

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-04-82-PT  
Date: 6 July 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge O-Gon Kwon  
Judge Kimberly Prost, Pre-Trial Judge

**Registrar:** Mr. Hans Holthuis

**Decision:** 6 July 2006

**PROSECUTOR**

v.

**Ljube BOŠKOSKI  
Johan TARČULOVSKI**

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**ORDER**

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**The Office of the Prosecutor:**

Mr. Dan Saxon  
Mr. William Smith  
Mr. Anees Ahmed

**Counsel for the Accused:**

Ljube Boškosi  
Mr. Antonio Apostolski for Johan Tarčulovski

**TRIAL CHAMBER II** (“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”);

**NOTING** the Confidential Order dated 4 July 2006 (“Confidential Order”), wherein the Trial Chamber changed the status of the Decision on Second Motion for Provisional Release<sup>1</sup> (“Decision”) from public to confidential and decided to issue a public, redacted version of the Decision;

**NOTING** that, in accordance with the Confidential Order, a public, redacted version of the Decision was filed on 4 July 2006;

**CONSIDERING** that the public, redacted version of the Decision, which is attached in Annex I to this Order, should replace the public, redacted version of the Decision that was filed on 4 July 2006;

**PURSUANT** to Rules 54 and 75 of the Tribunal’s Rules of Procedure and Evidence;

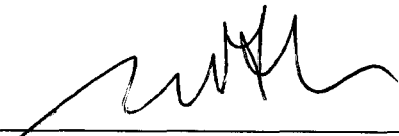
**HEREBY DECLARES** the public, redacted version of the Decision that was filed on 4 July 2006 null and void;

**ORDERS** the Registry to remove from the case file the public, redacted version of the Decision that was filed on 4 July 2006; and

**DECIDES** to issue the public, redacted version of the Decision that is attached in Annex I of this Order.

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

Dated this sixth day of July 2006,  
At The Hague,  
The Netherlands

  
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**Judge Carmel Agius**  
**Presiding Judge**

[Seal of the Tribunal]

<sup>1</sup> Decision on Second Motion for Provisional Release, 29 June 2006.  
Case No.: IT-04-82-PT

# **ANNEX I**

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-04-82-PT  
Date: 29 June 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Hans Henrik Brydesholt  
Judge Albin Eser, Pre-Trial Judge

**Registrar:** Mr. Hans Holthuis

**Decision:** 29 June 2006

**PROSECUTOR**

v.

**Ljube BOŠKOSKI  
Johan TARČULOVSKI**

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**DECISION ON SECOND MOTION FOR PROVISIONAL  
RELEASE**

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**The Office of the Prosecutor:**

Mr. Dan Saxon  
Mr. William Smith  
Mr. Anees Ahmed

**Counsel for the Accused:**

Ms. Edina Rešidović as *pro bono* counsel for Ljube Boškosi  
Mr. Antonio Apostolski for Johan Tarčulovski

## I. BACKGROUND

1. Trial Chamber II (“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 the “Second Motion for Provisional Release” filed by *Pro Bono* Counsel (“Counsel”) for Ljube Boškosi on 13 April 2006 (“Second Motion”).

2. The Accused, Ljube Boškosi (“Accused”), is jointly charged with Johan Tarčulovski for offences allegedly committed in the village of Ljuboten in the Former Yugoslav Republic of Macedonia (“FYROM”) between 10 and 12 August 2001 in an Amended Indictment confirmed on 2 November 2005 (“Amended Indictment”). On 24 March 2005, the Accused was transferred to the United Nations Detention Unit in The Hague. At the time of his transfer to The Hague, the Accused was in the custody of the County Court in Pula, Republic of Croatia (“Croatia”), where he was detained awaiting trial on separate criminal charges arising out of the Rastanski Lozja case.

3. On 25 May 2005, Counsel filed “Defence Motion of Ljube Boškosi for Provisional Release” (“Motion”), pursuant to Rule 65 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) which requested the provisional release of the Accused to the FYROM or, alternatively, to Croatia. The Motion was denied by the Trial Chamber on 18 July 2005 (“Decision”).<sup>1</sup> On 22 August 2005, the Accused filed an interlocutory appeal against this decision.<sup>2</sup> The Appeals Chamber found no error in the Decision and dismissed the appeal on 4 October 2005 (“Appeals Chamber decision”).<sup>3</sup>

4. On 13 April 2006, Counsel filed the Second Motion. On 27 April 2006, the Prosecution filed the “Confidential Prosecution’s Response to Accused Boškosi’s ‘Second Motion for Provisional Release’ with Annexes A through H” (“Response”).

5. On 3 May 2006, Counsel filed a motion seeking an extension of time to reply to the Prosecution’s response.<sup>4</sup> The Trial Chamber found that the Accused’s decision to represent himself did not constitute “good cause” since he still had assigned counsel but it granted the extension in light of the lengthy Prosecution response, and because it considered that the Trial Chamber would

<sup>1</sup> Decision on Defence Motion of Ljube Boškosi for Provisional Release, 18 July 2005.

<sup>2</sup> Interlocutory Appeal Against Trial Chamber’s Decision on Defence Motion of Ljube Boškosi for Provisional Release of 18 July 2005, 22 August 2005. See also Prosecution’s Response to the Interlocutory Appeal Filed on Behalf of Accused Ljube Boškosi against the Trial Chamber’s Decision Denying Provisional Release, 1 September 2005.

<sup>3</sup> Decision on Ljube Boškosi’s Interlocutory Appeal on Provisional Release, 4 October 2005.

<sup>4</sup> Confidential Urgent Defence Motion Seeking Extension of Time to Reply to Prosecution’s Response to Accused Boškosi’s Second Motion for Provisional Release with Annexes A through H, 3 May 2006. The Prosecution

benefit from a reply from the Defence and an extension would not delay the start of the case.<sup>5</sup> On 12 May 2006, Counsel filed the “Confidential Reply to Prosecution’s Response to Ljube Boškoski’s Second Motion for Provisional Release with Annexes A through H” (“Reply”).

6. On 15 June 2006, Counsel filed an Addendum to the Second Motion (“Addendum”).<sup>6</sup> In the Addendum, it is argued that a Letter, dated 30 May 2006 and attached to the Addendum (“Letter”), from the Croatian Ministry of Justice constitutes a material change in circumstances. On 23 June 2006, the Prosecution filed its response to the Addendum and, on 26 June 2006, Counsel filed a motion seeking leave to reply and including the reply to the Response to Addendum.<sup>7</sup> The Trial Chamber grants the Accused’s request to file the Reply to the Response to the Addendum.

7. In addition, on 10 May 2006, the Prosecution submitted an application, pursuant to Rules 65(E) and 127(A)(ii) of the Rules, for a stay of the decision of the Trial Chamber to provisionally release the Accused and requested an extension of time from 27 April 2006 to 10 May 2006 to file the application for the stay (“Application for Stay”).<sup>8</sup> Counsel filed a response on 16 May 2006<sup>9</sup> and the Prosecution filed its reply on 22 May 2006.<sup>10</sup>

## II. SUBMISSIONS

8. In the Second Motion, Counsel submits that there has been a material change in circumstances since the Decision. In support of this submission, Counsel notes that: (i) the Government of the FYROM has issued a new, detailed guarantee, should provisional release be granted;<sup>11</sup> (ii) officials from the Government of the FYROM have agreed to attend an oral hearing to affirm the new guarantee;<sup>12</sup> (iii) the Law on Witness Protection has come into force;<sup>13</sup> (v) the Appellate Court in Skopje has confirmed the not-guilty verdicts in the Rastanksi Lozja case;<sup>14</sup> and, (vi) the Croatian Ministry of Justice stated in the Letter that it supported the guarantee from the

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responded on 5 May 2006: Confidential Prosecution’s Response to Accused Boškoski’s Confidential Urgent Defence Motion Seeking Extension of Time to Reply with Annex A.

<sup>5</sup> Decision on Urgent Defence Motion Seeking Extension of Time to Reply to Prosecution’s Response to Accused Boškoski’s Second Motion for Provisional Release with Annexes A through H, 5 May 2006.

<sup>6</sup> Assigned Pro Bono Counsel Addendum to the Second Motion for Provisional Release, 15 June 2006.

<sup>7</sup> Prosecution’s Response to the “Assigned Pro Bono Counsel Addendum to the Second Motion for Provisional Release”, 23 June 2006 (“Response to the Addendum”), and Assigned Pro Bono Counsel Motion Seeking Leave to Reply and Reply to the “Prosecution’s Response to the ‘Assigned Pro Bono Counsel Addendum to the Second Motion for Provisional Release’”, 26 June 2006 (“Reply to the Response to the Addendum”).

<sup>8</sup> Confidential Prosecution’s Motion for Extension of Time and Application for a Stay of Decision Granting Provisional Release, 10 May 2006, para. 2.

<sup>9</sup> Confidential Response to Prosecution’s Motion for Extension of Time and Application for Stay of Decision Granting Provisional Release Dated 10 May 2006, 16 May 2006.

<sup>10</sup> Prosecution’s Reply to Accused Boškoski’s Confidential “Response to Prosecution’s Motion for Extension of Time and Application for Stay”, 22 May 2006.

<sup>11</sup> Second Motion, para. 10.

<sup>12</sup> Second Motion, para. 11.

<sup>13</sup> Second Motion, para. 12.

<sup>14</sup> Second Motion, para. 13.

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Government of the FYROM.<sup>15</sup> Counsel further submits that, should the Accused be provisionally released, he is not a flight risk and that he “never attempted to evade the investigation or the court proceedings”<sup>16</sup>. In relation to danger posed to victims, witnesses or other persons, Counsel maintains that the Accused has “never interfered with either alleged victims or witnesses or posed any danger whatsoever to other persons when he held the position of the Minister of the Interior or subsequently”<sup>17</sup>. Additionally, Counsel submits that there are personal reasons, namely, the Accused wishes to be reunited with his family,<sup>18</sup> his mother’s health,<sup>19</sup> and his health status,<sup>20</sup> that warrant his return to the FYROM prior to the commencement of trial and that as there is no date set for trial, his provisional release is a “necessary and proportionate measure”.<sup>21</sup>

9. The Prosecution submits that the Accused has failed to meet his burden to demonstrate that there has been a material change in circumstances since the Decision.<sup>22</sup> Moreover, the Prosecution submits that the Accused has not presented a “clear and strong case” that he will appear for trial if provisionally released and that he will not pose a danger to any victim, witness or other person.<sup>23</sup> In particular, the Prosecution asserts that: (i) the FYROM Government’s guarantee “in no way alleviates any of the concerns” raised by Trial Chamber in the Decision and given the Accused’s ongoing influence over members of the Government and the police it is not clear how the Government will implement the guarantee;<sup>24</sup> (ii) the Accused maintains means to flee and has attempted to avoid judicial proceedings in the past;<sup>25</sup> (iii) the Accused is “fully aware” of the identities of the intended witnesses [REDACTED];<sup>26</sup> (iv) the Law on Witness Protection is not fully operational;<sup>27</sup> (v) the confirmation of the acquittals in the Rastanksi Lozja case do not alter the fact that the Accused remains charged in Croatia;<sup>28</sup> and, (vi) the Accused’s personal reasons are not sufficient to qualify as a material change in circumstances.<sup>29</sup> The Prosecution also submits that an oral hearing would be a repetition of the

<sup>15</sup> Addendum, para. 12.

<sup>16</sup> Second Motion, para. 26.

<sup>17</sup> Second Motion, para. 32.

<sup>18</sup> Second Motion, paras. 36 – 37.

<sup>19</sup> Second Motion, para. 36.

<sup>20</sup> Second Motion, para. 39.

<sup>21</sup> Second Motion, para. 44.

<sup>22</sup> Response, para. 2.

<sup>23</sup> Response, para. 4.

<sup>24</sup> Response, paras. 6 – 11.

<sup>25</sup> Response, para. 7.

<sup>26</sup> Response, para. 22.

<sup>27</sup> Response, paras. 13 – 14.

<sup>28</sup> Response, para. 15.

<sup>29</sup> Response, para. 24.

earlier hearing and cannot constitute a material change in circumstances<sup>30</sup> and that there has been a material change in circumstances that militate against provisional release.<sup>31</sup>

### III. THE LAW

10. Pursuant to Rule 65(B) of the Rules, a Chamber may order the provisional release of an accused, *inter alia*, if the Chamber is satisfied that: (i) the accused will appear for trial; (ii) if released, the accused will not pose a danger to any victim, witness or other person; and (iii) if it is also satisfied that release is appropriate in the particular case. The Trial Chamber's discretion under Rule 65 of the Rules must be exercised in light of all the circumstances of the case. While it is accepted that detention is the most severe measure that can be imposed on an accused and is to be used only when no other measures can achieve the effect of detention, it is recognised that this does not preclude the use of detention in an appropriate case.<sup>32</sup>

11. Where an accused's previous application for provisional release has been denied, the accused must also satisfy the Trial Chamber that there has been a "material change in circumstances which would justify reconsideration of a renewed motion for provisional release".<sup>33</sup> The burden of proof remains on the accused to satisfy the Chamber that the requirements in Rule 65(B) are fulfilled.<sup>34</sup> The accused must have a clear and strong case to satisfy the Chamber that he will appear for judgement if released, and that he will not pose a danger to any victim, witness or other person.<sup>35</sup>

### IV. DISCUSSION

#### A. Word Limit

12. The Prosecution notes, in the Response, that the Second Motion is considerably over the allowable word limit set by the Practice Direction on the Length of Briefs and Motions ("Practice Direction"). The Trial Chamber reminds Counsel that, in accordance with Clause 7 of the Practice Direction, authorisation by the Trial Chamber must be sought in advance if the party wishes to exceed the word limits as established in the Practice Direction, although in this instance the Trial Chamber has considered the Second Motion in full.

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<sup>30</sup> Response, para. 12.

<sup>31</sup> Response, para. 26.

<sup>32</sup> See, for example, *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-PT, Decision on Ivan Čermak's and Mladen Markač's Motions for Provisional Release, 29 April 2004.

<sup>33</sup> *Prosecutor v. Bala and Musliu*, Case No. IT-03-66-T, Decision on Defence Renewed Motion for Provisional Release of Fatmir Limaj, 26 October 2005 ("*Limaj et al.* case"), para. 8; See also *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Second Motion for Provisional Release, 12 September 2005 ("*Martić* case"), para. 33.



13. In the Response and pursuant to Clause 7 of the Practice Direction, the Prosecution also requests permission to exceed the word limit and to submit a response of 3,943 words. The Trial Chamber grants the Prosecution's request to exceed the word limit for responses.

### **B. Opportunity to be Heard**

14. The Trial Chamber notes that, on 13 April 2006, copies of the Second Motion were sent to the Government of the Netherlands. To date, no submissions from the Government of the Netherlands have been received by the Tribunal. The Trial Chamber considers that the host country has been given sufficient time to be heard and that the requirement that the host country be given the opportunity to be heard, as set forth in Rule 65(B) of the Rules, has been satisfied.

15. The Trial Chamber further notes that, on 16 April 2006, the Government of the FYROM provided guarantees for the provisional release of the Accused, which are attached as Annex A to the Second Motion. Therefore, the Trial Chamber considers that the requirement of giving "the State to which the accused seeks to be released" the opportunity to be heard has been satisfied.

16. While no guarantees were filed by the Republic of Croatia ("Croatia"), the Trial Chamber similarly considers that, should it have wished to, Croatia could have provided guarantees given the amount of time it has had to do so. Furthermore, Croatia has expressed its support for the guarantees of the Government of the FYROM and Boškoski's provisional release to the FYROM through the Letter. Therefore, the Trial Chamber finds that Croatia has also been given the opportunity to be heard.

### **C. Oral Hearing**

17. The Trial Chamber acknowledges the willingness of the FYROM Minister of Justice and the President of the FYROM Government Coordinative Body for Cooperation with The Hague Tribunal and the FYROM Minister of Interior Affairs to attend an oral hearing in order to reaffirm the FYROM Government guarantee.<sup>36</sup> However, the Trial Chamber considers that it has ample documentation before it upon which it can base its decision regarding the Accused's provisional release, including the weight to be given to the FYROM guarantee in the context of the current circumstances. Therefore, the Trial Chamber considers that an oral hearing in conjunction with the Second Motion is not necessary.

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<sup>34</sup> *Martić* case, para 16.

<sup>35</sup> *Limaj et al.* case, para. 8.

<sup>36</sup> Second Motion, para. 11.

18. The Trial Chamber notes that Counsel refers to the willingness of the government officials to attend an oral hearing in the context of the submissions regarding material changes in circumstances. The Trial Chamber considers that this cannot constitute a material change in circumstances, sufficient to justify a reconsideration of the conclusions made in the Decision.

#### **D. The Provisional Release of the Accused to FYROM**

##### **1. Appearance of the Accused at Trial**

###### **(a) Seriousness of charges**

19. In the Second Motion, Counsel submits that the confirmation by the Skopje Appellate Court of the not-guilty verdicts rendered in the Rastanski Lozja case constitutes a material change in circumstances because it “further eliminate[s] the possibility of a lengthy prison sentence” and that the argument that the Accused may face a lengthy prison sentence if convicted in that case is no longer valid.<sup>37</sup> In relation to the case in Croatia, Counsel asserts that since it is the same case as that which was tried in the FYROM, “it is clear that there is no longer a necessity for detention in the Republic of Croatia”.<sup>38</sup>

20. Counsel also submits, as was submitted in the Motion, that the case against the Accused is based on command responsibility and that the severity of the charges against the Accused “is far less serious” when compared to charges faced by other accused who have been granted provisional release.<sup>39</sup> In this regard, Counsel also submits that the argument that, if convicted of the charges against the Accused in the case before the Tribunal, he would face a lengthy prison sentence cannot be used against him because all accused before the Tribunal may face lengthy prison sentences.<sup>40</sup>

21. The Prosecution disputes that the confirmation of the not-guilty verdicts is a material change. It notes that the appellate decision has been subject to criticism and expressions of concern by the international community.<sup>41</sup> It also submits that the Trial Chamber was aware that not-guilty verdicts had been issued by the Macedonian Court of First Instance when it issued the Decision and that, despite the confirmation in the FYROM, the Accused remains charged in Croatia for his participation in the same crime.<sup>42</sup> The Prosecution further submits that the possibility remains that

<sup>37</sup> Second Motion, paras. 13 and 21.

<sup>38</sup> Second Motion, para. 22.

<sup>39</sup> Second Motion, para. 18.

<sup>40</sup> Second Motion, para. 19.

<sup>41</sup> Response, para. 15.

<sup>42</sup> *Ibid.*

the Accused may receive a lengthy prison sentence if found criminally responsible for the charges set out in the Amended Indictment.<sup>43</sup>

22. In the Decision, the Trial Chamber found that it needed only find that if the Accused were to be convicted in either the case before the Tribunal or in the Rastanski Lozja case, he would likely face a lengthy prison sentence and that “the potential for a lengthy prison sentence resulting from either of these two cases may constitute an incentive for the Accused to flee and is an aggravating factor in determining whether the Accused will appear for trial”.<sup>44</sup> This finding was upheld on appeal.<sup>45</sup>

23. In the present circumstances, the Trial Chamber is of the view that the confirmation of the not-guilty verdicts does not constitute a material change in circumstances. Although the Accused no longer faces charges in the FYROM for his role in the Rastanski Lozja case, his guilt or innocence remains to be determined in the proceedings in Croatia. As such, the possibility of a lengthy prison sentence in Croatia exists. Furthermore, the charges against the Accused in the case before the Tribunal are the same. Therefore, the Trial Chamber considers that the seriousness of the charges against the Accused and, consequently, the possibility of a lengthy prison sentence still exist as aggravating factors when considering the Second Motion.

(b) Previous attempt to avoid criminal prosecution in the FYROM

24. In the Second Motion, Counsel disputes that the Government of the FYROM failed to arrest the Accused and allowed him to escape. Counsel submits that the Accused never attempted to evade investigation or court proceedings. Rather, he was never served with summons to appear.<sup>46</sup> In support of the argument that no criminal proceedings were initiated against the Accused and that he did not flee from the FYROM, Counsel submits that the Accused is still a member of the FYROM Parliament.<sup>47</sup> Counsel also argues that the Accused never intended to flee from Croatia, even when he was informed that his extradition to the FYROM was being sought and he could have

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<sup>43</sup> *Ibid.*

<sup>44</sup> Decision, paras. 31 - 32. See also Appeals Chamber decision, paras. 11 – 12.

<sup>45</sup> Appeals Chamber decision, para. 12.

<sup>46</sup> Second Motion, para. 26. See also Annexes D and E to the Second Motion for the investigator’s report stating that he had found no proof of service to Boškoski and a statement from a past attorney of Boškoski in support of the conclusion that the service of summons was not in accordance with the FYROM Code of Criminal Procedure, respectively.

<sup>47</sup> Second Motion, para. 27. See Annex G to the Second Motion, where Boškoski provides a certificate showing he has been employed as an Assemblyman for the Parliament of the FYROM, since 4 October 2002 and the President of the Counter-Intelligence Administration and Intelligence Agency of the Parliament of the FYROM.

easily left the country,<sup>48</sup> which, Counsel asserts, demonstrates the Accused's intention not to avoid legal proceedings against him.<sup>49</sup>

25. The Prosecution submits that the Accused's arguments and the supporting documentation does not "suggest a materially different factual setting" from that which existed at the time of the Accused's first application for provisional release. It cites a small section of a public speech by the Accused as evidence that he knew that judicial processes against him in relation to the Rastanski Lozja case were ongoing, and argues that "no interpretation of Macedonian law can mask the fact that the Accused, with this knowledge, chose to flee the country".<sup>50</sup> It also notes that despite the fact that the Accused remained in Croatia when he held a valid passport, there were regional and international arrest warrants issued against him from 4 May 2005, which would have made cross-border travel difficult.<sup>51</sup>

26. In the Decision, the Trial Chamber found that there was sufficient evidence to support the conclusion that the Accused left the FYROM to avoid criminal prosecution and that this was an aggravating factor in the consideration of his application for provisional release.<sup>52</sup> The Appeals Chamber upheld this finding.<sup>53</sup>

27. The Trial Chamber is not persuaded that the documentation provided by Counsel demonstrates a material change in circumstances that requires the Trial Chamber to revisit the conclusions made in the Decision. Thus, the Accused's attempt to avoided criminal prosecution by fleeing to Croatia in knowledge of the proceedings initiated against him still weigh heavily against a decision to provisionally release him.

(c) Co-operation with the Tribunal

28. Counsel submits that the Accused did not challenge or delay his extradition to The Hague and while in Pula Prison he co-operated fully with the Prosecution, and that this demonstrates that the Accused would have voluntarily surrendered to the Tribunal had he not been in Pula Prison at the time of his transfer.<sup>54</sup> The Prosecution does not respond to these submissions.

<sup>48</sup> Second Motion, para. 29.

<sup>49</sup> *Ibid.* The Accused also submits, at paragraph 29, that the confirmation of the not-guilty verdicts against his co-accused in the Rastanski Lozja case in the FYROM makes his intent not to avoid legal proceedings against him "especially true".

<sup>50</sup> Response, paras. 17 – 18.

<sup>51</sup> Response, para. 19.

<sup>52</sup> Decision, para. 35.

<sup>53</sup> Appeals Chamber decision, para. 14.

<sup>54</sup> Second Motion, para. 23.

29. In the Decision, the Trial Chamber found that in light of the fact that the Accused was in Pula Prison at the time of his transfer, it was not in the position to give much weight to the circumstances surrounding his transfer to The Hague.<sup>55</sup> The Appeals Chamber agreed, finding that since the Accused was in legal custody at the time, he was not in a position to be voluntarily transferred and the fact that he did not actively seek to prevent Croatia from carrying out its international obligation to transfer him to The Hague is not a factor that should weigh in his favour.<sup>56</sup>

30. The Trial Chamber sees no reason to come to a different conclusion. Counsel has not demonstrated that there has been a material change in circumstances regarding his co-operation with the Tribunal or his transfer to The Hague. As such, this factor does not warrant a reconsideration of the denial of his first application for provisional release.

(d) Personal circumstances

31. Counsel notes that, on 24 March 2006, the Accused signed a personal guarantee stating that he shall fully comply with the Trial Chamber's orders.<sup>57</sup> Counsel does not appear to argue that this personal guarantee constitutes a material change in circumstances. Counsel also submits that there are a number of personal reasons for the Accused wishing to be provisionally released, particularly, to be reunited with his family<sup>58</sup> and health problems.<sup>59</sup>

32. The Prosecution notes that the Accused provided a personal statement in his first application for provisional release, which was similar to the one he provides in the Second Motion, and that his health problems are "under control".<sup>60</sup> Therefore, the Prosecution submits, these factors do not constitute a material change in circumstances.

33. The Trial Chamber acknowledges the statements made by the Accused's family in support of his provisional release, the Accused's personal guarantee, and the fact that he has experienced health problems. However, the Trial Chamber is of the view that these personal circumstances do not represent a material change in circumstances and that they cannot justify a reconsideration of the Trial Chamber's previous findings regarding his first application for provisional release.

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<sup>55</sup> Decision, para. 36.

<sup>56</sup> Appeals Chamber decision, para. 15.

<sup>57</sup> Second Motion, para. 38.

<sup>58</sup> Second Motion, para. 36.

<sup>59</sup> Second Motion, para. 39.

<sup>60</sup> Response, para. 24.

(e) FYROM guarantees

34. Counsel submits that the Government of the FYROM has provided a new guarantee, which “substantiates that the FYROM can carry out every order of the Trial Chamber”.<sup>61</sup> Counsel argues that this new guarantee constitutes a material change in circumstances and “eliminates the concerns of the previous decision of the Trial Chamber”.<sup>62</sup> Furthermore, Counsel submits that the Government of the FYROM has been “fully cooperative with the Tribunal and has acted in good faith in relation to this and other investigations”<sup>63</sup> and that in support of the Tribunal’s work, the Government has created a Coordinative Body for the Cooperation with The Hague Tribunal.<sup>64</sup>

35. The Prosecution acknowledges that the new guarantee is more detailed than the previous one. However, the Prosecution submits that it does not alleviate the earlier concerns of the Trial Chamber and does not constitute a material change in circumstances in light of the uncertainty about how the Government would implement it.<sup>65</sup> It argues that the guarantee that the Government will respect the primacy of the Tribunal in relation to proceedings involving the Accused is “particularly problematic” because the “Macedonian Government is not a monolith” and members of the Government strongly contest the Tribunal’s primacy and because there is a “distinct possibility” that members of the VMRO-DPME may return to power in upcoming elections, putting into “serious doubt” the viability of a guarantee to respect the primacy of the Tribunal.<sup>66</sup>

36. In relation to the co-operation by the Government with the Tribunal, the Prosecution argues that while certain members of the Government have co-operated, this co-operation has not been “exempt from problems over the years”.<sup>67</sup> It also submits that although members of the Coordinative Body have attempted to facilitate the Prosecution’s work, other government officials have attempted to obstruct it.<sup>68</sup> Therefore, the Prosecution argues, co-operation by some members of the Government with the Tribunal is not a material change in circumstances.<sup>69</sup>

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<sup>61</sup> Second Motion, para. 25.

<sup>62</sup> Second Motion, para. 10.

<sup>63</sup> Second Motion, para. 24.

<sup>64</sup> *Ibid.*

<sup>65</sup> Response, paras. 6 and 11. For example, at paragraphs 6 and 8, the Prosecution questions the ability of the FYROM Government to prevent the Accused from interfering with victims, witnesses, or the proceedings, or to “immediately detain” him given the Accused’s ongoing influence over the Macedonian public and former members of the “Lions” special police unit. At paragraph 7, the Prosecution questions the ability of the FYROM Government to return the Accused to the Tribunal in light of his “demonstrated proclivity to avoid Macedonian Government attempts to submit him to judicial processes” and notes that he has the financial means to flee.

<sup>66</sup> Response, para. 10.

<sup>67</sup> Response, para. 16.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

37. In the Reply, Counsel reiterates that the guarantee ensures “the Government’s intentions and practical ability to comply with any and all orders the Trial Chamber may impose”.<sup>70</sup> Counsel rejects the claim that the Accused has the financial means to flee<sup>71</sup> and argues that the fact that it is election year in the FYROM is irrelevant.<sup>72</sup> Counsel also disputes the Prosecution’s submission regarding the Accused’s ongoing influence over the “Lions”. Counsel argues that the “Lions” police unit was not formed by the Accused but rather by “competent organs of the Republic of Macedonia” pursuant to law.<sup>73</sup> Furthermore, Counsel submits that other accused before the Tribunal, who have been provisionally released, were high-ranking and influential individuals and that “the influential status of an accused... has not constituted grounds to deny provisional release”.<sup>74</sup> Counsel also states that the assertion that the Government of the FYROM and the VMRO-DPME have not co-operated with the Tribunal is “absolutely false” and it points to the fact that state institutions have given the Defence a considerable amount of evidence, indicating co-operation with the Tribunal.<sup>75</sup>

38. In the Decision, the Trial Chamber held that the co-operative attitude that the FYROM Government has exhibited towards the Tribunal must be balanced against other practical considerations and the personal circumstances of the Accused.<sup>76</sup> The Trial Chamber noted that the Accused retains influence among the public and members of the police force and that members of the police force allegedly assisted him to flee the FYROM.<sup>77</sup> The Appeals Chamber upheld this finding.<sup>78</sup>

39. The Trial Chamber considers the co-operation by the Government of the FYROM to be a positive and ongoing matter and, as such, it does not represent a material change in circumstances affecting the provisional release of the Accused. Furthermore, the Trial Chamber is not persuaded that the new guarantee constitutes a material change in circumstances. The Trial Chamber reiterates its earlier finding that it is necessary to balance the guarantee with the other considerations relevant to the assessment of the Accused’s application for provisional release. Thus, the guarantee must be balanced against the information before the Trial Chamber that demonstrates that the *nature* of the Accused’s influence, and contrary to the submission by Counsel, not the fact that he is influential *per se*, increases the likelihood that he may fail to appear for trial and poses a threat to victims and witnesses.

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<sup>70</sup> Reply, para. 4.

<sup>71</sup> Reply, para. 5.

<sup>72</sup> Reply, para. 10.

<sup>73</sup> Reply, para. 6.

<sup>74</sup> Reply, para. 7.

<sup>75</sup> Reply, paras. 8 – 9.

<sup>76</sup> Decision, para. 41.

(f) Date for commencement of trial

40. In the Second Motion, Counsel notes that the trial is unlikely to start in 2006 and in light of this and the presumption of innocence granting provisional release is a “reasonable and proportionate measure”.<sup>79</sup> Counsel also cites the decision in *Prosecutor v. Delić* to provisionally release Mr. Delić, stating that it relied upon the fact that the trial would not commence in the foreseeable future.<sup>80</sup>

41. The Prosecution argues that “a significant distinction” exists between the *Delić* case and the present case. In particular, the Trial Chamber in that case found that Mr. Delić had shown that if provisionally released he would return for trial and would not pose a danger to anyone.<sup>81</sup>

42. At the time of the Decision, the Trial Chamber noted that it was anticipated that the trial would start in 2006. The Trial Chamber stated that it took account of the potential length of pre-trial detention but that in light of the other findings, the factor did not change its overall decision to deny provisional release.<sup>82</sup>

43. The Trial Chamber sees no reason to deviate from this previous conclusion. It is aware of the length of time that the Accused has currently spent in pre-trial detention but it does not consider that in the present circumstances the lack of a start date for trial constitutes a change in circumstances that is sufficiently material to justify a reconsideration of the conclusions made in the Decision.

## 2. Danger Posed by the Accused to Victims, Witnesses and Other Persons

44. Counsel’s submissions focus on the coming into force of the Law on Witness Protection law and the lack of danger the Accused poses to victims and witnesses. First, Counsel argues that the coming into force of the Law on Witness Protection on 1 January 2006 and the creation of the Council for Witness Protection is a material change in circumstances.<sup>83</sup> In the Response, the Prosecution argues that the creation of the Department for Witness Protection is not a material change in circumstances and questions the extent of both the implementation of the law and the operational status of the new Department for Witness Protection and Council for Witness

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<sup>77</sup> *Ibid.*

<sup>78</sup> Appeals Chamber decision, para. 18.

<sup>79</sup> Second Motion, paras. 40 – 42 and 44.

<sup>80</sup> Second Motion, para. 43.

<sup>81</sup> Response, para. 25.

<sup>82</sup> Decision, para. 44.

<sup>83</sup> Second Motion, para. 12.



Protection.<sup>84</sup> It notes the view of members of the Department for Witness Protection that the Department will not be fully operational before January 2007.<sup>85</sup> In the Reply, Counsel submits that the speed of adopting the law and the implementation process is commendable.<sup>86</sup>

45. Second, Counsel reiterates that the Accused has never taken any action against, interfered with, or posed a danger to, alleged victims or witnesses, and that “the distance and the link between him and the alleged victims and witnesses is rather remote”.<sup>87</sup> Counsel argues that the Prosecution must provide specific evidence that a concrete danger exists.<sup>88</sup> Counsel further submits that the argument that the Accused can influence victims or witnesses because of his previous position of authority is flawed.<sup>89</sup> The Prosecution asserts that the Accused is fully aware of the identities of the witnesses the Prosecution intends to call [REDACTED]

[REDACTED].<sup>90</sup> It also argues that the Accused has taken action against, interfered with, and posed a danger to, other persons when he was Minister of Interior or subsequently.<sup>91</sup> Further, the Prosecution submits [REDACTED]

[REDACTED] that the establishment of the Department for Witness Protection inside the Minister of Interior makes it more, not less, likely that the Accused could pose a danger to victims, witnesses or other persons if provisionally released.<sup>92</sup>

46. In addition, the Prosecution submits that there have been material changes in circumstances, which militate against the Accused’s provisional release, namely, (i) the Accused has now received copies of all witness statements and the exhibits the Prosecution intends to use at trial meaning that, should provisional release be granted, the Accused has a greater incentive not to return for trial; and, (ii) the identities of all Prosecution witnesses have now been disclosed to the Accused and, thus, there is a greater chance that the Accused will attempt to intimidate and/or threaten witnesses and/or their families.<sup>93</sup>

47. In the Reply, Counsel states that neither it nor the Accused have had any contacts with Prosecution witnesses other than those who have notified the Prosecution of their willingness to

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<sup>84</sup> Second Motion, para. 13.

<sup>85</sup> *Ibid.*

<sup>86</sup> Reply, para. 11.

<sup>87</sup> Second Motion, paras. 31 - 32.

<sup>88</sup> Second Motion, para. 33.

<sup>89</sup> Second Motion, para. 34.

<sup>90</sup> Response, para. 22.

<sup>91</sup> Response, para. 23.

<sup>92</sup> Response, para. 14.

<sup>93</sup> Response, para. 26.

meet with the Defence and the Defence has met with them only with the agreement of the Prosecution.<sup>94</sup> In relation to the Prosecution's assertion that there has been a material change in circumstances against his provisional release, Counsel also argues that it is the right of every accused to receive inculpatory and exculpatory evidence and that the jurisprudence of the Tribunal does not recognise that disclosure of witness statements is a basis for denial of a request for provisional release.<sup>95</sup>

48. In the Decision, the Trial Chamber considered that there was a close proximity between the Accused and victims and witnesses and that there was a lack of an operative witness protection law.<sup>96</sup> It took note of evidence of witness intimidation and threats of violence from former "Lions" members. The Trial Chamber found that the influence that the Accused had over former "Lions" members may present a concrete danger to victims and witnesses and interference with the administration of justice. Therefore, the Trial Chamber concluded, that "based on the totality of evidence, [it] is not persuaded that the release of the Accused would not pose a danger to victims, witnesses, or other persons".<sup>97</sup> The Appeals Chamber upheld this finding.<sup>98</sup>

49. The Trial Chamber reiterates that the Accused must satisfy it that, if provisionally released, he will not pose a danger to victims, witnesses and other persons. Although the Trial Chamber agrees that the disclosure of witness statements is not a basis for the denial of a request for provisional release, the Accused has not satisfied the Trial Chamber that he no longer poses a danger to victims and witnesses and that it should reconsider its earlier findings. The Trial Chamber also considers that the proper functioning of a system to protect victims and witnesses presupposes that those who stand to be protected by such a system have trust in it. In this regard, the Trial Chamber was impressed by the Prosecution's argument that it is unlikely that the Prosecution's witnesses will feel confident seeking assistance from an institution where individuals loyal to the Accused are employed.<sup>99</sup> In the current circumstances, and particularly in light of the Accused's continued close connection with the Ministry of Interior and current and former members of the police, victims and witnesses may fear to apply for protection pursuant to the Law on Witness Protection. Therefore, while this law is, in general terms, a positive development, its introduction does not, in and of itself, constitute a material change in circumstances sufficient to justify a reconsideration of the relevant findings in the Decision.

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<sup>94</sup> Reply, para. 13.

<sup>95</sup> Reply, para. 14.

<sup>96</sup> Decision, para. 43.

<sup>97</sup> *Ibid.*

<sup>98</sup> Appeals Chamber decision, para. 20.

<sup>99</sup> See Response, para. 14.

### **E. Guarantees by Croatia – Release to Croatia**

50. In the face of finding that there has been no material change in circumstances sufficient to justify a reconsideration of its earlier conclusions in the Decision regarding the Accused's provisional release to the FYROM, the Trial Chamber turns to the Accused's request, in the alternative, to be provisionally released to Croatia.

51. The Trial Chamber considers that the conclusions that it has drawn above in relation to the Accused's provisional release to the FYROM, namely, whether he will appear at trial and whether he poses a danger to victims, witnesses and other persons, can similarly be applied to the assessment about whether the Accused should be provisionally released to Croatia.

52. More specifically, in the Addendum, Counsel submits that "the Croatian Government letter of 30 May 2006 clearly constitutes a new fact and a material change of circumstances"<sup>100</sup> and that the Letter provides the consent of the Croatian Government to the provisional release of the Accused to the FYROM.<sup>101</sup> In the Response to the Addendum, the Prosecution submits that: (a) the Letter does not constitute a material change in circumstances;<sup>102</sup> (b) the Letter does not provide a government guarantee from the Government of Croatia regarding the provisional release of the Accused to Croatia, a "bare reading" of the Letter shows that the Government of Croatia has refused to provide such guarantee, and the Letter cannot be treated as a Croatian Government guarantee because the Government takes no responsibility for the return of the Accused to the Tribunal;<sup>103</sup> (c) the Government of Croatia's support of the FYROM guarantee is of no legal consequence;<sup>104</sup> (d) the Letter can be interpreted as a refusal by the Croatian Government to accept the Accused;<sup>105</sup> and, (e) the Letter establishes that there has been no change of circumstances regarding pending criminal proceedings against the Accused in Croatia.<sup>106</sup> In the Reply to the Response to the Addendum, Counsel submits that it never stated that the Letter provided a Croatian Government guarantee<sup>107</sup> and that the Government of Croatia was respecting the principle of the separation of powers by noting that criminal proceedings against the Accused in Croatia are pending and that the Accused's detention in Croatia remains a possibility.<sup>108</sup>

<sup>100</sup> Addendum, para. 5.

<sup>101</sup> Addendum, para. 6.

<sup>102</sup> Response to the Addendum, para. 3.

<sup>103</sup> Response to the Addendum, paras. 3, 4 and 6.

<sup>104</sup> Response to the Addendum, para. 4.

<sup>105</sup> Response to the Addendum, para. 7.

<sup>106</sup> Response to the Addendum, para. 8.

<sup>107</sup> Reply to the Response to the Addendum, paras. 7 – 9.

<sup>108</sup> Reply to the Response to the Addendum, para. 11.

53. In addition to the Letter, Counsel notes the opinion of the President of the County Court in Pula, Croatia, that the Accused would not intend to flee from Croatia if provisionally released.<sup>109</sup> Counsel also submits that “there is no longer a necessity for detention in Croatia”.<sup>110</sup> In response, the Prosecution contends that the Trial Chamber was aware of the President’s statement when it issued the Decision<sup>111</sup> and that the Accused’s assertion that detention in Croatia is no longer necessary is unsupported.<sup>112</sup> Further, it submits that the Accused should have been able to provide guarantees from the Government of Croatia.<sup>113</sup>

54. The Trial Chamber recalls that the Government of Croatia did not provide guarantees in relation to the Accused’s first application for provisional release.<sup>114</sup> Furthermore, in the Decision, the Trial Chamber found that the Accused’s provisional release to the FYROM could have led to his being tried in the FYROM for his alleged crimes in the Rastanski Lozja case, thus preventing Croatian authorities from completing their criminal proceedings in the same case and that, in those circumstances, the Trial Chamber “did not wish to provisionally release the Accused to the FYROM without first having been provided with the consent of the Croatian Government”.<sup>115</sup>

55. The Trial Chamber notes that the Letter, in relevant part, states that the Government of Croatia “fully supports” the FYROM’s guarantee and “in that respect” supports the Accused’s request for provisional release “exclusively in the Republic of Macedonia”.<sup>116</sup> The Letter also provides that if the Accused is granted provisional release to the FYROM, the Government of Croatia “cannot take any responsibility for the further development of events”.<sup>117</sup> In addition, it states that the Accused’s provisional release to Croatia, “would lose its meaning through his detention and by carrying out criminal proceedings in Croatia”.<sup>118</sup>

56. The Trial Chamber considers that, as submitted by the Prosecution, the Letter does not provide any government guarantees in respect of the provisional release of the Accused to Croatia, which would allow the Trial Chamber to consider a material change in circumstances. The Trial Chamber cannot rely on the opinion of the President of the County Court of Pula in lieu of these government guarantees. Therefore, the Trial Chamber disagrees with the Accused that, in this

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<sup>109</sup> Second Motion, para. 28.

<sup>110</sup> Second Motion, para. 22. See also the Reply, para. 12.

<sup>111</sup> Response, para. 19.

<sup>112</sup> The Accused made further submissions on this issue in the Reply to the Response to the Addendum, para. 10.

<sup>113</sup> Response, para. 20.

<sup>114</sup> See Decision, para. 49.

<sup>115</sup> Decision, paras. 45 – 46.

<sup>116</sup> See Letter, p. 2.

<sup>117</sup> *Ibid.*

<sup>118</sup> Letter, p. 1.

respect, the Letter represents a material change in circumstances that would justify a reconsideration of its earlier findings in the Decision.

57. However, the Trial Chamber is of the view that the Letter indicates that Croatia is not opposed to the provisional release of the Accused to the FYROM, and that this addresses concerns expressed in the Decision regarding the issue of international comity. As such, this aspect of the Letter represents a material change in circumstances and international comity no longer poses a barrier to the Accused's provisional release.

58. Despite this, since, for the reasons given above, provisional release of the Accused to the FYROM is not possible, in particular due to the danger the Accused poses to victims and witnesses, release to Croatia presupposes that a Croatian Government guarantee is required. As conceded by Counsel, the Government of Croatia has still not provided such a guarantee. Therefore, the Trial Chamber is of the view that the change to the matter of international comity is not sufficient to satisfy the Trial Chamber that the Accused should be granted provisional release to Croatia.

#### **F. Request for Stay**

59. As aforementioned in the Background, the Prosecution submitted an Application for Stay for a stay of the decision of the Trial Chamber to provisionally release the Accused and it requested an extension of time from 27 April 2006 to 10 May 2006 to file the application for the stay.<sup>119</sup>

60. As a result of the Trial Chamber's decision to deny the request for provisional release made in the Second Motion, the Trial Chamber considers that it is not necessary to further consider the Application for Stay or the submissions made by either party in response and reply. As such, the Trial Chamber considers the Application for Stay to be moot.

### **V. CONCLUSION**

61. The Trial Chamber finds that the Accused has not presented a strong and clear case that satisfies the Trial Chamber that, if provisionally released, the Accused will return for trial and that he does not pose a threat to victims, witnesses and other persons. Moreover, the Accused has not demonstrated that there has been a material change in circumstances that would justify the Trial Chamber reconsidering its findings in the Decision.

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<sup>119</sup> Application for Stay, para. 2. As also noted in the Background, Boškoski filed his response on 16 May 2006: Confidential Response to Prosecution's Motion for Extension of Time and Application for Stay of Decision Granting Provisional Release Dated 10 May 2006. The Prosecution filed its reply on 22 May 2006: Prosecution's Reply to Accused Boškoski's Confidential "Response to Prosecution's Motion for Extension of Time and Application for Stay".

## VI. DISPOSITION

**FOR THE FOREGOING REASONS**, the Trial Chamber, pursuant to Rules 65 and 126*bis* of the Rules;

**GRANTS** the Prosecution's request to exceed the allowable word limit in the Response;


**GRANTS** Counsel's request to file the Reply to the Response to the Addendum;

**DENIES** the Second Motion; and

**FINDS** the Application for Stay moot.

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

Dated this twenty-ninth day of June 2006,  
At The Hague,  
The Netherlands

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**Judge Carmel Agius**  
**Presiding Judge**

**[Seal of the Tribunal]**