

**UNITED  
NATIONS**

MICT-15-96-T  
D10860-D10846  
19 July 2017

10860  
SF



Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-T

Date: 19 July 2017

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Burton Hall, Presiding  
Judge Joseph E. Chiondo Masanche  
Judge Seon Ki Park

**Registrar:** Mr. Olufemi Elias

**Decision of:** 19 July 2017

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***CONFIDENTIAL***

**DECISION ON STANIŠIĆ'S MOTION FOR PROVISIONAL  
RELEASE**

**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Douglas Stringer

**Counsel for the Defence:**

Mr. Wayne Jordash and Mr. Iain Edwards for Mr. Jovica Stanišić  
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Mr. Franko Simatović

**Government of the Republic of Serbia**

**Government of the Kingdom of the Netherlands**

1. The Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively)<sup>1</sup> is seised of “Stanišić Defence Motion for Provisional Release” filed confidentially with confidential annexes A and B by Jovica Stanišić on 29 June 2017 (“Motion”).<sup>2</sup> The Prosecution filed a response on 7 July 2017<sup>3</sup> and, on 10 July 2017, Stanišić filed a reply.<sup>4</sup> The Kingdom of the Netherlands, in its capacity as the Mechanism’s host State, filed submissions on 6 July 2017.<sup>5</sup>

## I. BACKGROUND

2. On 9 December 2015, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) granted, in part, the ICTY Prosecution’s appeal, reversed Stanišić’s acquittal by the ICTY Trial Chamber, and ordered that he be retried on all counts of the Indictment.<sup>6</sup> The same day, the ICTY Appeals Chamber ordered the arrest and detention on remand of Stanišić and, on 15 December 2015, he was transferred to the United Nations Detention Unit (“UNDU”) in The Hague.<sup>7</sup> In accordance with Article 1(4) of the Transitional Arrangements annexed to the Statute of the Mechanism (“Statute”),<sup>8</sup> the President of the Mechanism assigned the case to the Trial Chamber on 17 December 2015.<sup>9</sup> The Presiding Judge held Stanišić’s initial appearance, in accordance with Rule 64 of the Mechanism’s Rules of Procedure and Evidence (“Rules”), on 18 December 2015, and Stanišić entered a plea of “not guilty” on all counts of the Indictment.<sup>10</sup>

<sup>1</sup> See Order Replacing a Judge in a Case Before a Trial Chamber, 21 February 2017, p. 1.

<sup>2</sup> See also Stanišić Defence Motion for Provisional Release, 30 June 2017 (public redacted with public Annex A and redacted Annex B).

<sup>3</sup> Prosecution Consolidated Response to Simatović Defence Motion Requesting Provisional Release During the Court Recess and Stanišić Defence Motion for Provisional Release, 7 July 2017 (confidential with confidential and *ex parte* Annex) (“Response”).

<sup>4</sup> Stanišić Defence Reply to Prosecution Consolidated Response to Defence Motions for Provisional Release, 10 July 2017 (confidential with confidential Annex A) (“Reply”).

<sup>5</sup> Correspondence from the Protocol Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, 6 July 2017 (indicating its willingness to facilitate Stanišić’s provisional release, if ordered).

<sup>6</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Judgement, filed in writing on 9 December 2015 and pronounced in public on 15 December 2015 (“Appeal Judgement”), paras. 129; 131. See also *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement, 30 May 2013 (public with confidential Appendix C), para. 2363; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008 (“Indictment”).

<sup>7</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Warrant of Arrest and Order for Surrender of Jovica Stanišić, 9 December 2015, p. 2; Appeal Judgement, para. 131; T. 18 December 2015, p. 2.

<sup>8</sup> U.N. Security Council Resolution 1966, U.N. Doc. S/Res/1966, 22 December 2010, Annex 2 (“Transitional Arrangements”).

<sup>9</sup> Order Assigning Judges to a Case Before a Trial Chamber, 17 December 2015, p. 1.

<sup>10</sup> T. 18 December 2015, p. 6. See also Order Designating a Pre-Trial Judge, 17 December 2015.

3. On 22 December 2015, the Trial Chamber granted Stanišić's urgent request for provisional<sup>10858</sup> release to the Republic of Serbia.<sup>11</sup> In its decision, the Trial Chamber instructed the UNDU Medical Service to: (i) put questions to Stanišić by telephone once every three weeks during Stanišić's provisional release, with a view to identifying in particular any symptoms which might suggest a deterioration or potential deterioration in Stanišić's condition and/or his ability to travel; (ii) report to the Trial Chamber on Stanišić's medical condition within two days of the aforementioned interviews; and (iii) remain available, to the extent possible, for consultation regarding the treatment Stanišić should receive, if contacted by an institution treating Stanišić during the period of his provisional release.<sup>12</sup>

4. On 24 June 2016, the Trial Chamber varied the conditions of Stanišić's provisional release by instructing the UNDU Medical Service to put questions to Stanišić's treating physician and, if necessary, to Stanišić by telephone at least once every three weeks during Stanišić's provisional release, with a view to identifying in particular any symptoms which might suggest a deterioration or potential deterioration in Stanišić's condition and/or his ability to travel.<sup>13</sup>

5. In the context of the Trial Chamber's determination of the modalities for trial, on 24 February 2017 Stanišić submitted that, in view of the exceptional circumstances present in this case, he should be permitted to remain on provisional release throughout the duration of the trial and that, if he is required to participate in certain parts of the trial and during the presentation of the Defence case, his participation should be via video-conference link from Belgrade.<sup>14</sup> On 13 April 2017, the Trial Chamber dismissed Stanišić's request, holding that any motion for provisional release during trial sessions must be accompanied by a signed, voluntary, and unequivocal waiver of Stanišić's right to be present and that, if such a request were to be granted, Stanišić must bear in mind that, at this stage, the Trial Chamber will not ensure his participation in the proceedings via video-conference link from Belgrade.<sup>15</sup>

6. On 19 May 2017, the Trial Chamber denied Stanišić's renewed request that his provisional release be extended for the duration of the Prosecution case.<sup>16</sup> The Trial Chamber decided, however,

---

<sup>11</sup> Decision on Stanišić's Urgent Motion for Provisional Release, 22 December 2015 ("Provisional Release Decision"), para. 16.

<sup>12</sup> Provisional Release Decision, p. 9.

<sup>13</sup> Decision Amending Decision on Stanišić's Urgent Motion for Provisional Release, 24 June 2016 (public redacted version), para. 21.

<sup>14</sup> Submissions on Modalities for Trial, 24 February 2017 (ex parte with confidential Annex A), paras. 7-14, 17, 25, 38, 40-62, 65; Stanišić Consolidated Response to Prosecution and Registrar Submissions on Modalities for Trial, 13 March 2017 (confidential), para. 14.

<sup>15</sup> Decision on Modalities for Trial, 13 April 2017 ("Modalities Decision"), para. 20.

<sup>16</sup> Decision on Stanišić's Motion For Extension of Provisional Release, 19 May 2017 ("Decision Denying Extension of Provisional Release"), paras. 10, 27, 28.

to revisit the question before the judicial recess should Stanišić wish to waive his right to be present<sup>10857</sup> and subject to the most recent independent medical reporting indicating that he remains fit to travel.<sup>17</sup> Stanišić returned to the UNDU on 30 May 2017, in accordance with the Trial Chamber's order terminating his provisional release, and the trial commenced on 13 June 2017.<sup>18</sup>

7. Following Stanišić's return to the UNDU, the Trial Chamber has been receiving regular reports from the UNDU Reporting Medical Officer on Stanišić's health condition.<sup>19</sup> In addition, on 6 July 2017, the Trial Chamber received an independent medical report by Dr. Eric Vermetten and, on 14 July 2017, an independent medical report by Dr. Jan Nicolai.<sup>20</sup> Both Stanišić and the Prosecution filed observations on Dr. Nicolai's report on 17 July 2017.<sup>21</sup> In view of the conclusions contained in Dr. Nicolai's report, on 18 July 2017, the Trial Chamber requested the Registry to arrange for an examination of Stanišić by the UNDU Medical Service and for the filing of a report by the UNDU Reporting Medical Officer.<sup>22</sup> Following Stanišić's examination, the Reporting Medical Officer filed a report on 19 July 2017.<sup>23</sup>

## II. SUBMISSIONS

8. Stanišić requests provisional release to the Republic of Serbia for the remainder of the presentation of the Prosecution case or, in the alternative, for the duration of the summer judicial recess.<sup>24</sup> In support of his request, Stanišić submits that he continues to satisfy the requirements of Rule 68(B) of the Rules and has complied with all past provisional release conditions.<sup>25</sup> He further submits that his provisional release will enable the trial to proceed faster, by allowing the Trial Chamber to increase sitting time and expedite the case.<sup>26</sup> Stanišić appends a signed, voluntary, and unequivocal waiver of his right to be present during the presentation of the Prosecution case,

<sup>17</sup> Decision Denying Extension of Provisional Release, para. 27.

<sup>18</sup> See Order Terminating the Provisional Release of Jovica Stanišić, 19 May 2017, pp. 1, 2; Procedural Matters, T. 13 June 2017 p. 2. See also Scheduling Order, 24 May 2017.

<sup>19</sup> Registrar's Submission of Medical Report Pursuant to the Decision on Modalities for Trial, 8 June 2017 (confidential and *ex parte* with confidential and *ex parte* Annex) ("Registrar's Submission of 8 June 2017"); Registrar's Submission of Medical Report, 16 June 2017 (confidential and *ex parte* with confidential and *ex parte* Annex) ("Registrar's Submission of 16 June 2017"); Registrar's Submission of Medical Report, 6 July 2017 (confidential and *ex parte* with confidential and *ex parte* Annex) ("Registrar's Submission of 6 July 2017").

<sup>20</sup> Registrar's Submission of Independent Expert's Medical Report, 6 July 2017 (confidential and *ex parte* with confidential and *ex parte* Annex), Annex; Registrar's Submission of Independent Expert's Medical Report, 14 July 2017 (confidential and *ex parte* with confidential and *ex parte* Annex), Annex.

<sup>21</sup> Stanišić Defence Observations on Report of Independent Gastroenterologist, 17 July 2017 (confidential and *ex parte*) ("Stanišić's Observations"); Prosecution Response to Registrar's Submission of Independent Expert's Medical Report and Stanišić Defence Observations on Report of Independent Gastroenterologist, 17 July 2017 (confidential and *ex parte*) ("Prosecution's Observations").

<sup>22</sup> Procedural Matters, T. 18 July 2017 pp. 2, 3 (private session).

<sup>23</sup> Registrar's Submission of Supplemental Medical Report, 19 July 2017 (confidential and *ex parte* with confidential and *ex parte* annex) ("Registrar's Submission of 19 July 2017").

<sup>24</sup> Motion, paras. 8, 24.

<sup>25</sup> Motion, paras. 12, 14, 18, 19.

<sup>26</sup> Motion, paras. 16, 17.

acknowledging that the Trial Chamber will not ensure his participation in the proceedings via video-conference link from Belgrade.<sup>27</sup> He further asserts that, if allowed to remain on provisional release, he will continue to be represented by Counsel in court and follow the proceedings by reviewing daily transcripts and watching the broadcast of public sessions of the proceedings via the Mechanism's website, which would allow him to provide instructions to his counsel on an ongoing basis.<sup>28</sup> Stanišić also appends a personal guarantee and waiver of doctor-patient privilege for the duration of his provisional release.<sup>29</sup> Finally, Stanišić submits that, granting him provisional release, will likely improve his [REDACTED] condition and help him obtain much needed rest.<sup>30</sup>

9. In response, the Prosecution opposes Stanišić's request to be provisionally released for the remainder of the Prosecution case on the basis that Stanišić does not meet the requirements for such a lengthy release, repeats arguments which were previously rejected by the Trial Chamber, and fails to advance a "humanitarian argument" that his health issues cannot be treated in The Hague.<sup>31</sup> The Prosecution further submits that the current modalities for trial have ensured efficient court proceedings and that Stanišić's continued presence in The Hague guarantees his ability to timely consult with and instruct his Counsel.<sup>32</sup> The Prosecution also argues that it is neither appropriate nor in the interests of justice for Stanišić to be on provisional release during court proceedings.<sup>33</sup> However, the Prosecution does not oppose Stanišić's alternative request to be granted provisional release during the summer judicial recess.<sup>34</sup> In this context, the Prosecution provides a list of conditions that should be imposed on Stanišić if he were to be released during the summer judicial recess, including that Stanišić remain under house arrest during this period and that any deterioration in Stanišić's health be reported to the Registrar by Stanišić, his Counsel, or by Stanišić's physician within 24 hours.<sup>35</sup> Finally, in light of Dr. Nicolai's report, the Prosecution requests that the Trial Chamber defers its decision on the Motion, until it receives additional information from the UNDU Reporting Medical Officer and independent medical experts.<sup>36</sup>

10. In reply, Stanišić submits that the conditions of house arrest and medical reporting proposed by the Prosecution are disproportionate and unnecessary.<sup>37</sup>

<sup>27</sup> Motion, paras. 20-23, Annex B, paras. 1, 2. Stanišić reserves his right to withdraw his waiver and seek a revision of the matter of his participation in proceedings via video-conference link from Belgrade at the end of the Prosecution case.

<sup>28</sup> Motion, para. 22; Motion, Annex B, para. 1.

<sup>29</sup> Motion, Annex B, paras. 3-5.

<sup>30</sup> Stanišić's Observations, para. 6.

<sup>31</sup> Response, paras. 1, 6.

<sup>32</sup> Response, para. 7.

<sup>33</sup> Response, para. 8.

<sup>34</sup> Response, paras. 1, 5.

<sup>35</sup> Response, paras. 9, 10.

<sup>36</sup> Prosecution's Observations, para. 3.

<sup>37</sup> Reply, paras. 8-11.

### III. APPLICABLE LAW

10855

11. Under Rule 68(B) of the Rules, the Trial Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person; and after having given both the host country and the State to which the accused seeks to be released the opportunity to be heard. Provisional release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement, and a trial chamber in granting such a release may consider the existence of sufficiently compelling humanitarian grounds.<sup>38</sup> When considering whether or not to grant the provisional release of an accused, a trial chamber is required to assess whether the conditions of Rule 68(B) of the Rules are fulfilled, not only as they exist at the time it reaches its decision on provisional release, but also, as much as can be foreseen, at the time the accused is expected to return to the Mechanism.<sup>39</sup>

12. In deciding whether the requirements of Rule 68(B) of the Rules have been met, a trial chamber must consider all relevant factors that a reasonable trial chamber would have been expected to take into account before coming to a decision.<sup>40</sup> What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.<sup>41</sup> This is because decisions on motions for provisional release are fact-intensive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused.<sup>42</sup>

13. In accordance with Article 19(4)(d) of the Statute, an accused has a fundamental right to be tried in his presence. The right to be present, however, may be waived under Rule 98 of the Rules, provided that: (i) the accused has made an initial appearance pursuant to Rule 64 of the Rules;

<sup>38</sup> See Rule 68(B) of the Rules; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.35, Decision on the Prosecution's Appeal of the Decision on Further Extension of Milivoj Petković's Provisional Release, 12 June 2012 ("Prlić Decision of 12 June 2012"), para. 5.

<sup>39</sup> See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR65.1, Decision on Prosecution Appeal Against the Decision on the Prosecution Motion to Revoke the Provisional Release of the Accused, 30 March 2015 ("Šešelj Decision of 30 March 2015"), para. 14, referring, *inter alia*, to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.24, Decision on Jadranko Prlić's Appeal of the Trial Chamber Decision on his Motion for Provisional Release, 8 June 2011, para. 6; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-AR65.1, Decision on Prosecution Appeal of the Trial Chamber's Decision on Ramush Haradinaj's Motion for Provisional Release, 16 December 2010, para. 7; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.14, Decision on Jadranko Prlić's Appeal Against the *Décision relative à la demande de mise en liberté provisoire de l'accusé Prlić*, 9 April 2009, 5 June 2009, para. 8; *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in Proceedings, 15 May 2008, para. 6.

<sup>40</sup> See *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-AR65.1, Decision on Urgent Interlocutory Appeal from Decision Denying Provisional Release, 13 April 2015 (public with confidential Annex) ("Hadžić Decision of 13 April 2015"), para. 7, referring to Šešelj Decision of 30 March 2015, para. 13.

<sup>41</sup> Hadžić Decision of 13 April 2015, para. 7 referring to Šešelj Decision of 30 March 2015, para. 13.

<sup>42</sup> Prlić Decision of 12 June 2012, para. 6, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.26, Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, 15 December 2011, para. 6.

(ii) the Registrar has duly notified the accused that he is required to be present at trial; (iii) the accused is physically and mentally fit to be present for trial; (iv) the accused has voluntarily and unequivocally waived, or has forfeited, his right to be tried in his presence; and (v) the interests of the accused are represented by counsel. 0854

#### IV. DISCUSSION

14. As previously held by the Trial Chamber, Rule 68(B) of the Rules envisages that provisional release may be ordered at stages of the trial involving hearings and the presentation of evidence to the extent that the accused continues to satisfy the conditions for provisional release, is represented by counsel, and has voluntarily and unequivocally waived his right to be present in the courtroom during that stage of the ongoing trial.<sup>43</sup>

15. The Trial Chamber notes that Stanišić was provisionally released for extended periods during the pre-trial stage of the original trial and on several occasions during the original trial proceedings and that, on each occasion, he appeared for trial and did not pose any danger to any victim, witness, or other person.<sup>44</sup> Similarly, during his provisional release prior to the commencement of the ongoing trial, the Trial Chamber received regular reports from the Government of the Republic of Serbia confirming Stanišić's compliance with the conditions of his provisional release.<sup>45</sup> In addition, Stanišić appeared for the commencement of the trial, following the Trial Chamber's order terminating his provisional release.<sup>46</sup> The Trial Chamber also notes the guarantees provided by the Government of the Republic of Serbia that, if provisionally released, Stanišić will appear before the Mechanism when ordered by the Trial Chamber.<sup>47</sup> In these circumstances, the Trial Chamber has no reason to believe that Stanišić would not again abide by provisional release conditions should his request for provisional release be granted.

16. The Trial Chamber further notes that there is no information before it to suggest that, having had full access to all confidential information in the original trial and to the identity of nearly all witnesses in this trial, Stanišić has ever engaged in any practices undermining the administration of justice. Accordingly, the Trial Chamber is satisfied that, if provisionally released, Stanišić will not pose a danger to any victim, witness, or other person.

17. In relation to Stanišić's health condition, the Trial Chamber notes that the medical reports by the UNDU Reporting Medical Officer, dated 7 June, 16 June, and 5 July 2017, indicate that

---

<sup>43</sup> Decision Denying Extension of Provisional Release, para. 16; Modalities Decision, para. 16.

<sup>44</sup> See Decision Denying Extension of Provisional Release, para. 19, and references cited therein.

<sup>45</sup> See Decision Denying Extension of Provisional Release, para. 19, and references cited therein.

<sup>46</sup> See *supra* para. 6.

Stanišić's health condition is currently stable.<sup>48</sup> In addition, the most recent independent 0853  
[REDACTED] report, dated 3 July 2017, indicates that "[o]n [REDACTED] examination [Stanišić]  
appeared well",<sup>49</sup> that his "condition is relatively unaltered in comparison to [nine] months earlier",  
and that his "[REDACTED] is still in remission".<sup>50</sup> The Trial Chamber notes however that,  
according to Dr. Nicolai's report, dated 13 July 2017, the current treatment of Stanišić's  
[REDACTED] "is not effective enough".<sup>51</sup> While this observation raises some concerns, the Trial  
Chamber has received a recent report by the UNDU Reporting Medical Officer, dated 19 July 2017,  
indicating that Stanišić's condition is stable and that he is fit to travel.<sup>52</sup>

18. Having carefully considered all the material before it, the Trial Chamber is not convinced  
that there is a substantial risk of serious disruption to the trial proceedings resulting from a possible  
deterioration in Stanišić's medical condition while on provisional release. The Trial Chamber  
further considers that any possible risk of disruption could be mitigated by seeking additional  
information from the UNDU Medical Service and independent medical experts concerning the  
observations contained in Dr. Nicolai's report, including any proposed changes in Stanišić's  
current treatment.<sup>53</sup> Following the receipt of such information, the Trial Chamber will take any  
necessary and appropriate measures to ensure that the monitoring, treatment, and reporting of  
Stanišić's medical condition while on provisional release remains adequate. The Trial Chamber will  
also change the conditions of or terminate his provisional release, if required.

19. In relation to the duration of Stanišić's provisional release, the Trial Chamber recalls that  
authorizing provisional release during the course of ongoing proceedings, especially the  
presentation of evidence, should be the exception, and that this case is unprecedented among those  
that have been tried before the *ad hoc* Tribunals.<sup>54</sup> Stanišić is being retried on all counts of the  
Indictment following proceedings of 14 years, of which he has spent nearly five years in  
detention.<sup>55</sup> In addition, in view of Stanišić's medical condition, since the commencement of the  
trial the Trial Chamber has held the majority of the hearings three days a week, divided into two

---

<sup>47</sup> Reply, Annex A.

<sup>48</sup> Registrar's Submission of 8 June 2017, Annex, Registry Pagination ("RP"), 10047; Registrar's Submission of  
16 June 2017, Annex, RP. 10130; Registrar's Submission of 6 July 2017, Annex, RP. 10509.

<sup>49</sup> Registrar's Submission of Medical Report, 6 July 2017 (confidential and *ex parte* with confidential and *ex parte*  
Annex) ("Registrar's Submission of 6 July 2017"), Annex, RP. 10503.

<sup>50</sup> Registrar's Submission of 6 July 2017, Annex, RP. 10502.

<sup>51</sup> Registrar's Submission of Independent Expert's Medical Report, 14 July 2017 (confidential and *ex parte* with  
confidential and *ex parte* Annex) ("Registrar's Submission of 14 July 2017"), Annex, RP. 10598, 10597.

<sup>52</sup> Registrar's Submission of 19 July 2017, Annex.

<sup>53</sup> See Procedural Matters, T. 18 July 2017 p. 3.

<sup>54</sup> See Decision Denying Extension of Provisional Release, paras. 15, 16.

<sup>55</sup> See Decision Denying Extension of Provisional Release, paras. 15, 16, 20, and references cited therein.

sessions of one hour and 30 minutes each.<sup>56</sup> On four occasions, Stanišić waived his right to be present due to health concerns or the need to undergo medical tests.<sup>57</sup> The Trial Chamber recalls that “the judicial activity calendar may be a relevant factor when assessing a request for provisional release, notably to avoid unwarranted disruptions or undue delays in the proceedings”.<sup>58</sup> As previously observed by the Trial Chamber, authorizing Stanišić’s provisional release during the Prosecution case would in fact have an appreciable impact on the expeditious conduct of these proceedings, in particular, in view of Stanišić’s history of chronic health conditions.<sup>59</sup>

20. The Trial Chamber further reiterates that any possible impact that Stanišić remaining on provisional release during the evidentiary stage of the proceedings may have on the confidence of the victims and witnesses in the proper administration of justice, must be viewed in the context of Stanišić’s history of compliance, the exceptional nature of this case, and the lack of any concrete information before the Trial Chamber that it will in fact impact the Prosecution’s ability to secure witnesses.<sup>60</sup> In addition, the existence of humanitarian grounds, while relevant, is not a mandatory requirement for provisional release at trial, and, thus, the Trial Chamber need not address the Prosecution’s contention that Stanišić has not demonstrated that his health issues cannot be treated in The Hague.

21. Turning to Stanišić’s waiver of his right to be present for the duration of the Prosecution case, the Trial Chamber recalls that, for such waiver to be valid, the accused must be physically and mentally fit to be present for trial.<sup>61</sup> In this context, the Trial Chamber is cognizant of Dr. Nicolai’s observation that, at the time of his examination of Stanišić, Stanišić was physically and mentally “not fit enough” to be present at trial.<sup>62</sup> While this observation, considered in isolation, may be disconcerting, in view of all of the available medical information before it, its own observations during the trial sessions so far, and Stanišić’s submissions refuting Dr. Nicolai’s conclusion, the Trial Chamber is satisfied that Stanišić remains physically and mentally fit to be present for trial.<sup>63</sup> The Trial Chamber is further satisfied that Stanišić has voluntarily waived his right to be present during the presentation of the Prosecution case.<sup>64</sup> In addition, Stanišić is represented by Counsel

<sup>56</sup> See e.g. T. 13 June 2017; T. 20 June 2017; T. 27 June 2017; T. 4 July 2017; T. 18 July 2017.

<sup>57</sup> Notice of Absence from Court Due to Illness, 11 July 2017; Notice of Absence from Court Due to Illness, 10 July 2017; Witness RFJ-072, T. 6 July 2017 p. 64; Notice of Absence from Court Due to Illness, 29 June 2017.

<sup>58</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.15, Decision on Prosecution’s Appeal Against the Trial Chamber’s Decision on Slobodan Praljak’s Motion for Provisional Release, 8 July 2009, para. 10.

<sup>59</sup> See Decision Denying Extension of Provisional Release, paras. 17, 21, and references cited therein.

<sup>60</sup> See Decision Denying Extension of Provisional Release, para. 21.

<sup>61</sup> See *supra* para. 13.

<sup>62</sup> Registrar’s Submission of 14 July 2017, Annex, RP. 10597.

<sup>63</sup> See Registrar’s Submission of 6 July 2017, Annex, RP. 10502; Procedural Matters, T. 18 July 2017 pp. 2, 3; Stanišić’s Observations, para. 5. See also Registrar’s Submission of 8 June 2017, Annex, RP. 10047; Registrar’s Submission of 16 June 2017, Annex, RP. 10130; Registrar’s Submission of 6 July 2017, Annex, RP. 10509.

<sup>64</sup> Motion, Annex, para. 1.

who has an in-depth familiarity with the case as he represented Stanišić during the original trial, and 0851  
Stanišić has confirmed that he will continue to follow the proceedings via the Mechanism's website  
and instruct Counsel remotely, if granted provisional release.<sup>65</sup>

22. In relation to the conditions of provisional release, the Trial Chamber finds the  
Prosecution's request that Stanišić remain under house arrest for the duration of his provisional  
release and for the imposition of stricter medical reporting regime than the one previously ordered,  
to be unsubstantiated. There is no information before the Trial Chamber to suggest that such stricter  
conditions are warranted.

23. In view of the above considerations, the Trial Chamber finds it appropriate to allow Stanišić  
to remain on provisional release for a period extending beyond the summer judicial recess. This is  
an exceptional measure. Accordingly, the Trial Chamber authorizes a more limited period of  
provisional release until Wednesday, 27 September 2017. During this period, the Trial Chamber  
will remain alert and take necessary action in response to any information that may constitute a  
change of circumstances calling into question whether the pre-conditions set forth in Rule 68(B) of  
the Rules remain fulfilled.<sup>66</sup> The Trial Chamber, considers that, in view of the most recent report by  
the UNDU Reporting Medical Officer and the relatively limited duration of the provisional release,  
the deferral of the Trial Chamber's decision on Stanišić's request for provisional release is not  
required. In addition, there is no indication, at this stage, that any possible change in Stanišić's  
treatment, stemming from the issues raised in Dr. Nicolai's report, may not be adequately  
addressed either during or following Stanišić's provisional release. Prior to the expiration of this  
initial period, the Trial Chamber will evaluate the merits of Stanišić's provisional release before  
determining whether an extension is justified.

## V. DISPOSITION

24. For the foregoing reasons, pursuant to Article 19(4)(d) of the Statute and Rules 68(B) and  
98 of the Rules, the Trial Chamber hereby:

**GRANTS** the Motion, in part, and **ORDERS** that:

- i. Stanišić shall be transported to a Dutch airport in The Netherlands by the Dutch authorities  
on Friday, 21 July 2017, or the first practicable day thereafter;

---

<sup>65</sup> Motion, para. 22.

<sup>66</sup> See *Šešelj's* Decision of 30 March 2015, para. 17.

- ii. at the Dutch airport, Stanišić shall be provisionally released into the custody of authorized official(s) of the Ministry of Interior of the Republic of Serbia and shall be under the supervision and surveillance of such official(s) who shall accompany him for the remainder of his travel to the Republic of Serbia and to his place of residence;
- iii. the period of the provisional release shall commence when Stanišić is delivered into the custody of the authorized official(s) of the Ministry of Interior of the Republic of Serbia at a Dutch airport and shall terminate upon his return to the Dutch authorities;
- iv. on his return flight, Stanišić shall be accompanied by the authorized official(s) of the Ministry of Interior of the Republic of Serbia who shall deliver him into the custody of the Dutch authorities at a Dutch airport, and the Dutch authorities shall then transport Stanišić back to the UNDU in The Hague;
- v. before leaving the UNDU, Stanišić shall provide the address at which he will be staying in Belgrade to the Serbian Ministry of Justice and to the Registrar of the Mechanism; and
- vi. during the period of his provisional release, Stanišić shall abide by, and the authorities of the Government of Serbia, including the local police, shall ensure compliance with the following conditions:
  - a. Stanišić shall remain within the confines of the city of Belgrade;
  - b. Stanišić shall surrender his passport and any other valid travel document to the Serbian Ministry of Justice;
  - c. Stanišić shall report every day to a local police station in Belgrade to be designated by the Serbian Ministry of Justice;
  - d. Stanišić shall consent to having the Serbian Ministry of Justice verify his presence with the local police and to the making of occasional unannounced visits upon him by the Serbian Ministry of Justice or by a person designated by the Registrar;
  - e. Stanišić shall have no contact whatsoever or in any way interfere with victims or (potential) witnesses, or otherwise interfere in any way with the proceedings before the Mechanism, or the administration of justice;
  - f. Stanišić shall not discuss his case with anyone, including the media, other than his Counsel;

- g. Stanišić shall refrain from seeking to directly access documents or archives, or seeking to destroy any evidence;
- h. Stanišić shall strictly comply with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under the present Decision and with the guarantees they have provided before the Mechanism;
- i. Stanišić shall return to the Mechanism at a date to be determined by the Trial Chamber;
- j. Stanišić shall strictly comply with any further order of the Trial Chamber varying the terms of or terminating his provisional release; and
- k. Stanišić shall comply with the reporting and treatment regime set out below;

**ORDERS** Stanišić, before leaving UNDU, to:

- i. identify a treating physician who would undertake his care for the duration of his provisional release; and
- ii. notify the Registrar of the name and contact details of the treating physician and of any changes as soon as possible during the period of his provisional release;

**INSTRUCTS** the Medical Service of the UNDU to:

- i. put questions to Stanišić's treating physician and, if necessary, to Stanišić by telephone at least once every three weeks during Stanišić's provisional release, with a view to identifying in particular any symptoms which might suggest a deterioration or potential deterioration in Stanišić's condition and/or his ability to travel; and
- ii. report to the Trial Chamber on Stanišić's medical condition after the aforementioned interviews at least once every three weeks;

**REQUIRES** the Government of the Republic of Serbia to ensure, to the fullest extent possible, that the treating physician identified by Stanišić:

- i to the extent possible, recommends examinations and treatment of Stanišić in consultation with the UNDU Medical Service; and
- ii reports to the UNDU Reporting Medical Officer on Stanišić's medical condition by telephone once every three weeks;

**INSTRUCTS** the Medical Service of the UNDU to be available, to the extent possible, for consultation regarding the treatment Stanišić should receive, if contacted by an institution treating Stanišić during the period of provisional release;

**ORDERS** that during the period of provisional release Stanišić shall:

- i. arrange with the Registry to return as soon as practicable to The Hague in case of any significant deterioration in his health, whether experienced personally or the symptoms of which are identified by medical practitioners;
- ii. not seek treatment from or consult with any medical practitioner other than the Medical Service of the UNDU and his current treating specialists, unless in need of urgent medical attention or when acting on and in accordance with the specific advice of the Medical Service of the UNDU and/or his current treating specialists; and
- iii. if required to seek urgent medical attention, or if specifically advised by the Medical Service of the UNDU and/or his current treating specialists to seek medical attention, notify the Registrar, directly or via counsel, as soon as possible of the name and address of any medical practitioner consulted and, if applicable, of the name and address of any institution where he has been or will be treated or to which he has been or will be admitted;

**REQUIRES** the Government of the Republic of Serbia to ensure, to the fullest extent possible, that any institution treating Stanišić or to which Stanišić is admitted during the period of provisional release, including the Military Medical Academy in Belgrade:

- i. reports to the Registrar as soon as possible regarding the arrival, assessment, or admission of Stanišić at the institution;
- ii. reports to the Registrar as soon as possible on any treatment Stanišić is to receive or has received;
- iii. notifies the Registrar of the identity of all medical practitioners involved in Stanišić's treatment at and/or by the institution;
- iv. allows the Medical Service of the UNDU, and any other medical experts appointed by the Trial Chamber, to examine Stanišić at any time;
- v. to the extent possible, treats Stanišić only in consultation with the Medical Service of the UNDU regarding the treatment Stanišić should receive; and

vi. in the event that Stanišić is admitted to a medical institution, allows the member of the 0847 police and any person(s) making an unannounced visit, as authorized under this Decision to verify at any time that Stanišić is present at the institution;

**REQUIRES** the Government of the Republic of Serbia to assume responsibility for:

- i. designating the authorized official(s) of the Ministry of Interior of the Republic of Serbia into whose custody Stanišić shall be provisionally released and who shall accompany him from a Dutch airport to the Republic of Serbia and to his place of residence, as well as upon his return;
- ii. notifying, as soon as practicable, the Trial Chamber and the Registrar of the name(s) of these designated official(s);
- iii. designating a local police station in Belgrade to which Stanišić is to report each day during the period of his provisional release, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the name and location of that police station;
- iv. in the event that Stanišić is admitted to a medical institution, by appointing a member of the police to verify at least daily that Stanišić is present at that institution, and by notifying, as soon as practicable, the Trial Chamber and the Registrar of the name of this member of the police;
- v. ensuring compliance with the conditions imposed on Stanišić under this Decision;
- vi. ensuring Stanišić's personal security and safety while on provisional release in the Republic of Serbia;
- vii. covering all expenses in connection with Stanišić's provisional release including, but not limited to, his medical treatment and transport from a Dutch airport to Belgrade and back into the custody of the Dutch authorities;
- viii. facilitating, at the request of the Trial Chamber or of the parties, all means of cooperation and communication between the parties and ensuring the confidentiality of any such communications;
- ix. not issuing any new passports or other documents enabling Stanišić to travel;
- x. submitting every two weeks a written report to the Trial Chamber on Stanišić's compliance with this Decision;

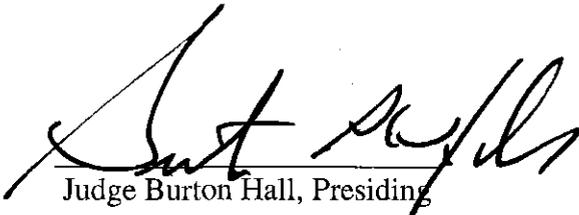
- xi. arresting and detaining Stanišić immediately should he breach any of the conditions of this Decision; and
- xii. reporting immediately to the Trial Chamber any breach of the conditions set out above;

**INSTRUCTS** the Registrar to:

- i. consult with the Dutch authorities and the authorities of the Republic of Serbia as to the practical arrangements for Stanišić's provisional release;
- ii. request the authorities of the State(s) through whose territory Stanišić may travel to:
  - a. hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
  - b. arrest and detain Stanišić pending his return to the UNDU, should he attempt to escape during travel;
- iii. continue to detain Stanišić at the UNDU in The Hague until such time as the Mechanism has been notified of the name(s) of the designated official(s) of the Ministry of Interior of the Republic of Serbia into whose custody Stanišić will be provisionally released as set out above;
- iv. provide to Stanišić and to the Government of the Republic of Serbia the contact details necessary for the communications set out in this Decision; and
- v. provide the Trial Chamber, without delay, the reports and notifications set out in this Decision.

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

Done this 19th day of July 2017,  
At The Hague,  
The Netherlands

  
Judge Burton Hall, Presiding

**[Seal of the Mechanism]**



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/  
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE  
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	MICT Registry/ <i>Greffe du MPTI</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
<b>From/ De :</b>	<input checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
<b>Case Name/ Affaire :</b>	<b>Prosecutor v. Jovica Stanišić &amp; Franko Simatović</b>	<b>Case Number/ Affaire n° :</b>	<b>MICT-15-96-T</b>
<b>Date Created/ Daté du :</b>	<b>19 July 2017</b>	<b>Date transmitted/ Transmis le :</b>	<b>19 July 2017</b>
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<b>Title of Document/ Titre du document :</b>	<b>DECISION ON STANIŠIĆ'S MOTION FOR PROVISIONAL RELEASE</b>		
<b>Classification Level/ Catégories de classification :</b>	<input type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input checked="" type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
<b>Document type/ Type de document :</b>	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
	<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	

**II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i> )
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input checked="" type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
<b>Original/ Original en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<b>Translation/ Traduction en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*

[JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org) OR/OU [JudicialFilingsHague@un.org](mailto:JudicialFilingsHague@un.org)

Rev: April 2014/Rév. : Avril 2014