

IT-03-69-T  
D 17593 - D 17586  
10 July 2009

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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: 10 July 2009  
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 10 July 2009

PROSECUTOR

v.

JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ

*PUBLIC*

**DECISION ON SIMATOVIĆ DEFENCE MOTION FOR PROVISIONAL RELEASE  
DURING THE UPCOMING COURT RECESS**

**Office of the Prosecutor**

Mr Dermot Groome  
Ms Doris Brehmeier-Metz

**Counsel for Jovica Stanišić**

Mr Geert-Jan Alexander Knoops  
Mr Wayne Jordash

**Counsel for Franko Simatović**

Mr Zoran Jovanović  
Mr Vladimir Domazet

## I. PROCEDURAL HISTORY

1. On 24 June 2009, the Simatović Defence filed a motion seeking provisional release.<sup>1</sup> On 29 June 2009, the Prosecution filed its response to the Motion.<sup>2</sup> On 1 July 2009, the Simatović Defence filed an addendum to the Motion including the guarantees given by the government of the Republic of Serbia,<sup>3</sup> and also asked for leave to reply to the Response.<sup>4</sup> On the same day, the Tribunal's host state filed a letter stating its position on the relief sought in the Motion.<sup>5</sup> On 3 July 2009, the Chamber denied the Request and communicated its decision to the parties through an informal communication.

## II. SUBMISSIONS

### 1. The Simatović Defence

2. In its Motion, the Simatović Defence requests that Franko Simatović ("Accused") be granted temporary provisional release for "the pending period of the court recess *id est* from any such time the Trial finally adjourns until the recommencement of the trial after the court recess".<sup>6</sup> The Motion seeks provisional release under the same terms and conditions as prescribed by the Chamber in its previous decisions regarding pre-trial provisional release of the Accused.<sup>7</sup>

3. The Simatović Defence argues that the Accused poses no threat to any victim, witness, or other person.<sup>8</sup> It submits that there was not a single piece of evidence that the Accused, during the previous periods of provisional release, interfered in any way with the victims and/or witnesses although he was already familiar with their names and whereabouts due to the Prosecution's prior disclosures.<sup>9</sup>

<sup>1</sup> Simatović Defence Motion for Provisional Release During the Upcoming Court Recess, 24 June 2009 ("Motion").

<sup>2</sup> Prosecution Response to Franko Simatović's Motion for Provisional Release During the Upcoming Court Recess, 29 June 2009 ("Response").

<sup>3</sup> Simatović Defence Addendum to "Motion for Provisional Release During the Upcoming Court Recess", 1 July 2009 ("Addendum").

<sup>4</sup> Simatović Defence Request for Leave to Reply to the Prosecution's Response to Simatović's Motion for Provisional Release During the Upcoming Court Recess, 1 July 2009 ("Request").

<sup>5</sup> Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release of Mr. Franko Simatović, dated 25 June 2009 ("Host State Letter").

<sup>6</sup> Motion, paras 1, 10.

<sup>7</sup> Motion, paras 2, 10. See Decision on Provisional Release, 28 July 2004 ("28 July 2004 Decision"); Decision on Prosecution's Appeal Against Decision on Provisional Release, 3 December 2004 ("3 December 2004 Appeal Decision"); Decision on Provisional Release, 26 May 2008 ("26 May 2008 Decision").

<sup>8</sup> Motion, para. 8.

<sup>9</sup> Ibid.

4. Similarly, the Simatović Defence argues that the Accused poses no risk of flight.<sup>10</sup> It submits that the Accused was granted provisional release on two prior occasions and that he adhered fully and unconditionally to all the terms and conditions imposed on him.<sup>11</sup> Furthermore, the Republic of Serbia submitted written guarantees in relation to the Motion.<sup>12</sup>

## 2. The Prosecution

5. Although the Prosecution acknowledges that the Accused did return to the United Nations Detention Unit (“UNDU”) after having been provisionally released on previous occasions without incident,<sup>13</sup> it opposes the Motion arguing that the circumstances of the case changed materially and that the Chamber should therefore use its discretion to deny the relief sought by the Accused despite the fact that it had previously granted provisional release.<sup>14</sup> Accordingly, the Prosecution argues that being aware of the substantive probability that the trial, which was interrupted before, will indeed continue now, the Accused has a higher incentive to abscond than in 2008.<sup>15</sup> The Prosecution also stresses that the Accused is charged with serious crimes and will likely face a lengthy prison sentence if convicted.<sup>16</sup>

6. Alternatively, the Prosecution submits that should the Chamber nevertheless decide to grant the Motion, it is not sufficient to impose the conditions it imposed when previously granting provisional release.<sup>17</sup> Accordingly, the Prosecution proposes several additional conditions.<sup>18</sup> It also submits that there is nothing in the Motion that would justify provisional release for a duration longer than the actual court recess, i.e. from 27 July to 14 August 2009.<sup>19</sup>

## III. APPLICABLE LAW

7. Rule 65 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) governs provisional release. It provides, in relevant parts:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that

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<sup>10</sup> Ibid.

<sup>11</sup> Motion, para. 6.

<sup>12</sup> See Motion, para. 7 and Addendum, Annex, containing the actual text of such guarantees.

<sup>13</sup> Response, para. 7.

<sup>14</sup> Response, paras 5-6.

<sup>15</sup> Response, paras 7-9.

<sup>16</sup> Response, para. 9.

<sup>17</sup> Response, para. 10.

<sup>18</sup> Response, paras 12-13.

<sup>19</sup> Response, para. 11.

the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

8. The conditions listed under Rule 65 (B) are the minimum requirements necessary for granting provisional release. The Chamber has the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.<sup>20</sup>

9. According to the Appeals Chamber, when considering a provisional release motion at the post-Rule 98 *bis* stage of the proceedings, even when satisfied that sufficient guarantees to offset the risk of flight, a Trial Chamber should not exercise its discretion in favour of a grant of provisional release unless compelling humanitarian grounds were present which cause to tip the balance in favour of allowing provisional release.<sup>21</sup>

#### IV. DISCUSSION

10. As regards whether the Accused, if released, will return for trial, the Chamber considers the seriousness of the allegations against the Accused, as well as the current stage of the proceedings. Moreover, the Chamber gives due consideration to the fact that the Accused expressed his wish to voluntarily surrender to the Tribunal<sup>22</sup> and that in connection with previous provisional release, he has always been in full compliance with the terms and conditions set by the Chamber.<sup>23</sup> Finally, the Accused has demonstrated his willingness to cooperate with the Prosecution by giving several interviews.<sup>24</sup> Furthermore, the Chamber takes into consideration, and gives appropriate weight to, the guarantees given by the Republic of Serbia.<sup>25</sup>

<sup>20</sup> *Prosecutor v. Popović et al.*, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; *Prosecutor v. Stanišić and Simatović*, Decision on Prosecution Appeal on Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 3; *Prosecutor v. Popović et al.*, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008, para. 5.

<sup>21</sup> *Prosecutor v. Prlić et al.*, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Petkovic dated 31 March 2008", 21 April 2008, para. 15; *Prosecutor v. Prlić et al.*, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Stojić dated 8 April 2008", 29 April 2008, paras 14-15; *Prosecutor v. Popović et al.*, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for Custodial Visit and Decision on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008, para. 24.

<sup>22</sup> See 28 July 2004 Decision, paras 19-20; 26 May 2008 Decision, para. 51.

<sup>23</sup> See 26 May 2008 Decision.

<sup>24</sup> See 28 July 2004 Decision, paras 16-18; 26 May 2008 Decision, para. 49.

<sup>25</sup> Addendum, Annex.

11. The Chamber notes that the circumstances of the case has changed compared to the period of the previous provisional release of the Accused insofar as the presentation of evidence has started. However, the Chamber is not persuaded by the Prosecution's argument that this change is such as to give rise to the reasonable fear that the Accused will attempt to abscond.

12. For these reasons and subject to the terms and conditions imposed by this decision, the Chamber is satisfied that the Accused, if provisionally released, will return for trial.

13. As regards whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber notes that there is no indication that would suggest that the Accused interfered or would interfere with the administration of justice. As stated above, during previous provisional releases the Accused has fully complied with the terms and conditions set by the Chamber.

14. For this reason and subject to the terms and conditions imposed by this decision, the Chamber is satisfied that the Accused, if provisionally released, will not pose a danger to any victim, witness or other person.

15. In considering whether provisional release should be granted, the Chamber notes that there is no requirement set out in case law for compelling humanitarian reasons at an early stage of the proceedings, as is the case here. Having considered in particular the stage of the proceedings and that the time during which provisional release is sought is a regular break in the proceedings lasting for approximately one month, the Chamber is satisfied that a temporary provisional release, under the condition set out below, is appropriate.

## V. DISPOSITION

16. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber **GRANTS** the Motion and

(1) **ORDERS** as follows:

- a) As soon as practicable, on or after 23 July 2009, the Accused Franko Simatović shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- b) At Schiphol airport, the Accused shall be provisionally released into the custody of officials of the government of the Republic of Serbia to be designated prior to release in accordance with operative paragraph (2)(a) hereof, who shall accompany the Accused for the remainder of his travel to Serbia and to his place of residence;

- c) On his return, the Accused shall be accompanied by the same designated officials of the government of the Republic of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport on or before 20 August 2009, and the Dutch authorities shall then transport the Accused back to the UNDU in The Hague;
- d) During the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the government of the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
- (i) to remain within the confines of the municipality of Belgrade;
  - (ii) to surrender his passport to the Ministry of Justice;
  - (iii) to provide the address at which he will be staying in Belgrade to the Ministry of Justice and the Registrar of the Tribunal before leaving the UNDU in The Hague;
  - (iv) to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar of the Tribunal;
  - (v) not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
  - (vi) not to discuss their case with anyone, including the media, other than with his counsel;
  - (vii) to continue to co-operate with the Tribunal;
  - (viii) to comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under this order and their guarantees;
  - (ix) to return to the Tribunal on or before 20 August 2009;
  - (x) to comply strictly with any further order of the Chamber varying the terms of or terminating his provisional release;
  - (xi) the Accused is to report each day, before 1 p.m. to the police in Belgrade at a local police station to be designated by the Ministry of Justice;

(2) **REQUIRES** the government of the Republic of Serbia to assume responsibility as follows:

- a) by designating an official of the government of the Republic of Serbia into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and to his place of residence, and notifying, as soon as practicable, the Chamber and the Registrar of the Tribunal of the name of the designated official;
- b) for the personal security and safety of the Accused while on provisional release;
- c) for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- d) for all expenses concerning accommodation and security of the Accused while on provisional release;
- e) at the request of the Chamber or the Parties to facilitate all means of co-operation and communication between the parties and to ensure the confidentiality of any such communication;
- f) to submit a written report to the Chamber every week as to the compliance of the Accused with the terms of this order;
- g) to arrest and detain the Accused immediately if he breaches any of the conditions of this Order; and
- h) to report immediately, not later than within two hours, to the Registry of the Tribunal any breach of the conditions set out above; and

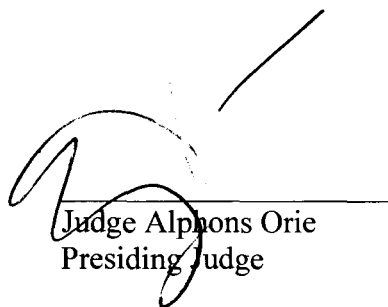
(3) **INSTRUCTS** the Registrar of the Tribunal to:

- a) consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the provisional release of the Accused;
- b) continue to detain the Accused at the UNDU in The Hague until such time as the Chamber and the Registrar have been notified of the name of the designated official of the government of the Republic of Serbia into whose custody the Accused is to be provisionally released;

(4) **REQUESTS** the authorities of all States through which the Accused will travel to:

- a) hold the Accused in custody for any time that he will spend in transit at the airport;
- b) arrest and detain the Accused pending his return to the UNDU in The Hague, should he attempt to escape.

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



Judge Alphonse Orié  
Presiding Judge

Dated this tenth day of July 2009  
At The Hague  
The Netherlands

[Seal of the Tribunal]