



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: 7 December 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: 7 December 2007

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON MILUTINOVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Government of The Netherlands

**Government of the Republic of
Serbia**

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 “Mr. Milan Milutinović’s Motion for Temporary Provisional Release on Compassionate Grounds,” filed confidentially on 23 November 2007 (“Motion”), and hereby renders its decision thereon.

Brief procedural background

1. On 5 December 2006, the Trial Chamber denied the six Accused’s joint application for provisional release over the winter recess.¹ The Appeals Chamber affirmed this decision.² On 22 May 2007, the Chamber denied the application of Accused Milan Milutinović (“Accused”) for provisional release over the summer recess, holding, *inter alia*, that he had not demonstrated how the circumstances that led to the denial of his application in December 2006 had changed so as to materially affect the approach taken by the Chamber at that time.³ On 4 July 2007, the Chamber denied the Accused’s motion for temporary provisional release on the basis that he had made no showing that he was receiving inadequate health care at the United Nations Detention Unit (“UNDU”) and that it was therefore unnecessary for him to travel to Belgrade in order to undergo medical examination and consultation.⁴

Submissions

2. In the Motion, the Accused requests temporary provisional release for a period of 15 days on account of “pressing personal circumstances,” which are described in detail in the Motion. The Trial Chamber is in receipt of guarantees from the Republic of Serbia confirming that it will respect all orders made by the Chamber in respect of the provisional release of the Accused.⁵ The Netherlands, in its capacity as host country, represents that it has no objection to the Accused’s provisional release.⁶

3. On 30 November 2007, the Prosecution responded to the Motion, expressing its general opposition to the provisional release of any of the six Accused, but recognising that there is

¹ Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2007.

² *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During Winter Recess, 14 December 2007.

³ Decision on Milutinović Motion for Provisional Release, 22 May 2007, para. 15.

⁴ Decision on Milutinović Motion for Temporary Provisional Release, 4 July 2007, para. 5.

⁵ Confidential Addendum to Mr. Milutinović’s Motion for Provisional Release – Filing of Guarantee from the Government of the Republic of Serbia, 26 November 2007.

⁶ Letter from Deputy Director of Protocol for the Dutch Minister of Foreign Affairs, dated 29 November 2007.

precedent for limited and strictly controlled provisional releases in cases of a compelling showing of special circumstances. The Prosecution asserts that the Accused has failed to make a showing in the instant Motion that he cannot receive the treatment, which he claims he needs, here in The Hague. Should the Motion be granted, the Prosecution requests the Chamber to order 24-hour electronic surveillance of the Accused.⁷

4. On 4 December 2007, the Accused filed a confidential “Application to File a Reply and Reply to Prosecution’s Response to Milan Milutinovic’s Motion for Temporary Provisional Release on Compassionate Grounds.” In its “Order on Procedure and Evidence,” issued 11 July 2006,⁸ the Chamber stated as follows:

11. Replies to responses will not be accepted by the Chamber unless on good cause shown. A party wishing to make such a reply must seek the leave of the Chamber to do so, specifying why the circumstances ... amount to good cause. Should a party seek leave from the Chamber to file a reply, it should do so within three days from the expiration of the fourteen day deadline for the filing of responses. The request for leave to file a reply should not include the substance of the reply, which should await the decision of the Chamber upon whether to grant such leave.

5. Due to the fact that the reply was filed along with the request for leave to file a reply, rather than after leave was requested and granted, it will not be considered by the Chamber.

Discussion

6. The Chamber has carefully considered all the submissions of the parties in relation to this matter and has taken all relevant factors bearing upon the issue of provisional release into account.

7. While it is now settled law that Rule 65 of the Rules of Procedure and Evidence of the Tribunal governs provisional release generally,⁹ motions for temporary provisional release on compassionate or humanitarian grounds are governed by a distinct set of principles. Rule 65(B), which governs provisional release during trial, makes no mention of compassionate or humanitarian grounds. However, the jurisprudence of the Tribunal has recognised that Chambers enjoy a measure of discretion when considering motions pursuant to Rule 65, and that, notwithstanding a finding that an accused does not meet the formal requirements for provisional

⁷ Confidential Prosecution Response to Milan Milutinović’s Motion for Temporary Provisional Release on Compassionate Grounds, 30 November 2007, paras. 5–7.

⁸ The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007.

⁹ Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, paras. 8–10.

release pursuant to Rule 65, compassionate or humanitarian concerns may nevertheless permit a more limited provisional release.¹⁰

8. [See confidential annex.]

9. The Chamber therefore decides that a temporally circumscribed and closely controlled temporary provisional release of the Accused to Belgrade is appropriate and in the interests of justice, in light of all the present circumstances and subject to the conditions ordered below. In light of the 24-hour surveillance of the Accused, the Chamber does not consider that monitoring him electronically is necessary.

10. In cases where limited provisional release has been granted on compassionate or humanitarian grounds, the period for which an accused has been provisionally released has varied from three to five days.¹¹ However, based upon the purpose of this temporary provisional release, *i.e.*, a specific medical procedure requiring a fixed amount of time, the Chamber considers that granting the Applicant provisional release for a period of 15 days is appropriate.

11. For the foregoing reasons and pursuant to Rules 54 and 65, the Chamber hereby GRANTS the Motion for temporary provisional release and ORDERS as follows:

- (a) On **Monday, 17 December 2007**, Milan Milutinović (“Accused”) shall be transported to the appropriate airport in the Netherlands by the Dutch authorities.

¹⁰ See Decision on Šainović Motion for Temporary Provisional Release, 7 June 2007, paras. 7–11; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision Granting Provisional Release to Haradin Bala to Attend His Brother’s Memorial Service and to Observe the Traditional Period of Mourning, 1 September 2006, p. 1; *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, p. 3; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision Granting Provisional Release to Haradin Bala to Attend His Daughter’s Memorial Service, 20 April 2006, p. 2; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005, para. 15; *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 Service for His Father, 21 October 2004, para. 20; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Dario Kordić’s Request for Provisional Release, 19 April 2004, paras. 5–12; *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Decision on Application for Provisional Release, 12 December 2002, para. 10.

¹¹ See, *e.g.*, *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Decision on Application for Provisional Release, 12 December 2002 (15 days requested; five days granted); *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision Granting Provisional Release to Haradin Bala to Attend His Daughter’s Memorial Service, 20 April 2006 (five days); *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Decision on Urgent Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 16 April 2005 (three days); *Prosecutor v. Hadžihasanovic et al.*, Case No. IT-01-47-T, Decision Granting Provisional Release to Enver Hadžihasanovic, 18 January 2004 (three days); *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-PT, Decision Pursuant to Rule 65 Granting Mrkšić’s Request to Attend His Mother’s Funeral, 30 January 2004 (three days); *Prosecutor v. Hadžihasanovic et al.*, Case No. IT-01-47-T, Decision Pursuant to Rule 65 Granting Amir Kubura Authorisation to Attend His Mother’s Funeral, 12 March 2004 (three days).

- (b) At the appropriate airport, the Accused 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 Accused's release in accordance with operative paragraph (m) hereunder, who shall accompany the Accused for the remainder of his travel to and from the address detailed in the confidential annex to this Decision.
- (c) On his return, the Accused shall be accompanied by a designated official of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague.
- (d) During the period of his provisional release, the Accused shall abide by the following conditions,
 - i. the Accused shall remain at the address detailed in the confidential annex to this Decision;
 - ii. Serbia shall provide 24-hour surveillance of the Accused throughout his presence in Serbia; and
 - iii. the Accused 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 Accused shall provide details of his itinerary to the Ministry of Justice of the Netherlands and to the Registrar of the Tribunal.
- (f) The Accused shall not have any contact with any co-Accused in the case.
- (g) The Accused 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 Accused shall not discuss his case with anyone, including the media, apart from his counsel.
- (i) The Accused 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 Accused 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.

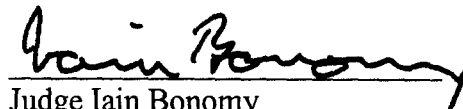
- (k) The Accused shall return to the Tribunal on **Wednesday, 2 January 2008**.
- (l) The Accused shall comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.
- (m) The Government of Serbia shall assume the following responsibilities:
 - (i) ***Designation of an official of Serbia***, into whose custody the Accused shall be provisionally released and who shall accompany the Accused from the appropriate airport in The Netherlands to the address detailed in the confidential annex to this Decision, and ***notification, as soon as practicable, to the Trial Chamber and the Registrar of the Tribunal of the name of the designated official.***
 - (ii) Provision of 24-hour surveillance of the Accused throughout his stay in Serbia.
 - (iii) Provision of the personal security and safety of the Accused 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 assurance of the confidentiality of any such communication(s).
 - (v) Responsibility for informing the Trial Chamber of any failure by the Accused to comply with the terms of this Order.
 - (vi) Responsibility for immediately arresting and detaining the Accused, should he breach any of the conditions of this Order.
 - (vii) Responsibility, once the Accused 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.

12. 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 Accused, and to continue to detain the Accused 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.

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

- (a) to hold the Accused 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 Bonomy
Presiding

Dated this seventh day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]