



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 December 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 10 December 2010

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

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

Office of the Prosecutor
Mr Dermot Groome

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Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

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

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

Government of the Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 26 November 2010, the Simatović Defence filed a motion seeking provisional release of Franko Simatović (“Accused”) from 16 December 2010 until the end of the winter court recess (“Motion”).¹ On 30 November 2010, the Prosecution informed the Chamber through an informal communication that it would file its response to the Motion by 3 December 2010.² On 1 December 2010, the Simatović Defence filed an addendum to the Motion, containing the guarantees given by the Republic of Serbia (“Serbia”).³ On the same day, the Prosecution opposed the Motion (“Response”).⁴ On 6 December 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 oppose the Motion.⁵ On 7 December 2010, the Simatović Defence requested leave to reply to the Response, which the Chamber granted, the reply to be filed by 8 December 2010.⁶ On 8 December 2010, the Simatović Defence filed its reply to the Response (“Reply”).⁷

II. SUBMISSIONS OF THE PARTIES

2. The Simatović Defence submits that the Accused does not pose a risk to any victim or witness and asserts there is no evidence that the Accused or any person affiliated with him interfered in any way with victims or witnesses in this case.⁸ In this respect, the Simatović Defence points out more generally that the Accused has fully complied with all conditions imposed on him during previously granted periods of provisional release.⁹ The Simatović Defence submits that the Accused poses no risk of flight and emphasises that he voluntarily surrendered to the Tribunal.¹⁰ It refers to Serbia’s guarantees and submits that these must be considered trustworthy and reliable.¹¹ The Simatović Defence further argues that the presence of the Accused in Belgrade during the

¹ Defence Motion Requesting Provisional Release during the Winter Court Recess, 26 November 2010.

² The deadline for the Prosecution’s response to the Motion was first discussed on 25 November 2010. The Simatović Defence indicated it would file a request for provisional release of the Accused and requested that the Chamber ask in advance for the Prosecution’s position on a shortened deadline for response. Upon the Chamber’s suggestion, the Prosecution indicated it would explore whether it would be possible to file its response to the Motion by 3 December 2010. See T. 9542-9543.

³ Addendum to Defence Motion Requesting Provisional Release during the Winter Court Recess, 1 December 2010 (“Addendum”). On 3 December, the Simatović Defence changed the status of the Addendum from public to confidential; see Notice of Change of Status, 3 December 2010.

⁴ Prosecution Response to Urgent Simatović Defence Motion for Provisional Release, 3 December 2010.

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands concerning Provisional Release of Mr Franko Simatović, 6 December 2010.

⁶ T. 9886.

⁷ Defence Reply to Prosecution Response to Urgent Simatović Defence Motion for Provisional Release, 8 December 2010.

⁸ Motion, para. 10; Reply, para. (v).

⁹ Motion, paras 6, 10.

¹⁰ Motion, paras 7, 10; Reply, paras (ii)-(iv).

¹¹ Motion, paras 8-9; Reply, para. (ii).

winter recess would benefit the ongoing trial preparations by the present counsel, who were appointed during the trial phase of the case.¹² Finally, the Simatović Defence submits that the proceedings have not yet reached a stage that requires an additional showing of compelling humanitarian reasons to justify provisional release.¹³

3. The Prosecution submits that, since it is nearing the end of its case, an additional showing of compelling humanitarian grounds is required before provisional release may be granted, and that the Simatović Defence has failed to present such grounds.¹⁴ The Prosecution further submits that, should the Chamber not require a showing of compelling humanitarian grounds, the advanced stage of the proceedings should be considered a factor weighing against granting the Motion as it increases the risk of flight.¹⁵ According to the Prosecution, in assessing the risk of flight the Chamber should also take into account the Accused's influential position during the period relevant to the Indictment, as well as the gravity of the offences with which he is charged.¹⁶ The Prosecution does not take a position on whether the Accused poses a risk to any victim or other person.¹⁷ However, it requests the Chamber to take into consideration the evidence presented against the Accused and the consequent increased motivation to exert pressure on remaining witnesses; the number of witnesses granted protective measures during the case; the reluctance of witnesses to testify; and the allegations of witness interference in this case.¹⁸ The Prosecution further submits that the Accused did not in fact voluntarily surrender and that the Chamber should therefore not give any weight to this factor.¹⁹ Finally, the Prosecution submits that in light of all the above, the Chamber should give limited weight to the benefit of the presence of the Accused in Belgrade for the preparation of his defence.²⁰

III. APPLICABLE LAW

4. The Chamber recalls the applicable law governing provisional release and provisional release procedures as set out in its previous decisions.²¹ Furthermore, according to the Appeals Chamber, when considering a provisional release motion at the post-Rule 98 *bis* stage of the

¹² Motion, paras 11-13; Reply, para. (vi).

¹³ Reply, para. (i).

¹⁴ Response, paras 7-10.

¹⁵ Response, paras 11-12.

¹⁶ Response, para. 13.

¹⁷ Response, para. 17.

¹⁸ Ibid.

¹⁹ Response, paras 14-15.

²⁰ Response, para. 18.

²¹ See Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential), paras 19-21; Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12.

proceedings, even when satisfied that sufficient guarantees exist to offset the risk of flight, a Chamber should not exercise its discretion in favour of a grant of provisional release unless compelling humanitarian grounds are present which tip the balance in favour of allowing provisional release.²²

IV. DISCUSSION

5. As to whether the Accused, if provisionally released, will return for trial, the Chamber recalls the discussion in its decision of 23 March 2010.²³ The Chamber has not received information indicating a change of circumstances in this regard. Specifically, the Chamber considered that the presentation of evidence has continued and that the Prosecution is nearing the end of its case. The Chamber finds however that this does not give rise to a reasonable fear that the Accused will attempt to abscond. Further, the Chamber considers and gives appropriate weight to the renewed guarantees given by Serbia.²⁴ For these reasons, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

6. As to whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber recalls its analysis in the 22 July 2010 Decision.²⁵ As the Chamber has not received information indicating a change of circumstances since then, it remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

7. The Prosecution submits that the proceedings are sufficiently advanced as to require an additional showing of compelling humanitarian grounds. As set out above, the showing of such grounds is indeed necessary once a case has reached the post-Rule 98 *bis* stage. By way of argument *a contrario*, the Chamber finds that at an earlier stage of proceedings – as is the case here

²² *Prosecutor v. Popović et al.*, Case nos IT-05-88-AR65.4, IT-05-88-AR65.5, IT-05-88-AR65.6, 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, paras 23-24; *Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR65.9, 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 13-15; *Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR65.8, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Prlić dated 7 April 2008", 25 April 2008, para. 14; *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, paras 15, 17; *Prosecutor v. Prlić et al.*, Case no. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 21.

²³ Decision on Simatović Defence Motion Requesting Provisional Release during the Adjournment, 23 March 2010, paras 25-27. A Public Redacted Version of this Decision was filed on 12 May 2010. See also Decision on Simatović Defence Motion Requesting Provisional Release During the Summer Court Recess, 22 July 2010 ("22 July 2010 Decision").

²⁴ Addendum, Annex.

²⁵ 22 July 2010 Decision, paras 6-7.

– the existence of a sufficiently compelling humanitarian reason for provisional release is *not* required.

8. In considering whether provisional release should be granted, the Chamber has furthermore given due consideration to the benefits of the Accused's presence in Belgrade during the winter recess in assisting the Defence team in the continued preparations of his defence.

9. Based on all the above, the Chamber is satisfied that provisional release, under the conditions set out below, is appropriate. The Chamber notes that the Accused requests to be provisionally released from 16 December 2010. However, considering that the case is scheduled to sit that day, the Chamber grants the provisional release starting the next day, 17 December 2010.

V. DISPOSITION

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

- (1) **GRANTS** the Motion in part; and
- (2) **ORDERS** as follows:
 - a) On Friday 17 December 2010 (or in case of unforeseen events, the first practicable day thereafter), 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 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 Serbia, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol Airport on or before Thursday, 6 January 2011 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 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 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 Thursday, 6 January 2011;
- (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 Serbia to assume responsibility as follows:

- a) by designating an official of the Government 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) by designating a local police station in Belgrade to which the Accused is to report each day during the period of provisional release, and notifying, as soon as practicable, the Chamber and the Registrar of the name and location of this police station;
- c) by ensuring compliance with the conditions imposed on the Accused under the present order;
- d) for the personal security and safety of the Accused while on provisional release;
- e) for all expenses concerning transport of the Accused from Schiphol Airport to Belgrade and back;
- f) for all expenses concerning accommodation and security of the Accused while on provisional release;
- g) by not issuing any new passports or other documents which would enable the Accused to travel;
- h) by submitting a written report to the Chamber every week as to the compliance of the Accused with the terms of this order;
- i) by arresting and detaining the Accused immediately if he breaches any of the conditions of this Order;
- j) by reporting immediately to the Registry of the Tribunal any breach of the conditions set out above;

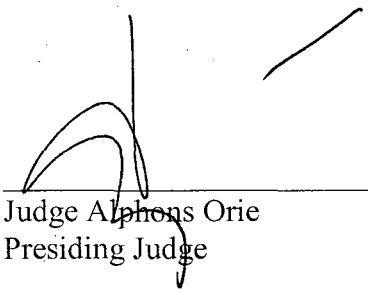
(4) **INSTRUCTS** the Registrar of the Tribunal to:

- 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 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 in French, the English being authoritative.



Judge Alphons Orié
Presiding Judge

Dated this tenth of December 2010
At The Hague
The Netherlands