



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: 21 April 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 21 April 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ URGENT REQUEST FOR
PROVISIONAL RELEASE**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

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 12 April 2011, the Simatović Defence filed an urgent motion seeking provisional release of Franko Simatović (“Accused”) from 18 April to 14 June 2011 (“Motion”).¹ On 13 April 2011, upon request of the Simatović Defence, the Chamber shortened the deadline for a response to the Motion to 18 April 2011.² On 18 April 2011, the Prosecution filed a response to the Motion, opposing it (“Response”).³ On the same day, the Simatović Defence filed an addendum to the Motion, containing the guarantees given by the Republic of Serbia (“Serbian Guarantees”).⁴ Also on the same day, 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 Motion.⁵

II. SUBMISSIONS OF THE PARTIES

2. With regard to the shortening of deadlines for responses to the Motion, the Simatović Defence submits that the short time period between the Motion and the requested period of provisional release presents good cause.⁶ The Simatović Defence further submits that the relatively late timing of its Motion resulted from its need to prepare for Rule 98 *bis* submissions and to complete other tasks.⁷

3. With regard to the requested provisional release, the Simatović Defence submits that the requirements of Rule 65(B) of the Rules are met.⁸ The Simatović Defence asserts that the Accused poses no risk of flight.⁹ He has been on provisional release several times during the trial stage and complied with the conditions imposed by the Chamber during such releases.¹⁰ The Simatović Defence submits that during past periods of provisional release, neither the Accused, nor any person affiliated with him, interfered with or posed a threat to any witness, victim, or other person.¹¹ It also argues that the Accused’s voluntary surrender to the Tribunal supports the request for provisional release.¹² The Simatović Defence further refers to the Serbian Guarantees.¹³

¹ Urgent Request for Provisional Release, 12 April 2011.

² The Chamber informed the parties of the shortened deadline through an informal communication.

³ Prosecution Response to Urgent Simatović Request for Provisional Release, 18 April 2011.

⁴ Addendum to Urgent Request for Provisional Release, 18 April 2011.

⁵ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr Franko Simatović, 18 April 2011.

⁶ Motion, para. 18; T. 11447-11448.

⁷ T. 11447-11448.

⁸ Motion, para. 10.

⁹ Motion, para. 14, referring to Urgent Request for Provisional Release, 23 February 2011 (“23 February 2011 Motion”), para. 9.

¹⁰ Motion, paras 11, 14, referring to the 23 February 2011 Motion, para. 9.

¹¹ Motion, para. 14, referring to the 23 February 2011 Motion, para. 9.

¹² Motion, para. 12.

4. The Simatović Defence requests provisional release for two periods: firstly, from 18 April 2011 until the date of the Rule 98 *bis* decision, scheduled for 5 May 2011 (“First Period”), and secondly, from 5 May 2011, until the day of the Pre-Defence Conference, if any, scheduled for 14 June 2011 (“Second Period”).¹⁴ The Simatović Defence submits that Rule 65(B) of the Rules does not require a showing of “compelling humanitarian grounds” during the post-Rule 98 *bis* stage of the proceedings.¹⁵ Alternatively, if any such additional requirements would apply, they would apply only to the Second Period, after the rendering of the Chamber’s Rule 98 *bis* decision.¹⁶ The Simatović Defence further submits, with regard to both periods, that the Chamber has the discretion to take into consideration the Accused’s specific circumstances resulting from the appointment of counsel at a late stage of the case without a proper hand-over.¹⁷ Simatović’s presence in Belgrade would make the preparation of the defence case faster and more efficient, and therefore justify his provisional release.¹⁸ According to the Simatović Defence, daily consultations with the Accused would include analysis of documentary evidence which cannot be done through telecommunications from the United Nations Detention Unit (“UNDU”).¹⁹

5. With regard to the shortening of deadlines for responses to the Motion, the Prosecution submits that, other than the late filing of the Motion, the Simatović Defence has failed to show good cause as required under Rule 127 of the Rules.²⁰ The Prosecution argues that the Defence has consistently filed its requests for provisional release on an urgent basis and that an expedited response schedule could affect the legal standard to be applied in a manner advantageous to the Accused.²¹

6. With regard to the requested provisional release, the Prosecution submits that in the Decision on Urgent Simatović Motion for Provisional Release of 11 March 2011 (“Decision of 11 March 2011”), the Chamber denied a request for provisional release for the same period as requested in the Motion.²² There has been no change of circumstance since the Decision of 11 March 2011 and the Simatović Defence has shown no good cause for seeking the same relief.²³ Alternatively, the Prosecution argues that the Accused currently presents a significant risk of

¹³ Motion, para. 13.

¹⁴ Motion, paras 1, 19.

¹⁵ Motion, para. 10.

¹⁶ Motion, para. 8.

¹⁷ Motion, para. 6

¹⁸ Motion, paras 6-7, 9, 15.

¹⁹ Motion, para. 7.

²⁰ Motion, paras 2-3; T. 11443-11446.

²¹ T. 11444-11445.

²² Response, paras 6-7.

²³ Response, para. 7.

flight.²⁴ The Prosecution submits that it has adduced a substantial amount of evidence against the Accused and made its Rule 98 *bis* submissions, as a result of which the Accused's incentive not to return has increased.²⁵

7. The Prosecution further submits that, pursuant to the Decision of 11 March 2011, the post-Rule 98 *bis* standard applies to the present request for provisional release.²⁶ The Prosecution argues that the circumstances advanced by the Simatović Defence do not amount to compelling humanitarian grounds justifying provisional release post-Rule 98 *bis* phase.²⁷ The Prosecution points out that the change of counsel occurred over a year and a half ago; that shortly thereafter the Prosecution re-disclosed to present counsel the materials it had disclosed to previous counsel; that the case has a reduced sitting schedule; and that the Chamber has introduced measures to accommodate the appointment of new counsel, including additional adjournments and the re-organization of the Prosecution's witness order.²⁸ The Prosecution argues that the Accused can provide necessary assistance and communicate with counsel by telephone and video-conference from the UNDU.²⁹

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.³⁰

IV. DISCUSSION

9. With regard to the shortening of deadlines for responses to the Motion, the Chamber considers that applying the standard time limit of 14 days following the filing of the Motion would render moot part of the requested relief. This urgency stems from the relatively late filing of the Motion, which the Chamber understands to have resulted from the Simatović Defence's tasks in preparing and presenting Rule 98 *bis* submissions. Nevertheless, the Chamber urges the Defence to

²⁴ Response, paras 7, 14-15.

²⁵ Response, paras 14-16.

²⁶ Response, para. 12.

²⁷ Response, paras 19-25.

²⁸ Response, para. 21.

²⁹ Response, para. 24.

³⁰ See Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 10 December 2010 ("Decision of 10 December 2010"), para. 4; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010, 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.

keep in mind the 14-day response time of Rule 126 *bis* of the Rules when filing future requests for provisional release, if any.

10. With regard to the requested provisional release, the Chamber recalls the discussion in its Decision of 11 March 2011 in respect of whether the Accused – if provisionally released – would return for trial.³¹ The Chamber further considers the advanced stage of the proceedings. The Chamber also considers the Serbian Guarantees and the lack of evidence that the Accused would act in a manner contrary to his co-operation with the Tribunal to date. Based on the information before it, the Chamber is satisfied that there has not been a change of circumstances that would warrant a different conclusion.

11. As to whether the Accused, if released, would pose a danger to any victim, witness, or other person, the Chamber recalls its analysis in its decision of 22 July 2010.³² The Chamber has not received information indicating a change of circumstances since then and therefore remains satisfied that the Accused, if provisionally released, would not pose a danger to any victim, witness, or other person.

12. With regard to the First Period, the Chamber recalls that in its Decision of 11 March 2011, it estimated that the time between the Rule 98 *bis* hearing and the Chamber's 98 *bis* decision would be short.³³ The Chamber further recalls that provisional release would be beneficial for the preparation of the Defence case.³⁴ However, the Accused's assistance to counsel in Belgrade, rather than from the UNDU, is not essential.³⁵ If released, the Accused would have to return to the UNDU by 3 May 2011, in order to be present in Court for the Rule 98 *bis* decision, scheduled for 5 May 2011. As a result, the First Period consists of a short period of time, namely from the first practicable day of departure after the filing of this decision until 3 May 2011. Moreover, the Accused was recently granted almost three weeks of provisional release to Belgrade, namely from 15 March to 4 April 2011. Under these circumstances, the Chamber is not inclined to exercise its discretion in favor of granting provisional release for the First Period.

13. With regard to the Second Period, the Chamber considers that in the 23 February 2011 Motion, the Simatović Defence requested provisional release for the same period.³⁶ In its Decision of 11 March 2011, the Chamber denied this request, as the Simatović Defence had not presented

³¹ Decision of 11 March 2011, para. 14.

³² Decision on Simatović Defence Motion Requesting Provisional Release During the Summer Court Recess, paras 6-7, see also Decision of 11 March 2011, para. 15; Decision of 10 December 2010, para. 6.

³³ Decision of 11 March 2011, para. 13.

³⁴ Decision of 11 March 2011, paras 16, 19.

³⁵ Ibid.

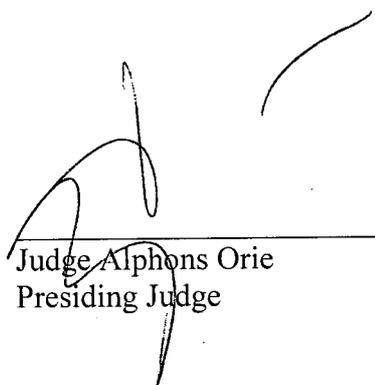
³⁶ 23 February 2011 Motion, paras 1, 17-18.

compelling humanitarian grounds justifying provisional release.³⁷ In the Motion, the Simatović Defence has put forward arguments which are repetitive of those which the Chamber previously considered. Therefore, in the absence of new arguments or a change of circumstances presented in the Motion, the Chamber denies provisional release for the Second Period.

V. DISPOSITION

14. For the foregoing reasons and pursuant to Rules 54 and 65 the Chamber **DENIES** the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-first of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

³⁷ Decision of 11 March 2011, para. 11.