



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: 7 September 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 7 September 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON THE SIMATOVIĆ DEFENCE REQUEST FOR
PROVISIONAL RELEASE
DURING THE ADJOURNMENT IN PROCEEDINGS**

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 AND SUBMISSIONS

1. On 24 August 2011, the Simatović Defence (“Defence”) filed a request seeking provisional release for Mr. Franko Simatović (“Accused”) during the four-week adjournment in court proceedings starting on 5 September 2011 (“Request”).¹ The Defence did not provide guarantees by the Republic of Serbia (“Serbia”) that it would act in accordance with any conditions imposed by the Chamber upon the provisional release of the Accused (“Guarantees of Serbia”). The Defence submits that the Guarantees of Serbia will be provided as soon as they are received, that Serbia had provided such guarantees for previous provisional release requests, and that there was no reason to anticipate that Serbia had changed its position.² The Defence submits that all other requirements of Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) were met by the Accused.³ The Defence also submits that Rule 65 of the Rules does not require “compelling humanitarian grounds” to justify provisional release at the post-Rule 98 *bis* stage of the proceedings.⁴ Rather, the Defence submits that the requirement of compelling humanitarian grounds is inconsistent with the Accused’s right to be presumed innocent until proven guilty.⁵ The Defence further submits that, if provisional release is granted, the Accused will use the court recess to help prepare his case and argues that the need to efficiently prepare for the presentation of the defence case justifies provisional release.⁶

2. On 24 August 2011, the Chamber set the deadline for responding to the Request at 29 August 2011.⁷ On 26 August 2011, the Prosecution filed a response in opposition to the Request.⁸ The Prosecution maintains that the Accused has not submitted compelling humanitarian grounds to justify provisional release, which are required by Appeals Chamber jurisprudence.⁹ The Prosecution also submits that preparation of the defence case does not comprise a compelling humanitarian ground.¹⁰

¹ Defence Motion Requesting Provisional Release During the Court Recess, 24 August 2011 (Confidential), paras 1-2, 15.

² Request, para. 7.

³ Request, paras 6-11.

⁴ Request, para. 11.

⁵ Request, paras 5, 12.

⁶ Request, paras 13-14.

⁷ T. 13608-13609.

⁸ Prosecution Response to Simatović Defence Motion Requesting Provisional Release During the Court Recess, 26 August 2011 (Confidential) (“Response”).

⁹ Response, paras 1, 6.

¹⁰ Response, para. 7.

3. On 31 August 2011, the Tribunals' Host State filed a letter pursuant to Rule 65 (B) of the Rules, stating that it did not oppose the Request.¹¹ On 6 September 2011, the Simatović Defence informally notified the Chamber that it had not yet received the Guarantees of Serbia.

II. APPLICABLE LAW AND DISCUSSION

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

5. Under Rule 65 (B) of the Rules, the Chamber cannot order the provisional release of the Accused until it has given Serbia an opportunity to be heard. Serbia has not yet submitted its views on the Request. However, Serbia renewed its provisional release guarantees in relation to all previous requests.¹³ On this basis, the Chamber anticipates the submission of the Guarantees of Serbia to be forthcoming. Nevertheless, the Request must be denied for additional reasons, as set out in the following paragraphs. Under these circumstances, the Chamber will, exceptionally, issue its decision prior to the submission of the Guarantees of Serbia.

6. The Chamber recalls its discussion in its decision of 20 July 2011, where it was satisfied that the Accused would return for trial if granted provisional release.¹⁴ The Chamber has received no information indicating a change of circumstances in this regard. If the Guarantees of Serbia are renewed prior to any period of provisional release, the Chamber would be satisfied, as it has been in previous decisions, that the Accused would appear for trial if provisionally released.

7. The Chamber further recalls its discussion in its decision of 20 July 2011, where it concluded that the Accused would not pose a danger to any victim, witness, or other person.¹⁵ The Chamber has received no information indicating a change in circumstances and remains satisfied that the Accused would not pose a danger to any victim, witness, or other person.

¹¹ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Franko Simatović, 31 August 2011 (Confidential).

¹² See Decision on Urgent Stanišić Motion for Provisional Release, 10 December 2010 (Confidential), para. 5; 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. See also *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. I T-08-91-AR65.2, Decision on Mićo Stanišić's Appeal Against Decision on his Motion for Provisional Release, 19 August 2011, paras 12-13.

¹³ See Decision on Stanišić Defence Request for Provisional Release during Summer Recess, 21 July 2011 (Confidential); Decision on Urgent Stanišić Defence Request for Provisional Release, 21 April 2011.

¹⁴ Decision on Simatović Defence Request for Provisional Release During Summer Recess, 20 July 2011 (Confidential) ("Decision of 20 July 2011"), para. 9.


¹⁵ Decision of 20 July 2011, para. 10.

8. Pursuant to Appeals Chamber case law, 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 Simatović Defence has submitted that the Accused should be provisionally released in order to help the preparation of his case. The Simatović Defence does not argue, and the Chamber does not consider that this constitutes a compelling humanitarian ground.¹⁶ The Defence has not made any other submissions concerning the existence of compelling humanitarian grounds. The Chamber has not received any other information indicating the existence of such grounds. Under these circumstances, the Chamber finds that the request for provisional release should be denied.

III. DISPOSITION

9. For the foregoing reasons, 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 Seventh of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁶ See Decision of 20 July 2011, para. 11. See also Decision on Simatović Urgent Request for Provisional Release, 21 April 2011, para. 13.