



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: 14 December 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 14 December 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ DEFENCE MOTION
REQUESTING PROVISIONAL RELEASE DURING
THE WINTER COURT RECESS**

Office of the Prosecutor

Mr Dermot Groome

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Mr Geert-Jan Alexander Knoops
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
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I. PROCEDURAL HISTORY

1. On 4 December 2009, the Simatović Defence filed a motion seeking provisional release of Franko Simatović (“Accused”).¹ On 8 December 2009, the Simatović Defence filed an addendum to the Motion including the guarantees given by the Government of the Republic of Serbia.²
2. On 7 December 2009, the Chamber ordered the Prosecution to file its response to the Motion, if any, by 10 December 2009.³ On 9 December 2009, the Prosecution opposed the Motion.⁴
3. On 14 December 2009, the Tribunal’s host state filed a letter stating its position on the relief sought in the Motion.⁵
4. The Chamber notes that the last hearing in this case before the winter recess is scheduled for 15 December 2009. The proceedings in the present case shall recommence after the winter court recess during the week of 18 January 2010.⁶

II. SUBMISSIONS

1. The Simatović Defence

5. In its Motion, the Simatović Defence requests that the Accused be granted temporary provisional release between 16 December 2009 and 15 January 2010.⁷
6. The Simatović Defence argues that the Accused poses no threat to any victim, witness, or other person.⁸ It submits that there is not a single piece of evidence that the Accused, during previous periods of provisional release, interfered in any way with the victims and/or witnesses although he was already familiar with their names and whereabouts due to the Prosecution’s prior disclosures.⁹

¹ Defence Motion Requesting Provisional Release During the Winter Court Recess, 4 December 2009 (“Motion”).

² Addendum to the Defence Motion Requesting Provisional Release During the Winter Court Recess, 8 December 2009 (“Addendum”).

³ The Chamber communicated this order to the parties through an informal communication.

⁴ Prosecution Response to Franko Simatović’s Motion Requesting for Provisional Release During the Winter Court Recess, 9 December 2009 (“Response”).

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release of Mr. Franko Simatović, dated 14 December 2009.

⁶ Decision on Motion for Adjournment of Proceedings by the Simatović Defence, 15 October 2009, para. 30.

⁷ Motion, paras 1-2, 15.

⁸ Motion, para. 9.

⁹ Ibid.

7. Similarly, the Simatović Defence argues that the Accused poses no risk of flight.¹⁰ It recalls in this respect that the Accused voluntarily surrendered to the Tribunal.¹¹ It also submits that in the past, the Accused was granted provisional release on several occasions and that he adhered fully and unconditionally to all the terms and conditions imposed on him.¹² Furthermore, the Republic of Serbia submitted written guarantees in relation to the Motion.¹³

8. Finally, the Simatović Defence submits that granting the Motion would assist the Defence in preparing the Accused's representation before the Tribunal by facilitating daily, intensive contacts with the Accused.¹⁴

2. The Prosecution

9. In opposing the Motion,¹⁵ the Prosecution incorporates by reference the arguments it had articulated in its previous filing of 18 September 2009.¹⁶ Although the Prosecution acknowledges that it is unaware of any act of non-compliance by the Accused with orders of the Chamber issued in conjunction with the previous provisional release, it points out that the argument that provisional release can facilitate defence preparations has been rejected in other cases, albeit under somewhat different circumstances.¹⁷

10. Alternatively, the Prosecution submits that should the Chamber nevertheless decide to grant the Motion, the same conditions as those imposed during prior periods of provisional release should be imposed again.¹⁸

III. APPLICABLE LAW

11. Rule 65 of the Tribunal's Rules of Procedure and Evidence ("Rules") governs provisional release. It provides, in relevant parts:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that

¹⁰ Motion, para. 10.

¹¹ Motion, para. 7.

¹² Motion, paras 6, 9-10.

¹³ See Motion, para. 8; Addendum, Annex, containing the actual text of such guarantees.

¹⁴ Motion, paras 11-14.

¹⁵ Response, paras 1, 11.

¹⁶ Response, para. 6, referring to Prosecution Response to Franko Simatović's Motion Requesting Provisional Release, 18 September 2009, paras 4-10.

¹⁷ Response, paras 5, 7.

¹⁸ Response, para. 8.

the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

12. The conditions listed under Rule 65 (B) of the Rules are the minimum requirements necessary for granting provisional release. The Chamber has the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.¹⁹

IV. DISCUSSION

13. As regards whether the Accused, if released, will return for trial, the Chamber considers the seriousness of the allegations against him, as well as the current stage of the proceedings. Moreover, the Chamber gives due consideration to the fact that the Accused expressed his wish to voluntarily surrender to the Tribunal²⁰ and that he has always been in full compliance with the terms and conditions set by the Chamber during previous periods of provisional release.²¹ Furthermore, the Accused has demonstrated his willingness to cooperate with the Prosecution by giving several interviews.²² Finally, the Chamber takes into consideration, and gives appropriate weight to, the guarantees given by the Republic of Serbia.²³

14. The Chamber notes that the circumstances of the case have changed compared to the previous period of provisional release of the Accused insofar as the presentation of evidence is further underway. The Chamber, however, does not consider that this change is such as to give rise to a reasonable fear that the Accused will attempt to abscond.

15. For these reasons and subject to the terms and conditions imposed by this decision, the Chamber is satisfied that the Accused, if provisionally released, will return for trial.

¹⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; Decision on Prosecution Appeal on Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 3; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008, para. 5.

²⁰ See Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009 ("15 October 2009 Decision"), para. 13; Decision on Simatović Defence Motion for Provisional Release During the Upcoming Court Recess, 10 July 2009 ("10 July 2009 Decision"), para. 10; Decision on Provisional Release, 26 May 2008 ("26 May 2008 Decision"), para. 51; Decision on Provisional Release, 28 July 2004 ("28 July 2004 Decision"), paras 19-20.

²¹ See 15 October 2009 Decision, para. 13; 10 July 2009 Decision, para. 10; 26 May 2008 Decision, para. 47.

²² See 15 October 2009 Decision, para. 13; 10 July 2009 Decision, para. 10; 26 May 2008 Decision, para. 49; 28 July 2004 Decision, paras 16-18.

²³ Addendum, Annex.

16. As regards whether the Accused, if released, will pose a danger to any victim, witness, or other person, the Chamber notes that there is no indication that the Accused interfered or would interfere with the administration of justice. As stated above, during previous periods of provisional release, the Accused has fully complied with the terms and conditions set by the Chamber.

17. For this reason and subject to the terms and conditions imposed by this decision, the Chamber is satisfied that the Accused, if provisionally released, will not pose a danger to any victim, witness or other person.

18. In considering whether provisional release should be granted, the Chamber notes that the case is at an early stage of the proceedings. The Chamber has given due consideration to its decision to adjourn the trial proceedings for the winter recess until the week of 18 January 2010 and in that context, to the benefits of the Accused's presence in Belgrade during this period to assist the new Defence team and facilitate that his defence continues to be prepared expeditiously. The Chamber is therefore satisfied that a temporary provisional release, under the conditions set out below, is appropriate.

V. DISPOSITION

19. For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, the Chamber **GRANTS** the Motion and

(1) **ORDERS** as follows:

- a) As soon as practicable, on or after 16 December 2009, the Accused Franko Simatović shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- b) At Schiphol airport, the Accused shall be provisionally released into the custody of officials of the government of the Republic of Serbia to be designated prior to release in accordance with operative paragraph (2)(a) hereof, who shall accompany the Accused for the remainder of his travel to Serbia and to his place of residence;
- c) On his return, the Accused shall be accompanied by the same designated officials of the government of the Republic of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport on or before 15 January 2010, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit ("UNDU") in The Hague;
- d) During the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the government of the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
 - (i) to remain within the confines of the municipality of Belgrade;
 - (ii) to surrender his passport to the Ministry of Justice;
 - (iii) to provide the address 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 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;
 - (v) not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;

- (vi) not to discuss his case with anyone, including the media, other than with his counsel;
- (vii) to continue to co-operate with the Tribunal;
- (viii) to comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under this order and their guarantees;
- (ix) to return to the Tribunal on or before 15 January 2010;
- (x) to comply strictly with any further order of the Chamber varying the terms of or terminating his provisional release;
- (xi) 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;

(2) **REQUIRES** the government of the Republic of Serbia to assume responsibility as follows:

- a) by designating an official of the government of the Republic 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 name of the designated official;
- b) for the personal security and safety of the Accused while on provisional release;
- c) for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- d) for all expenses concerning accommodation and security of the Accused while on provisional release;
- e) at the request of the Chamber or the Parties to facilitate all means of co-operation and communication between the parties and to ensure the confidentiality of any such communication;
- f) to submit a written report to the Chamber every week as to the compliance of the Accused with the terms of this order;

- g) to arrest and detain the Accused immediately if he breaches any of the conditions of this Order; and
- h) to report immediately, not later than within two hours, to the Registry of the Tribunal any breach of the conditions set out above; and

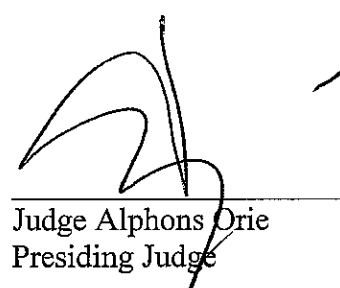
(3) **INSTRUCTS** the Registrar of the Tribunal to:

- a) consult with the Ministry of Justice in 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 official of the government of the Republic of Serbia into whose custody the Accused is to be provisionally released;

(4) **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;
- b) arrest and detain the Accused pending his return to the UNDU in The Hague, should he attempt to escape.

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



Judge Alphons Orie
Presiding Judge

Dated this fourteenth day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]