



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-01-42-PT
Date: 30 November 2001
Original: English

BEFORE THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mohamed Amin El Abbassi Elmahdi
Judge Alphons Martinus Maria Orié

Registrar: Mr. Hans Holthuis

Order of: 30 November 2001

PROSECUTOR

v.

**PAVLE STRUGAR
MIODRAG JOKIĆ
& Others**

**ORDER ON THE PROVISIONAL RELEASE
OF THE ACCUSED PAVLE STRUGAR**

The Office of the Prosecutor:

Ms. Joanna Korner

Counsel for the Accused:

**Mr. Goran Rodić
Mr. Vladimir Petrović**

TRIAL CHAMBER I (“the Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1992 (“the Tribunal”):

BEING SEIZED of the “Defence Motion For Provisional Release” (“the Motion”), filed on 22 November 2001, requesting provisional release from detention due to the serious medical condition of Pavle Strugar (“the accused”);

NOTING that the Defence filed, on 26 November 2001, a “Second Confidential Annex to Defence Motion For Provisional Release” (“the Confidential Annex”);

CONSIDERING that Rule 65 (B) of the Rules of Procedure and Evidence of the Tribunal (“the Rules”) provides that “Release may be ordered by a Trial Chamber only after hearing the host country 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”;

NOTING that Counsel for the accused submitted two medical reports, issued by different physicians of the Clinical Centre of Montenegro, Podgorica, on 18 and 19 October 2001;

NOTING that written correspondence between the Chief of the UN Detention Unit and the Registrar, concerning the state of health of the accused, was submitted to the Chamber by the Registry;

NOTING that on 23 November 2001, the accused was examined at the Hague by both a physician and a psychiatrist and that reports of both examinations were received by the Chamber on 28 November 2001;

CONSIDERING that all documents and information submitted to the Chamber unanimously corroborate the Defence’ argument that the medical condition of the accused is serious and requires further specialist treatment in form of hospitalisation and surgery;

CONSIDERING that the accused is of the age of 68 years;

CONSIDERING that the accused publicly expressed his willingness to surrender voluntarily and swiftly to the Tribunal on 4 October 2001, only one day after being put on notice of the pending indictment against him;

NOTING that the accused was hospitalised on 5 October 2001, and that he surrendered to the Tribunal, on 21 October 2001, only two days after his release from hospital, notwithstanding medical problems he might still have faced;

NOTING FURTHER that the accused has fully and credibly recognised the authority of the Tribunal to try the charges against him and that he has publicly expressed his wish to defend himself during the trial to prove his innocence;

NOTING that Exhibit 9 of the Confidential Annex is a document, dated 23 November 2001 and signed by the President of the Government of the Republic of Montenegro, containing a set of sophisticated co-operation guarantees (“the Guarantees”) offered by this Government to the Tribunal should the accused be granted provisional release;

NOTING that the Government of the Republic of Montenegro, guarantees, *inter alia*, “that the competent bodies of the Republic of Montenegro will act in accordance with all the orders of the Trial Chamber in this matter”;

NOTING that the Confidential Annex further contains a letter relating to the Guarantees (Exhibit 12), which affirms that the State of Montenegro will entirely fulfil his undertaken obligations as to the provisional release of the accused;

CONSIDERING that this written assurance of “full and concrete support” and co-operation was signed personally by Mr. Milenko Dukanović, President of the Republic of Montenegro, on 24 November 2001;

NOTING that the authorities of the Kingdom of the Netherlands have been duly informed and have stated that they have no objection to the Motion being granted;

NOTING the “Prosecution’ Response to Motion For Provisional Release Filed by The Accused General Pavle Strugar” (“the Response”), filed on 28 November 2001, whereby the Prosecution did not oppose the Motion but took the view that the accused’s voluntary surrender to the Tribunal, his age, and his medical condition militate in favour of his release;

CONSIDERING that the Prosecution, asked, however, for an oral hearing to be held for the purpose of (i) hearing from at least one of the named guarantors and (ii) receiving a personal

guarantee from the accused that he will co-operate with the Prosecution, will appear for trial and will not attempt to contact witnesses for the Prosecution;

NOTING that written personal guarantees (“the personal guarantees”), signed by the accused, that he will co-operate with the Tribunal by returning to the Tribunal “at such time and on such date as the Trial Chamber may order” and that he will obey “every order of the Trial Chamber” were submitted to the Chamber with the Confidential Annex (Exhibit 13);

NOTING the Defence reply to the Response filed on 29 November 2001 (“the Reply”);

NOTING, finally, that the authorities of the Republic of Montenegro have designated an official to accompany the accused, if released, back to the territory of that Republic;

CONSIDERING that it arises from the Reply that the Guarantees could be made public and, consequently, they are attached as an annex to this Order;

CONSIDERING that the Chamber regards the personal guarantees and the Guarantees being made public, as submitted *in writing*, to be of the same binding character as any oral statement, and, therefore, attaches the same weight to them as to any *oral guarantees* received in a hearing;

CONSIDERING that, therefore, there is no need for a hearing of the parties;

CONSIDERING that the Chamber is satisfied, in the light of the undertaking provided by the accused, that he will keep his word and re-appear for trial;

CONSIDERING FURTHER that the Chamber is satisfied that the accused, in particular due to his age, his serious medical problems and his honourable attitude expressed towards the authority of the Tribunal, is not likely to pose a danger to any victim, witness or other person;

CONSIDERING that, therefore, all requirements of Rule 65 (B) of the Rules are met;

FOR THE FOREGOING REASONS,

GRANTS THE MOTION;

ORDERS that the accused be provisionally released under the following conditions:

1. The accused shall be released as soon as practicable and taken to Schipol airport (or any other airport within the territory of the Kingdom of the Netherlands) by the Dutch authorities, who are hereby requested to transport him to the airport and provide for all necessary administrative and security measures.
2. Once at the airport, the accused shall be remitted into the custody of the official designated by the Republic of Montenegro and accompanied by that official to the place of his residence in Podgorica.
3. The period of provisional release shall commence when the accused is actually remitted to the Defence Counsels, and shall terminate at a time to be determined by the Chamber.
4. After termination of the provisional release upon an order of this Tribunal, the accused shall be accompanied by an official of the Republic of Montenegro on his return flight who shall hand the accused at a Dutch airport to the Dutch authorities, who shall then transport him to the United Nations Detention Unit in Scheveningen.
5. During the term of his provisional release, the accused shall abide by the following conditions:
 - a. The accused shall remain within the territory of the Republic of Montenegro;
 - b. The accused shall surrender his passport to the Ministry of Interior of the Republic of Montenegro;
 - c. The accused shall submit his residence address to the Registry of the Tribunal;
 - d. The accused shall co-operate in ensuring communication between the parties and secure the secrecy of such communication;
 - e. The accused shall report once a week to the Ministry of Interior of the Republic of Montenegro Security Centre Podgorica;

- f. The accused shall submit himself to occasional unannounced visits of officials of the Security Centre in Podgorica, in order to verify his presence;
- g. The accused shall inform officials of the Security Centre in Podgorica about required hospital stays and shall consent to unannounced hospital visits of these officials, in order to verify his presence;
- h. The accused shall not have any contact whatsoever nor in any way interfere with victims, witnesses of co-accused of the case, or obstruct justice in any other way;
- i. The accused shall not discuss the case with anyone, including the media, except for his Defence Counsel(s);
- j. The accused shall assume responsibility for all expenses regarding the transport from the Hague to Podgorica and back;
- k. The accused shall act strictly in accordance with this order of the Chamber and any further order of the Chamber which may alter the conditions of the provisional release;
- l. The accused shall act strictly in accordance with any order issued to him by officials of the Republic of Montenegro in furtherance of the terms of this Order;
- m. The accused shall be immediately detained should he attempt to escape from the territory of the Republic of Montenegro, or should he in any other way breach the terms and conditions of his provisional release as set out by the Chamber;
- n. The accused shall return into the custody of the Tribunal at a time and date the Chamber will determine;

INFORMS the accused that he shall, at any time, be entitled to bring matters to the attention of the Chamber and in doing so request a modification of the terms and conditions of this Order or any variations made by the Chamber *proprio motu*, while reminding the accused that until such modification, if any, is made, the conditions set out above shall apply in full;

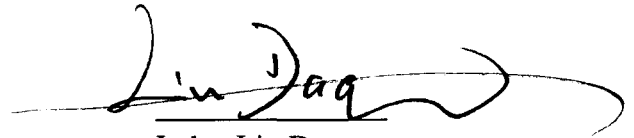
ACKNOWLEDGES the Guarantees given by the Republic of Montenegro, as annexed to this Order, including the assurance that the Ministry of Interior of the Republic of Montenegro Security Centre Podgorica will maintain a log and file a written report with the Tribunal confirming the accused's presence each week;

THANKS the respective authorities of the Kingdom of the Netherlands and of the Republic of Montenegro for their co-operation in the implementation of this Order;

REQUESTS the Registry to transmit the Order to the Government of the Republic of Montenegro.

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

Dated this thirtieth day of November 2001,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]



REPUBLIKA
CRNE GORE

Broj:02-5326

Podgorica, 23. novembra 2001. godine

Povodom molbe advokata Gorana Rodića, branioca generala Pavla Strugara pred Međunarodnim krivičnim sudom za bivšu Jugoslaviju (Internacional Criminal Tribunal for the Former Yugoslavia-ICTY) u Hagu, a u vezi sa podnesenim zahtjevom za privremeno puštanje na slobodu optuženog, Vlada Republike Crne Gore, na sjednici od 23. novembra 2001. godine, usvojila je

ZAKLJUČAK

o davanju garancije Međunarodnom krivičnom sudu za bivšu Jugoslaviju u Hagu za izvršavanje svih naloga Pretresnog vijeća, ukoliko se gospodinu Pavlu Strugaru omogući dalja odbrana sa slobode.

1. Ukoliko se generalu Pavlu Strugaru omogući dalja odbrana pred Međunarodnim krivičnim sudom za bivšu Jugoslaviju sa slobode, Vlada Republike Crne Gore garantuje:

- da će nadležni organi Republike Crne Gore postupati po svim nalogima Pretresnog vijeća u ovoj stvari;
- da će obezbijediti da general Strugar neće napustiti teritoriju Crne Gore bez saglasnosti ICTY;
- da će odmah obezbijediti privodjenje optuženog u slučaju bjekstva ili prekoračenja bilo kojeg uslova predviđenog Odlukom o privremenom puštanju na slobodu od strane ICTY;
- da će preuzeti odgovornost za ličnu sigurnost i bezbjednost optuženog dok se nalazi na privremenom puštanju na slobodu;
- da će preko svojih predstavnika preuzeti optuženog na Aerodromu Schiphol, koji će pratiti optuženog na putovanju do mjesta u kome će nadalje boraviti;
- da će obezbijediti iste (ili po prethodnom obavještenju druge) predstavnike koji će predati optuženog holandskim vlastima na Aerodromu Schiphol u vrijeme i na mjesto određeno od strane Pretresnog vijeća;
- da će preuzeti sve troškove u vezi sa transportom optuženog od Aerodroma Schiphol do Podgorice i nazad;
- da će na zahtjev Pretresnog vijeća ili neke od strana obezbijediti saradnju i komunikaciju izmedju strana i obezbijediti tajnost takve komunikacije;

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- da će svake dvije nedjelje podnositi pismeni izvještaj Pretresnom vijeću, kojim će ga obaviještavati da li se optuženi pridržava uslova sadržanih u Odluci o privremenom puštanju na slobodu;

- da će odmah obavijestiti Pretresno vijeće o kršenju bilo koje obaveze koju je na sebe preuzeo optuženi;

- da će odmah obavijestiti Sekretarijat ICTY o bilo kakvim eventualnim prijetnjama optuženom i istražnim radnjama preduzetim u vezi sa tim.

2. Vlada Republike Crne Gore upoznata je sa obavezama koje je preuzeo optuženi i učiniće sve što je neophodno preko nadležnih ministarstava kako bi se obezbijedilo:

- da optuženi ne napušta teritoriju Republike Crne Gore;

- da preda svoj pasoš Ministarstvu unutrašnjih poslova Republike Crne Gore;

- da se svaki dan javlja Ministarstvu unutrašnjih poslova Republike Crne Gore - CB Podgorica;

- da optuženi dostavi Ministarstvu unutrašnjih poslova Republike Crne Gore i Sekretarijatu ICTY adresu na kojoj će boraviti;

- da je saglasan da Ministarstvo unutrašnjih poslova Republike Crne Gore može, preko Centra bezbjednosti Podgorica i/ili lica koje odredi Sekretarijat ICTY, da vrši povremene nenajavljene posjete optuženom, kako bi bilo provjereno njegovo prisustvo;

- da neće imati nikakvog kontakta sa sa-optuženim;

- da neće diskutovati svoj slučaj ni sa kim, uključujući i medije, izuzev sa svojim braniocima;

- da će postupiti u skladu sa svim nalogima Vlade Republike Crne Gore neophodnim kako bi Vlada Republike Crne Gore izvršila obaveze koje preuzima u ovoj stvari;

- da će se vratiti u Medjunarodni tribunal u vrijeme kada to Tribunal odredi;

- da će striktno postupiti u skladu sa nalogima Pretresnog vijeća kojima se eventualno mijenjaju uslovi privremenog puštanja.

3. Za realizaciju ovog Zaključka, Vlada Republike Crne Gore staraće se preko Ministarstva unutrašnjih poslova i Ministarstva pravde.



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is a true copy of the original.
09.02.2001

GOVERNMENT OF THE REPUBLIC OF MONTENEGRO

No-02-5326

Podgorica 23 November 2001

In accordance with the application of Attorney at Law Goran Rodić, counsel of General Pavle Strugar before the International Criminal Tribunal for the Former Yugoslavia - ICTY in the Hague, with regard to the request for the provisional release of the accused, the Government of the Republic of Montenegro, at its session of the 23 November 2001, adopted the following

CONCLUSION

of guarantees given to the International Criminal Tribunal for the Former Yugoslavia in the Hague for the execution of all orders of the Trial Chamber, if Mr Pavle Strugar is enabled to continue his defense at liberty.

1. If General Pavle Strugar is enabled to continue his defense before the International Criminal Tribunal for the Former Yugoslavia at liberty, the Government of the Republic of Montenegro guarantees:
 - that the competent bodies of the Republic of Montenegro will act in accordance with all the orders of the Trial Chamber in this matter;
 - that it will ensure that General Strugar will not leave the territory of Montenegro without the consent of the ICTY;
 - that it will immediately ensure the arrest of the accused in the case of escape or violation of any condition prescribed by the Decision of provisional release by the ICTY;
 - that it will undertake the responsibility for the personal safety and security of the accused while he is in provisional release;
 - that its representatives will take over the accused at the Schiphol Airport, and accompany the accused to the place of his residence;
 - that it will secure the same (or upon previous notice other) representatives which will hand over the accused to the Netherlands authorities at the Schiphol Airport in the place and at the time determined by the Trial Chamber;
 - that it will undertake to cover all travel costs for the accused from Schiphol Airport until Podgorica and back;
 - that it will secure, at the request of the Trial Chamber or some of the parties, cooperation and communication between the parties and secure the secrecy of such communication;
 - that it will submit a written report every two weeks to the Trial Chamber, informing it if the accused is acting in accordance with the conditions contained in the Decision of provisional release;

- that it will immediately inform the Trial Chamber about the infringement of any of the obligations undertaken by the accused;
 - that it will immediately inform the ICTY Secretariat about any eventual threats to the accused and investigation carried out thereto;
2. The Government of the Republic of Montenegro is aware of the obligations undertaken by the accused and it will take all necessary action through the competent ministries in order to secure:
- that the accused does not leave the territory of the Republic of Montenegro;
 - that he surrenders his passport to the Ministry of Interior of the Republic of Montenegro and his residence address to the Secretariat of the ICTY;
 - that he reports every day to the Ministry of Interior of the Republic of Montenegro Security Center Podgorica (CB Podgorica)
 - that he gave his consent to the Ministry of Interior of the Republic of Montenegro, to effect, through the Security Center in Podgorica and/or the person determined by the Secretariat of the ICTY, occasional unannounced visits to the accused, in order to check his presence;
 - that he will not have any contacts with the co-accused;
 - that he will not discuss his case with anyone, including the media, except his counsels;
 - that he will act in accordance with all orders of the Government of the Republic of Montenegro, necessary for the execution of the obligations undertaken by the Government of Montenegro in this matter;
 - that he will return to the International Tribunal at the time so requested by the Tribunal;
 - that he will strictly act in compliance with the orders of the Trial Chamber which eventually alter the conditions of the provisional release;
3. The Government of the Republic of Montenegro will ensure the execution of this Conclusion through the Ministry of Interior and the Ministry of Justice.

PRESIDENT OF THE GOVERNMENT

Filip Vujanović, sgd.

Round Seal: Republic of Montenegro
Government of the Republic of Montenegro
P o d g o r i c a