



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: 4 July 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: 4 July 2007

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON OJDANIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

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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 several filings regarding Ojdanić’s motion for temporary provisional release and hereby renders its decision thereon.

1. On 15 March 2007, Ojdanić (“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. On 21 June 2007, the Applicant confidentially filed “Dragoljub Ojdanić Motion for Provisional Release on Compassionate Grounds with Annex A” (“21 June Motion”). However, in “General Ojdanić’s Motion Requesting Leave to Replace Motion For Provisional Release on Compassionate Grounds and Motion for Provisional Release on Compassionate Grounds”, filed confidentially on 22 June 2007 (“22 June Motion”), the Ojdanić Defence informs the Trial Chamber that an “Incomplete Draft version” of the 21 June Motion was filed.⁴ The Trial Chamber also notes that Annex A of the 21 June Motion contains medical records without required English translations.

3. The Ojdanić Defence seeks leave to replace the Incomplete Draft version of the 21 June Motion with the “correct version”, as contained in Annex A of the 22 June Motion.⁵ The Applicant also confidentially filed “Additional Submission to General Ojdanić’s Motion For Provisional Release on Compassionate Grounds English Translation of Annex A” on 22 June 2007 (“Additional Submission”), in which he submits English translations of the medical records contained in Annex A of the 21 June Motion. The Trial Chamber will allow the Incomplete Draft version to be replaced by the version of the motion contained in Annex A of the 22 June Motion and will consider the medical records contained in Annex A of the Additional Submission (hereinafter collectively referred to as “Motion”).

¹ General Ojdanić Motion for Provisional Release Upon Close of the Prosecution’s Case, 15 March 2007.

² Decision on Ojdanić Motion for Provisional Release, 22 May 2007 (“22 May Decision”), para. 9. *See also* Decision on Joint Motion for Provisional Release During the Winter Recess, 5 December 2006.

³ 22 May Decision, para. 14.

⁴ 22 June Motion, para. 2, p. 2

⁵ 22 June Motion, para. 1, p.2.

4. In the Motion, the Applicant moves the Trial Chamber for provisional release on compassionate grounds “for a limited time period in second part of July”.⁶ The grounds upon which the Applicant bases his Motion are (a) his desire to visit his paralysed, bedridden sister, who is in a state of deteriorating health and is unable to travel to The Hague;⁷ and (b) his desire to visit his daughter and her fiancé, who cannot travel to the Hague due to his employment in the army, and to take part in their wedding preparations.⁸

5. The Applicant specifies three locations in the Republic of Serbia, to which he proposes to travel should his Motion be granted; his family residence in Belgrade (as detailed in the confidential annex to this Decision);⁹ his sister’s village of Sirogojno, Uzice municipality; and the village of Ravni, Uzice municipality.¹⁰ The Applicant submits that he would not leave the territory of the city of Belgrade, except for one day, during which he proposes to visit his sister in Sirogojno, Uzice municipality, and also use the opportunity to visit his parent’s repository in Ravni, Uzice municipality.¹¹ The Applicant submits that, during his two previous periods of provisional release, he “fully complied with all the terms, conditions, obligations and restrictions required of him”.¹²

6. On 25 June 2007, the Prosecution filed its response to the Motion,¹³ 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.¹⁴ 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”.¹⁵

7. 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.¹⁶ The Trial Chamber is also in receipt of the

⁶ Motion, para. 4 (as contained in Annex A, 22 June Motion, p. 5).

⁷ Motion, para. 5 (as contained in Annex A, 22 June Motion, p. 5).

⁸ Motion, para. 5 (as contained in Annex A, 22 June Motion, p. 6).

⁹ Motion, para. 5 (as contained in Annex A, 22 June Motion, p. 6). The Trial Chamber notes that the Applicant has mistakenly numbered the paragraphs in the Motion contained in Annex A of the 22 June Motion.

¹⁰ Motion, para. 5 (as contained in Annex A, 22 June Motion, p. 5).

¹¹ Motion, para. 5 (as contained in Annex A, 22 June Motion, p. 6).

¹² Motion, para. 7 (as contained in Annex A, 22 June Motion, p. 6).

¹³ Prosecution Response to Dragoljub Ojdanić’s Motion for Provisional Release on Compassionate Grounds, 25 June 2007 (“Response”).

¹⁴ Response, para. 5, p. 3.

¹⁵ Response, para. 6, p. 3.

¹⁶ Letter from Mr. J.H.P.A.M. de Roy, Deputy Director of Protocol for the Minister of Foreign Affairs, to Chief CMSS, dated 26 June 2007.

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.

8. 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 appropriate, based upon the familial circumstances of the Applicant, that he be granted provisional release for a limited duration. The Trial Chamber reiterates that, in cases similar to the instant case where limited provisional release has been granted on compassionate grounds, the period for which an accused has been provisionally released has varied from three to five days.¹⁷ The Trial Chamber therefore considers that granting the Applicant provisional release on compassionate grounds for a period of five days is consistent with the practice of the Tribunal.

9. For the foregoing reasons and pursuant to Articles 20, 21, and 29 of the Statute and Rules 54 and 65, the Trial Chamber hereby **GRANTS** the Motion in part and **ORDERS** as follows:

- (a) On 12 July 2007, Dragoljub Ojdanić ("Applicant") shall be transported to the appropriate airport in the Netherlands by the Dutch authorities.
- (b) At the appropriate airport, the Applicant shall be provisionally released into the custody of an official of the Government of the Republic of Serbia ("Serbia") to be designated prior to the Applicant's release in accordance with operative paragraph (m) hereunder, who shall accompany the Applicant for the remainder of his travel to and from and between the address detailed in the confidential annex to this Decision and the locations indicated in the Motion.
- (c) On his return, the Applicant shall be accompanied by a designated official of Serbia, who shall deliver the Applicant to the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport the Applicant back to the United Nations Detention Unit in The Hague.
- (d) During the period of his provisional release, the Applicant shall abide by the following conditions:

¹⁷ See 7 June Šainović Decision, para. 12.

- i. the Applicant shall remain at the address detailed in the confidential annex to this Decision and shall be permitted to travel to the other locations indicated in the Motion for one day during the period of provisional release;
 - ii. Serbia shall provide 24-hour surveillance of the Applicant throughout his presence in Serbia; and
 - iii. the Applicant shall surrender his passport to the Ministry of Justice of Serbia for the duration of his provisional release.
- (e) Before leaving the United Nations Detention Unit in The Hague, the Applicant shall provide details of his itinerary to the Ministry of Justice of the Netherlands and to the Registrar of the Tribunal.
- (f) The Applicant shall not have any contact with any co-accused in the case.
- (g) The Applicant shall not have any contact whatsoever, or in any way interfere with, any victim or potential witness or otherwise interfere in any way with proceedings before the Tribunal or with the administration of justice.
- (h) The Applicant shall not discuss his case with anyone, including the media, apart from his counsel.
- (i) The Applicant shall continue to cooperate with the Tribunal and comply with any further Orders or Decisions of this Trial Chamber regarding his provisional release.
- (j) The Applicant shall comply strictly with any requirements of the authorities of Serbia, which are necessary for them to comply with their obligations pursuant to this Order.
- (k) The Applicant shall return to the Tribunal on 18 July 2007.
- (l) The Applicant shall comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.
- (m) The Government of Serbia shall assume the following responsibilities:
 - (i) Designation of an official of Serbia, into whose custody the Applicant shall be provisionally released and who shall accompany the Applicant from the appropriate airport in The Netherlands to and from the address detailed in the confidential annex to this Decision and notify, as soon as practicable, the

Trial Chamber and the Registrar of the Tribunal of the name of the designated official.

- (ii) Provision of 24-hour surveillance of the Applicant throughout his stay in Serbia.
- (iii) Provision of the personal security and safety of the Applicant while on provisional release.
- (iv) Responsibility, at the request of the Trial Chamber or the parties, for facilitating all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication(s).
- (v) Responsibility for informing the Trial Chamber of any failure by the Applicant to comply with the terms of this Order.
- (vi) Responsibility for arresting and detaining the Applicant immediately should he breach any of the conditions of this Order.
- (vii) Responsibility, once the Applicant has returned to the United Nations Detention Unit in The Hague, for the submission of a written report to the Trial Chamber as to the compliance of the Applicant with the terms of this Order.

10. The Trial Chamber hereby **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the provisional release of the Applicant, and to continue to detain the Applicant at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the Government of the Republic of Serbia into whose custody the Accused is to be provisionally released.

11. The Trial Chamber hereby **REQUESTS** the authorities of all States through which the Accused will travel:

- a. to hold the Applicant in custody for any time that he will spend in transit at an airport in their territories; and
- b. to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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

Judge Iain Bony
Presiding

Dated this fourth day of July 2007
At The Hague
The Netherlands

[Seal of the Tribunal]