

IT-03-69-T
D47820- D47815
12 February 2013

47820
YB.



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: 12 February 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 12 February 2013

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ REQUEST FOR PROVISIONAL
RELEASE AFTER CLOSING ARGUMENTS UNTIL ENTRY
OF TRIAL JUDGEMENT**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Scott Martin

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 16 July 2012, the Chamber granted the provisional release of the Accused Franko Simatović (“Accused”) for the time period between the conclusion of the presentation of evidence and the closing arguments of the parties, ordering the Accused to return to the Tribunal on or before 4 October 2012.¹ The Chamber denied, without prejudice, the Simatović Defence (“Defence”) request for the provisional release of the Accused for the time following the closing arguments until the date of the judgement.²

2. On 17 January 2013, the Defence requested the provisional release of the Accused from 1 February 2013 until a day before the date of entry of the trial judgement (“Request”).³ On 29 January 2013, the Defence filed an addendum to the Request with the guarantees of the Republic of Serbia in relation to the provisional release of the Accused (“Serbian Guarantees”).⁴ On 30 January 2013, the Prosecution filed a response to the Request (“Response”).⁵ On 4 February 2013, the Tribunal’s Host State filed a statement pursuant to Rule 65 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), to the effect that it does not object the provisional release of the Accused.⁶

II. SUBMISSIONS OF THE PARTIES

3. The Defence submits that during the provisional release following the Chamber’s decision of 16 July 2012, the Accused has fully adhered to the demands of the Chamber.⁷ The Defence further recalls that during previous and present periods of provisional release, there has been no evidence to show that the Accused, or anyone affiliated with him, has interfered with witnesses or victims.⁸ Regarding the possibility of flight, the Defence submits that the demeanour of the Accused refutes any such risk.⁹ The Defence furthermore notes that the Accused surrendered voluntarily to the Tribunal.¹⁰ The Defence points out that, for the time period after the closing

¹ Decision on Simatović Request for Provisional Release, 16 July 2012, paras 9 (1) (a), (c).

² Decision on Simatović Request for Provisional Release, 16 July 2012, paras 5, 9 (1); Urgent Simatovic Request for Provisional Release, 20 June 2012.

³ Simatović Request for Provisional Release After Closing Arguments Until the Trial Judgment, 17 January 2013, para. 11.

⁴ Addendum to Defence Request for Provisional Release, 30 January 2013 (Confidential).

⁵ Prosecution Response to Simatović Request for Provisional Release After Closing Arguments Until the Trial Judgement, 30 January 2013.

⁶ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release for Mr. Franko Simatović, 1 February 2013.

⁷ Request, para. 4.

⁸ Request, para. 5.

⁹ Request, para. 5.

¹⁰ Request, para. 6.

arguments until the entry of the final judgement, it has been the practice of the Tribunal to grant provisional release for three months with the possibility of renewal.¹¹

4. The Prosecution submits that the Accused has failed to show that he does not pose a flight risk, considering the gravity of the charges against him, in combination with the body of incriminating evidence presented in court, and the proximity of the judgement.¹² The Prosecution additionally submits that the Accused is an increased flight risk given the Tribunal's reliance on the enforcement capabilities of States, taking into account that its mandate is near completion.¹³ Finally, the Prosecution submits that if the Chamber were to grant the provisional release of the Accused, it should do so for a renewable period of three months.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. The Chamber recalls its previous decisions granting provisional release to the Accused, whereby it has been satisfied that the Accused would return for trial and would not pose a danger to any victim, witness or other person.¹⁶ No additional information has been provided to the Chamber indicating a change of circumstances in this regard. The Chamber further notes that during previous periods of provisional release, the Accused has adhered to the conditions set out in the operative decisions.

7. The Chamber considers that the Prosecution has failed to substantiate its claim that the Accused is an increased flight risk as a result of the late stage of the proceedings. Affording due consideration to the Serbian Guarantees, the Chamber is satisfied that if granted provisional release, the Accused will appear for trial and will not pose a danger to any victim, witness or other person.

8. As to the duration of the provisional release, the Chamber considers that the presence of the Accused is not required at the Tribunal until the date of entry of judgement. The Chamber considers

¹¹ Request, para. 8.

¹² Response, paras 5-7.

¹³ Response, para. 7.

¹⁴ Response, para. 8.

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

¹⁶ See Decision on the Simatović Request for Provisional Release, 13 December 2011, para. 9 and the decisions cited therein.

that given the anticipated date of entry of the judgement, within the not too distant future, provisional release until then is appropriate.

V. DISPOSITION

9. For the foregoing reasons, pursuant to Rule 65 (B) of the Rules, the Chamber

1. **GRANTS** the Request in part and **ORDERS**:

- a. that the Accused be transported by the Dutch authorities to Schiphol airport in the Netherlands on the first practicable day after 14 February 2013;
- 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 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 a date to be set by the Chamber as soon as it is able to project with clarity the date for the entry of the final judgement; and
- x. to comply strictly with any further order of the Chamber varying the terms of or terminating provisional release;

2. **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;

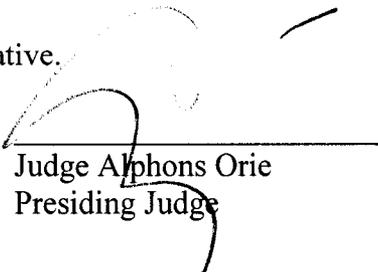
3. **INSTRUCTS** the Registrar to:

- 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

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; 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 twelfth day of February 2013
At The Hague
The Netherlands

[Seal of the Tribunal]