



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-05-87-PT
Date: 30 September 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 30 September 2005

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ

**** CONFIDENTIAL ****

**DECISION ON NEBOJŠA PAVKOVIĆ'S
PROVISIONAL RELEASE**

The Office of the Prosecutor

Embassy of Serbia and Montenegro

Mr. Thomas Hannis

Ms. Christina Moeller

Ms. Carolyn Edgerton

Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Milan Milutinović

Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić

Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović

Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković

Mr. Mihaljo Bakrač for Mr. Vladimir Lazarević

Mr. Theodore Scudder for Mr. Sreten Lukić

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 (“the International Tribunal”),

BEING SEIZED of confidential “Motion for Provisional Release”, filed by the Defence for Pavković on 10 June 2005 (“Motion”) in which it requests that Nebojša Pavković (“the Accused”) be provisionally released pending trial and states that the Defence would be prepared to provide further arguments and evidence during an oral hearing,

NOTING the “Prosecution’s Response to Nebojša Pavković’s Motion for Provisional Release with Annexes A and B”, filed on 24 June 2005 (“Response”), opposing the Motion on the basis that the Accused would fail to appear for trial if released, and requesting a stay of the decision on provisional release pending appeal pursuant to Rule 65 (E), should the Trial Chamber grant the Motion,

NOTING that Rule 65(B) (“Provisional Release”) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) requires an applicant for provisional release to satisfy the Trial Chamber of two matters: (1) that he will appear for trial, and (2) that, if released, he will not pose a danger to any victim, witness or other person,¹

CONSIDERING that there is nothing to suggest that, if released, the Accused will pose a danger to any victim, witness or other person and that the Trial Chamber thereby previously identified the first limb of this Rule as being in issue,²

NOTING that the Trial Chamber considered it might be assisted by further submissions on the likelihood that the Accused will return for trial, if released, and, in particular, on the circumstances of the Accused’s surrender, and so scheduled an oral hearing on the Motion which took place on 23 August 2005,³

NOTING the principal Defence submissions as contained in the Motion and expressed at the oral hearing on 23 August 2005, which can be summarised as follows:

¹ *Prosecutor v. Milutinović*, “Decision on Second Application for Provisional Release”, Case No. IT-99-37-PT, 14 April 2005, para. 4; *Prosecutor v. Ojdanić*, “Decision on General Ojdanić’s Fourth Application for Provisional Release”, Case No. IT-99-37-PT, 14 April 2005, para. 6; *Prosecutor v. Šainović*, “Decision on Third Defence Request for Provisional Release”, Case No. IT-99-37-PT, 14 April 2005, para. 5.

² “Scheduling Order for Hearing on Motion for Provisional Release”, 19 July 2005, p.2.

- (1) the Accused voluntarily surrendered to the International Tribunal three days after receiving a copy of the Indictment from the District Court in Belgrade and this is *per se* evidence that he will adhere to all and any orders of the Trial Chamber;⁴
- (2) the Guarantees provided by the Government of the Republic of Serbia and the Guarantees from Serbia and Montenegro can be relied upon in light of the considerable number of voluntary surrenders that the Government of Serbia has ensured;⁵
- (3) the Accused has demonstrated a high degree of co-operation with the International Tribunal in that he agreed to an interview with the Office of the Prosecutor (OTP) before receiving any of the supporting material upon which the Indictment against him was based; this also indicates a willingness to co-operate further by being available when called upon for the proceedings in this case;⁶

NOTING the Prosecution's objections to the Accused's Provisional Release, as set-forth in the Response and at the oral hearing on 23 August 2005, which can be summarised as follows:

- (1) The Indictment was confirmed by Judge O-Gon Kwon on 2 October 2003 and the order to delay its publication was lifted on 20 October 2003, at which time an arrest warrant was issued and made publicly available, yet the Accused did not surrender to the International Tribunal until 25 April 2005 and has provided no explanation of what prohibited him from so doing during that time;⁷
- (2) The Accused knew about the existence of the Indictment and arrest warrant as he made a number of strongly worded public statements about them which were quoted in a variety of press articles and these indicate his hostile and aggressive attitude towards the International Tribunal;⁸
- (3) Guarantees have been provided by the Council of Ministers of Serbia and Montenegro and the Government of the Republic of Serbia, yet representatives of the Council of Ministers and the Government have repeatedly expressed the view that they will under no circumstances arrest any Accused, and the Guarantees should therefore be given less weight;⁹

³ "Scheduling Order for Hearing on Motion for Provisional Release", 19 July 2005, p.2.

⁴ Motion, paras. 8- 10.

⁵ Motion, paras. 11 – 15.

⁶ Motion, paras. 16 – 18.

⁷ Response, paras 3 and 12 – 15.

⁸ Response, para. 12 and 14 and Annex A.

⁹ Response, para. 16 and Annex B; Hearing, T. 7-8 and 23-24.

- (4) the evidence given by the Minister of Justice of the Republic of Serbia, Zoran Stojković, was unsatisfactory as allegedly inconsistent with evidence given on another occasion;¹⁰
- (5) The Accused held a senior position in the VJ which may allow him to use particular means not available to other accused if trying to abscond;¹¹

NOTING the Guarantees from the Council of Ministers of Serbia and Montenegro attached to the Motion, and communicated to the International Tribunal by the Embassy of Serbia and Montenegro on 17 June 2005, which state that if the Accused is granted provisional release then Serbia and Montenegro will honour all orders of the Trial Chamber to ensure the Accused will appear before the International Tribunal at all times, and which also include, *inter alia*:

- (1) an undertaking by the Ministry of the Interior of the Republic of Serbia and the Security Intelligence Agency of the Republic of Serbia to ensure that the Accused reports to the nearest police station every day, to keep a record of this, and send monthly reports in writing to confirm the Accused's compliance with these undertakings, and to inform the International Tribunal immediately of any absence of the Accused;
- (2) an undertaking by the Ministry of Interior of the Republic of Serbia to arrest the Accused immediately if he attempts to abscond or violate any of the conditions of his provisional pre-trial release, and to inform the International Tribunal of this in order to make preparations for his renewed handover to the International Tribunal;

CONSIDERING that the Indictment became public knowledge on 2 October 2003 and that the Accused did not surrender to the International Tribunal until 25 April 2005 and that no explanation has been expounded as to why this is so, other than that the Accused has "changed his mind",¹²

NOTING that Mr. Stojković, as Minister of Justice for the Republic of Serbia, gave evidence in which he provided assurances that his Government would strictly enforce the terms of their

¹⁰ Hearing, 23 August 2005, T. 3, 5 and 9-11; *Prosecutor v. Milutinović, Ojdanić, Šainović*, Case No. IT-99-37-PT, Hearing, 10 March 2005, T. 898-900.

¹¹ Response, para.19.

¹² Hearing, 23 August 2005, T. 35.

guarantee to secure the attendance of the Accused for trial before the International Tribunal, in the event that he defaulted following his release,¹³

CONSIDERING that, in dealing with applications for provisional release from other accused, this Trial Chamber has found similar guarantees to be important elements in its decision to grant the applications,

CONSIDERING that the Government in which Mr. Stojković is a minister has reversed the policy of the previous government and initiated greater co-operation with the International Tribunal following their election in March 2004,¹⁴

CONSIDERING that, notwithstanding the absence of any satisfactory explanation as to the Accused's failure to surrender prior to April 2005, the Trial Chamber is satisfied by the Guarantees provided by the Council of Ministers of Serbia and Montenegro and the Government of the Republic of Serbia, that all necessary steps will be taken to ensure the attendance of the Accused for trial, and is thereby persuaded that if released, the Accused will appear for trial,

PURSUANT TO Rules 54 and 65 of the Rules,

HEREBY GRANTS the provisional release of Nebojša Pavković and **ORDERS:**

- (1) the provisional release of Nebojša Pavković subject to the terms and conditions set out in the Order for Provisional Release appended to this Decision; and
- (2) the provisional release of Nebojša Pavković is stayed pending an appeal by the Prosecution pursuant to Rule 65(D), (E), (F) and (G) of the Rules.

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

¹³ Hearing, 23 August 2005, T. 3-4.

¹⁴ Hearing, 23 August 2005, T. 7-8.



Judge Patrick Robinson
Presiding

Dated this thirtieth day of September 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

ORDER FOR PROVISIONAL RELEASE OF NEBOJŠA PAVKOVIĆ

1. Nebojša Pavković (“the Accused”) shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
2. 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;
3. 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;
4. 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 remain within the confines of the municipality of Belgrade;
 - (ii) to surrender his passport to the Ministry of Justice;
 - (iii) to report each day to the police in Belgrade at a local police station to be designated by the Ministry of Justice;
 - (iv) to provide the address at which he will be staying to the Ministry of Justice and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague;
 - (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; and

REQUIRES The Governments of the State Union of 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; and

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; and

REQUESTS the authorities of all States through which 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.



Judge Patrick Robinson
Presiding

Dated this thirtieth day of September 2005
At The Hague
The Netherlands