



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-96-T

Date: 31 December 2018

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: 31 December 2018

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON SIMATOVIĆ'S MOTION FOR EXTENSION OF
PROVISIONAL RELEASE**

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

THE TRIAL CHAMBER OF the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively);¹

RECALLING that Franko Simatović was granted provisional release until 10 January 2019;²

BEING SEISED OF a motion filed on 5 December 2018, in which Simatović requests an extension of his provisional release until the commencement, if at all, of the Defence case;³

NOTING Simatović’s submissions that the guarantees provided by the Government of the Republic of Serbia will continue to apply during the extended period of his provisional release,⁴ that he fully complied with the conditions imposed during previous periods of provisional release,⁵ and that, extending his provisional release, would: (i) allow him to continue certain medical treatment and to spend time with his family, which would be beneficial for his physical and mental well-being; and (ii) facilitate communication with his counsel and enhance the preparation of his Defence case;⁶

NOTING that the Prosecution opposes the Motion,⁷ arguing that: (i) granting provisional release during the course of ongoing proceedings should be the exception and that Simatović should return to the United Nations Detention Unit by 24 January 2019, which is prior to the scheduled testimony of the Prosecution’s last witness;⁸ and (ii) there is no information suggesting that Simatović cannot receive adequate medical treatment in the Netherlands;⁹

NOTING the reply filed by Simatović on 25 December 2018;¹⁰

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

² Decision on Simatović’s Motion Requesting Provisional Release, 12 September 2018 (confidential; made public on 18 September 2018) (“Decision of 12 September 2018”), pp. 4, 5. *See Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-AR68.1, Decision on Urgent Prosecution Appeal of the Decision on Simatović’s Motion Requesting Provisional Release, 8 November 2018 (confidential), para. 12.

³ Simatović Defence Motion Requesting an Extension of Provisional Release, 5 December 2018 (confidential and *ex parte*) (“Motion”), paras. 3, 4, 18.

⁴ Motion, paras. 6, 7, referring to Supplement to Simatović Defence Motion Requesting Provisional Release, 7 September 2018 (confidential and *ex parte*), Annex B, Registry Pagination 22223, 22222.

⁵ Motion, para. 9.

⁶ Motion, paras. 10-13, 16, 17.

⁷ Prosecution Response to Simatović Defence Motion Requesting an Extension of Provisional Release and Request for Timeline, 18 December 2018 (confidential and *ex parte*) (“Response”), paras. 1, 6. The Prosecution further requests that the Trial Chamber issue an indicative timeline in respect of any proceedings pursuant to Rule 121 of the Rules of Procedure and Evidence (“Rules”), and other filings related to the Defence case. *See* Response, paras. 1, 5, 6. *See also* Response, para. 3.

⁸ Response, paras. 1, 2.

⁹ Response, para. 4.

¹⁰ Reply to Prosecution’s Response to Simatović Defence Motion Requesting an Extension of Provisional Release, 25 December 2018 (confidential and *ex parte*) (“Reply”). With respect to the Prosecution’s request for an indicative timeline, Simatović contends that such a request is “inappropriate and premature” prior to the conclusion of the Prosecution case, and that only after reviewing the totality of the Prosecution case will the Defence be in a position to indicate whether it intends to pursue proceedings under Rule 121 of the Rules. *See* Reply, paras. 2-4.

RECALLING the applicable law governing provisional release pursuant to Rule 68(B) of the Rules, as set out in previous decisions;¹¹

NOTING that Simatović was provisionally released by the Trial Chamber during the pre-trial stage and following the commencement of the trial, including during evidentiary hearings, and that, on each occasion, he surrendered when ordered to do so and adhered to the conditions set out in the operative decisions;¹²

NOTING that the reports provided by the Government of the Republic of Serbia confirm Simatović's compliance with the provisional release conditions and that there is no indication that he has ever engaged in any practice undermining the administration of justice;¹³

CONSIDERING that, in these circumstances, there is no reason to believe that Simatović would cease to abide by the conditions set out in the Decision of 12 September 2018 or pose a danger to any victim, witness, or other person, should there be an extension of his provisional release;

CONSIDERING that the Trial Chamber remains satisfied that Simatović has voluntarily waived his right to be present for the period of his provisional release, and that he will continue to follow the proceedings and instruct his counsel remotely;¹⁴

¹¹ See, e.g., Decision on Stanišić's Motion for Provisional Release, 19 July 2017 (confidential; made public on 24 July 2017), paras. 11, 12; Decision on Stanišić's Motion for Extension of Provisional Release, 19 May 2017, paras. 12, 13 (noting that the legal principles applicable to a motion for provisional release apply *mutatis mutandis* to a motion for extension of provisional release).

¹² See Decision of 12 September 2018, p. 2; Decision on Simatović's Motion for Provisional Release During Summer Judicial Recess, 10 July 2018 (confidential; public redacted version filed on 17 July 2018) ("Decision of 10 July 2018"), pp. 1, 2; Decision on Simatović's Motion Requesting Provisional Release, 19 March 2018 (confidential; made public on 26 March 2018) ("Decision of 19 March 2018"), pp. 2, 3; Decision on Simatović's Motion Requesting Provisional Release during the Court Recess, 4 December 2017 (confidential; made public on 12 December 2017) ("Decision of 4 December 2017"), pp. 1, 2; Decision on Simatović's Urgent Defence Motion Requesting Provisional Release, 16 October 2017 (confidential; made public on 23 October 2017) ("Decision of 16 October 2017"), paras. 5, 7, 8; Decision on Simatović's Motion Requesting Provisional Release During the Court Recess, 19 July 2017 (confidential; made public on 24 July 2017) ("Decision of 19 July 2017"), paras. 7, 11, 12; Decision on Simatović's Urgent Motion for Provisional Release, 22 December 2015 ("Decision of 22 December 2015"), paras. 7, 10, 11.

¹³ See confidential Communications from the Ministry of Justice of the Republic of Serbia filed on 26 September, 4 October, 9 October, 16 October, 24 October, 31 October, 6 November, 13 November, 19 November, 29 November, 3 December, 12 December, 19 December, and 27 December 2018. See also Decision of 12 September 2018, p. 2; Decision of 10 July 2018, p. 1; Decision of 19 March 2018, p. 2; Decision of 4 December 2017, p. 1; Decision of 16 October 2017, para. 5; Decision of 19 July 2017, para. 7; Decision of 22 December 2015, para. 8. The Trial Chamber is satisfied that the guarantees previously provided by the Government of the Republic of Serbia remain in force. See *supra* n. 4.

¹⁴ See Motion, paras. 14, 15. The Trial Chamber notes that Simatović "voluntarily and unequivocally, waives his right to be present in the courtroom from 10 January 2019 until the commencement, if at all, of the Defence case" (see Motion, para. 14), and finds that the waiver provided by him in his previous request for provisional release remains in force. See Simatović Defence Motion Requesting Provisional Release, 28 August 2018 (confidential and *ex parte* with confidential and *ex parte* Annex), Annex A.

CONSIDERING further that the existence of humanitarian grounds, while relevant, is not a mandatory requirement for provisional release at trial and that, therefore, the Trial Chamber need not address the Prosecution's submission in this regard;¹⁵

NOTING that the testimony of the last Prosecution witness¹⁶ will take place from 28 January 2019 until 1 February 2019;

CONSIDERING that the date for the start of the Defence case has yet to be determined¹⁷ and that the proper administration of justice requires a fixed date for any extension of Simatović's provisional release;

FINDING, therefore, that a further extension of Simatović's provisional release until Thursday, 2 May 2019 is appropriate;

NOTING that 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;

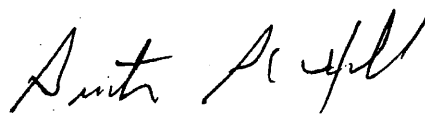
PURSUANT to Rules 68(B) and 98 of the Rules,

HEREBY GRANTS the Motion, in part; and

AUTHORIZES an extension of Simatović's provisional release until Thursday, 2 May 2019, under the conditions set forth in the Decision of 12 September 2018.

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

Done this 31st day of December 2018,
At The Hague,
The Netherlands



Judge Burton Hall, Presiding

[Seal of the Mechanism]

¹⁵ See Decision of 12 September 2018, p. 3.

¹⁶ See Internal Communication, 20 September 2018.

¹⁷ In relation to the Prosecution's separate request for an indicative timeline (*see supra* n. 7), the Trial Chamber envisions issuing such a timeline after appropriate consultations with the parties in January 2019.



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