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D 18700 - D 18693
15 October 2009

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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: 15 October 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 15 October 2009

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ DEFENCE MOTION
REQUESTING PROVISIONAL RELEASE**

Office of the Prosecutor

Mr Dermot Groome
Ms Doris Brehmeier-Metz

Counsel for Jovica Stanišić

Mr Geert-Jan Alexander Knoop
Mr Wayne Jordash

Counsel for Franko Simatović

Mr Mihajlo Bakrač
Mr Vladimir Petrović

I. PROCEDURAL HISTORY

1. On 14 September 2009, the Simatović Defence filed a motion seeking that the present proceedings be adjourned to allow the new Defence team to prepare its case, following of the death of former lead-counsel for Franko Simatović (“Accused”).¹ On the same day, the Simatović Defence filed a motion seeking provisional release of the Accused.²
2. On 17 September 2009, the Tribunal’s host state filed a letter stating its position on the relief sought in the Motion.³ On 18 September 2009, the Prosecution filed its response to the Motion.⁴ On 6 October 2009, the Simatović Defence informed the Chamber that it had requested the relevant guarantees from the Republic of Serbia for the provisional release sought in the Motion.⁵ On 12 October 2009, the Simatović Defence filed an addendum to the Motion including the guarantees given by the government of the Republic of Serbia.⁶
3. On 15 October 2009, the Trial Chamber decided that proceedings in the present case shall not to recommence before 30 November 2009.⁷

II. SUBMISSIONS

1. The Simatović Defence

4. In its Motion, the Simatović Defence requests that the Accused be granted temporary provisional release between “the day of the eventual adjournment and ending the date the Trial Chamber deems fit prior to recommencement of trial proceedings”.⁸
5. The Simatović Defence argues that the Accused poses no threat to any victim, witness, or other person.⁹ 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

¹ Defence Motion Requesting Adjournment of Trial Proceedings, 14 September 2009.

² Defence Motion Requesting Provisional Release, 14 September 2009 (“Motion”).

³ Letter of the Ministry of Foreign Affairs of the Kingdom of the Netherlands on Provisional Release of Mr. Franko Simatović, dated 17 September 2009.

⁴ Prosecution Response to Franko Simatović’s Motion Requesting Provisional, 18 September 2009 (“Response”).

⁵ Defence Notice, 6 October 2009.

⁶ Addendum to the Defence Motion Requesting Provisional Release, 12 October 2009 (“Addendum”).

⁷ Decision on Motion for Adjournment of Proceedings by the Simatović Defence, 15 October 2009 (“Adjournment Decision”).

⁸ Motion, para. 15; see also *Id.*, para. 4.

⁹ Motion, para. 9.

although he was already familiar with their names and whereabouts due to the Prosecution's prior disclosures.¹⁰

6. Similarly, the Simatović Defence argues that the Accused poses no risk of flight.¹¹ It 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

7. Finally, the Simatović Defence submits that granting the Motion would enable the expeditious preparation of the Defence case as the Accused would have "constant contact with his counsel, unimpeded by UNDU time restrictions".¹⁴

2. The Prosecution

8. Although the Prosecution acknowledges that the Accused did return to the United Nations Detention Unit ("UNDU") after having been provisionally released on previous occasions without incident, it opposes the Motion arguing that the circumstances of the case changed materially since the granting of the last provisional release and that the Chamber should therefore use its discretion to deny the relief sought by the Accused despite having previously granted provisional release.¹⁵

9. At the same time, however, the Prosecution recognises that the appointment of new Defence counsel and the need for preparation, including the Accused's active role in this process, may present an argument in favour of granting provisional release since both new lead and co-counsel reside in Belgrade.¹⁶ Therefore, 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 releases be imposed again.¹⁷

III. APPLICABLE LAW

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

¹⁰ Ibid.

¹¹ Motion, paras 8, 10.

¹² Ibid.

¹³ See Motion, para. 9; Addendum, Annex, containing the actual text of such guarantees.

¹⁴ Motion, paras 11-13.

¹⁵ In relation to this issue, the Prosecution incorporates its arguments submitted in Prosecution Response to Franko Simatović's Motion for Provisional Release During the Upcoming Court Recess, 29 June 2009, paras 6-10, Response para. 6.

¹⁶ Response, para. 7.

¹⁷ Response, paras 9, 11.

(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 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.

11. 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.¹⁸

12. According to the Appeals Chamber, when considering a provisional release motion at the post-Rule 98 *bis* stage of the proceedings, even when satisfied that sufficient guarantees to offset the risk of flight, a Trial Chamber should not exercise its discretion in favour of a grant of provisional release unless compelling humanitarian grounds were present which cause to tip the balance in favour of allowing provisional release.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 Finally, the Accused has demonstrated his willingness to cooperate with the Prosecution by giving several

¹⁸ *Prosecutor v. Popović et al.*, 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.*, Decision on Vujadin Popović's Interlocutory Appeal Against the Decision on Popović's Motion for Provisional Release, 1 July 2008, para. 5.

¹⁹ *Prosecutor v. Prlić et al.*, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Petkovic dated 31 March 2008", 21 April 2008, para. 15; *Prosecutor v. Prlić et al.*, Decision on "Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Stojić dated 8 April 2008", 29 April 2008, paras 14-15; *Prosecutor v. Popović et al.*, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for Custodial Visit and Decision on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008, para. 24. See *Prosecutor v. Gotovina et al.*, Decision on Ivan Čermak's Appeal Against Decision on his Motion for Provisional Release, 3 August 2009, para. 6.

²⁰ See 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 26 May 2008 Decision; 10 July 2009 Decision, para. 10.

interviews.²² Furthermore, 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. However, the Chamber 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.

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 there is no requirement set out in the Tribunal's case law for compelling humanitarian reasons at an early stage of the proceedings, as is the case here. The Chamber has given due consideration to its decision to adjourn the trial proceedings until 30 November 2009 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 be prepared expeditiously. The Chamber is therefore satisfied that a temporary provisional release, under the condition 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:

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

²³ Addendum, Annex.

- a) As soon as practicable, on or after 19 October 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 25 November 2009, and the Dutch authorities shall then transport the Accused back to the 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 25 November 2009;

(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

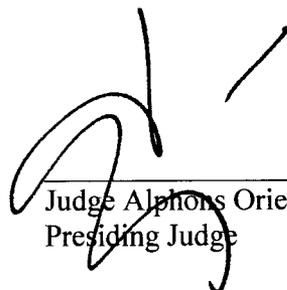
(3) **INSTRUCTS** the Registrar of the Tribunal to:

- 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 fifteenth day of October 2009
At The Hague
The Netherlands

[Seal of the Tribunal]