



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: 22 July 2010  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 22 July 2010

**PROSECUTOR**

v.

**JOVICA STANIŠIĆ  
FRANKO SIMATOVIĆ**

***PUBLIC***

**DECISION ON SIMATOVIĆ DEFENCE MOTION  
REQUESTING PROVISIONAL RELEASE  
DURING THE SUMMER COURT RECESS**

**Office of the Prosecutor**

Mr Dermot Groome

**The Government of the Republic of Serbia**

*Per:* The Embassy of the Republic of Serbia to  
the Kingdom of the Netherlands

**Government of The Kingdom of the Netherlands**

**Counsel for Jovica Stanišić**

Mr Geert-Jan Alexander Knoops  
Mr Wayne Jordash

**Counsel for Franko Simatović**

Mr Mihajlo Bakrač  
Mr Vladimir Petrović

## I. PROCEDURAL HISTORY

1. On 25 June 2010, the Simatović Defence filed a motion seeking provisional release of Franko Simatović (“Accused”) from 21 July 2010 to the end of the summer recess, as determined by the Trial Chamber (“Motion”).<sup>1</sup> On 2 July 2010, the Tribunal’s host state filed a letter pursuant to Rule 65 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) stating that it did not object to the Motion.<sup>2</sup> On 7 July 2010, the Prosecution responded to the Motion, requesting the Chamber to deny it (“Response”).<sup>3</sup> On 13 July 2010, the Simatović Defence filed an addendum to the Motion, containing the guarantees given by the Republic of Serbia (“Addendum”).<sup>4</sup> On 14 July 2010, the Simatović Defence requested leave to reply to the Response.<sup>5</sup> On 15 July 2010, the Chamber denied the request for leave to reply, and informed the parties accordingly in an informal communication.

## II. SUBMISSIONS OF THE PARTIES

2. The Simatović Defence submits that the Accused does not pose a risk of flight, and points out that he voluntarily surrendered to the Tribunal.<sup>6</sup> The Simatović Defence further submits that the Accused does not pose a threat to any victim, witness or other person.<sup>7</sup> It argues that the Accused has fully complied with all conditions imposed on him during previous periods of provisional release.<sup>8</sup> Specifically, the Simatović Defence argues that there is no evidence that the Accused or any person affiliated with him interfered with witnesses in any way, although the Accused was familiar with their names and whereabouts.<sup>9</sup> The Simatović Defence submits that the Republic of Serbia has provided written guarantees in relation to the Motion.<sup>10</sup> Finally, the Simatović Defence submits that the Accused’s presence in Belgrade would benefit the ongoing trial preparations by lead and co-counsel, who were appointed in September 2009.<sup>11</sup>

3. The Prosecution submits that the risk of flight of the Accused has increased since 23 March 2010, as a result of the progress of the case, during which evidence directly related to the Accused

<sup>1</sup> Defence Motion Requesting Provisional Release during the Summer Court Recess, 25 June 2010.

<sup>2</sup> Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release of Mr Franko Simatović, 2 July 2010.

<sup>3</sup> Prosecution Response to Simatović Request for Provisional Release, with Confidential and Ex Parte Annex, 7 July 2010.

<sup>4</sup> Addendum to Defence Motion for Provisional Release during the Summer Recess, 13 July 2010.

<sup>5</sup> Defence Request to File a Reply, 14 July 2010.

<sup>6</sup> Motion, paras 8, 12.

<sup>7</sup> Motion, para. 11.

<sup>8</sup> Motion, paras 7, 11.

<sup>9</sup> Motion, para. 11.

<sup>10</sup> Motion, para. 10; Addendum, Annexes A-D.

has been introduced.<sup>12</sup> The Prosecution further submits that on 23 March 2010, the Chamber rejected the Accused's previous request for provisional release, as it was no longer satisfied that the Accused would not pose a danger to any victim, witness or other person.<sup>13</sup> The Prosecution submits that it has no additional information with regard to the events addressed in the previous decision of 23 March 2010, or with regard to any new acts of intimidation or interference with Prosecution witnesses by any person.<sup>14</sup> In the Confidential and Ex Parte Annex to the Response ("Annex"), the Prosecution elaborates that it has no information indicating a systematic effort to intimidate or harm Prosecution witnesses or any additional information suggesting that either Accused is connected in any way to the acts of intimidation addressed in the previous decision.<sup>15</sup> The Prosecution finally submits that the Chamber already granted the Simatović Defence an adjournment for the purpose of preparation in October 2009.<sup>16</sup>

### III. APPLICABLE LAW

4. The Chamber recalls the applicable law governing provisional release and provisional release procedures as previously set out by this Chamber.<sup>17</sup>

### IV. DISCUSSION

5. As to whether the Accused, if provisionally released, will return for trial, the Chamber recalls its discussion in the "Decision on Simatović Defence Motion Requesting Provisional Release during the Adjournment" of 23 March 2010 ("23 March 2010 Decision").<sup>18</sup> Further, the Chamber considers and gives appropriate weight to the renewed guarantees given by the Republic of Serbia.<sup>19</sup> The Chamber also considers that, while the presentation of evidence has continued since the 23 March 2010 Decision, this change does not give rise to a reasonable fear that the Accused will attempt to abscond. For these reasons, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

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<sup>11</sup> Motion, paras 13-15.

<sup>12</sup> Response, para. 12.

<sup>13</sup> Response, para. 10.

<sup>14</sup> Response, para. 11; Confidential and Ex Parte Annex to the Response, para. 10.

<sup>15</sup> Annex, para. 10.

<sup>16</sup> Response, para. 8.

<sup>17</sup> See Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12; Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010, paras 19-21.

<sup>18</sup> 23 March 2010 Decision, paras 25-27. A Public Redacted Version of this Decision was filed on 12 May 2010.

<sup>19</sup> Addendum, Annexes A-D.

6. As to whether the Accused, if provisionally released, will pose a danger to any victim, witness, or other person, the Chamber recalls its 23 March 2010 Decision. There, the Chamber considered that the analysis of the facts as presented by the Prosecution was not conclusive as to whether the Accused was involved in interference with a witness by an unidentified third party but nevertheless allowed for such possibility.<sup>20</sup> The Chamber held that under the circumstances a “substantial uncertainty” remained, negatively affecting the Chamber’s assessment of whether the Accused, if released, would pose a danger to any victim, witness or other person.<sup>21</sup> The Chamber further stressed the limited information presented by the Prosecution and the lack of a thorough investigation into the events.<sup>22</sup> At the same time, it drew the Prosecution’s attention to the necessity of further investigating the instances of witness interferences and instructed the Prosecution to inform the Chamber of the result of any further investigation.<sup>23</sup>

7. The Chamber considers that the Prosecution’s further investigations have not resulted in any additional information concerning the past interferences and the involvement therein of the Accused. The Prosecution further has no information on any acts of intimidation or interference involving the Accused since March 2010 or of any systematic efforts to intimidate or harm Prosecution witnesses.<sup>24</sup> Given the outcome of the Prosecution’s investigations and considering that the Chamber has not received any other information to the contrary since the 23 March 2010 Decision, 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.

8. In considering whether provisional release should be granted, the Chamber has further given due consideration to the benefits of the Accused’s presence in Belgrade during the summer recess to assist the Defence team in the continued preparations of his defence. The Chamber is therefore satisfied that a temporary provisional release, under the conditions set out below, is appropriate.

## V. DISPOSITION

9. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber

(1) **GRANTS** the Motion; and

<sup>20</sup> 23 March Decision, para. 31.

<sup>21</sup> 23 March Decision, paras 33-34.

<sup>22</sup> 23 March Decision, para. 33.

<sup>23</sup> 23 March Decision, paras 35-36.

<sup>24</sup> Response, para. 11; Annex, para. 10.

(2) **ORDERS** as follows:

- a) As soon as practicable, 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 (3)(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 Monday, 23 August 2010, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit ("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 and any other valid travel documents 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 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;
  - (v) 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;
  - (vi) 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;

- (vii) not to seek direct access to documents or archives nor destroy evidence;
- (viii) not to discuss his case with anyone, including the media, other than with his counsel;
- (ix) to continue to co-operate with the Tribunal;
- (x) 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;
- (xi) to return to the Tribunal on or before Monday, 23 August 2010;
- (xii) to comply strictly with any further order of the Chamber varying the terms of or terminating his provisional release;

(3) **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) ensuring compliance with the conditions imposed on the Accused under the present order;
- c) for the personal security and safety of the Accused while on provisional release;
- d) for all expenses concerning transport of the Accused from Schiphol Airport to Belgrade and back;
- e) for all expenses concerning accommodation and security of the Accused while on provisional release;
- f) not issuing any new passports or other documents which would enable the Accused to travel;
- g) to submit a written report to the Chamber every week as to the compliance of the Accused with the terms of this order;

- h) to arrest and detain the Accused immediately if he breaches any of the conditions of this Order;
- i) to report immediately, not later than within two hours, to the Registry of the Tribunal any breach of the conditions set out above;


(4) **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; and

(5) **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.

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Judge Alphons Orie  
Presiding Judge

Dated this twenty-second day of July 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**