



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-95-13/1-A
Date: 11 December 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Order of: 11 December 2007

PROSECUTOR

v.

**MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN**

PUBLIC

**DECISION ON THE MOTION OF VESELIN ŠLJIVANČANIN
FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Helen Brady

Counsel for the Appellants:

Mr. Novak Lukić and Mr. Momčilo Bulatović for Veselin Šljivančanin
Mr. Miroslav Vasić and Mr. Vladimir Domazet for Mile Mrkšić

Republic of Serbia

Kingdom of The Netherlands

THE APPEALS 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 (“International Tribunal” or “Tribunal”),

NOTING that on 3 October 2007 the Appellant Veselin Šljivančanin (“Mr. Šljivančanin”) was found guilty of one count of aiding and abetting torture and sentenced to a single term of five years’ imprisonment;¹

NOTING that Mr. Šljivančanin filed his Notice of Appeal on 29 October 2007 and that the Appeals Chamber is presently seized of the case;

NOTING that Mr. Šljivančanin’s current motion for provisional release is the only such request before the Tribunal and, as he submits, has superseded all of his earlier motions;²

NOTING the Prosecution’s Response³ in which the Prosecution does not take a position on Mr. Šljivančanin’s request but urges that, if the Appeals Chamber grants the Appellant’s motion, adequate measures should be in place to ensure the Appellant’s return to The Hague at the appropriate time, particularly in light of the fact that Mr. Šljivančanin did not surrender voluntarily to Serbian authorities in 2003 and the fact that the Prosecution has sought an increase in Mr. Šljivančanin’s sentence;

NOTING that the Prosecution further urges that all submissions in regard to the present motion be made public⁴ and that Mr. Šljivančanin raises no objections in this regard;⁵

NOTING Mr. Šljivančanin’s Reply;

NOTING that Rule 65(I) of the Rules of Procedure and Evidence (“Rules”) provides:

[T]he Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that:

¹ *Prosecutor v. Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007 (“Trial Judgement”), paras 715, 716.

² Veselin Šljivančanin’s [*sic*] Amended Motion for Provisional Release, filed confidentially, 13 November 2007 (“Motion”), para. 10.

³ Prosecution’s Response to Veselin Šljivančanin’s Amended Motion for Provisional Release, filed confidentially, 21 November 2007 (“Prosecution’s Response”), paras 3, 4.

⁴ Prosecution’s Response, paras 5, 6.

⁵ Motion for Leave to Reply and Reply to Prosecution’s Response to Veselin Šljivančanin’s [*sic*] Amended Motion for Provisional Release, filed confidentially, 22 November 2007 (“Reply”), para. 13.

- (i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;
- (ii) the appellant, if released, will not pose a danger to any victim, witness or other person, and
- (iii) special circumstances exist warranting such release.

CONSIDERING that the first requirement of Rule 65(I) is satisfied by the facts that Mr. Šljivančanin has a disincentive to flee since he has already served nearly 90 percent of his sentence;⁶ that although the Prosecution has noted certain concerns about Mr. Šljivančanin's incentive to return to The Hague, the Prosecution does not take a position on his request;⁷ that the Republic of Serbia has demonstrated its cooperation in this case by the fact that Serbian authorities arrested Mr. Šljivančanin and transferred him to the Tribunal in 2003;⁸ and that the Republic of Serbia has guaranteed that it will respect all orders of the Tribunal and will ensure that Mr. Šljivančanin will appear, at any time so requested, before the Tribunal;⁹

CONSIDERING that the second requirement of Rule 65(I) is satisfied by the fact that the victims all live outside of Serbia and that there is no indication from the witnesses or the Prosecution that Mr. Šljivančanin has sought to intimidate the witnesses;¹⁰

NOTING the jurisprudential similarities between the present case and the provisional releases granted in the *Hadžihasanović* and *Kvočka*¹¹ cases;

RECALLING that “[w]hether an applicant satisfies [the Rule 65(I)] requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities”;¹²

RECALLING that the only controversial issue in the *Hadžihasanović* and *Kvočka* cases concerned the third requirement of Rule 65(I), specifically whether the fact that a convicted individual had

⁶ Mr. Šljivančanin was arrested on 13 June 2003.

⁷ Prosecution's Response, para. 3.

⁸ Trial Judgement, para. 720.

⁹ Motion, Annex III. See also *Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-A, Decision on Motion on Behalf of Enver Hadžihasanović for Provisional Release, 20 June 2007 (“*Hadžihasanović*”), para. 10.

¹⁰ Motion, para. 21. See also Prosecution's Response.

¹¹ *Prosecutor v. Kvočka*, Case No. IT-98-30/1-A, Decision on the Request for Provisional Release of Miroslav Kvočka, 17 December 2003 (“*Kvočka*”).

¹² *Hadžihasanović*, para. 8 (quoting *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Radoslav Brđanin's Motion for Provisional Release, 23 February 2007, para. 5) (internal quotation marks omitted).

already served a significant portion of his sentence could constitute a “special circumstance” within the meaning of Rule 65(I)(iii);

CONSIDERING that the Appeals Chamber in *Kvočka* held that “the fact that the Appellant has already served around 80% of the sentence imposed by the Trial Chamber amounts to a special circumstance warranting his release,”¹³ and that the Appeals Chamber in *Hadžihasanović* endorsed this holding;¹⁴

CONSIDERING that Mr. Šljivančanin has served almost 90 percent of the sentence imposed by the Trial Chamber and that this constitutes a special circumstance that, when assessed in conjunction with the other factors of Rule 65(I), militates in favor of granting provisional release;¹⁵

HEREBY GRANTS the Motion, **ORDERS** that this Decision and all submissions by the parties noted herein be made public, and **FURTHER ORDERS** that Mr. Šljivančanin be provisionally released pending the hearing of his appeal under the following terms and conditions:

1. Mr. Šljivančanin shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as possible;
2. At Schiphol airport, he shall be provisionally released into the custody of the designated officials of the Government of the Republic of Serbia (whose names shall be provided in advance to the Appeals Chamber and the Registry) who shall accompany Mr. Šljivančanin for the remainder of his travel to and from his place of residence;
3. On his return flight, Mr. Šljivančanin shall be accompanied by a designated official of the Republic of Serbia (or by such other designated officials as the Appeals Chamber may order or accept) who shall deliver Mr. Šljivančanin into the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by the Appeals Chamber; the Dutch authorities shall then transport him back to the United Nations Detention Unit;
4. Mr. Šljivančanin shall at no time be present in the Republic of Croatia while in transit between The Netherlands and the Republic of Serbia or at any other time during his provisional release;

¹³ *Kvočka*, p. 3.

¹⁴ *Hadžihasanović*, para. 13. The *Hadžihasanović* case involved a slightly different issue than that presented in the *Kvočka* case or the present case, specifically whether the fact that the appellant had served two-thirds of his sentence, when “considered together with other specific facts of the case,” could also constitute a “special circumstance.” *Hadžihasanović*, para. 13.

¹⁵ The jurisprudence of the Tribunal supports this conclusion. As in the *Hadžihasanović* case, the Prosecution has appealed Mr. Šljivančanin’s sentence. As in the *Kvočka* case, Mr. Šljivančanin has never before been on provisional

5. During the period of his provisional release, Mr. Šljivančanin shall abide by the following conditions, and the authorities of the Republic of Serbia shall ensure compliance with such conditions:
- a. Within three days of his arrival, to report the address where he will be staying to the Registrar of the International Tribunal and to indicate any change of address to the Registrar within three days of such change;
 - b. To surrender his passport to the police station of his residence;
 - c. To remain within the boundaries of the territory of the Republic of Serbia;
 - d. To report every month to his local police station whose officers shall maintain a log and file a written report with the International Tribunal confirming his presence each time;
 - e. Not to have any direct contact or in any way interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - f. Not to discuss his case with anyone, including the media, other than his Counsel and immediate members of his family;
 - g. To comply with any order of the Appeals Chamber varying the terms of, or terminating, his provisional release;
 - h. To comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under the present decision for provisional release;
 - i. To return to the International Tribunal at such time and on such date as the Appeals Chamber may order;

REQUIRES the Government of the Republic of Serbia to assume responsibility for:

1. The personal security and safety of Mr. Šljivančanin while on provisional release;
2. All expenses in connection with the transport of Mr. Šljivančanin from Schiphol airport to his place of residence and back;
3. Reporting immediately to the Registrar of the International Tribunal the substance of any threats to the security of Mr. Šljivančanin, including full reports of investigations related to such threats;

release. Furthermore, Mr. Šljivančanin has served a higher percentage of his sentence than had the appellants in those cases. A balancing of the factors enumerated in Rule 65(I) thus counsels granting provisional release in this instance.


4. Facilitating, at the request of the Appeals Chamber or of the parties, all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication;
5. Immediately detaining Mr. Šljivančanin should he breach any of the terms and conditions of his provisional release and reporting immediately any such breach to the Registry and the Appeals Chamber;
6. Respecting the primacy of the International Tribunal in relation to any existing or future proceedings in the Republic of Serbia concerning Mr. Šljivančanin;

INSTRUCTS the Registrar of the Tribunal to:

1. Consult with the Dutch authorities and the authorities of the Republic of Serbia as to the practical arrangements for the provisional release of Mr. Šljivančanin;
2. Request the authorities of the State(s) through whose territory Mr. Šljivančanin may travel to:
 - a. Hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
 - b. Arrest and detain Mr. Šljivančanin pending his return to the UNDU should he attempt to escape during travel.

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

Done this 11th day of December 2007,
At The Hague,
The Netherlands.


Judge Theodor Meron
Presiding Judge

[Seal of the International Tribunal]