



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-05-88-PT
Date: 6 June 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Kevin Parker
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 6 June 2006

THE PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ
MILORAD TRBIĆ**

**DECISION ON PANDUREVIĆ'S RENEWED MOTION
FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Zoran Živanović for Vujadin Popović
John Ostojić and Christopher Meek for Ljubiša Beara
Jelena Nikolić and Stephane Bourgon for Drago Nikolić
Aleksandar Lazarević and Miodrag Stojanović for Ljubomir Borovčanin
Natacha Fauveau Ivanović for Radivoje Miletić
Dragan Krgović for Milan Gvero
Peter Haynes and Đorđe Sarapa for Vinko Pandurević
Stephane Piletta-Zanin for Milorad Trbić

TRIAL CHAMBER II 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”);

BEING SEISED OF “Vinko Pandurević’s Request for Provisional Release Until the Beginning of the Trial Phase of the Proceedings”, filed on 30 January 2006 (“Second Motion”) by the Defence for Vinko Pandurević (“Defence” and “Accused” respectively);

NOTING “Prosecution’s Response to Vinko Pandurević’s Second Request for Provisional Release Until the Beginning of the Trial Phase of the Proceedings”, filed on 1 February 2006, in which the Prosecution requests that the Second Motion be denied and that in the event the Second Motion is granted that such decision is stayed;

NOTING “Vinko Pandurević’s Defence Motion Submitting the Conclusion of the Government of the Republic of Serbia and Proposing an Oral Hearing”, filed on 11 May 2006, in which the Defence proposes that an oral hearing be scheduled;

NOTING “Prosecution’s Response to Vinko Pandurević’s Defence Motion Submitting the Conclusion of the Government of the Republic of Serbia and Proposing an Oral Hearing”, filed on 18 May 2006;

NOTING “Further Response of the Defence for Vinko Pandurević in Relation to his Application for Provisional Release”, filed on 26 May 2006;

NOTING that the Government of the Netherlands, the “host country”, has communicated by a letter submitted by the Ministry of Foreign Affairs dated 2 February 2006, that it has no objection to the requested provisional release;

NOTING that the Trial Chamber considered and denied an application from the Accused for provisional release (“First Motion”)¹ and that the Appeals Chamber upheld the Trial Chamber’s decision (“First Decision” and “Appeals Chamber Decision” respectively)²;

NOTING that pre-trial preparations have advanced considerably and that the scheduled trial date is swiftly approaching, and that the Trial Chamber is therefore suspending the provisional release of two Co-Accused;

¹ Application for Provisional Release, filed on 3 June 2005.

² Decision on Vinko Pandurević’s Application for Provisional Release, issued by the Trial Chamber on 18 July 2005, and Decision on Interlocutory Appeal From Trial Chamber Decision Denying Vinko Pandurević’s Application for Provisional Release, Case No. IT-05-86-AR65.1, issued by the Appeals Chamber on 3 October 2005.

CONSIDERING that the Tribunal interprets the Second Motion to be a renewed motion for provisional release, and that the Tribunal's jurisprudence indicates there should be a "material change in circumstances which would justify reconsideration of a renewed motion for provisional release"³;

CONSIDERING that the Accused again argues he surrendered voluntarily and defends his failure to surrender earlier by noting a "fear for the safety of his family", and that these arguments do not purport to address any material change in circumstances since the Trial Chamber's First Decision, wherein the Trial Chamber accepted that the Accused surrendered voluntarily⁴ but found that the long period of time during which the Accused was a fugitive from justice, together with the "unsubstantiated and generalized reasons" he provided for his failure to surrender earlier, entitled this factor to very little weight in his favour,⁵ and that the Appeals Chamber stated this "was not unreasonable"⁶, and, therefore, that the arguments advanced by the Accused do not constitute a material change in circumstances since the First Decision;

CONSIDERING that the Accused has attached personal guarantees to the Second Motion, which were not included in the First Motion, and that these personal guarantees do not purport to address any material change in circumstances since the Trial Chamber's First Decision, and that the Trial Chamber's reference in its First Decision to the Accused's failure to attach personal guarantees to his First Motion was not an invitation to file such guarantees in a renewed motion, and that this factor was not held against the Accused⁷, and, therefore, that this is not a material change in circumstances since the Trial Chamber's First Decision, neither is it a determinative factor that sways the Trial Chamber's overall assessment so as to satisfy the Trial Chamber that the Accused, if released, would appear for trial;

CONSIDERING that the guarantees from the Government of Serbia and Montenegro attached to the Second Motion⁸ are not materially different from the earlier guarantees considered by the Trial Chamber in its First Decision⁹, and, therefore, that these guarantees do not constitute a material change in circumstances since the First Decision;

CONSIDERING that the Accused has attached a copy of his statement given on 19 March 2005 to the Security-Informative Agency, the substance of which was noted by the Trial Chamber in its

³ *Prosecutor v. Limaj, Bala and Musliu*, Case No. IT-03-66-T, Decision on Defence Renewed Motion for Provisional Release of Fatmir Limaj, 26 October 2005, para. 8; *see also Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Second Motion for Provisional Release, 12 September 2005, para. 33.

⁴ Trial Chamber Decision, para. 17.

⁵ Trial Chamber Decision, para. 18.

⁶ Appeals Chamber Decision, para. 7.

⁷ Trial Chamber Decision, para. 20.

⁸ Annex A to Second Motion.

First Decision, and which purports to offer no material change in circumstances since the First Decision;

CONSIDERING that the Accused's assertion that he contacted the Prosecution in 2001 was considered by the Trial Chamber in its First Decision and purports to offer no material change in circumstances since the First Decision;

CONSIDERING that in its First Decision, the Trial Chamber agreed with the Accused's argument that he will not pose a danger to any victim, witness or other person¹⁰ ;

CONSIDERING that the Accused now argues, *inter alia*, i) that co-operation with the Tribunal is a priority for the authorities,¹¹ ii) that provisional release would "help in creating an even more positive attitude of the general public towards the Tribunal and would facilitate for the authorities further co-operation with the Tribunal"¹², iii) that "[a] differentiation should be made between those accused who did not surrender and are still at large, and those who have appeared before the Tribunal and were, thereupon, provisionally released"¹³, and iv) that persons provisionally released are under constant police surveillance making escape impossible¹⁴, and that none of these arguments purports to address a material change in circumstances since the First Decision which would be relevant to satisfying the standard outlined in Rule 65(B);

CONSIDERING that the Accused has proposed that an oral hearing be scheduled,¹⁵ and that the arguments and supporting materials submitted by the parties are sufficient for the Trial Chamber to decide this issue, and, therefore, that it is not necessary in the circumstances of this case to hold an oral hearing;

CONSIDERING that the "Further Response of the Defense for Vinko Pandurević in Relation to his Application for Provisional Release" appears to be in the nature of a Reply to "Prosecution's Response to Vinko Pandurević's Defence Motion Submitting the Conclusion of the Government of The Republic of Serbia and Proposing an Oral Hearing", and that it appears to contain a new argument never raised in the First or Second Motion, namely that the Accused's circumstances have changed in that, since the filing of the Consolidated Amended Indictment on 11 November 2005 his case is now part of a larger trial raising the potential for "substantial delay", and that the Defence

⁹ Trial Chamber Decision, para. 19.

¹⁰ Trial Chamber Decision, para. 23.

¹¹ Second Motion, para. 29 referring to footnote 1.

¹² Second Motion, para. 36.

¹³ Second Motion, para. 32.

¹⁴ Second Motion, paras 32-34

¹⁵ Vinko Pandurević's Defence Motion Submitting the Conclusion of the Government of the Republic of Serbia and Proposing an Oral Hearing, filed on 11 May 2006.

has not sought leave of the Trial Chamber to file a Reply, nevertheless considering the newly raised argument and that it does not constitute a material change in circumstances relevant to the standard of Rule 65(B);

CONSIDERING, therefore, that the Trial Chamber is not satisfied that there has been a material change in circumstances since the First Motion;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 65 of the Rules;

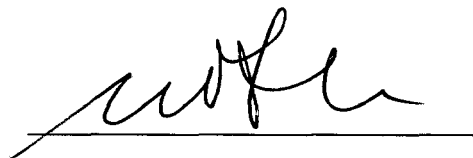
HEREBY DENIES the Second Motion.

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

Dated this sixth day of June 2006

At The Hague

The Netherlands



Judge Carmel Agius

Presiding Judge

[Seal of the Tribunal]