



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: 11 March 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 11 March 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON URGENT SIMATOVIĆ MOTION FOR
PROVISIONAL RELEASE**

Office of the Prosecutor

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Counsel for Jovica Stanišić

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The Government of the Republic of Serbia

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

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I. PROCEDURAL HISTORY

1. On 23 February 2011, the Simatović Defence filed an urgent motion seeking provisional release of Franko Simatović (“Accused”) following the completion of the Prosecution case and until the beginning of the Defence case (“Motion”).¹ At the request of the Simatović Defence the Chamber shortened the deadline to respond.² On 28 February 2011, the Tribunal’s Host State filed confidentially a letter pursuant to Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”), stating that it did not oppose the Motion.³ On 1 March 2011, the Prosecution responded, opposing the Motion (“Response”).⁴ Following leave from the Chamber,⁵ the Simatović Defence filed the reply on 7 March 2011 (“Reply”).⁶ On 11 March 2011, the Simatović Defence submitted the guarantees of the Government of the Republic of Serbia dated 11 March 2011 (“Serbian Guarantees”).⁷

II. SUBMISSIONS OF THE PARTIES

A. Motion

2. The Simatović Defence asserts that the Accused’s voluntary surrender to the Tribunal reflects his intention to co-operate with the Tribunal and that he poses no risk of flight.⁸ The Accused has been on provisional release several times during the trial stage and has complied with the conditions of such release.⁹ Furthermore, the Simatović Defence submits that during past provisional releases, the Accused or any person affiliated with him has never interfered with, or posed a threat to, any victim, witness or other person.¹⁰

¹ Urgent Request for Provisional Release, 23 February 2011.

² On 24 February 2011, the Parties were informed through an informal communication that the deadline for the Prosecution response was shortened until 1 March 2011, pursuant to Rule 126 *bis* of the Rules of Procedure and Evidence.

³ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Franko Simatović, 24 February 2011 (Confidential).

⁴ Prosecution Response to Urgent Simatović Defence Motion for Provisional Release, 1 March 2011.

⁵ The Simatović Defence requested leave to file a reply to the Prosecution Response, Defence Request to file a Reply to Prosecution Response to Urgent Simatović Defence Motion for Provisional Release, 3 March 2011. Through an informal communication on 4 March 2011, the Trial Chamber granted the request to reply, setting a deadline of Monday 7 March 2011.

⁶ Defence Reply to Prosecution Response to Urgent Simatović Defence Motion for Provisional Release, 7 March 2011.

⁷ Simatovic Defence Submission of Additional Documents related to its 23 February 2011 Urgent Request for Provisional Release, 11 March 2011, Confidential Annex A

⁸ Motion, paras 6, 9.

⁹ Motion, para. 6.

¹⁰ Motion, para. 9.

3. The Simatović Defence refers to the guarantees from the Government of the Republic of Serbia (“Serbia”).¹¹

4. The Simatović Defence further asserts that the Accused’s provisional release to Belgrade would greatly assist Counsel in preparation of the Defence case.¹² It points to the fact that present Counsel was appointed at a progressed stage of the case and was granted a short time to prepare for the recommencement of the trial.¹³ As a result, it submits Counsel has done little preparation for the Defence case and has not formulated a definite approach with the Accused.¹⁴ The Simatović Defence refers to the voluminous additional disclosures by the Prosecution as further indication of the necessity of the Accused’s assistance.¹⁵ Furthermore, the Simatović Defence emphasises that in previous decisions, the Chamber has given “due consideration to the benefits of the Accused’s presence in Belgrade” in facilitating the preparation of the Defence case.¹⁶

B. Response

5. The Prosecution submits that the timing of the motion warrants its denial.¹⁷ The Accused has faced the totality of the evidence against him and this poses an increased risk of flight.¹⁸ The Prosecution refers to its previous submissions concerning possible risk to victims and witnesses associated with the provisional release of the Accused and submits the Trial Chamber should give due consideration to those submissions.¹⁹

6. The Prosecution asserts that the Simatović Defence has failed to provide any factual basis for its assertion that the assistance of the Accused in Belgrade - rather than in The Hague - is necessary.²⁰ The Prosecution argues that preparations such as reviewing documents and speaking with counsel can all be done from the United Nations Detention Unit (“UNDU”) and do not require the Accused’s presence in Belgrade.²¹ Furthermore, the Prosecution submits that the conditions of the provisional release would prohibit the Accused from engaging in direct investigative activities

¹¹ Motion, para. 8.

¹² Motion, paras 10-14.

¹³ Motion, para. 10.

¹⁴ Motion, para. 11.

¹⁵ Motion, para.13.

¹⁶ See Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 10 December 2010, para. 8; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, para. 18.

¹⁷ Response, para. 5.

¹⁸ Response, paras 5-9.

¹⁹ See Prosecution Response to Urgent Simatović Defence motion for Provisional Release, 3 December 210, para. 17.

²⁰ Response, para. 12.

²¹ *Ibid.*

and thus would not allow him to seek direct access to archives or documents or to contact potential witnesses.²²

7. The Prosecution submits that the Simatović Defence's assertion that it has "no defined concept of the Defence case" is unjustified, and that the Simatović Defence has presented cogent cross-examinations in support of its case.²³ Furthermore, the Prosecution highlights that the Simatović Defence has not previously raised any issues relating to its lack of understanding of the Defence case. The Simatović Defence is thus exaggerating the extent of work it will have to undertake, and the necessity of the Accused's presence in Belgrade.²⁴

8. The Prosecution asserts that no humanitarian grounds have been presented warranting the granting of provisional release post 98 *bis* proceedings.²⁵

C. Reply

9. The Simatović Defence asserts that the Prosecution's allegation that there is an increased flight risk no

Simatović Defence points to the fact that the Accused has been granted provisional release five times in the course of the Prosecution case.²⁷ Since his most recent provisional release, in January 2011, the Accused has not heard any evidence that is graver than the evidence previously presented against him, thus there is no reason to suspect an increased risk of flight.²⁸

10. The Simatović Defence submits that extensive preparation by the Defence team cannot be done by telecommunication.²⁹ Granting provisional release would allow for continuous and daily consultations in Belgrade, which would remove the need for Counsel to travel to The Hague during court recess.³⁰ Therefore Counsel may concentrate on gathering evidence and talking to potential witnesses in the region.³¹ The Simatović Defence reiterates that the extensive amount of disclosures made by the Prosecution throughout its case has hindered Counsel from preparing the Defence case.³² The Simatović Defence notes that only about 70 exhibits were admitted before the current Counsel took over the Defence case, and that since recommencement of the trial following their

²² Response, paras 12-13.

²³ Response, para 16.

²⁴ Response, paras 14-18.

²⁵ Response, para. 19.

²⁶ Reply, para. 6.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Reply, para. 8.

³⁰ Reply, para. 9.

³¹ Reply, paras 8-9.

³² Reply, para. 10.

appointment, approximately 2,500 Prosecution exhibits have been admitted.³³ This has amounted to a huge workload for the Defence.³⁴

11. The Simatović Defence argues that the Prosecution has overstated the preparedness of the Simatović Defence in every regard.³⁵ The Simatović Defence asserts that the 90 exhibits it has tendered, when compared to the Prosecution's 2,500 exhibits, are proof of the disparity between Prosecution and Defence, "which is a result of the inequitable position of both sides in the trial due to the belated appointment of the Simatović Defence Counsels in the proceedings".³⁶

III. APPLICABLE LAW

12. The Chamber recalls and refers to the applicable law governing provisional release and provisional release procedures, as set out in its previous decisions, including with regard to the post-Rule 98 *bis* stage of the proceedings.³⁷

IV. DISCUSSION

13. The law provides for one standard to be applied before the Rule 98 *bis* stage of the proceedings and a different standard post Rule 98 *bis*. The Chamber has ordered that the oral submissions pursuant to Rule 98 *bis*, if any, be heard on 7, 8, 11 and 12 April 2011.³⁸ At the present stage, the Chamber is of the view that the Accused should be present during the Rule 98 *bis* hearings and it currently estimates the time between the hearing and the Chamber's decision to be short. Therefore the Chamber will assess the request for provisional release in two stages, first until the scheduled hearing on 98 *bis* ("First Period") and then for the period from the scheduled hearing until the start of the Defence case ("Second Period"). If no Rule 98 *bis* submissions are made, the Chamber still applies the post-Rule 98 *bis* standard for the Second Period.

14. In relation to the First Period, the Chamber is satisfied that despite the present stage of proceedings, the Accused, if provisionally released, would appear for trial. Furthermore, the Chamber notes the Guarantees provided by Serbia and the lack of evidence suggesting that the

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Reply, paras. 10-13.

³⁶ Reply, para. 12.

³⁷ See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential) ("Decision of 10 December 2010"), para. 5; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential) ("31 March 2010 Decision"), 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.

³⁸ Scheduling Order, 2 March 2011.

Accused would act in a manner contrary to his co-operation with the Tribunal to date. The Chamber refers to its previous Decision of 10 December 2010 and is satisfied based on the information before it that there has not been a change of circumstances.³⁹

15. The Chamber is also satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person. The Chamber recalls its analysis in the 10 December 2010 Decision⁴⁰, and notes that there is no information before it indicating a change of circumstances.

16. The Accused's presence in Belgrade would be beneficial, though not essential to, the Defence preparations.

17. In balancing the circumstances, the Chamber in the exercise of its discretion, grants provisional release for the First Period, *i.e.* until the scheduled start of Rule 98 *bis* submissions.

18. In relation to the Second Period, the Chamber, even when satisfied that the conditions of Rule 65 (B) are met, should exercise its discretion in favour of granting provisional release only if compelling humanitarian grounds tip the balance in favour of allowing provisional release.⁴¹

19. The Chamber has considered the late assignment of the current Simatović Counsel in trial proceedings and the extensive Prosecution disclosures. The Chamber reiterates that provisional release would be beneficial for the preparation of the Defence case, but does not consider the Accused's assistance to counsel in Belgrade, rather than in The Hague, to be essential.

20. The Chamber finds that these circumstances do not constitute compelling humanitarian grounds justifying provisional release. The Chamber therefore denies provisional release for the Second Period.

V. DISPOSITION

³⁹ Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 10 December 2010, para. 5.

⁴⁰ *Ibid.*, para. 6.

⁴¹ *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 Ćorić, 11 March 2008, para. 21.

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

1. **GRANTS** the Motion in part; and

2. **ORDERS** as follows:

- (a) that on **Tuesday, 15 March 2011** (or in case of unforeseen events, the first practicable day thereafter), the Accused be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- (b) that, at Schiphol airport, the Accused be provisionally released into the custody of officials of the Government of Serbia to be designated prior to his 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) that, on his return, the Accused be accompanied by the same designated officials of the Government of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport on or before **Monday 4 April 2011**, and that the Dutch authorities then transport the Accused back to the UNDU in The Hague;
- (d) that, during the period of provisional release, the Accused abide by the following conditions, and that the authorities of the Government of Serbia, including the local police, 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 Serbian Ministry of Justice (“Ministry of Justice”);
 - (iii) to provide the addresses 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 in accordance with operative paragraph 3(b) hereof;
 - (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 to otherwise interfere in any way with the proceedings or the administration of justice;

- (vii) not to discuss his case with anyone, including the media, other than his Counsel;
- (viii) not to seek direct access to documents or archives or to destroy any evidence;
- (ix) to comply strictly with any requirements of the authorities of the Government of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
- (x) to return to the Tribunal on or before **Monday 4 April 2011**;
- (xi) to comply strictly with any further Order of the Chamber varying the terms of or terminating provisional release;

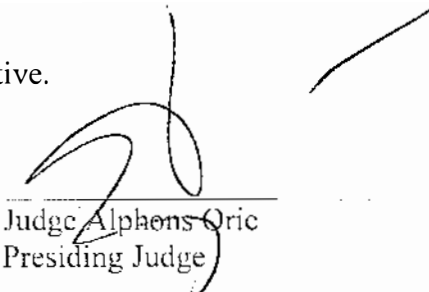
3. **REQUIRES** the Government of Serbia to assume responsibility as follows:

- (a) by designating officials 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 names of the designated officials;
- (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 weekly written report to the Chamber as to the compliance of the Accused with the terms of this Order;
- (i) by arresting and detaining the Accused immediately if he should breach any of the conditions of this Order; and
- (j) by reporting immediately to the Chamber any breach of the conditions set out above;

4. **INSTRUCTS** the Registrar of the Tribunal to:

- (a) consult with the Ministry of Justice of 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 officials of the Government of Serbia into whose custody the Accused is to be provisionally released;
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; and
 - (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 version being authoritative.



Judge Alphons Oric
Presiding Judge

Dated this eleventh day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]