



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-AR65.1  
Date: 30 September 2004  
Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron Presiding  
Judge Fausto Pocar  
Judge Mehmet Güney

**Registrar:** Mr. Hans Holthuis

**Decision of:** 30 September 2004

**PROSECUTOR**  
v.  
**JOVICA STANIŠIĆ**

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**DECISION ON PROSECUTION'S APPLICATION FOR LEAVE TO APPEAL DECISION  
ON PROVISIONAL RELEASE**

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**Counsel for the Prosecution**

Mr. Dermot Groome  
Mr. David Re

**Counsel for the Accused:**

Mr. Zoran Jovanović for Franko Simatović  
Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić

1. The Prosecution has filed an application<sup>1</sup> for leave to appeal a decision of Trial Chamber III issued on 28 July 2004, granting an application for provisional release<sup>2</sup> filed by Jovica Stanišić (“Stanišić”).<sup>3</sup> The Prosecution’s Application is filed pursuant to Rule 65(D) of the Rules of Procedure and Evidence (“Rules”).

2. In order for the Application to be granted, the Prosecution is required to demonstrate good cause. The jurisprudence of the Tribunal establishes that “good cause” under Rule 65 will be established where the applicant demonstrates that the Trial Chamber may have erred in the Impugned Decision.<sup>4</sup> While the Prosecution is only required to show the possibility of error on the part of the Trial Chamber for good cause to be established that possibility of error must be clearly established.<sup>5</sup>

3. The Appeals Chamber has considered all of the Prosecution’s arguments alleging that the Trial Chamber may have erred in the Impugned Decision, the response of Stanišić and the Prosecution’s reply thereto.<sup>6</sup> Without prejudice to any other possibility of error on the part of the Trial Chamber, the Appeals Chamber is satisfied that the Trial Chamber may have erred in the weight it placed upon the Government guarantees of Serbia and Montenegro in finding itself satisfied that, if released, Stanišić would appear for trial. While Government guarantees are not a necessary condition for the grant of provisional release,<sup>7</sup> the Appeals Chamber is satisfied that the

<sup>1</sup> Application for Leave to Appeal “Decision on Provisional Release”, 29 July 2004 (“Application”).

<sup>2</sup> *Prosecutor v Stanišić and Simatović*, Decision on Provisional Release, 28 July 2004 (“Impugned Decision”).

<sup>3</sup> *Prosecutor v Stanišić and Simatović*, Defence Motion for Provisional Release, Confidential and *ex parte*, 14 January 2004.

<sup>4</sup> *Prosecutor v Blagoje Simić et. al*, Case No. IT-95-9-AR65, Decision on Application for Leave to Appeal, 19 April 2000, page 3.

<sup>5</sup> *Prosecutor v Nikola Šainović & Dragoljub Ojdanić*, Case No. IT-99-37 AR 65.2, Decision Refusing Leave to Appeal, 26 June 2003; *Prosecutor Blagoje Simić et.al*, Case No. IT-95-9-AR65, Decision on Application for Leave to Appeal, 19 April 2000; *Prosecutor v Fatmir Limaj, et al*, Case No. IT-03-66-AR65.3, Decision on Isak Musliu’s Request for Provisional Release, 31 October 2003; Decision on Haradin Bala’s Request for Provisional Release, 31 October 2003; Decision on Fatmir Limaj’s Request for Provisional Release, 31 October 2003; *Prosecutor v Momčilo Krajišnik & Biljana Plavšić*, Case No. IT-00-39 & 40-AR65, Decision on Application for Leave to Appeal, 14 December 2001; *Prosecutor v Enver Hadžihasanović*, Case No. IT-01-47-AR65 & IT-0147-AR65.2, Decision on Application for Leave to Appeal, 5 September 2002; *Prosecutor v Vidoje Blagojević*, Case No. IT-02-60-AR65.3 & IT-02-60-AR65.4, Decision on Applications by Blagojević and Obrenović for Leave to Appeal, 16 January 2003.

<sup>6</sup> Defence’s Response to Prosecution’s “Application for Leave to Appeal Decision on Provisional Release”, 29 July 2004; Prosecution’s Reply to “Defence’s Response to Prosecution Application for Leave to Appeal Decision on Provisional Release”, 3 August 2004.

<sup>7</sup> *Prosecutor v Dragan Jokić*, Case No. IT-02-53-AR65, Decision on Application by Dragan Jokić for Provisional Release, 28 May 2002, p. 2.

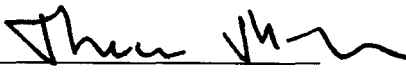
possibility of error in the Trial Chamber's consideration of these guarantees establishes good cause for leave to appeal to be granted to the Prosecution.

### **Disposition**

4. The Prosecution's Application for leave to appeal the Impugned Decision is granted.

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

Done this 30<sup>th</sup> day of September 2004,  
At The Hague,  
The Netherlands.



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Judge Theodor Meron  
Presiding Judge

**Seal of the Tribunal**