



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 OJDANIĆ 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 “Dragoljub Ojdanić Motion for Temporary Provisional Release During Holiday Recess or Temporary Provisional Release on Compassionate Grounds,” filed confidentially on 28 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 Dragoljub Ojdanić (“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

2. On 4 July 2007, the Chamber granted the Accused’s motion for temporary provisional release on the basis of his familial circumstances.⁴ On 11 July 2007, the Duty Judge of the Tribunal granted a motion by the Accused to vary the address in Belgrade to which he was to be provisionally released.⁵

Submissions

3. In the Motion, the Accused requests provisional release during the four-week winter recess. In the alternative, the Accused requests temporary provisional release on compassionate or humanitarian grounds for seven days, as described in the Motion.⁶ The Trial Chamber is in receipt of guarantees from the Republic of Serbia confirming that it will respect all orders made by the

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 Ojdanić Motion for Provisional Release, 22 May 2007, para. 11.

⁴ Decision on Ojdanić Motion for Temporary Provisional Release, 4 July 2007, para. 8 (public with confidential annex).

⁵ Confidential Order Varying 4 July 2007 Decision on Ojdanić Motion for Temporary Provisional Release, 11 July 2007.

⁶ Motion, para. 1.

Chamber in respect of the provisional release of the Accused.⁷ The Netherlands, in its capacity as host country, represents that it has no objection to the Accused's provisional release.⁸

4. On 5 December 2007, the Prosecution responded to the Motion, expressing its general opposition to the provisional release of any of the six Accused. The Prosecution opposes the provisional release on the same grounds it advanced in connection with the last winter recess and summer recesses. Moreover, the Prosecution submits that granting provisional release at this advanced stage of the proceedings is not in the interests of justice and could disrupt the trial and prevent it from being brought to a fair and expeditious conclusion. According to the Prosecution, "[t]he rights of the Accused to temporary provisional release or to provisional release should be carefully balanced against the legitimate interest of the international community in the proper administration of justice which can only be achieved by completing this trial."⁹

5. The Prosecution also argues that, although it is within the discretion of the Chamber to grant temporary provisional release on compassionate or humanitarian grounds, the Accused has advanced no such compelling, urgent, or special grounds to cement his request for relief.¹⁰

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. In deciding a request for provisional release, a Trial Chamber must determine whether the applicant has satisfied the burden of showing that, if released provisionally, he or she will (a) return for the continuation of the trial and (b) not pose a danger to any victim, witness, or other person. Where an accused applies for provisional release following the denial of a previous application, "it is incumbent on that accused to satisfy the Trial Chamber that there has been a change in circumstances that materially affects the approach taken in earlier provisional release decisions regarding the same accused."¹¹

⁷ Motion, Annex 1.

⁸ Letter from Deputy Director of Protocol for the Dutch Minister of Foreign Affairs, dated 29 November 2007.

⁹ Confidential Prosecution's Response to Ojdanić's Motion for Temporary Provisional Release During Holiday Recess or Temporary Provisional Release on Compassionate Grounds, 5 December 2007, paras. 5–7, 9.

¹⁰ Response, paras. 8–9.

¹¹ *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 ("*Popović* Decision"), para. 12.

8. The Accused points to his respect for previous orders for provisional release and the guarantees from the Republic of Serbia as factors in support of his request for relief.¹² The Chamber, however, considers that the Accused has not demonstrated how these factors lead to the conclusion that the circumstances that led to the denial of his application in December 2006 have changed so as to materially affect the approach taken by the Chamber at that time.

9. The Chamber now turns to the Accused's alternative request, *i.e.*, for temporary provisional release on compassionate or humanitarian grounds. While it is now settled law that Rule 65 of the Rules of Procedure and Evidence of the Tribunal governs provisional release generally,¹³ 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 release pursuant to Rule 65, compassionate or humanitarian concerns may nevertheless permit a more limited provisional release.¹⁴

10. [See confidential annex.]

11. Although the Chamber granted the Accused permission to travel to Belgrade in July 2007 for reasons substantially similar to those advanced in the present Motion,¹⁵ it cannot discern a compelling reason to do so again. Moreover, the Accused was on provisional release during the pre-trial phase of the proceedings and was released during the summer recess last year (July 2006). The Accused has therefore had opportunities to tend personally to pressing personal matters, and the Chamber's previous decision to grant temporary provisional release, far from being a reason to

¹² Motion, paras. 5–6.

¹³ Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, paras. 8–10.

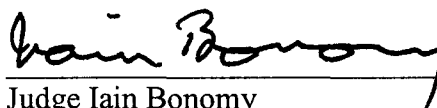
¹⁴ See Decision on Šainović Motion for Temporary Provisional Release, 7 June 2007, paras. 7–11; see also *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007, para. 5; *Prosecutor 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.

¹⁵ Decision on Ojdanić Motion for Temporary Provisional Release, 4 July 2007, para. 8 (public with confidential annex).

grant yet another, reinforces the notion that the Accused already has been granted an adequate opportunity in this regard. Moreover, by the Accused's own reckoning, his health concerns can be adequately addressed at the United Nations Detention Unit.

12. For the foregoing reasons and pursuant to Rules 54 and 65, the Trial Chamber hereby DENIES the Motion.

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]