



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: 12 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: 12 December 2007

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON PAVKOVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

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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 a “Pavković Motion for Temporary Provisional Release on Compassionate Grounds, with Annexes A & B,” filed confidentially on 10 December 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 Nebojša Pavković (“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 18 June 2007, the Chamber granted the Accused’s motion for temporary provisional release upon circumstances related to the ill health of his father.⁴

2. On 27 November 2007, the Accused filed a motion for provisional release.⁵ In its decision of 7 December 2007, the Trial Chamber denied that motion, reasoning that the Accused 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 Accused provisional release in December 2006.⁶ Additionally, the Chamber held:

There has been no change in circumstances to persuade the Chamber that the Accused is no longer a flight risk. The Accused’s return from a strictly controlled, temporary provisional release on humanitarian grounds does not alter the situation. For the Chamber to agree with the Accused’s point about the purported weakening of the Prosecution case, it would have to weigh the evidence adduced by the Prosecution against that of the Accused, and this is a task reserved for the Chamber’s final assessment of all the evidence at the conclusion of the trial, not at this stage. The fact that the Prosecution and Accused have finished adducing their evidence does not obviate the previous finding of the Chamber that the Accused, if provisionally released, will pose a danger to any victim, witness, or other person.⁷

¹ Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006.

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 2006.

³ Decision on Pavković Motion for Provisional Release, 22 May 2007, para. 13.

⁴ Decision on Pavković Motion for Temporary Provisional Release, 18 June 2007, para. 6.

⁵ Pavković Motion for Temporary Provisional Release, 27 November 2007.

⁶ Decision on Pavković Motion for Temporary Provisional Release, 7 December 2007, paras. 8, 11.

⁷ Decision on Pavković Motion for Temporary Provisional Release, 7 December 2007, para. 9.

Submissions

3. In the Motion, the Accused moves the Trial Chamber for temporary provisional release on compassionate or humanitarian grounds for a period of time during the winter recess that the Trial Chamber deems appropriate, as described 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.⁸ The Netherlands, in its capacity as host country, represents that it has no objection to the Accused's provisional release.⁹
4. The Prosecution has indicated that it does not intend to respond to the Motion.

Discussion

5. 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. While it is now settled law that Rule 65 of the Rules of Procedure and Evidence of the Tribunal governs provisional release generally,¹⁰ 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.¹¹

6. [See confidential annex.]

⁸ Pavković Motion for Temporary Provisional Release, 27 November 2007, Annex A.

⁹ Letter from Deputy Director of Protocol for the Dutch Minister of Foreign Affairs, 6 December 2007.

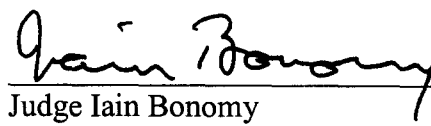
¹⁰ Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, paras. 8–10.

¹¹ 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.

7. 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,¹² it cannot discern a compelling reason to do so again. The Chamber notes that 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). Moreover, the circumstances that have arisen since the Accused's last temporary provisional release do not rise to the level so as to warrant release at this stage of the proceedings.

8. For the foregoing reasons and pursuant to Rules 54 and 65 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby DENIES the Motion.

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


Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]

¹² Decision on Pavković Motion for Temporary Provisional Release, 18 June 2007, para. 8 (public with confidential annex).