



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: 13 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: 13 December 2007

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

**DECISION ON LAZAREVIĆ MOTION TO RECONSIDER DENIAL OF 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 a “Defence Motion to Reconsider Decision on Lazarevic Motion for Temporary Provisional Release with Confidential Annex,” filed confidentially by the Defence of Accused Vladimir Lazarević (“Accused”) on 11 December 2007 (“Motion”), and hereby renders its decision thereon.

1. On 5 December 2006, the 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 the 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. The Chamber left open the possibility that the Accused could apply for temporary provisional release on compassionate or humanitarian grounds.³ Following this denial, the Accused applied on 29 May 2007 for temporary provisional release arguing that his wife’s health condition was worsening and prevented her from travelling to The Hague to visit him.⁴ On 18 June 2007, the Chamber granted this motion.⁵

2. On 4 December 2007, the Accused filed a motion for provisional release or, in the alternative, temporary provisional release on compassionate or humanitarian grounds.⁶ On 7 December 2007, the Chamber denied the motion for provisional release, considering that the Accused had not demonstrated how any of the factors cited in his motion led to the conclusion that 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.⁷ The Chamber also denied the request for temporary provisional release on compassionate or humanitarian grounds, reasoning as follows:

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 Lazarević Motion for Provisional Release, 22 May 2007, paras. 13, 15.

⁴ Confidential Vladimir Lazarević’s Motion Requesting Provisional Release on the Grounds of Compassion with Confidential Annex, 29 May 2007.

⁵ Decision on Lazarević Motion for Temporary Provisional Release, 18 June 2007 (public with confidential annex).

⁶ Confidential Vladimir Lazarevic Motion for Temporary Provisional Release During Court Recess or Temporary Provisional Release on the Grounds of Compassion, 4 December 2007.

⁷ Decision on Lazarević Motion for Temporary Provisional Release, 7 December 2007, para. 8.

Although the Chamber granted the Accused permission to travel to Serbia in June and July 2007 for reasons substantially similar to those advanced in the present Motion,⁸ 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 grant yet another, reinforces the notion that the Accused already has been granted an adequate opportunity in this regard.⁹

3. In the Motion, the Accused, on the basis of a new development regarding the Accused's family situation, requests the Chamber to reconsider its denial of his motion for temporary provisional release of seven days on compassionate or humanitarian grounds and details the arguments in support thereof.¹⁰

4. [See confidential annex.]

5. The Prosecution has indicated that it does not intend to respond to the Motion.

6. The Chamber has carefully considered all the submissions in relation to this matter and has taken all relevant factors bearing upon the issue of provisional release into account. Moreover, the legal standard for reconsideration is as follows: "a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.'"¹¹

7. The Chamber acknowledges that there has been a change in the circumstances since the filing of the original motion for temporary provisional release; however, those circumstances do not rise to the level requiring reconsideration of the decision. If the Chamber had been faced with the same circumstances in the original motion, it still would have denied temporary provisional release. The Accused has not demonstrated that the circumstances are so grave that his presence in the Republic of Serbia is required in order to attend to his recently-changed familial situation.

8. The Chamber notes that it is open to the Accused to appeal pursuant to Rule 65(D).

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

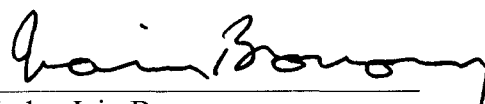
⁹ Decision on Lazarević Motion for Temporary Provisional Release, 7 December 2007, paras. 11–12.

¹⁰ Motion, paras. 5–12

¹¹ See *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber's Decision of 6 December 2005, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence "Requête de l'Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d'une Erreur Matérielle", 14 June 2006, para. 2.

9. 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 thirteenth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]