



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: 13 July 2006

Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 13 July 2006

THE PROSECUTOR

v.

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

**DECISION ON JOINT MOTION OF THE ACCUSED MILETIĆ AND
GVERO FOR TEMPORARY PROVISIONAL RELEASE FROM
15 JULY 2006 UNTIL THE CONTINUATION OF TRIAL**

The Office of the Prosecutor:

Peter McCloskey

Government of the Republic of Serbia

Government of the Netherlands

Counsel for the Accused:

Zoran Živanović and Julie Condon for Vujadin Popović
John Ostojić and Christopher Meek for Ljubiša Beara
Jelena Nikolić and Stéphane 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

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 the “Joint Defence Motion by the Accused Radivoje Miletić and Milan Gvero for Temporary Provisional Release from 15 July 2006 Until the Continuation of Trial” (“Motion”), filed on 8 June 2006;

NOTING the Decisions granting provisional release for Milan Gvero¹ and Radivoje Miletić² (collectively the “Accused”), and the Trial Chamber’s “Order Suspending Provisional Release” (“Order”), issued on 6 June 2006, in which the provisional release of the Accused was suspended effective 29 June 2006;

NOTING the “Prosecution’s Response to Joint Defence Motions by the Accused Radivoje Miletić and Milan Gvero for Variation of Provisional Release and Temporary Provisional Release”, filed on 9 June 2006, in which the Prosecution takes no position on the Motion;

NOTING the “Decision on Joint Defence Motion for Variation of the Order Suspending Provisional Release Issued on 6 June 2006” (“Decision”), issued on 20 June 2006, in which the Trial Chamber modified its Order and suspended the provisional release of the Accused effective 4 July 2006;

NOTING that the Accused returned to the United Nations Detention Unit (“Detention Unit”) by 4 July 2006, in compliance with the Trial Chamber’s Decision suspending provisional release effective that date;

NOTING that the Motion requests the Trial Chamber to grant the Accused temporary provisional release during the Tribunal’s summer recess, from 15 July 2006 until “a date determined by the Trial Chamber that will be 5 days prior to the date fixed for the continuation of the trial”;³

NOTING the “Joint Defence Urgent Submission by the Accused Radivoje Miletić and Milan Gvero”, filed *confidentially* on 11 July 2006, to which the Defence attached confidential guarantees of the Republic of Serbia, dated 7 July 2006, to carry out all orders issued by the Trial Chamber so that the Accused could at any time appear before the Tribunal;

¹ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005 (“Gvero Decision”).

² *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005 (“Miletić Decision”).

³ Motion, para. 12.

NOTING that the Registry indicates that the Government of the Netherlands, the “host country”, was notified of the Motion on 9 June 2006, and that the host country has not communicated any objection to the Motion to the Tribunal;

NOTING that at the Status Conference held 6 July 2006, the Trial Chamber affirmed that opening statements in the trial would begin 21 August 2006;⁴

NOTING that the Motion asserts that all requirements for provisional release are met in this case, and that temporary provisional release during the break in proceedings will have no impact upon the proceedings, and that the requirements of Rule 65 of the Rules of Procedure and Evidence (“Rules”), which the Trial Chamber found were satisfied at the time provisional release was granted to the Accused, remain satisfied in that relevant circumstances have not changed;

NOTING that the Motion asserts that the Accused “have always fully complied with all conditions imposed upon them by the Trial Chamber Decisions concerning provisional release,”⁵ and further asserts that the Accused, if temporarily provisionally released during the break in proceedings, will return to the Tribunal on the date fixed by the Trial Chamber and will not pose any danger to victims, witnesses or any other persons;

CONSIDERING that the host country was notified of the Motion and has not communicated any objection to the Motion, and that the host country has, therefore, been given a reasonable opportunity to be heard pursuant to Rule 65(B) of the Rules;

CONSIDERING the guarantees of the Republic of Serbia dated 7 July 2006, and that such guarantees satisfy the requirement of Rule 65(B) of the Rules that the State to which the accused seeks to be released must be given a reasonable opportunity to be heard;

CONSIDERING that the Accused voluntarily surrendered to the custody of the Tribunal on 24 February 2005⁶ and 28 February 2005;⁷

CONSIDERING that the Accused appear to have complied with all conditions imposed upon them by the Trial Chamber while provisionally released, and that the Accused returned to the Detention Unit 4 July 2006, in compliance with the Trial Chamber’s Decision suspending provisional release effective that date;

⁴ Status Conference, T. 216 (6 July 2006).

⁵ Motion, para. 11.

⁶ Gvero Decision, paras. 2, 11.

⁷ Miletić Decision, paras. 2, 11.

CONSIDERING that the Trial Chamber is satisfied that the Accused, if temporarily released during the break in proceedings over the Tribunal's 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;

CONSIDERING that the administration of the Detention Unit requires the Accused to return at least seven days in advance of the date scheduled for the resumption of further trial proceedings;

PURSUANT to Article 29 of the Statute and Rules 54 and 65 of the Rules;

HEREBY GRANTS the Motion **IN PART** and **ORDERS** the provisional release of the Accused as soon as practicable on or after 14 July 2006 until 14 August 2006 on the following terms and conditions:

- a. After the end of the sitting of 14 July 2006, and as soon as practicable for the Registry to make the appropriate administrative arrangements, 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, Republic of Serbia and to their places of residence therein.
- c. During their release, the Accused and the Government of the Republic of Serbia shall continue to adhere to the applicable restrictions and obligations set out in the orders of the Trial Chamber initially provisionally releasing the Accused, cited in footnotes 1 and 2 of this Decision.
- d. The Accused shall return to the Detention Unit no later than 14 August 2006. 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 the Detention Unit.

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

Dated this thirteenth day of July 2006

At The Hague

The Netherlands



Judge Carmel Agius

Presiding

[Seal of the Tribunal]