



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-99-36-A
Date: 23 February 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Christine Van Den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 23 February 2007

PROSECUTOR

v.

RADOSLAV BRĐANIN

**DECISION ON RADOSLAV BRĐANIN'S MOTION FOR
PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter Kremer, QC
Ms. Helen Brady

Counsel for the Accused:

Mr. John Ackerman

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively), is seised of the “Motion for Provisional Release” (“Motion”), filed by Radoslav Brđanin (“Brđanin”) on 7 February 2007.

I. BACKGROUND

2. In the Motion, Brđanin seeks provisional release “for the period from on or about 1 March 2007 to on or about 16 March 2007.”¹ On 13 February 2007, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Response to Brđanin’s Motion for Provisional Release” (“Response”), in which it opposes the Motion. Brđanin has not filed a reply to the Response.

3. Brđanin was arrested in Banja Luka on 6 July 1999 and has since been continuously in the custody of the Tribunal.² Brđanin requests provisional release in order to see his siblings who are all over 65 years of age.³ He alleges that some are in “very poor health” and that none can afford to come visit him.⁴ He further submits that he will “remain within the confines of Banja Luka and Čelinac municipalities; that he [will] report once per day, in person, to the Banja Luka police who will maintain a log and immediately report any failure to report; [will] avoid contact with any person who testified in his trial; and, [will undertake] any other conditions that this Chamber might find appropriate”.⁵ Brđanin also filed a guarantee of the Government of Republika Srpska stating that, among other things, it will arrange security for him, provide reports and investigations concerning any threats to Brđanin, facilitate communication and cooperation between parties, and in case of escape or violation of the provisional release order, return Brđanin to the Tribunal.⁶ The Appeals Chamber has also received a statement from the Dutch Ministry of Foreign Affairs that the Kingdom of the Netherlands, as host country, does not have any objections to Brđanin’s provisional release.⁷

¹ Motion, para. 7.

² *Ibid.*, para. 2.

³ *Ibid.*, para. 5.

⁴ *Ibid.*

⁵ *Ibid.*, para. 8.

⁶ An untranslated version of this guarantee was attached as Exhibit A to the Motion. Shortly thereafter, Brđanin filed a translated version of this guarantee. *See* Addendum to Motion for Provisional Release (Guarantee of Republika Srpska Government), 7 February 2007.

⁷ Correspondence of Host Country re: Provisional Release of Mr. Brđanin, signed 8 February 2007 and filed 12 February 2007.

4. The Prosecution opposes the Motion and submits that Brđanin fails to satisfy the requirements for granting provisional release. The Prosecution claims that Brđanin's 32-year sentence imposed by the Trial Chamber creates an incentive for flight.⁸ The Prosecution further argues that, while there is no indication that "Brđanin would take steps to endanger victims, witnesses or other persons", his release "may reasonably be expected to affect victims, witnesses and others living in the area" because the municipalities that he intends to visit are the sites of crimes for which he was convicted.⁹ The Prosecution further submits that Brđanin's desire to visit his siblings does not constitute a special circumstance (such as the death of a family member or important religious duties) which might warrant granting provisional release.¹⁰

II. DISCUSSION

5. Under Rule 65(I) of the Rules of Procedure and Evidence ("Rules"), the Appeals Chamber may grant provisional release to a convicted person if it is satisfied that "(i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the appellant, if released, will not pose a danger to any victim, witness or other person, and (iii) special circumstances exist that warrant release." These requirements must be considered cumulatively.¹¹ "Whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities."¹²

6. The Appeals Chamber need not consider whether the requirements of Rule 65(I)(i) or Rule 65(I)(ii) have been met in this case, since the Appeals Chamber concludes that Brđanin's request to visit his ailing siblings does not constitute a special circumstance within the meaning of Rule 65(I)(iii). In fact, "[t]he specificity of the appeal stage is reflected by Rule 65(I)(iii) of the Rules, which provides for an additional criterion, i.e. that 'special circumstances exist warranting such release.'"¹³ Where a convicted person seeks provisional release pending appeal, the Appeals Chamber has only found special circumstances where there is an acute justification, such as a

⁸ Response, para. 8. In a related filing, the Prosecution states that it takes no position on the sufficiency of the guarantees offered by Republika Srpska. See Corrigendum and Amendment to Prosecution's Response to Brđanin's Motion for Provisional Release (Guarantees of the *Republika Srpska*), 13 February 2007, para. 6.

⁹ Response, paras 10, 12-13.

¹⁰ *Ibid.*, paras 14-15.

¹¹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Second Defense Request For Provisional Release of Stanislav Galić, 31 October 2005, para. 3.

¹² *Ibid.*

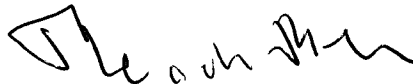
medical need¹⁴ or a memorial service for a near family member.¹⁵ By contrast, where a convicted person simply “wishes to spend time with his family”¹⁶ or seeks to visit a close relative in poor health,¹⁷ the Appeals Chamber has not found special circumstances. Such is the situation in this instance. Even assuming that some of Brđanin’s siblings are in very poor health conditions – an assertion which he offers no evidence to substantiate – there is no suggestion of an acute crisis. Accordingly, the Appeals Chamber finds no special circumstances that satisfy the requirements of Rule 65(I)(iii).

III. DISPOSITION

7. For the foregoing reasons, the Motion is **DENIED**.

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

Dated this 23rd day of February 2007,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]

¹³ *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić Pursuant to Rule 65(i) for Provisional Release for a Fixed Period to Attend Memorial Services for his Father, 21 October 2004 (“*Simić* Decision of 21 October 2004”), para. 14.

¹⁴ See generally *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on “Defense Motion: Defense Request for Provisional Release for Providing Medical Aid in the Republic of Montenegro”, 16 December 2005 (granting provisional release for an applicant convicted by the Trial Chamber to undergo a hip replacement pending appeal).

¹⁵ See generally *Simić* Decision of 21 October 2004 (granting provisional release for an applicant convicted by the Trial Chamber to attend his father’s memorial service); *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić for Provisional Release for a Fixed Period to Attend Memorial Services for his Mother, 5 May 2006 (granting provisional release for an applicant convicted by the Trial Chamber to attend his mother’s memorial service).

¹⁶ *Simić* Decision of 21 October 2004, para. 21.

¹⁷ See generally *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Order of the Appeals Chamber on the Motion for Provisional Release by Miroslav Kvočka, 11 September 2002.