

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-15-96-T

Date: 19 July 2017

Original: English

IN THE TRIAL CHAMBER

Before: Judge Burton Hall, Presiding
Judge Joseph E. Chiondo Masanche
Judge Seon Ki Park

Registrar: Mr. Olufemi Elias

Decision of: 19 July 2017

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

CONFIDENTIAL

**DECISION ON SIMATOVIĆ'S MOTION REQUESTING
PROVISIONAL RELEASE DURING THE COURT RECESS**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Douglas Stringer

Counsel for the Defence:

Mr. Wayne Jordash and Mr. Iain Edwards for Mr. Jovica Stanišić
Mr. Mihajlo Bakrač and Mr. Vladimir Petrović for Mr. Franko Simatović

Government of the Republic of Serbia

Government of the Kingdom of the Netherlands

1. The Trial Chamber of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively)¹ is seized of “Simatović Defence Motion Requesting Provisional Release During the Court Recess”, filed on 27 June 2017 (“Motion”). The Prosecution filed a response on 7 July 2017,² to which Franko Simatović replied on 12 July 2017.³ The Kingdom of the Netherlands, in its capacity as the Mechanism’s host State, filed a submission on 6 July 2017.⁴

I. BACKGROUND

2. On 9 December 2015, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) granted, in part, the ICTY Prosecution’s appeal, reversed Simatović’s acquittal by the ICTY Trial Chamber, and ordered that he be retried on all counts of the indictment.⁵ On the same day, the ICTY Appeals Chamber ordered the arrest and detention on remand of Simatović and, on 15 December 2015, he was transferred to the United Nations Detention Unit (“UNDU”) in The Hague.⁶ On 22 December 2015, following Simatović’s initial appearance before the Mechanism’s Pre-Trial Judge on 18 December 2015,⁷ the Trial Chamber granted Simatović’s request to be provisionally released, subject to certain conditions, until his presence is required for trial proceedings.⁸ Simatović returned to the UNDU on 30 May 2017, further to the Trial Chamber’s order terminating his provisional release, and the trial commenced on 13 June 2017.⁹ On 13 July 2017, the Trial Chamber informed the parties that, following the summer judicial recess, the trial will resume in the week of Monday, 21 August 2017.¹⁰

¹ Order Replacing a Judge in a Case Before a Trial Chamber, 21 February 2017, p. 1.

² Prosecution Consolidated Response to Simatović Defence Motion Requesting Provisional Release During the Court Recess and Stanišić Defence Motion for Provisional Release, 7 July 2017 (confidential with confidential and *ex parte* Annex) (“Response”).

³ Simatović Defence Reply to Prosecution Consolidated Response to Simatović Defence Motion Requesting Provisional Release During the Court Recess and Stanišić Defence Motion for Provisional Release, 12 July 2017 (confidential and *ex parte* with confidential and *ex parte* Annex A) (“Reply”).

⁴ Correspondence from the Protocol Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, 6 July 2017 (indicating its willingness to facilitate Simatović’s provisional release, if ordered).

⁵ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Judgement, filed in writing on 9 December 2015 and pronounced in public on 15 December 2015 (“Appeal Judgement”), paras. 129, 131. *See also Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, T. 15 December 2015, pp. 103-116; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Judgement, 30 May 2013 (public with confidential Appendix C), para. 2363; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Prosecution Notice of Filing of Third Amended Indictment, 10 July 2008.

⁶ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Warrant of Arrest and Order for Surrender of Franko Simatović, 9 December 2015, p. 2; Appeal Judgement, para. 131; T. 18 December 2015 p. 2.

⁷ Initial Appearance, T. 18 December 2015.

⁸ Decision on Simatović’s Urgent Motion for Provisional Release, 22 December 2015 (“Decision of 22 December 2015”), paras. 10, 11.

⁹ *See* Order Terminating the Provisional Release of Franko Simatović, 19 May 2017, p. 1; Procedural Matters, T. 13 June 2017 p. 2. *See also* Scheduling Order, 24 May 2017.

¹⁰ Procedural Matters, T. 13 July 2017 p. 42.

II. SUBMISSIONS

3. Simatović requests provisional release for the period of the summer judicial recess, starting from 21 July 2017.¹¹ He submits that, during previous periods of provisional release, he always complied with the imposed conditions and did not pose any threat to any victim, witness, or other person.¹² Simatović further emphasizes that he voluntarily surrendered to the ICTY and asserts that granting him provisional release would facilitate his interaction with counsel and the effective preparation of his defence.¹³

4. The Prosecution responds that Simatović's request should be denied.¹⁴ It argues that, although it is not a mandatory requirement, Simatović has not advanced any humanitarian grounds for his provisional release and that previous findings of the Trial Chamber regarding Simatović's suitability for provisional release pertain to the pre-trial phase of the case.¹⁵ In the alternative, if Simatović's request is granted, the Prosecution requests that the Trial Chamber impose certain conditions, including that Simatović remain under house arrest during the period of his provisional release.¹⁶

5. Simatović replies that his eligibility to provisional release does not depend upon the phase of the trial or upon the existence of humanitarian grounds.¹⁷

III. DISCUSSION

6. The Trial Chamber recalls the applicable law governing provisional release pursuant to Rule 68(B) of the Rules, as set out in its previous decisions.¹⁸

7. The Trial Chamber notes that Simatović was provisionally released on a number of occasions during the original trial,¹⁹ including during judicial recess,²⁰ and by the Trial Chamber

¹¹ Motion, paras. 1, 2, 13.

¹² Motion, paras. 6, 9, 10. *See also* Reply, paras. 5, 8-10.

¹³ Motion, paras. 7, 11, 12. Simatović also notes that the ICTY granted provisional release to accused during breaks in trial proceedings. *See* Motion, para. 5.

¹⁴ Response, paras. 1, 3, 12.

¹⁵ Response, paras. 2, 3. The Prosecution notes that, according to the ICTY Appeals Chamber's jurisprudence, there is no "recess leave" and that the existence of humanitarian reasons warranting release can be a salient and relevant factor in assessing whether to exercise discretion to grant provisional release. Response, para. 2.

¹⁶ Response, paras. 1, 4, 9, 12. The Prosecution also states that the Trial Chamber should require an undertaking from the Republic of Serbia that it will comply with the Trial Chamber's orders in this matter; however, this issue is moot as the Government of the Republic of Serbia has, in the meantime, provided guarantees. *See* Response, para. 11; Reply, para. 3, Annex A.

¹⁷ Reply, paras. 6, 7, 12. Nonetheless, Simatović refers to a number of circumstances in his case which he considers to amount to humanitarian grounds. *See* Reply, para. 12.

¹⁸ *See* Decision on Stanišić's Motion for Extension of Provisional Release, 19 May 2017 ("Decision of 19 May 2017"), paras. 12, 13; Decision of 22 December 2015, para. 6. *See also* Decision on Stanišić's Urgent Motion for Provisional Release, 22 December 2015, para. 8.

during the pre-trial stage of this case.²¹ On each occasion, Simatović surrendered to the ICTY or to the Mechanism when ordered to do so and adhered to the conditions set out in the operative decisions.²² The Trial Chamber further notes the lack of any indication that, if granted provisional release, Simatović would interfere with the administration of justice. As noted above, during previous periods of provisional release, Simatović fully complied with the imposed conditions.

8. While the stage of the proceedings may be a relevant factor in deciding whether to order the provisional release of an accused,²³ there is nothing to suggest that, following the commencement of the trial, there is an increased risk that Simatović may flee or pose a danger to any victim, witness, or other person. This conclusion is further supported by the fact that Simatović is already familiar with the Prosecution's case as it was presented in the original trial, and was provisionally released during the entire pre-trial phase of the case. In addition, the existence of humanitarian grounds, while relevant, is not a mandatory requirement for provisional release at trial, and, thus, the Trial Chamber need not address the Prosecution's contention that Simatović has not demonstrated their existence.

¹⁹ See, e.g., *Prosecutor v. Franko Simatović*, Case No. IT-03-69-PT, Decision on Provisional Release, 28 July 2004, para. 34; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Provisional Release, 26 May 2008, para. 68; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, para. 19; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Urgent Simatović Motion for Provisional Release, 11 March 2011, para. 21; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Request for Provisional Release, 13 December 2011, para. 16; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Request for Provisional Release, 4 April 2012, p. 4; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Request for Provisional Release, 16 July 2012, p. 3; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Request for Provisional Release After Closing Arguments Until Entry of Trial Judgement, 12 February 2013 ("ICTY Decision of 12 February 2013"), para. 9.

²⁰ See, e.g., *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Defence Motion for Provisional Release During the Upcoming Court Recess, 10 July 2009, para. 16; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 15 December 2009, para. 19; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Defence Motion Requesting Provisional Release During the Summer Court Recess, 22 July 2010, para. 9; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Simatović Defence Motion Requesting Provisional Release During the Winter Court Recess, 10 December 2010, p. 4.

²¹ See Decision of 22 December 2015, para. 11. See also *supra* para. 2.

²² See ICTY Decision of 12 February 2013, para. 6; Procedural Matters, T. 13 June 2017 p. 2. The Trial Chamber further notes that, according to the official minutes of a hearing held before the High Court of Belgrade on 14 December 2015, Simatović expressed his intention to surrender voluntarily to the ICTY, having been informed that his presence was required at the public pronouncement of the Appeal Judgement. See Decision of 22 December 2015, para. 7.

²³ See, e.g., *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, para. 15 ("The Appeals Chamber finds it reasonable for the Trial Chamber to have concluded that the Defendants' incentives to flee increased over the course of a trial as they heard first-hand the evidence against them. This is not to say this is the only reasonable conclusion. In some cases, the incentives to flee might decrease over time; in other cases, these incentives might stay the same; and in still other cases these incentives might not shift enough to affect materially the approach taken in earlier provisional release decisions regarding the same accused.") (references omitted); Rule 68(B) of the Rules ("Release may be ordered at any stage of the trial proceedings *prior to the rendering of the final judgement* by the Trial Chamber[...]") (emphasis added).

9. Having taken all the above factors into consideration, including the guarantees provided by the Government of the Republic of Serbia,²⁴ the Trial Chamber is satisfied that, if provisionally released under certain conditions, Simatović will appear for trial and will not pose a danger to any victim, witness, or other person.

10. Turning to the conditions of release, the Trial Chamber recalls that when granting Simatović provisional release during the pre-trial phase of this case, it found it sufficient to order Simatović to remain within the confines of the city of Belgrade.²⁵ Considering Simatović's compliance with the conditions that were previously imposed and the lack of any indication that these conditions were insufficient to ensure the proper administration of justice, the Trial Chamber is not convinced that ordering Simatović to remain under house arrest during his provisional release is warranted.

11. In view of the above considerations, the Trial Chamber is satisfied that the requirements of Rule 68(B) of the Rules are met and that Simatović's provisional release, under the conditions set out below, is appropriate for the period until the trial hearings resume following the summer judicial recess. The Trial Chamber will remain alert and take necessary action in response to any information that may constitute a change of circumstances calling into question whether the pre-conditions set forth in Rule 68(B) of the Rules remain fulfilled.²⁶

IV. DISPOSITION

12. For the foregoing reasons, pursuant to Rule 68(B) of the Rules, the Trial Chamber hereby:

GRANTS the Motion; and

ORDERS that:

- i. Simatović shall be transported to a Dutch airport in The Netherlands by the Dutch authorities on Friday, 21 July 2017, or the first practicable day thereafter;
- ii. at the Dutch airport, Simatović shall be provisionally released into the custody of authorized official(s) of the Ministry of Interior of the Republic of Serbia and shall be under the supervision and surveillance of such official(s) who shall accompany him for the remainder of his travel to the Republic of Serbia and to his place of residence;

²⁴ Reply, Annex A.

²⁵ See Decision of 22 December 2015, para. 11(vi)(a).

²⁶ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR65.1, Decision on Prosecution Appeal Against the Decision on the Prosecution Motion to Revoke the Provisional Release of the Accused, 30 March 2015, paras. 16, 17.

- iii. the period of the provisional release shall commence when Simatović is delivered into the custody of the authorized official(s) of the Ministry of Interior of the Republic of Serbia at a Dutch airport and shall terminate upon his return to the Dutch authorities;
- iv. on his return flight, Simatović shall be accompanied by the authorized official(s) of the Ministry of Interior of the Republic of Serbia who shall deliver him into the custody of the Dutch authorities at a Dutch airport on or before Wednesday, 16 August 2017, and the Dutch authorities shall then transport Simatović back to the UNDU in The Hague;
- v. before leaving the UNDU, Simatović shall provide the address at which he will be staying in Belgrade to the Serbian Ministry of Justice and to the Registrar of the Mechanism; and
- vi. during the period of his provisional release, Simatović shall abide by, and the authorities of the Government of Serbia, including the local police, shall ensure compliance with the following conditions:
 - a. Simatović shall remain within the confines of the city of Belgrade;
 - b. Simatović shall surrender his passport and any other valid travel document to the Serbian Ministry of Justice;
 - c. Simatović shall report every day to a local police station in Belgrade to be designated by the Serbian Ministry of Justice;
 - d. Simatović shall consent to having the Serbian Ministry of Justice verify his presence with the local police and to the making of occasional unannounced visits upon him by the Serbian Ministry of Justice or by a person designated by the Registrar;
 - e. Simatović shall have no contact whatsoever or in any way interfere with victims or (potential) witnesses, or otherwise interfere in any way with the proceedings before the Mechanism, or the administration of justice;
 - f. Simatović shall not discuss his case with anyone, including the media, other than his Counsel;
 - g. Simatović shall refrain from seeking to directly access documents or archives, or seeking to destroy any evidence;

- h. Simatović shall strictly comply with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under the present Decision and with the guarantees they have provided before the Mechanism;
- i. Simatović shall return to the Mechanism on or before Wednesday, 16 August 2017; and
- j. Simatović shall strictly comply with any further order of the Trial Chamber varying the terms of or terminating his provisional release;

REQUIRES the Government of the Republic of Serbia to assume responsibility for:

- i. designating the authorized official(s) of the Ministry of Interior of the Republic of Serbia into whose custody Simatović shall be provisionally released and who shall accompany him from a Dutch airport to the Republic of Serbia and to his place of residence, as well as upon his return;
- ii. notifying, as soon as practicable, the Trial Chamber and the Registrar of the name(s) of these designated official(s);
- iii. designating a local police station in Belgrade to which Simatović is to report each day during the period of his provisional release, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the name and location of that police station;
- iv. ensuring compliance with the conditions imposed on Simatović under this Decision;
- v. ensuring Simatović's personal security and safety while on provisional release in the Republic of Serbia;
- vi. covering all expenses in connection with Simatović's provisional release including, but not limited to, the transport of Simatović from a Dutch airport to Belgrade and back into the custody of the Dutch authorities;
- vii. facilitating, at the request of the Trial Chamber or of the parties, all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication;
- viii. not issuing any new passports or other documents enabling Simatović to travel;
- ix. submitting a weekly written report to the Trial Chamber on Simatović's compliance with this Decision;

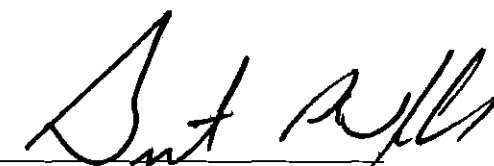
- x. arresting and detaining Simatović immediately should he breach any of the conditions of this Decision; and
- xi. reporting immediately to the Trial Chamber any breach of the conditions set out above;

INSTRUCTS the Registrar to:

- i. consult with the Dutch authorities and the authorities of the Republic of Serbia as to the practical arrangements for Simatović's provisional release;
- ii. request the authorities of the State(s) through whose territory Simatović may travel to:
 - a. hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
 - b. arrest and detain Simatović pending his return to the UNDU, should he attempt to escape during travel;
- iii. continue to detain Simatović at the UNDU in The Hague until such time as the Mechanism has been notified of the name(s) of the designated official(s) of the Ministry of Interior of the Republic of Serbia into whose custody Simatović will be provisionally released as set out above.

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

Done this 19th day of July 2017,
At The Hague,
The Netherlands.



Judge Burton Hall, Presiding

[Seal of the Mechanism]



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ Greffe du MPTI	<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye
From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur
Case Name/ Affaire :	Prosecutor v. Jovica Stanišić & Franko Simatović	Case Number/ Affaire n° :	MICT-15-96-T
Date Created/ Daté du :	19 July 2017	Date transmitted/ Transmis le :	19 July 2017
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
		<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Title of Document/ Titre du document :	DECISION ON SIMATOVIĆ'S MOTION REQUESTING PROVISIONAL RELEASE DURING THE COURT RECESS		
Classification Level/ Catégories de classification :	<input type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	
	<input checked="" type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu	
	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu	
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu	
		<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Indictment/ Acte d'accusation
	<input checked="" type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers	<input type="checkbox"/> Warrant/ Mandat
	<input type="checkbox"/> Order/ Ordonnance	<input type="checkbox"/> Book of Authorities/ Recueil de sources	<input type="checkbox"/> Notice of Appeal/ Acte d'appel
	<input type="checkbox"/> Judgement/ Jugement/Arrêt	<input type="checkbox"/> Affidavit/ Déclaration sous serment	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word est jointe)					
<input type="checkbox"/> English/ Anglais	<input checked="" type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input checked="" type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :					
Original/ Original en	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :					
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :	

Send completed transmission sheet to/ Veuillez soumettre cette fiche dûment remplie à :

JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014