



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-04-83-T
Date: 23 November 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 23 November 2007

PROSECUTOR

v.

RASIM DELIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR
PROVISIONAL RELEASE**

The Office of the Prosecutor

Mr. Daryl A. Mundis
Ms. Laurie Sartorio
Mr. Matthias Neuner
Mr. Kyle Wood
Mr. Aditya Menon

The Government of Bosnia and Herzegovina

Per: The Embassy of BiH to the Netherlands,
The Hague

Counsel for the Accused

Ms. Vasvija Vidović
Mr. Nicholas David Robson

Kingdom of the Netherlands

1. Trial Chamber I (“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 “Defence Motion for Provisional Release” filed confidentially with two annexes on 19 November 2007 (“Motion”). On 20 November 2007, the Trial Chamber granted the Motion orally and hereby renders its written Decision.¹

I. SUBMISSIONS

2. The Defence requests that the Trial Chamber grant provisional release to Rasim Delić (“Accused”) pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) from 7 December 2007 until 6 January 2008.² The Defence contends that a number of factors militate in favour of granting the Motion, namely that:

- a. the Accused surrendered voluntarily to the custody of the Tribunal as soon as he was made aware of the indictment against him;³
- b. the Accused has previously cooperated with the Prosecution;⁴
- c. on 9 November 2007, the Government of the Federation of Bosnia and Herzegovina (“FBiH”) issued a conclusion to the effect that the competent organs of the FBiH would ensure that the Accused “responds to every call of the [Tribunal]” and that he “shall carry out all orders of the [Tribunal]”;⁵
- d. by virtue of the Accused’s former senior position in the Army of Bosnia and Herzegovina (“ABiH”), the guarantee by the FBiH Government “carries significant weight”;⁶
- e. the Accused was previously granted provisional release from 6 May 2005 to 25 June 2007, during which time he “complied with the conditions of release imposed by the [Trial Chamber III], as did the [FBiH] authorities”;⁷

¹ Hearing, 20 November 2007, T. 5850-5951 (closed session).

² Motion, para. 1.

³ Motion, paras 4, 10, 19.

⁴ Motion, paras 10, 19.

⁵ Motion, para. 17; Motion, Annex A.

⁶ Motion, para. 19.

⁷ Motion, paras 9-12, 18. See *Prosecution v. Rasim Delić*, Case No. IT-04-83-PT, Decision on Defence Request for Provisional Release, 6 May 2005 (“First Provisional Release Decision”); *Prosecution v. Rasim Delić*, Case No. IT-04-83-PT, Order Recalling Rasim Delić from Provisional Release, 14 June 2007.

f. the Accused provides an undertaking that, in the event that he is granted provisional release, “he will promptly return to the custody of the Tribunal” at such time and on such date as the Trial Chamber may order and that he will not contact “any of the victims, Prosecution witnesses or other persons related to the events in the [Indictment]”.⁸

3. The Defence further requests that the Accused should be released to two specific locations in the FBiH, Visoko and Sarajevo.⁹

4. On 20 November 2007, counsel for the Prosecution orally submitted that, in light of the guarantees given by the Accused and by the FBiH Government, the Prosecution does not oppose the Motion.¹⁰

II. APPLICABLE LAW

5. Rule 65 of the Rules governs provisional release. It provides, in relevant part:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

6. The Defence bears the burden of proof, on a balance of probabilities, that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.¹¹ The jurisprudence of the Tribunal also establishes that the weight of a governmental guarantee may be affected by the seniority of the position held by an accused.¹²

⁸ Motion, paras 20-21; Motion, Annex B.

⁹ Motion, paras 22-23.

¹⁰ Hearing, 20 November 2007, T. 5850-5851(closed session).

¹¹ First Provisional Release Decision, p. 3, with further references.

¹² First Provisional Release Decision, p. 4, with further references.

III. DISCUSSION

7. The Trial Chamber recalls that the Accused voluntarily surrendered to the Tribunal as soon as he was made aware of the indictment against him.¹³ The Trial Chamber further recalls that the Accused has voluntarily cooperated with the Prosecution prior to being indicted.¹⁴

8. The Trial Chamber notes the personal guarantee by the Accused in which he undertook to return to the custody of the Tribunal before the resumption of the proceedings, and generally to comply with any order issued by the Trial Chamber or the Tribunal.¹⁵ The Trial Chamber also took into consideration, and gave appropriate weight to, the guarantee given by the FBiH Government,¹⁶ especially in light of the senior position previously held by the Accused.

9. For these reasons, the Trial Chamber is satisfied that the Accused, if released, will return for trial and will not pose a danger to any victim, witness or other person.

10. According to the general practice of the Tribunal, an accused is required to remain within the confines of one municipality—usually where he or she resides—when provisionally released.¹⁷ In view of the personal circumstances of the Accused, the Trial Chamber however orders that he be released to specific locations within the municipalities of Visoko and Sarajevo.¹⁸

¹³ The indictment against Rasim Delić was confirmed on 16 February 2005 and he was transferred to the Tribunal on 28 February 2005.

¹⁴ See First Provisional Release Decision, p. 4.

¹⁵ Motion, Annex B.

¹⁶ Motion, Annex A.

¹⁷ See First Provisional Release Decision, p. 5.

¹⁸ Trial Chamber further notes that the distance between the apartment of the Accused in Sarajevo and his residence in Visoko is less than 25 kilometers, *ibid.*

IV. DISPOSITION

For the reasons set out above and pursuant to Rules 54 and 65 of the Rules, the Trial Chamber hereby:

GRANTS the Motion, and

1. **ORDERS** as follows:

- a. As soon as practicable on or after 11 December 2007, the Accused Rasim Delić 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 Federation of Bosnia and Herzegovina ("FBiH"), who shall accompany the Accused for the remainder of his travel to the FBiH and to his place of residence therein;
- c. during the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the FBiH, including the local police, shall ensure compliance with such conditions:
 - i. to provide (a) the address at which he will be staying in Visoko and (b) the address at which he will be residing in Sarajevo, to the FBiH Ministry of Justice and the Registrar of the Tribunal before leaving the United Nations Detention Unit ("UNDU") in The Hague;
 - ii. to remain within the confines of the municipalities of Visoko and Sarajevo;
 - iii. to surrender his passport to the Ministry of Justice of the FBiH ("Ministry of Justice");
 - iv. to report weekly to the police in Visoko at a local police station to be designated by the Ministry of Justice;
 - v. to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar of the Tribunal;

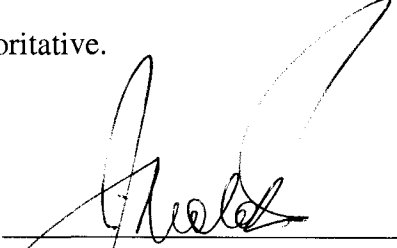
- vi. not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
 - vii. not to discuss his case with anyone, including the media, other than with his counsel;
 - viii. to continue to cooperate with the Tribunal;
 - ix. to comply strictly with any requirements of the authorities of the FBiH necessary to enable them to comply with their obligations under this Decision and their guarantees;
 - x. to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release;
- d. the Accused shall return to the UNDU in The Hague no later than 11 January 2008. He shall be accompanied from the place of his residence in the FBiH by the same designated official of the FBiH Government, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport, and the Dutch authorities shall then transport the Accused back to the UNDU in The Hague.

2. **REQUIRES** the FBiH Government to assume responsibility as follows:

- a. by designating an official of the FBiH Government into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to his place of residence in Visoko, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated official;
- b. for the personal security and safety of the Accused while on provisional release;
- c. for all expenses concerning transport of the Accused from Schiphol airport to his residence in Visoko and back;
- d. for all expenses concerning accommodation and security of the Accused while on provisional release;
- e. at the request of the Trial Chamber or the parties to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;

- f. to submit a written report to the Trial Chamber every week as to the compliance of the Accused with the terms of this Decision;
 - g. to arrest and detain the Accused immediately if he should breach any of the conditions of this Decision; and
 - h. to report immediately to the Trial Chamber any breach of the conditions set out above.
3. **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the release of the Accused and to continue to detain him at the UNDU 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 FBiH Government into whose custody the Accused is to be provisionally released.
4. **REQUESTS** the authorities of all States through whose territory the Accused will travel,
- a. to hold the Accused in custody for any time that he will spend in transit at the airport; and
 - b. to arrest and detain the Accused pending his return to the UNDU in The Hague, should he attempt to escape.
5. **ORDERS** that the Accused shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release.

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



Judge Bakone Justice Moloto
Presiding

Dated this twenty-third day of November 2007

At The Hague

The Netherlands

[Seal of the Tribunal]