



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: 12 May 2006

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 12 May 2006

PROSECUTOR

v.

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

**ORDER RE SUBMISSION OF REGISTRAR
PURSUANT TO RULE 33(B) ON PROVISIONAL RELEASE OF NIKOLA ŠAINOVIĆ,
DRAGOLJUB OJDANIĆ, AND NEBOJŠA PAVKOVIĆ**

Office of the Prosecutor

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Government of the Republic of Serbia

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Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihaljo Bakrač for Mr. Vladimir Lazarević
Mr. Theodore Scudder and Mr. Dragan Ivetić 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 ("Tribunal") is seized of a submission made by the Registrar of the Tribunal pursuant to Rule 33(B) of the Rules of Procedure and Evidence on 24 March 2006, stating that "several Serbian newspapers ... reported on 19, 20 and 21 March 2006 that Mr. D. Ojdanić, Mr. N. Pavković and Mr. N. Šainović had been present at Mr. Slobodan Milošević's funeral in the municipality of Požarevac, 60 km from Belgrade. Video footage shot on the occasion of Mr. Milošević's funeral and broadcasted by the Serbian broadcasting company 'B92' ... appear to confirm information contained in the reports of the print media."¹

1. The Chamber notes that it has granted requests for provisional release of Nikola Šainović, Dragoljub Ojdanić, and Nebojša Pavković, subject to conditions imposed by order of the Chamber, including to remain within the confines of the municipality of Belgrade and not to have any contact with the co-accused in the case.²

2. On 20 March 2006, the Ministry of Justice of the Republic of Serbia made certain representations regarding this matter, including that it is "complying fully with the conditions and orders set out in the decisions of the Trial Chamber of the International Criminal Tribunal on the provisional release of Dragoljub Ojdanić, Nikola Šainović and Nebojša Pavković".³ The Ministry of Justice continued,

This also applies to the above-named, who are fully abiding by the obligations set out in the Tribunal's decisions, including the obligation not to leave the territory of the city of Belgrade without the approval of this Ministry.

As regards leaving the territory of the city of Belgrade, this Ministry allows all provisionally released indictees in Serbia, in certain cases, to leave the territory of the city of Belgrade for several hours. Such approval is immediately sent also to the Ministry of the Interior, which takes measures within its range of responsibilities to ensure full compliance with the commitments undertaken.

In this case too, the above-named approached this Ministry and were granted approval.⁴

¹ Submission of the Registrar Pursuant to Rule 33 (B) on the Provisional Release of Nikola Šainović, Dragoljub Ojdanić and Nebojša Pavković, 24 March 2006 ("Registrar's Submission"), para. 4.

² *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on Third Defence Request for Provisional Release, 14 April 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Nebojša Pavković's Provisional Release, 30 September 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Second Decision on Nebojša Pavković's Provisional Release, 18 November 2005.

³ Registrar's Submission, Annex C.

⁴ *Ibid.*

3. On 11 April 2006, the Chamber considered that there appeared to be some confusion regarding the conditions of provisional release regarding the Accused and ordered “the Government of Serbia and Montenegro and the Government of the Republic of Serbia to file ... submissions indicating (a) whether it is their practice to exempt an accused from the explicit conditions of provisional release; (b) if so, the basis of such a practice; and (c) all other information relevant to this issue.”⁵

4. On 3 May 2006, the Republic of Serbia responded, stating the following:

[I]n the course of the implementation of the decisions on provisional release, there have been situations when the accused on provisional release, for specially justified personal reasons and in cases of emergency (death, attendance at funeral, visit to seriously ill family members, medical examinations at the Military Medical Academy, consultation with defence counsel in the preparation of defence, etc.) needed to leave the territory of Belgrade, or the registered place of residence, for several hours. In such situations, the Ministry of Justice would, exceptionally, grant the accused and the Ministry of the Interior approval to leave the territory of Belgrade, or the registered place of residence, for several hours, under constant police escort, but they had to return to the place of residence immediately, or no later than 2400 hours on the same day. The Ministry of Justice’s understanding is that such short absences, lasting several hours, are not in contravention of the prohibition on leaving the territory of the place of residence. The prohibition refers to the leaving of the territory of the place of residence without approval and in the manner and length that would indicate that the accused attempts to escape.

In this case, each of the above accused individually submitted requests to the Ministry of Justice to leave the territory of the city of Belgrade and travel to Požarevac to attend the funeral of Slobodan Milošević. Approval was granted to them in writing and, each of them separately, under strict police escort and in compliance with all other obligations and conditions, travelled to Požarevac, which is only 20 kilometers from the boundary of the city of Belgrade, and immediately after the funeral they returned to Belgrade.⁶

5. On 4 May 2006, the Prosecution, in the context of its response to a request from one of the Accused in this case for the Chamber to temporarily modify the conditions of his provisional release, submitted the following: (1) Serbia and Montenegro has given no legal basis for its position in its submission dated 3 May 2006; (2) there is a lack of understanding by the authorities and the parties regarding the issues of who makes the rules governing provisional release and exactly what those rules mean; (3) Pavković has requested and received approval from the Ministry of Justice for travel outside Belgrade on five occasions (other than the one in connection with the funeral of Slobodan Milošević) between 20 November 2005 and 13 February 2006, one of these trips being approved for a 24-hour duration and for an unspecified date (“on the date he so

⁵ Order to the Government of Serbia and Montenegro and the Republic of Serbia Regarding Provisional Release, 11 April 2006.

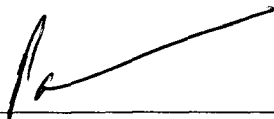
⁶ Submission of the Government of the Republic of Serbia, 3 May 2006.

requires”); and (4) the prohibition against travel outside Belgrade not only serves the interest of the Accused returning for trial, but also the nonintimidation of witnesses.⁷

6. The Trial Chamber considers that the variation of the conditions of the Accused’s provisional releases by Serbia and Montenegro is not consistent with the conditions that were imposed by the Trial Chamber. Moreover, the conditions pursuant to which these variations were granted did not constitute an emergency; and, even in the case of an emergency, the Accused should make every effort to secure the permission of the Tribunal for variation of the conditions of provisional release.

7. Pursuant to Article 29 of the Statute and Rules 33(B), 54, and 65 of the Rules, the Trial Chamber hereby ORDERS Serbia and Montenegro and the Republic of Serbia to comply with all the conditions pertaining to the provisional releases of the Accused and DIRECTS the Accused in the above-captioned matter to address any requests for variation of the conditions of provisional release directly to the Tribunal.

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



Judge Robinson
Presiding

Dated this twelfth day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Prosecution’s Response to “Defence Motion: Requesting Variation of Conditions of Provisional Release” with Annex A, 4 May 2006, paras 1, 9–10, 12.