



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-AR65.2
Date: 29 July 2011
Original: English

BEFORE THE DUTY JUDGE

Before: Judge Árpád Prandler, Duty Judge

Registrar: Mr. John Hocking

Decision: 29 July 2011

PROSECUTOR

v.

**MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN**

PUBLIC

**DECISION ON COMPETENCE OF DUTY JUDGE PURSUANT
TO RULE 28**

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Thomas Hannis

Counsel for the Accused:

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

1. I, Árpád Prandler, a Judge 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”), acting in my current capacity as Duty Judge in accordance with Rule 28 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), am seised of “Mr. Mićo Stanišić’s Appeal Against the Decision Denying Mićo Stanišić’s Request for Provisional Release During the Upcoming Summer Court Recess”, filed on 1 July 2011¹ (“Appeal”), against a decision rendered by Trial Chamber II of the Tribunal (“Trial Chamber”) on 29 June 2011, which denied Mr. Stanišić’s application for provisional release (“Impugned Decision”).² The Office of the Prosecutor (“Prosecution”) filed its response on 8 July 2011.³ Mr. Stanišić did not file a reply.

2. On 21 July 2011, Mr. Stanišić filed a supplemental submission in relation to his request for provisional release (“Supplemental Submission”).⁴ On 22 July 2011, the Prosecution filed a response to this supplemental submission.⁵

I. BACKGROUND

3. On 2 June 2011, Mr. Stanišić filed a motion before the Trial Chamber seeking provisional release to the Republic of Serbia, for the period of the summer recess in order to assist in the preparation of his defence case (“Motion”).⁶

4. On 29 June 2011, the Trial Chamber issued the Impugned Decision, in which it denied the Motion.⁷ Mr. Stanišić did not advance any humanitarian grounds in favour of his request for provisional release.⁸ The Trial Chamber opined that, “only due to the overriding effect of Appeals

¹ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-AR65.2, Mr. Mićo Stanišić’s Appeal Against the Decision Denying Mićo Stanišić’s Request for Provisional Release During the Upcoming Summer Court Recess, 30 June 2011 (“Appeal”).

² *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Denying Mićo Stanišić’s Request for Provisional Release During the Upcoming Summer Court Recess, 29 June 2011 (“Impugned Decision”), para. 38.

³ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-AR65.2, Prosecution’s Response to Mićo Stanišić’s Appeal Against the Decision Denying Mićo Stanišić’s Request for Provisional Release During the Upcoming Summer Court Recess, 8 July 2011 (“Response”).

⁴ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Supplemental Submission to Mr. Stanišić’s Motion for Provisional Release During the Upcoming Summer Court Recess, 21 July 2011 (“Supplemental Submission”).

⁵ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Prosecution’s Response to Stanišić’s Supplemental Submission to Motion for Provisional Release During the Upcoming Court Recess, 22 July 2011 (“Response to Supplemental Submission”).

⁶ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Mr. Stanišić’s Motion for Provisional Release During the Upcoming Summer Court Recess (with confidential annexes), 1 June 2011 (“Motion”), paras 1-2, 10(g).

⁷ Impugned Decision, para. 38.

⁸ See Impugned Decision, paras 31-32, 37; see Motion.

Chamber precedent, of which the Trial Chamber is cognisant, [...] the Motion [had to] be denied for lack of ‘compelling humanitarian grounds’.”⁹

5. In his Appeal, filed on 1 July 2011, Mr. Stanišić submitted that Appeals Chamber jurisprudence regarding the serious and sufficiently compelling humanitarian reasons requirement is conflicting¹⁰ and asserted that there are cogent reasons to depart from previous case law and discard the requirement.¹¹ On 5 July 2011, the President of the Tribunal issued an order assigning Judges in the Appeals Chamber to decide Mr. Stanišić’s Appeal.¹²

6. The Prosecution responded that the Appeals Chamber’s jurisprudence on the serious and sufficiently compelling humanitarian reasons requirement for granting provisional release is not conflicting and is well established.¹³ It therefore urged the dismissal of the Appeal.¹⁴

7. Mr. Stanišić filed the Supplemental Submission requesting that the period of his provisional release, should it be granted, be extended to 30 August 2011 to account for a change in the scheduling of trial proceedings.¹⁵ In its response to the Supplemental Submission, the Prosecution maintained its objection to Mr. Stanišić’s request for provisional release, but did not object to an extension of the period of provisional release in the event that Mr. Stanišić’s request should be granted.¹⁶

II. APPLICABLE LAW

8. Under Rule 28, subsections (D)(ii) and (F), of the Rules, where a case has already been assigned to a Chamber and an application is made within the normal registry hours, but the Chamber is unavailable, it shall be dealt with by the Duty Judge if the Duty Judge is satisfied as to its urgency or that it is otherwise appropriate to do so in the absence of the Chamber.

III. DISCUSSION

9. As Duty Judge, I have been seised of Mr. Stanišić’s Appeal regarding his request for provisional release since 22 July 2011 as the Appeals Chamber seised of the matter did not dispose

⁹ Impugned Decision, para. 37.

¹⁰ Appeal, paras 7-10.

¹¹ Appeal, paras 11-15.

¹² *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-AR65.2, Order Assigning Judges to a Case Before the Appeals Chamber, 5 July 2011 (“Order Assigning Judges”).

¹³ Response, paras 12-15.

¹⁴ Response, paras 33-34.

¹⁵ Supplemental Submission, paras 2-3.

¹⁶ Response to Supplemental Submission, para. 2.

of it prior to the commencement of the Tribunal's summer recess. I, however, do not find myself competent, within the meaning of Rule 28(D)(ii) of the Rules, to decide Mr. Stanišić's Appeal as I find the matter neither urgent nor otherwise appropriate to deal with in the absence of the Appeals Chamber.

10. In determining one's competence as Duty Judge, Rule 28(D)(ii) of the Rules instructs the Duty Judge to consider whether a matter is urgent *or* whether other appropriate reasons exist to take up a matter when a Chamber already assigned to a case is unavailable. Stated in the disjunctive, Rule 28(D)(ii) of the Rules allows one of the two express considerations to override the other. Consequently, urgent matters may fall squarely within the competence of the Duty Judge, overriding considerations of whether it is otherwise appropriate to hear the matter in the absence of the Chamber already assigned to the case.

11. Although Duty Judges have considered applications for provisional release, I do not find Mr. Stanišić's Appeal requesting provisional release to be urgent within the meaning of Rule 28(D)(ii) of the Rules. Mr. Stanišić's requested period of provisional release runs from 23 July 2011 to 30 August 2011 as a result of the Supplemental Submission.¹⁷ While the period of Mr. Stanišić's requested provisional release has begun, a considerable portion of the requested provisional release period remains in which the Appeals Chamber will have the opportunity to render a decision on the matter before it becomes moot.

12. Mr. Stanišić's single ground of appeal asserts that there are cogent reasons to depart from Appeals Chamber jurisprudence regarding the serious and sufficiently compelling humanitarian reasons requirement for provisional release at a late stage of proceedings.¹⁸ Importantly, Mr. Stanišić does not challenge the Trial Chamber's finding that he did not advance any serious and sufficiently compelling humanitarian reasons for his request for provisional release.¹⁹ Rather, Mr. Stanišić seeks to have the Appeals Chamber overturn the jurisprudence established since the *Petković* Decision of 21 April 2008²⁰ in relation to the serious and sufficiently compelling humanitarian reasons requirement.²¹ A matter of such consequence to Appeals Chamber jurisprudence falls more appropriately within the competence of the Appeals Chamber, which has been assigned the case since 5 July 2011²² and has been fully apprised of all the relevant appeal

¹⁷ Supplemental Submission, paras 1, 3.

¹⁸ Appeal, paras 11-15.

¹⁹ See Appeal, paras 6, 7-15.

²⁰ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.7, Decision on "Prosecution's Appeal from *Décision relative à la demande de mise en liberté provisoire de l'Accusé Petković* Dated 31 March 2008", 21 April 2008 ("*Petković* Decision of 21 April 2008").

²¹ Appeal, paras 7-15.

²² Order Assigning Judges.


filings since 12 July 2011.²³ I therefore also do not find it otherwise appropriate to deal with the matter in the absence of the Appeals Chamber.

13. Having found no urgency in the matter, nor finding it otherwise appropriate to deal with the matter in the absence of the Appeals Chamber, I find no basis on which to establish my competence as Duty Judge to decide Mr. Stanišić's Appeal.

IV. DISPOSITION

14. On the basis of the foregoing and Rule 28, subsections (D)(ii) and (F), of the Rules, I hereby **DECLARE** that I, as Duty Judge, in the specific circumstances of Mr. Stanišić's Appeal, lack competence to decide the matter, which continues to lie before the Appeals Chamber.

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


Judge Árpád Prandler
Duty Judge

Dated this twenty-ninth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²³ The Prosecution Response was filed on 8 July 2011. *See* Response. Mr. Stanišić had four days thereafter to file a reply. *See* IT/155/Rev.3, 16 September 2005.