

IT-03-69-T
D 39431 - D 39426
04 April 2012

39431 vs.



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: 4 April 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 4 April 2012

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ REQUEST FOR PROVISIONAL
RELEASE**

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

Government of the Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 2 March 2012, the Simatović Defence (“Defence”) requested provisional release of the Accused Franko Simatović (“Accused”) for the period of 30 March to 30 April 2012 (“Request”).¹ On 6 March 2012, the Chamber invited the Republic of Serbia (“Serbia”) to state, within ten days of receipt, its position in respect of the Request (“Invitation”).² On 7 March 2012, 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 Request.³ The Prosecution submitted a response on 16 March 2012, opposing the Request and seeking a reasonable opportunity to respond to any written submissions by Serbia on the issue of provisional release (“Prosecution Response”).⁴

2. On 21 March 2012, noting that Serbia had failed to respond to the Invitation, the Chamber invited Serbia again to file its position in respect of the Request, either in writing or at a hearing before the Chamber.⁵ Serbia submitted, on 26 March 2012, that the issue should be discussed by the Government of Serbia by 30 March 2012 and in case of a favourable outcome, guarantees would be provided without delay.⁶ On 2 April 2012, the Chamber received a Defence submission containing guarantees provided by Serbia to the effect that Serbia would comply with all orders issued by the Chamber to ensure that the Accused would appear for trial (“Serbian Guarantees”).⁷

II. SUBMISSIONS OF THE PARTIES

3. The Defence submits that the Accused poses no threat to any victim, witness, or other person, and that there is no risk of flight.⁸ The Defence further submits that the Accused has always unconditionally complied with all conditions imposed on his provisional release.⁹ It points out that the Accused voluntarily surrendered to the Tribunal and argues that the Accused’s presence in Belgrade during the adjournment period would substantially assist the preparations of the next phase of the Defence case.¹⁰

¹ Request for Provisional Release, 2 March 2012, para. 1.

² Invitation to the Republic of Serbia in Relation to Requests for Provisional Release, 6 March 2012.

³ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Franko Simatović, 7 March 2012 (Confidential).

⁴ Prosecution Response to Simatović Request for Provisional Release, 16 March 2012.

⁵ Order Scheduling a Hearing in Relation to Requests for Provisional Release, 21 March 2012.

⁶ The Republic of Serbia’s Reply to Trial Chamber’s Order for Scheduling a Hearing in Relation to Requests for Provisional Release from 21 March 2012, 26 March 2012 (Confidential).

⁷ Addendum to Defence Request for Provisional Release, 2 April 2012 (Confidential), Defence Submission, 3 April 2012 (Confidential).

⁸ Request, para. 4.

⁹ Ibid.

¹⁰ Request, paras 4, 6, 7.

4. The Prosecution submits that the risk of absconding is higher at the present stage of proceedings, given the body of Prosecution evidence, the Rule 98 *bis* decision, and the evidence elicited from the Defence witnesses, as well as the grave nature of crimes charged.¹¹ It further submits there is an increased risk of influencing witnesses, referring to changes to the Defence case to be explored during the adjournment, including meeting new prospective witnesses.¹² The Prosecution also argues that the Accused's ability to assist in Defence preparations from Belgrade is not essential.¹³ It further argues that granting provisional release would be disproportionate in the absence of compelling humanitarian grounds.¹⁴

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing provisional release as set out in its previous decisions.¹⁵

IV. DISCUSSION

6. In light of the Defence submission containing Serbian Guarantees, the Chamber will not further discuss the parties' submissions and requests regarding the absence of such guarantees.¹⁶ Given that the Serbian Guarantees are identical in substance to the guarantees provided by Serbia in respect of previous requests for provisional release, the Chamber does not seek further submissions by the Prosecution.

7. The Chamber recalls the discussion in its decision of 13 December 2011, whereby it was satisfied that the Accused would appear for the trial and would not pose a danger to any victim, witness, or other person.¹⁷ The Chamber has not received information indicating a change of circumstances in this regard. Having considered the advanced stage of the proceedings and accorded due weight to the Serbian Guarantees, the Chamber remains satisfied that the Accused, if provisionally released, will appear for trial and will not pose a danger to any victim, witness, or other person.

8. With regard to the current stage of the trial and to the adjournment granted at the Defence's request, the Chamber considers that the Accused's presence in Belgrade may be beneficial to the

¹¹ Prosecution Response, paras 9-12.

¹² Prosecution Response, paras 13-14.

¹³ Prosecution Response, para. 16.

¹⁴ Prosecution Response, paras 17-18.

¹⁵ Decision on Simatović Request for Provisional Release, 13 December 2011 ("Decision of 13 December 2011"), paras 6-7 and the decisions cited therein.

¹⁶ Request, paras 8-10; Prosecution Response, paras 6-8, 19.

¹⁷ Decision of 13 December 2011, para. 9.

preparation of his defence. In the light of the above discussion, the Chamber finds provisional release to be appropriate.

V. DISPOSITION

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

1. **DENIES** the Prosecution leave to respond to Serbia's submissions concerning the Request;
2. **GRANTS** the Request in part and **ORDERS** as follows:
 - a. that **on the first practicable day following the filing of this decision**, 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 by Serbia prior to his departure from the United Nations Detention Unit in The Hague ("UNDU"), who shall accompany the Accused for the remainder of his travel to Serbia and to his place of residence ("Designated Officials");
 - c. that, on his return, the Accused be accompanied and handed over by the Designated Officials at Schiphol airport, on or before **Thursday, 26 April 2012**, to the custody of the Dutch authorities who shall transport him back to the UNDU; and
 - d. that the Accused provide the addresses at which he will be staying in Belgrade to the Serbian Ministry of Justice ("MoJ") and to the Registrar of the Tribunal ("Registrar") prior to leaving the UNDU, that during the period of provisional release the Accused abide by, and that the authorities of the Government of Serbia, including the local police, ensure compliance with the following 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 MoJ;
 - iii. to report every day before 1 p.m. to a local police station in Belgrade to be designated by the MoJ in accordance with the below;
 - iv. to consent to having the MoJ verify his presence with the local police and to the making of occasional unannounced visits upon the Accused by the MoJ or by a person designated by the Registrar;

- v. to refrain from having any contact whatsoever or in any way interfering with any victim or potential witness, or from otherwise interfering in any way with the proceedings or administration of justice;
- vi. to refrain from discussing his case with anyone, including media, other than his Counsel;
- vii. to refrain from seeking to directly access documents or archives, or seeking to destroy any evidence;
- viii. to comply strictly with any requirements of the authorities of Serbia necessary to enable them to comply with their obligations under this Order and with the Serbian Guarantees;
- ix. to return to the Tribunal on or before Thursday, 26 April 2012; and
- x. 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 as specified above, 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, as well as upon his return, and notifying, as soon as practicable, the Chamber and the Registrar 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 that police station;
- c. by ensuring compliance with the conditions imposed on the Accused under this 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 enabling the Accused to travel;
- h. by submitting a weekly written report to the Chamber on compliance by the Accused with the terms of this Order;
- i. by arresting and detaining the Accused immediately should he breach any of the conditions of this Order; and
- j. by reporting immediately to the Chamber any breach of the conditions set out above;

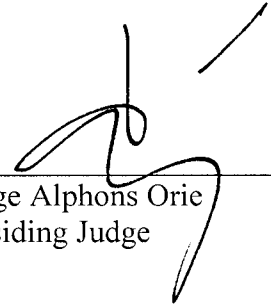
4. **INSTRUCTS** the Registrar to:

- a. consult with the Ministry of Justice of the Netherlands on the practical arrangements for the provisional release of the Accused; and
- b. continue to detain the Accused at the UNDU until such time as the Chamber and the Registrar have been notified of the names of the Designated Officials 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; and
- b. arrest and detain the Accused pending his return to the UNDU should he attempt to escape.

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



Judge Alphons Orié
Presiding Judge

Dated this fourth of April 2012
At The Hague
The Netherlands

[Seal of the Tribunal]