanišić Defence Request for Provisional Release" 10 April 2012, 8 May 2012, para. 12.

⁵⁴ Third Decision Amending Modalities for Trial, 17 September 2010, para. 11; Invitation, para. 5.

V. DISPOSITION

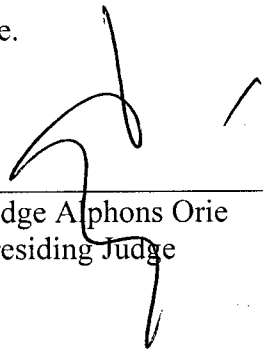
18. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber

GRANTS leave to exceed the word limit, as requested by the Defence and by the Prosecution;

DENIES the remainder of the Motion; and

INVITES the Defence and the Registry to submit public (redacted) versions of the filings made in respect of the present decision.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-third of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]