



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-03-70-PT  
Date: 14 April 2005  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**Decision of:** 14 April 2005

**PROSECUTOR**

v.

**VLADIMIR LAZAREVIĆ**

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**DECISION ON DEFENCE REQUEST FOR PROVISIONAL RELEASE**

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**The Office of the Prosecutor**

Mr. Thomas Hannis  
Ms. Christina Moeller

**Counsel for the Accused**

Mr. Mihajlo Bakrač

**THIS TRIAL 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 1991 (“International Tribunal”),

**BEING SEISED OF** the “Defence Request for Provisional Release”, filed by the Defence of Vladimir Lazarević (“the Accused”) on 22 March 2005 (“Request”), which asserts that the Accused meets the criteria established in Rule 65(B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), and that the individual circumstances of his case support a grant of provisional release,

**CONSIDERING** that Rule 65(B) provides:

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.

**CONSIDERING** that there are therefore two prongs to the provisional release inquiry, which must both be satisfied before a Chamber may grant release: (1) will the Accused appear for trial? and (2) if released, will he pose a danger to victims, witnesses, or others?<sup>1</sup>

**CONSIDERING** that the Registry provided a certified copy of the Request to the relevant authorities in the Netherlands along with an invitation to present the host country’s comments on the motion, that no response has been received in the three weeks since the Request’s filing, and that Rule 65(B)’s requirement that the host country be offered an opportunity to be heard has therefore been fulfilled,

**CONSIDERING** that the guarantees provided by the Council of Ministers of Serbia and Montenegro and the Government of the Republic of Serbia<sup>2</sup> make clear their views on the matters raised in the Request, and therefore indicate that “the State to which the accused seeks to be released” has been given an opportunity to be heard,

**CONSIDERING** the “Prosecution’s Response to Defence Request for Provisional Release”, filed on 29 March 2005 (“Response”), in which the Prosecution states that it does not oppose the Request, “in

<sup>1</sup> See *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37-PT, “Decision on Application of Nikola Šainović and Dragoljub Ojdanić for Provisional Release,” 26 June 2002 (“Šainović Trial Chamber Decision”), at para. 11, citing *Prosecutor v. Blagojević et al.*, Case No. IT-02-53-AR65, “Decision on Application by Dragan Jokić for Leave to Appeal,” 114 April 2002, at para. 7.

<sup>2</sup> See *Prosecutor v. Pavković, Lazarević, Đorđević, and Lukić*, Case No. IT-03-70-PT, Correspondence from the Embassy of Serbia and Montenegro, 7 April 2005, at pp. 1–3 (submitting the Guarantee Given by the Council of Ministers of Serbia and Montenegro pursuant to a Decision of 16 February 2005) (“Serbia and Montenegro’s Guarantees”); *id.*, p. 4 (submitting the guarantees given by the Government of the Republic of Serbia pursuant to a Conclusion of 3 February 2005) (“Republic of Serbia’s Guarantees”).

light of the[] specific circumstances that apply to this particular accused”, and discusses the facts of the case that are considered in detail by the Trial Chamber below,<sup>3</sup>

**CONSIDERING** that the Trial Chamber is, in general, informed by the Prosecution with regard to any factor within its knowledge that indicates that provisional release should not be granted, and that the Prosecution has not identified any such factor in relation to this Accused,

**CONSIDERING** that a Trial Chamber must identify all the factors that it has taken into account in reaching its decision, with particular attention paid to the circumstances of the case before it,<sup>4</sup>

**CONSIDERING** that this Chamber has previously considered the following factors as especially relevant to the provisional release inquiry:<sup>5</sup>

- a. the Accused is charged with serious criminal offences;
- b. if convicted, he is likely to face a long prison term;
- c. circumstances of the Accused’s surrender;
- d. degree of co-operation given by the authorities of the State to which the Accused seeks to be released;
- e. guarantees offered by those authorities, and any personal guarantees offered by the Accused; in particular, the weight given to the governmental guarantees must be assessed in light of the position held by the Accused prior to his rendition to the Tribunal;
- f. likelihood that, in case of breach of the conditions of provisional release, the relevant authorities will re-arrest the Accused if he declines to surrender; and
- g. the Accused’s degree of co-operation with the Prosecution;
- h. any suggestion that the Accused has interfered with the administration of justice since the confirmation of the indictment against him;

**CONSIDERING** that the burden of proof on the balance of probabilities is placed upon the Accused with respect to both prongs of the provisional release inquiry,<sup>6</sup>

**CONSIDERING** that although the Accused is charged with serious criminal offences and faces a lengthy prison sentence if convicted, this Chamber has previously emphasised that “the gravity of the

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<sup>3</sup> See *infra*, p. 3.

<sup>4</sup> *Prosecutor v. Stanišić*, Case No. IT-03-69-PT, “Decision on Provisional Release”, 28 July 2004 (“Stanišić Trial Chamber Decision”), at para. 10.

<sup>5</sup> See generally Stanišić Trial Chamber Decision, *supra* note 4, at paras. 8–14 (applying *Prosecutor v. Šainović and Ojdanić*, Case No. IT-99-37-AR65, “Decision on Provisional Release”, 30 October 2002, at para. 6); *Prosecutor v. Simatović*, Case No. IT-03-69-PT, “Decision on Provisional Release”, 28 July 2004 (“Simatović Trial Chamber Decision”), at paras. 7–13 (same).

<sup>6</sup> See Stanišić Trial Chamber Decision, *supra* note 4, at para. 14 & n.15.

charges cannot by itself serve to justify long periods of detention on remand”,<sup>7</sup> an approach which has been upheld by the Appeals Chamber,<sup>8</sup>

**CONSIDERING** that the Accused surrendered on 3 February 2005, six days after formally receiving the indictment at the District Court in Belgrade pursuant to the Law on Co-operation between the Tribunal and Serbia and Montenegro,<sup>9</sup>

**CONSIDERING** the increased co-operation given by the authorities of Serbia and Montenegro and the Republic of Serbia to the International Tribunal in recent months,

**CONSIDERING** that these authorities have undertaken to adhere to any and all orders by the Trial Chamber so as to ensure the Accused’s presence at the Tribunal, and, in particular, have acknowledged their obligation to arrest the Accused should he violate any condition of provisional release,<sup>10</sup>

**CONSIDERING** that the Accused has co-operated with the Prosecution by participating in an extensive interview over the course of several days and providing new documents, a factor which is particularly noted in the Response,<sup>11</sup>

**CONSIDERING** that there is no indication that the Accused has interfered with the administration of justice since the confirmation of the indictment against him, for example by attempting to influence or intimidate victims or potential witnesses, and that there is no suggestion that he may pose a danger to others if released,

**NOTING** that a standard condition of provisional release, which the relevant government authorities have undertaken to enforce through their guarantees, prohibits the accused from having any contact whatsoever or interfering in any way with any victim or potential witness, or otherwise interfering in any way with the proceedings or the administration of justice,

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<sup>7</sup> Stanišić Trial Chamber Decision, *supra* note 4, at para. 22 (internal quotation marks and citation omitted); *see also* Simatović Trial Chamber Decision, *supra* note 5, at para. 21.

<sup>8</sup> *Prosecutor v. Stanišić*, Case No. IT-03-69-AR65.1, “Decision on Prosecution’s Appeal Against Decision Granting Provisional Release”, 3 December 2004 (“Stanišić Appeals Chamber Decision”), at para. 27; *Prosecutor v. Simatović*, Case No. IT-03-69-AR65.2, “Decision on Prosecution’s Appeal Against Decision on Provisional Release”, 3 December 2004 (“Simatović Appeals Chamber Decision”), at para. 15.

<sup>9</sup> While the indictment against the four co-Accused in this case was confirmed in October 2003, the Prosecution’s Response noted that at least part of the delay between confirmation and voluntary surrender was ostensibly due to delayed notification by the Serbian authorities and repeated hospitalisations of the Accused in 2004. *See* Response, at para. 5.

<sup>10</sup> *See* Serbia and Montenegro’s Guarantees, *supra* note 2, at p. 2; Republic of Serbia’s Guarantees, *supra* note 2, at p. 1.

<sup>11</sup> *See* Response, at para. 3.

**CONSIDERING** that the Accused has satisfied the Chamber that, if released, he will return for trial and will not pose a danger to anyone,

**CONSIDERING** that Rule 65(C) provides that “[t]he 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”,

**PURSUANT TO** Rule 65 of the Rules,

**HEREBY GRANTS** the Request, and

1. **ORDERS** as follows:

- a. the Accused 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 an official of the government of Serbia and Montenegro 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 Montenegro and to his place of residence;
- c. on his return, the Accused shall be accompanied by the same designated official of the government of Serbia and Montenegro, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by Order of the Trial Chamber, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague;
- d. during the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the governments of Serbia and Montenegro and the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
  - i. to provide the address at which he will be staying in Belgrade to the Ministry of Justice and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague;
  - ii. to remain within the confines of the municipality of Belgrade;
  - iii. to surrender his passport to the Ministry of Justice;
  - iv. to report each day to the police in Belgrade at a local police station to be designated by the Ministry of Justice;
  - v. 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 International Tribunal;
  - vi. not to have any contact with the co-accused in the case;
  - vii. 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;
  - viii. not to discuss his case with anyone, including the media, other than with his counsel;

- ix. to continue to cooperate with the International Tribunal;
  - x. to comply strictly with any requirements of the authorities of Serbia and Montenegro and the Republic of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
  - xi. to return to the International Tribunal at such time and on such date as the Trial Chamber may order; and
  - xii. to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release;
2. **REQUIRES** the governments of the Serbia and Montenegro and the Republic of Serbia to assume responsibility as follows:
- a. by designating an official of the government of Serbia and Montenegro into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and Montenegro and to his place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the International 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 Trial Chamber or the parties to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;
  - f. to submit a written report to the Trial Chamber every month as to the compliance of the Accused with the terms of this Order;
  - g. to arrest and detain the Accused immediately if he should breach any of the conditions of this Order; and
  - h. to report immediately to the Trial Chamber any breach of the conditions set out above;
3. **INSTRUCTS** the Registrar of the International Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for his release and to continue to detain the Accused at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the government of Serbia and Montenegro into whose custody the Accused is to be provisionally released;
4. **REQUESTS** the authorities of all States through whose territory the Accused will travel,
- a. to hold the Accused in custody for any time that he will spend in transit at the airport;
  - b. to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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

A handwritten signature in black ink, consisting of a stylized 'P' and 'R' followed by a long horizontal stroke extending to the right.

Judge Patrick Robinson  
Presiding

Dated this fourteenth day of April 2005  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**