

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of Former Yugoslavia since
1991

Case No. IT-04-84-T
Date: 14 December 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 14 December 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON MOTION ON BEHALF OF RAMUSH HARADINAJ FOR
PROVISIONAL RELEASE

Office of the Prosecutor

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I. PROCEDURAL BACKGROUND

1. On 7 December 2007, the Defence for Mr Haradinaj filed a Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release (“Motion”). The Defence requests that Mr Haradinaj be provisionally released during the court recess, suggesting the period from Friday 21 December 2007 until Friday 4 January 2008.¹ The Defence further requests that Mr Haradinaj be required to reside in his home in Priština/Prishtinë, Kosovo/Kosova, and remain within the confines of the municipality of Priština/Prishtinë.²

2. On 10 December 2007, the Trial Chamber notified UNMIK of its opportunity to be heard on the Motion under Rule 65(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and invited UNMIK to make submissions by 13 December 2007.³ On 13 December 2007, UNMIK confirmed that it had the ability to effectively monitor Mr Haradinaj during a possible provisional release and guaranteed that it would ensure compliance with any conditions that the Trial Chamber would set.⁴

3. On 12 December 2007, the Prosecution filed its Response Opposing Haradinaj’s Motion for Provisional Release (“Prosecution’s Response”), requesting that the Trial Chamber deny the Motion.⁵

4. On 14 December 2007, the Netherlands, in its capacity as the host country and limiting itself to the practical consequences of a possible provisional release, filed a letter pursuant to Rule 65(B) stating that it has no objection to the Motion being granted.⁶ The Netherlands understood from the Motion that upon provisional release Mr Haradinaj would leave Dutch territory.⁷

¹ Motion, para. 2.

² *Ibid.*, paras 2-3.

³ Notification to UNMIK of the Opportunity to be heard on the Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 10 December 2007, page 2.

⁴ Submission by the United Nations Interim Administration Mission in Kosovo (UNMIK) to the Trial Chamber on Invitation to UNMIK of the Opportunity to Make Submissions on the Motion of Ramush Haradinaj for Temporary Provisional Release, 12 December 2007 (“UNMIK Submission”).

⁵ Prosecution’s Response, para. 5.

⁶ Letter from The Netherlands with Regard to the Provisional Release of Mr Ramush Haradinaj, dated 10 December 2007, filed 14 December 2007.

⁷ *Ibid.*

II. APPLICABLE LAW

5. Rule 65 of the Rules sets out the basis upon which a Trial Chamber may order the provisional release of an accused. Rule 65 applies during pre-trial, well as during the course of trial.⁸ Rule 65 reads, in relevant parts:

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

6. The conditions listed under Rule 65(B) are the minimum requirements necessary for granting provisional release. A Trial Chamber has the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.⁹ It is for the accused to prove that the conditions of Rule 65(B) have been met¹⁰ and to satisfy the Trial Chamber “that release is appropriate in a particular case”.¹¹

7. Where an accused applies for provisional release following the denial of a previous application, it is incumbent upon 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.¹²

⁸ *Prosecutor v. Milutinović et al.*, Decision on Interlocutory Appeal of Denial of Provisional Release during the Winter Recess, 14 December 2006, para. 10.

⁹ *Prosecutor v. Popović et al.*, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007 (“Popović et al. Decision”), para. 5.

¹⁰ *Prosecutor v. Limaj et al.*, Decision on Fatmir Limaj’s Request for Provisional Release, 31 October 2003, para. 40; *Prosecutor v. Prlić et al.*, Decision on Motions for Re-Consideration, Clarification, Request for Release and Application for Leave to Appeal, 8 September 2004, para. 28.

¹¹ *Prosecutor v. Šešelj*, Decision on Defence Motion for Provisional Release, 23 July 2004, para. 6.

¹² Popović et al. Decision, para. 12.

III. SUBMISSIONS

8. The Defence for Mr Haradinaj submits that all requirements of Rule 65(B) have been met.¹³ The Defence refers to Mr Haradinaj's exemplary record and behaviour during the previous periods of his provisional release and throughout the trial.¹⁴ The Defence further notes that Mr Haradinaj fully complied with all orders of the Trial Chamber during the previous periods of provisional release, which proceeded without difficulties or incidents.¹⁵ The Defence also alleges that there is no risk that Mr Haradinaj would not return for trial.¹⁶

9. The Defence submits that there is no suggestion of any risk that Mr Haradinaj's provisional release would pose a danger to victims or witnesses given that the Prosecution's case is closed.¹⁷ It points out that no instances of witness intimidation have arisen during or as a cause of Mr Haradinaj's previous periods of provisional release.¹⁸

10. The Defence further points out that Mr Haradinaj undertakes to once again comply with all orders by the Trial Chamber if the provisional release should be granted.¹⁹ The Defence submits that UNMIK can again guarantee, as it did during previous periods of provisional release, the effective implementation of all conditions and orders imposed by the Trial Chamber.²⁰

11. The Defence suggests that Mr Haradinaj should be granted provisional release on humanitarian grounds and for family reasons during the winter recess, to return to Priština/Prishtinë to visit his wife and his children, aged 1 and 3 years, for a private family time over the Christmas period.²¹

12. The Prosecution argues that the two-limb test of Rule 65(B) of the Rules has not been satisfied. It argues that, even though the Prosecution's case is now closed and all its witnesses have testified, the atmosphere of fear for witnesses prevails in Kosovo/Kosova. A provisional release of Mr Haradinaj, which would receive wide media coverage, would negatively impact

¹³ Motion, para. 4.

¹⁴ *Ibid.*, para. 4.

¹⁵ *Ibid.*, para. 9.

¹⁶ *Ibid.*, para. 4.

¹⁷ *Ibid.*, para. 4.

¹⁸ *Ibid.*, para. 4.

¹⁹ *Ibid.*, para. 10.

²⁰ *Ibid.*, para. 11.

this atmosphere.²² The Prosecution is of the opinion that provisional release at this stage of the trial in close proximity to closing briefs, statements and the delivery of the judgment is inappropriate, and further weighs against a decision to grant provisional release.²³ The Prosecution submits that the denial of even a short period of provisional release would be proportionate given the serious nature of the charges against Mr Haradinaj and the relatively short period of his detention.²⁴ Moreover, the Prosecution submits that provisional release should be denied as the Accused has failed to show any specific circumstance warranting release at this specific time.²⁵

IV. DISCUSSION

13. According to Rule 65(B), a Trial Chamber cannot grant provisional release unless it is satisfied that an accused, if released, would return for trial.

14. The Trial Chamber considers the circumstances of Mr Haradinaj's surrender to the Tribunal and behaviour during his prior provisional release. In general, the fact that an accused surrendered voluntarily to the Tribunal is a strong indication that he would not try to escape from justice if provisionally released. Mr Haradinaj voluntarily surrendered to the Tribunal on 9 March 2005 under circumstances that the Trial Chamber at pre-trial phase considered to be "exemplary".²⁶

15. In its Decision of 6 June 2005, the Trial Chamber provisionally released Mr Haradinaj,²⁷ who returned voluntarily to the Tribunal on 27 February 2007 for the commencement of his trial. On 3 October 2007, the Trial Chamber again granted provisional release to Mr Haradinaj to enable him to attend a funeral,²⁸ and Mr Haradinaj returned voluntarily to the Tribunal. On both occasions, Mr Haradinaj abided by all orders imposed by the Trial Chamber.

²¹ Ibid., paras 2, 6-7.

²² Prosecution's Response, paras 3-5.

²³ Ibid., paras 2, 7.

²⁴ Ibid., paras 3, 9.

²⁵ Ibid., paras 3, 8.

²⁶ Haradinaj 6 June Decision, para. 33.

²⁷ Haradinaj 6 June Decision, para. 53.

²⁸ *Prosecutor v. Haradinaj et al.*, Decision on Defence Motion on Behalf of Ramush Haradinaj for Urgent Provisional Release, 3 October 2007, p. 3.

16. Furthermore, UNMIK has provided guarantees that it would ensure compliance with any conditions that the Trial Chamber would set if provisional release for Mr Haradinaj would be granted. According to Security Council Resolution 1244 of 10 June 1999, UNMIK is entrusted with ensuring public safety and order in Kosovo/Kosova,²⁹ and therefore UNMIK is the proper authority to provide such guarantees.³⁰ On the basis of the UNMIK Submission,³¹ the Trial Chamber is satisfied that UNMIK is able as it was in previous instances of provisional release to secure the attendance of Mr Haradinaj before the Tribunal.

17. In light of the above, the Trial Chamber is satisfied that Mr. Haradinaj will appear for the remainder of the trial.

18. Additionally, provisional release cannot be granted unless the Trial Chamber is satisfied that an accused, if released, would not pose a danger to victims, witnesses or other persons. This assessment cannot be made in abstract – a concrete danger needs to be identified.³²

19. The Trial Chamber notes that during previous instances of provisional release of Mr Haradinaj, no concrete witness or victim intimidation incidents have come to the Trial Chamber's knowledge. The Trial Chamber also notes that in its Decision of 20 July 2007, in which provisional release was denied, the Trial Chamber nevertheless found no evidence of witness or victim intimidation by either Mr Haradinaj himself or on his behalf.³³ The Trial Chamber further notes that the Prosecution's case is closed with no Defence case, which further diminishes any risk that witnesses, victims or other persons are interfered with.

20. In sum, the Trial Chamber is satisfied that the specific requirements set out in Rule 65(B) for granting provisional release have been met. The Trial Chamber retains its discretion not to grant provisional release in cases where it is satisfied that the two conditions of Rule 65(B) are met.

²⁹ Security Council Resolution 1244 (1999), UN Doc. S/RES/1244 (1999), para. 11(i).

³⁰ *Prosecutor v. Haradinaj et al.*, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005 ("Haradinaj 6 June Decision"), para. 26.

³¹ UNMIK Submission, para. 4.

³² *Prosecutor v. Stanišić*, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005, para. 27.

³³ *Prosecutor v. Haradinaj et al.*, Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007, para. 18.

21. The Trial Chamber denied an earlier request by Mr Haradinaj for provisional release on 20 July 2007.³⁴ This denial was based on a consideration of the Trial Chamber that the personal interests of Mr Haradinaj for provisional release were outweighed by the interests of justice. Exercising its discretion, the Trial Chamber took into consideration the exceptional difficulty in obtaining witness testimony in this case due to a widespread fear of witnesses to testify. It assumed that granting provisional release would likely have attracted a great deal of media coverage due to Mr Haradinaj's popularity in Kosovo/Kosova, which in turn would have added to the atmosphere of extreme fear and consequent reluctance of witnesses to testify. The Trial Chamber considered that any further aggravation in the difficulty to ensure witness cooperation would be irreconcilable with the Trial Chamber's duty to ensure the integrity of the trial by taking all necessary measures to ensure that witnesses testify before the Tribunal.³⁵ The Trial Chamber has already noted, that after the close of the Prosecution's case and without a Defence case, the situation, on which the July Decision was based, has considerably changed with regard to the impact on witnesses or victims.³⁶

22. The Trial Chamber is mindful of the personal situation of Mr Haradinaj, who would like to visit his wife and children, aged 1 and 3 years, over the holiday period. These humanitarian considerations weigh in favour of granting the requested provisional release.

23. The Prosecution submits that even a short period of provisional release would be disproportionate to the grave nature of the charges Mr Haradinaj stands accused of.³⁷ The Trial Chamber notes that charges of grave crimes do not in themselves militate against a decision in favour of a temporary, provisional release on humanitarian grounds. The Prosecution submits that provisional release at the proximity to the closing briefs, closing statements and the delivery of the judgment would be inappropriate.³⁸ The Prosecution fails to explain in which way the proximity of these stages of the proceedings would render a provisional release inappropriate, nor is this further explained in the decision the Prosecution refers to.³⁹ The Trial Chamber does not consider temporary, provisional release to be inappropriate, solely on account of the imminence of a judgement in the *Haradinaj et al.* case.

³⁴ Ibid., para. 18.

³⁵ Ibid., paras 24-30.

³⁶ See above, para. 18.

³⁷ Prosecution's Response, paras 3, 9.

³⁸ Ibid., paras 2, 7.

³⁹ Ibid., para. 7; *Prosecutor v. Jokić*, Order on Miodrag Jokić's Motion for Provisional Release, 20 February 2002. para. 21.

24. Considering all the foregoing factors, and pursuant to Rule 65 of the Rules, the Trial Chamber hereby **GRANTS** the Motion and **ORDERS** the provisional release of Ramush Haradinaj on the following terms and conditions:

1. The Accused shall travel from The Hague to Priština/Prishtinë on 21 December 2007 and return from Priština/Prishtinë to The Hague no later than 4 January 2008;
2. During his travel from The Hague to Priština/Prishtinë, and on his return trip, the Accused shall be escorted by security officers of the Tribunal;
3. At Priština/Prishtinë airport the Accused shall be delivered into the custody of UNMIK officials;
4. Once in Kosovo/Kosova the Accused shall travel directly to Priština/Prishtinë where he will remain at his home, the address of which he shall communicate to the Registrar before being provisionally released;
5. For his return, the Accused shall be accompanied to the airport by UNMIK officials, who shall deliver the Accused to the custody of security officers of the Tribunal at Priština/Prishtinë airport;
6. The Accused shall not have or attempt to have contact with any Prosecution witnesses in the case against him, or attempt in any way to interfere with the administration of justice;
7. The Accused shall not have or attempt to have contact with a representative of any media organisation, he shall not engage in any political activity, and he shall not make any public statement during his provisional release;
8. The Accused shall refrain from any activity that is not in accordance with the private nature of his provisional release, which includes any contact with either domestic or international officials not necessitated for security reasons;
9. The Accused shall comply with any instructions given to him by anyone acting under the authority of the Special Representative of the United Nations Secretary-General.

The Trial Chamber **REQUIRES** the authorities of UNMIK to assume responsibility as follows:

- (i) Designate the UNMIK officials who shall take custody of the Accused at Priština/Prishtinë airport, and notify the Registrar, prior to the Accused's

departure from The Hague, of the names of the officials, who shall at all times include at least one non-Albanian UNMIK representative who understands and speaks Albanian;


- (ii) Ensure the 24-hour supervision and protection of the Accused while he is in Kosovo/Kosova;
- (iii) Ensure compliance with the conditions of his provisional release as set out in this Decision, and arrest and detain the Accused immediately and report immediately to the Registrar any breach of the conditions set out herein;
- (iv) Submit a written report to the Trial Chamber every 48 hours as to the compliance of the Accused with the terms of this Decision.

The Trial Chamber **INSTRUCTS** the Registrar to ensure that the Accused is safely escorted from The Hague to Priština/Prishtinë, as well as on the return journey, and to consult with the appropriate authorities as to the arrangements for his provisional release and transport.

It further **REQUESTS** the authorities of all States through whose territory the Accused will travel,

- (i) To hold the Accused in custody for any time that he will spend in transit at the airport;
- (ii) 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 version being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this 14th day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

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