

IT-03-69-T
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17 August 2011

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**UNITED
NATIONS**



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: 17 August 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 August 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON SIMATOVIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE DURING SUMMER RECESS” OF 20
JULY 2011**

Office of the Prosecutor

Mr Dermot Groome

Counsel for Jovica Stanišić

Mr Wayne Jordash
Mr Scott Martin

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

I. PROCEDURAL HISTORY

1. On 7 July 2011, the Simatović Defence (“Defence”) filed a request seeking provisional release for Mr. Franko Simatović (“Accused”) from 22 July 2011 to 14 August 2011 (“Request”).¹ The Request contains an annex with guarantees given by the Republic of Serbia (“Serbia”), dated 30 June 2011, that it will comply with all the orders of the Chamber, should the Accused be granted provisional release (“Serbian Guarantees”).² On 8 July 2011, the Chamber shortened the deadline for responses to the Request to 14 July 2011.³ On 14 July 2011, the Prosecution filed a response to the Request opposing it (“Response”).⁴ On 15 July 2011, the Tribunal’s Host State filed a letter pursuant to Rule 65 (B) of the Rules of Evidence and Procedure (“Rules”) stating that it did not oppose the Request.⁵

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that all available evidence indicates that the Accused will not be a flight-risk and will not pose a danger to any victim, witness or other person, thereby meeting the requirement of Rule 65 (B) of the Rules.⁶ In support of this submission, the Defence points out that the Accused fully complied with the terms and conditions of his last provisional release.⁷

3. The Defence requests provisional release for the Accused to allow him to assist his counsel in the preparation of his defence case.⁸ It submits that given the large quantity of work the Accused was able to accomplish during his last provisional release, the grant of provisional release during the upcoming summer recess would allow the Accused to further assist the preparation of the defence case and points out that the Statute of the Tribunal guarantees the Accused adequate time and facilities for the preparation of the defence case.⁹

4. The Defence also requests provisional release for the Accused on compelling humanitarian grounds.¹⁰ It submits that granting provisional release will allow the Accused to visit his ill mother [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³ The Defence explains that the Accused was

¹ Urgent Simatović Request for Provisional Release During the Summer Judicial Recess (Confidential with Confidential Annexes), 7 July 2011.

² Request, Confidential Annex B.

³ The Chamber informed the parties of the shortened deadline through an informal communication.

⁴ Prosecution Response to Urgent Simatović Request for Provisional Release During the Summer Judicial Recess (Confidential), 14 July 2011.

⁵ Correspondence from Host Country regarding provisional release of Mr. Simatović (Confidential), 15 July 2011.

⁶ Request, para. 20.

⁷ Request, para. 18.

⁸ Request, para. 1.

⁹ Request, paras 15-16.

¹⁰ Request, para. 1.

¹¹ Request, paras 2, 10-14.

not able to spend adequate time with his mother during his previous provisional release because he was working on the defence case.¹⁴

5. The Prosecution submits that the Chamber's oral decision pursuant to Rule 98 *bis* of the Rules, whereby the Accused heard the Chamber state that there is sufficient evidence under the standard of Rule 98 *bis* of the Rules of the commission of crimes charged in the Indictment and of the existence of a joint criminal enterprise including the Accused, constitutes a material change in circumstances since the Accused's last provisional release.¹⁵ Hence, the Prosecution contends, the Chamber cannot be satisfied that the Accused will appear for trial if provisionally released.¹⁶

6. With respect to whether there are compelling humanitarian grounds to grant provisional release in this case, the Prosecution also submits that assisting the preparation of one's defence case does not constitute a compelling humanitarian ground for provisional release.¹⁷ The Prosecution further argues that the medical report submitted by the Defence in support of the Request does not provide enough information to determine whether the Accused's mother's condition [REDACTED].¹⁸ [REDACTED].¹⁹ The Prosecution notes that it is unlikely that the Accused was unable to spend sufficient time with his mother during his last provisional release.²⁰

7. The Prosecution requests that, should the Chamber grant the Accused provisional release, the length of such release be proportional to the purpose and, in this respect, notes that the Chamber granted the accused, Mr. Jovica Stanišić, seven days of release to visit his ailing father at an earlier stage of the trial.²¹ The Prosecution further requests the Chamber to clarify that the discussion of health matters with the Accused's mother will not become an ongoing basis for the grant of provisional release [REDACTED].²²

¹² Request, para. 11.

¹³ Request, para. 13.

¹⁴ Request, para. 12.

¹⁵ Response, paras 5-6.

¹⁶ Response, para. 6.

¹⁷ Response, paras 7-8.

¹⁸ Response, paras 9-15.

¹⁹ Response, para. 13.

²⁰ Response, para. 14.

²¹ Response, paras 16, 18.

²² Response, para. 17.

III. APPLICABLE LAW

8. 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.²³

IV. DISCUSSION

9. The Chamber recalls its discussion in its decision of 21 April 2011, where it concluded that it was satisfied that the Accused would return for trial if granted provisional release.²⁴ The Chamber has not received information indicating a change of circumstances in this regard. In this respect, the Chamber has considered the post-Rule 98 *bis* stage of the proceedings. This change 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 Serbian Guarantees. Consequently, the Chamber remains satisfied that the Accused, if provisionally released, would appear for trial.

10. The Chamber further recalls its discussion in its decision of 21 April 2011 where it was satisfied that the Accused would not pose a danger to any victim, witness or other person if released.²⁵ The Chamber has not since received any new information indicating a change in circumstances and, therefore, reaches the same conclusion.

11. At the post-Rule 98 *bis* stage of the proceedings, a Chamber should not grant provisional release unless compelling humanitarian grounds are present which tip the balance in favour of allowing provisional release. The Chamber reiterates, as it has done in previous decisions, that the Accused's assistance to counsel for preparation of the defence case does not constitute a compelling humanitarian ground.²⁶ Hence, the Chamber will only consider whether the medical condition of the Accused's mother constitutes sufficiently compelling humanitarian grounds for the Accused to be granted provisional release.

12. According to the medical report submitted by the Defence, the Accused's mother [REDACTED].²⁷ [REDACTED].²⁸ The Chamber considers the possibility of the Accused's

²³ See Decision on Defence Request Requesting Provisional Release During the Winter Court Recess, 10 December 2010, para. 4; Decision on Defence Request Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Defence Request Requesting Provisional Release, 15 October 2009, paras 10-12.

²⁴ Decision on Simatović Urgent Request for Provisional Release, 21 April 2011, para. 10. See also Decision on Urgent Simatović Motion for Provisional Release, 11 March 2011, para. 14.

²⁵ Decision on Simatović Urgent Request for Provisional Release, 21 April 2011, para. 11. See also Decision on Urgent Simatović Motion for Provisional Release, 11 March 2011, para. 15.

²⁶ Decision on Simatović Urgent Request for Provisional Release, 21 April 2011, para. 13. See also Decision on Urgent Simatović Motion for Provisional Release, 11 March 2011, para. 11.

²⁷ Request, Confidential Annex A, p. 1.

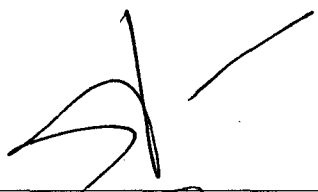
mother's health being poor and gives this due weight in its consideration of the Request. However, the Chamber notes that the medical report does not provide findings that demonstrate [REDACTED], which makes it difficult for the Chamber to assess the urgency of the humanitarian grounds advanced by the Defence. In this respect, the Chamber notes that the medical report submitted by the Defence does not establish whether the Accused's mother's condition [REDACTED]. The Chamber also considers that the Accused may be able to [REDACTED] but notes that it has not been presented with any evidence that only the Accused is able to do so.

13. Therefore, on the basis of the submissions presently before it, the Chamber is unable to determine that the humanitarian grounds advanced in the Request are sufficiently compelling to grant provisional release.

V. DISPOSITION

For the foregoing reasons and pursuant to Rules 54 and 65 of the Rules, the Chamber **DENIES** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this seventeenth of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁸ Ibid.