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16 July 2012

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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: 16 July 2012
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 16 July 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

The Government of the Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 20 June 2012, the Simatović Defence (“Defence”) requested provisional release of the Accused Franko Simatović (“Accused”) for two periods (“Request”), following the conclusion of the presentation of evidence until the closing arguments (“First Period”), and from after the closing arguments until the date of the judgement (“Second Period”).¹ In the alternative, in respect of the Second Period, the Defence requested provisional release of three months with a possibility of extension until the date of the judgement.² On 27 June 2012, the Defence filed an addendum to the Request, containing guarantees by the Republic of Serbia (“Serbia”) to the effect that Serbia would comply with all orders issued by the Chamber to ensure that the Accused would appear before the Tribunal (“Serbian Guarantees”).³ On 2 and 4 July 2012, the Prosecution responded, opposing the Request (“Response”).⁴ The Prosecution requested that the Chamber deny provisional release during the First Period and dismiss as premature the request for provisional release during the Second Period.⁵ On 6 July 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.⁶

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the Accused poses no threat to any victim, witness, or other person, and that there is no risk of flight.⁷ It further submits that the Accused has always unconditionally complied with all conditions imposed on his provisional release.⁸ The Defence argues that the Accused’s presence in Belgrade would significantly facilitate the preparation of the Defence final submissions.⁹ Finally, it points out that Chambers in other cases before the Tribunal have granted provisional release between the conclusion of trial proceedings and the date of the judgement, for three months with the possibility of renewal.¹⁰

¹ Urgent Simatović Request for Provisional Release, 20 June 2012. The dates indicated by the Defence no longer reflect the trial schedule, which was amended following the filing of the Request. The Chamber will consider the Request in light of the present trial schedule.

² Request, p. 3.

³ Addendum to Defence Request for Provisional Release, 27 June 2012 (Confidential), Annex.

⁴ Prosecution Response to Urgent Simatović Request for Provisional Release, 2 July 2012; Notice of Withdrawal and Refiling of Prosecution Response to Urgent Simatović Request for Provisional Release, 4 July 2012.

⁵ Ibid.

⁶ Letter of the Ministry of the Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Franko Simatović, 6 July 2012.

⁷ Request, p. 3.

⁸ Ibid.

⁹ Ibid.

¹⁰ Request, p. 2.

3. The Prosecution submits that the risk of the Accused absconding will be at its highest after the presentation of rebuttal evidence and final submissions of the parties, particularly in light of the grave nature of crimes charged, the evidence elicited from the Defence witnesses, and the temporal proximity of the judgement, as well as the near completion of the Tribunal's mandate.¹¹ It submits that the advanced stage of and developments in the trial constitute a change in circumstances relevant to the requirements of Rule 65 (B) of the Rules.¹² It argues that granting provisional release for an indefinite period pending the date of the judgement undermines the credibility and standing of the Tribunal among victims and witnesses.¹³ It further argues that granting the provisional release would be disproportionate given the weight of evidence against the Accused and the absence of compelling humanitarian grounds.¹⁴ The Prosecution submits, in respect of the Second Period, that the Request is premature as the outstanding rebuttal evidence and final submissions could constitute material circumstances relevant to the consideration of provisional release.¹⁵

III. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing provisional release as set out in its previous decisions.¹⁶

IV. DISCUSSION

5. At the outset, the Chamber considers in relation to the Second Period that whether the criteria of Rule 65 (B) of the Rules will be fulfilled and whether provisional release will be appropriate, depends on future developments. For instance, the potential admission of evidence in the Defence case through the pending bar table motions, or in rebuttal and rejoinder, as well as the parties' final submissions, could affect the Chamber's assessment regarding the Rule 65 (B) criteria. Under these circumstances, the Chamber finds that the Request in relation to the Second Period is premature and should be denied without prejudice.

6. With regard to the First Period, the Chamber recalls the discussion in its decision of 4 April 2012, whereby it was satisfied that the Accused would appear before the Tribunal and would not pose a danger to any victim, witness, or other person.¹⁷ The Chamber has not received any

¹¹ Response, paras 7-11.

¹² Response, para. 11.

¹³ Response, paras 12-13.

¹⁴ Response, paras 14-18.

¹⁵ Response, paras 19-20.

¹⁶ Decision on Simatović Request for Provisional Release, 13 December 2011, paras 6-7 and the decisions cited therein.

¹⁷ Decision on Simatović Request for Provisional Release, 4 April 2012, para. 7 and decisions cited therein.

information indicating a change of circumstances in this regard. Having considered the advanced stage of the proceedings as well as having accorded due weight to the Serbian Guarantees, the Chamber remains satisfied that the Accused, if provisionally released, will appear before the Tribunal and will not pose a danger to any victim, witness, or other person.

7. The Chamber considers that the Prosecution has failed to substantiate its position that provisional release would undermine the Tribunal's credibility and standing among victims and witnesses. It further considers that the Accused's presence in Belgrade during the First Period may be beneficial to the preparation of the final submissions.

8. The Chamber notes that the Chamber witness will no longer be called,¹⁸ that there are presently no further witnesses scheduled to testify, and that on 11 July 2012, the Chamber rescheduled the parties closing arguments for 9 to 11 October 2012.¹⁹ As matters stand, the Accused's presence at the Tribunal is not required until the closing arguments. However, there are several pending Defence motions to tender evidence from the bar table and there is a possibility of further rebuttal and rejoinder evidence, which may include requests to call witnesses.²⁰ Should a request to call a witness in rebuttal or rejoinder be granted, the Chamber will recall the Accused from provisional release. In light of the above, the Chamber finds provisional release until the closing arguments to be appropriate.

V. DISPOSITION

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

1. **DENIES** the Request in relation to the Second Period without prejudice;
2. **GRANTS** the Request in respect of the First Period and **ORDERS** as follows:
 - a. that the Accused be transported by the Dutch authorities to Schiphol airport in the Netherlands on the first practicable day following this decision;
 - 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

¹⁸ On 25 June 2012, the Chamber decided to hear a Chamber witness in the week of 9 July 2012, see Scheduling Order, 25 June 2012. On 6 July 2012, the Chamber cancelled the hearing of the Chamber witness and informed the parties accordingly in an informal communication.

¹⁹ Scheduling Order, 11 July 2012.

²⁰ See T. 19887- 19890.

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, on or before **4 October 2012**, by the Designated Officials at Schiphol airport to the custody of the Dutch authorities who shall then transport the Accused 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 City 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 the dates set by the Chamber as provided in the operative paragraph 2(c); 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:

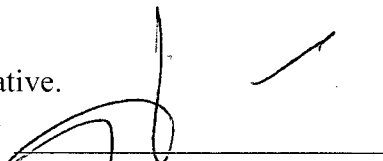
- a. by designating officials as specified above, into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and to his place of residence, as well as upon his return, and notifying, as soon as practicable, the Chamber and the Registrar 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 Orie
Presiding Judge

Dated this Sixteenth day of July 2012

At The Hague
The Netherlands

[Seal of the Tribunal]