



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-T
Date: 25 June 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 25 June 2007

PROSECUTOR

v.

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

PUBLIC

DECISION ON LUKIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

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. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić 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 “Sreten Lukić’s Renewed Motion For Provisional Release”, filed confidentially on 29 May 2007 (“Motion”), and hereby renders its decision thereon.

1. On 30 March 2007, Lukić (“Applicant”) filed a motion for provisional release.¹ In its decision of 22 May 2007, the Trial Chamber denied that motion, reasoning that the Applicant had not satisfied the Trial Chamber that there had been a change in circumstances that materially affected the approach taken in the decision denying the Applicant provisional release of 5 December 2006.² The Trial Chamber stated, however, that its decision was without prejudice to any future motion for provisional release of a more limited duration on compassionate grounds.³

2. The Applicant now moves the Trial Chamber for temporary provisional release on compassionate grounds for a period “from 1 June through to 18 June 2007”, or “any shorter period as to be determined by the Trial Chamber”, and subject to the same terms, conditions, and restrictions under which he was previously granted provisional release.⁴ The Applicant has specified the location to which he proposes to travel, should his Motion be granted, as his residence in Belgrade (the place where he had previously been provisionally released on two occasions).⁵ The grounds upon which the Applicant bases his Motion are the Applicant’s desire to consult with his primary care cardiologists in Belgrade and to visit his elderly father (who is in poor health and recovering from surgery) and his wife (who is also in poor health).⁶ The Applicant submits that the Government of the Republic of Serbia has guaranteed that the Applicant will return from Serbia for trial.⁷

¹ Sreten Lukić’s Motion for Provisional Release with Exhibits A, B and C, 30 March 2007 (“March Motion for Provisional Release”).

² Decision on Lukić Motion for Provisional Release, 22 May 2007 (“22 May Decision”), para. 13.

³ 22 May Decision, para. 15.

⁴ Motion, paras 4–5, 22.

⁵ Motion, paras 5, 8; *see also* Decision on Sreten Lukić’s Provisional Release, 3 October 2005; Decision on Joint Motion for Temporary Provisional Release During Summer Recess, 1 June 2006; confidential Supplement to Sreten Lukić’s Renewed Motion for Provisional Release, 14 June 2007 (including exact street address whither it is proposed that Applicant be released).

⁶ Motion, paras 20–21, Exhibits A–B. The Trial Chamber notes that the Applicant’s submissions relating to his previous record on provisional release generally repeat the arguments made in his March Motion for Provisional Release at paragraphs 6–17, which concern the requirements of Rule 65. These issues have already been determined by the Chamber in its 22 May Decision and do not pertain to provisional release on compassionate grounds.

⁷ Motion, para. 18.

3. On 5 June 2007, the Prosecution filed its response to the Motion,⁸ in which it states its “general opposition” to the provisional release of any of the six Accused in this case at this stage, but recognises the Trial Chamber’s discretion nevertheless to grant provisional release on compassionate grounds.⁹ The Prosecution notes that the medical information provided in the Motion does not “indicate an immediate, urgent life-threatening crisis or condition on the part of either the spouse o[r] the father of General Lukić”,¹⁰ and that “there has been no showing that the cardiologists cannot travel to The Hague to see the Accused, nor that the care provided at the UNDU is not fully adequate to his current needs.”¹¹ The Prosecution submits that, should the Applicant be granted provisional release, the Trial Chamber should consider requiring “electronic monitoring and/or 24-hour security details.”¹²

4. The Trial Chamber is in receipt of a letter from the Ministry of Foreign Affairs of The Netherlands, in which The Netherlands – in its capacity as host country – represents that it has no objection to the Applicant’s provisional release.¹³ The Trial Chamber is also in receipt of the confidential “Conclusion of the Government of the Republic of Serbia”, dated 22 March 2007, confirming that Serbia will respect all orders made by this Trial Chamber in respect of the provisional release of the Applicant.

5. In its “Decision on Šainović Motion for Temporary Provisional Release”, issued 7 June 2007 (“7 June Šainović Decision”), the Trial Chamber detailed the law in relation to granting provisional release on compassionate grounds. Applying the same legal principles to the Applicant’s Motion, the Trial Chamber considers that in this case it is not appropriate that the Applicant be granted provisional release for a limited duration on compassionate grounds.

6. The Applicant has not demonstrated that the health conditions of his father and wife preclude their travel to the Hague; therefore, it is not necessary for the Applicant to travel to Belgrade in order to visit with them.¹⁴ Moreover, in respect of the Applicant’s desire to see his physician in Serbia, he has made no showing that he is receiving inadequate health care in the

⁸ Confidential Prosecution Response to Sreten Lukić’s Renewed Motion for Provisional Release, 5 June 2007 (“Response”).

⁹ Response, para. 4.

¹⁰ Response, para. 5.

¹¹ Response, para. 6.

¹² Response, para. 7.

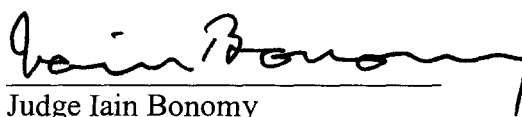
¹³ Letter from Mr. J.H.P.A.M. de Roy, Deputy Director of Protocol for the Minister of Foreign Affairs, to Chief CMSS, dated 1 June 2007.

¹⁴ See Decision on Lazarević Motion for Temporary Provisional Release, 18 June 2007, paras 2, 6.

UNDU, and therefore it is not necessary for him to travel to Belgrade to receive medical treatment.¹⁵

7. For the foregoing reasons and pursuant to Articles 20 and 21 of the Statute and Rules 54 and 65 of the Rules of Procedure and Evidence, the Trial Chamber hereby DENIES the Motion.

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


Judge Iain Bony
Presiding

Dated this twenty-fifth day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ See Decision on Pavković Motion for Temporary Provisional Release, 18 June 2007, para. 6.