



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: 1 June 2006
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 1 June 2006

PROSECUTOR

v.

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

**DECISION ON JOINT MOTION FOR TEMPORARY
PROVISIONAL RELEASE DURING SUMMER RECESS**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Government of Serbia and Montenegro

Government of the Republic of Serbia

Government of The Netherlands

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić 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 seised of a “Joint Request by the Accused for Temporary Provisional Release During the Summer Recess”, filed 22 May 2006 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused request that the Trial Chamber grant them temporary provisional release during the summer recess, from 15 July to 4 August 2006.¹ They represent to the Chamber that the Governments of the Republic of Serbia and Serbia and Montenegro have provided guarantees that the conditions of their provisional release will be complied with during this period and that, pursuant to the personal undertakings in connection with their previous requests for and their conduct during provisional release, they pose no risk of flight or danger to any victims, witnesses, or other persons.²

2. The Prosecution opposes the Motion on grounds that “the risks of flight attendant to provisional release as set out in [its previous submissions opposing initial provisional release] are greatly heightened once the trial has started.”³ The Prosecution also submits, in connection with its pending motion for delayed disclosure of witness information to the Accused,⁴ that “the potential for action that may endanger the security of, or otherwise improperly interfere with, these highly sensitive witnesses are greatly increased if their identities became known while the accused are provisionally released.”⁵

¹ Motion, paras 1–3.

² Motion, paras 5–6.

³ Prosecution’s Response to Joint Request by the Accused for Temporary Provisional Release During the Summer Recess, 26 May 2006 (“Response”), para. 2.

⁴ Prosecution’s Sixth Motion for Protective Measures with Confidential and *Ex Parte* Annex A, filed 7 April 2006.

⁵ Response, paras 3–4. *See also* Application for Leave to File a Reply and Joint Reply to the Prosecution’s Response to Joint Request by the Accused for Temporary Provisional Release During the Summer Recess”, filed 30 May 2006 (wherein the Accused agreed to defer disclosure of all the witness material that has been granted delayed disclosure in this case until they have returned to the UNDU).

3. Having been provisionally released in accordance with orders of the Chamber,⁶ the Accused's provisional release has now been suspended as of 4 July 2006, by which date the Accused are to have returned to the United Nations Detention Unit ("UNDU") in anticipation of the start of trial on 10 July 2006.⁷ Rule 65(B) requires an applicant for provisional release to satisfy the Trial Chamber that he will appear for trial and that, if released, he will not pose a danger to any victim, witness, or other person.⁸ The burden of proof rests upon the accused seeking provisional release, and the standard applied is that of the balance of probabilities.⁹ The Chamber is satisfied that the Accused, if temporarily released during the summer recess, will return for the resumption of the trial and will not pose a danger to any victim, witness, or other person and that it is in the interests of justice to grant the Motion. However, the proper administration of UNDU requires that the Accused return in advance of the date requested in the Motion, as will be ordered below.

4. Pursuant to Article 29 of the Statute and Rules 54 and 65 of the Rules of Procedure and Evidence, the Trial Chamber hereby GRANTS the Motion, in part, and ORDERS as follows:

- a. On 15 July 2006, 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 a designated official of the Government of the Republic of Serbia, who shall accompany the Accused for the remainder of their travel to Belgrade, Serbia, Serbia and Montenegro and to their places of residence therein.

⁶ *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-99-37-PT, Decision on Second Application for Provisional Release, 14 April 2005 (Milutinović); *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on Third Defence Request for Provisional Release, 14 April 2005 (Šainović); *Prosecutor v. Lazarević*, Case No. IT-03-70-PT, Decision on Defence Request for Provisional Release, 14 April 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, confidential Decision on Sreten Lukić's Provisional Release, 30 September 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Sreten Lukić's Provisional Release, 3 October 2005 (public redacted version); *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, confidential Decision on Nebojša Pavković's Provisional Release, 30 September 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Interlocutory Appeal from Trial Chamber Decision Granting Nebojša Pavković's Provisional Release, 1 November 2005, para. 13; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Second Decision on Nebojša Pavković's Provisional Release, 18 November 2005.

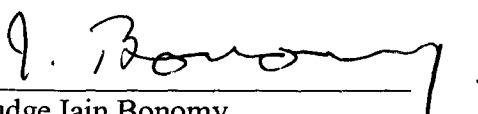
⁷ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Order Suspending Provisional Release of Each Accused, 26 May 2006.

⁸ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-PT, Decision on Sreten Lukić's Provisional Release, 3 October 2005 (public redacted version), p. 3 (citing *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on Second Application for Provisional Release, 14 April 2005, para. 4 (Milutinović); *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005, para. 6; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Decision on Third Defence Request for Provisional Release, 14 April 2005, para. 5 (Šainović)).

⁹ See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Jadranko Prlić, 30 July 2004, para. 14; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on Provisional Release, 28 July 2004, para. 14, n.15.

- c. During their release, the Accused and the Governments of the Republic of Serbia and Serbia and Montenegro shall continue to adhere to the applicable restrictions and obligations set out in the orders of the Chamber initially provisionally releasing the Accused, as set forth in footnote 6 of this Decision.
- d. The Accused shall return to UNDU no later than 31 July 2006 at 14.00 hours. They shall be accompanied from their places of residence in Belgrade by the designated official of the Government of the Republic of Serbia, who shall deliver the Accused into the custody of the Dutch authorities at Schiphol airport; the Dutch authorities shall then transport the Accused back to UNDU.

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



Judge Iain Bonomy
Presiding

Dated this first day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]