



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: 26 March 2008

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:** 26 March 2008

**PROSECUTOR**

v.

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

**PUBLIC**

**DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF  
ORDER REINSTATING TEMPORARY PROVISIONAL RELEASE OF  
NEBOJŠA PAVKOVIĆ**

**Office of the Prosecutor**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Government of Republic of Serbia**

**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 the confidential “Prosecution Motion for Re-Consideration of the Order Re-Instating Temporary Provisional Release of Nebojša Pavković,” filed on 26 March 2008 (“Motion”), and hereby renders its decision thereon.

1. On 14 March 2008, the Trial Chamber granted the motion of Accused Nebojša Pavković (“Pavković”) for temporary provisional release, via its “Decision on Pavković Motion for Temporary Provisional Release” (“Decision”). This release was conditioned upon the Government of the Republic of Serbia (“Serbia”) providing 24-hour electronic surveillance of Pavković during his time in Serbia. Following this, Serbia requested, through the Registry of the Tribunal, clarification of the condition of 24-hour electronic surveillance, and the Chamber therefore suspended the Decision pending submissions from the parties and Serbia upon the matter.<sup>1</sup>

2. On 20 March 2008, Pavković provided the Chamber with additional information regarding the conditions of his provisional release, including that electronic surveillance is not available in Serbia, but that, in addition to being accompanied by police officers 24 hours a day, Pavković’s privately owned dwelling, in which he will reside during the provisional release, has 24-hour video surveillance. According to Pavković, the disc containing the surveillance videos from the private dwelling is available to the Serbian police at any time.<sup>2</sup> Serbia also made submissions, as requested, confirming that electronic surveillance is not available in Serbia and elaborating upon the detailed procedures put into place to ensure that the Decision of the Chamber is respected.<sup>3</sup>

3. On 20 March 2008, based upon the further submissions of Pavković and Serbia, as well as the particularly persuasive humanitarian grounds set forth in the confidential annex of the Decision and the lack of Prosecution objection to the initial motion, the Chamber considered it appropriate to rescind the requirement of 24-hour electronic surveillance, provided that Pavković surrender to the Serbian authorities on each day of his provisional release the surveillance video-recording of his home. The Chamber also ordered that all other provisions of the Decision continued to apply to the temporary provisional release of the Accused.<sup>4</sup>

4. On 25 March 2008, the Prosecution filed its confidential “Prosecution Submission on Electronic Surveillance and the Temporary Provisional Release of Nebojša Pavković,” in which it

<sup>1</sup> Order Suspending Temporary Provisional Release of Nebojša Pavković, 18 March 2008.

<sup>2</sup> Pavković Second Supplement to Motion for Provisional Release, 20 March 2008, paras. 1, 2, 4–8, 10, 11.

<sup>3</sup> Republic of Serbia’s Submission Related to Trial Chamber’s Order of 18 March 2008, 20 March 2008.

<sup>4</sup> Order Reinstating Temporary Provisional Release of Nebojša Pavković, 20 March 2008.

stated its belief that it was precluded from challenging the Decision, but placed upon the record its general position in relation to electronic surveillance. However, the Prosecution went on to state that, “[i]f 24-hour electronic surveillance or its equivalent cannot be provided by Serbia, temporary provisional release for [Pavković] should be denied.”<sup>5</sup>

5. On 26 March 2008, in the Motion, the Prosecution now requests the Chamber to reconsider its decision to reinstate Pavković’s temporary provisional release. The Prosecution attempts to clarify its position in the 25 March submission by stating that it objected to the release, if 24-hour electronic surveillance or its equivalent could not be provided by Serbia. In particular, the Prosecution objects to video surveillance of Pavković’s residence as a means of monitoring. Finally the Prosecution states that it is not clear from the order reinstating the release that the rescinded condition of electronic surveillance has been replaced with the measures set out in Serbia’s submissions on 20 March regarding police surveillance of Pavković.

6. 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.’”<sup>6</sup>

7. As a preliminary matter, the Chamber notes that the Prosecution misapprehends the Decision in submitting that the Chamber did “not expressly state that it is satisfied that [Pavković] poses no danger to witnesses or that he will appear for trial.” Contrary to this submission, the Chamber clearly held that the criteria of Rule 65(B) were satisfied and that it was prepared to exercise its discretion to grant provisional release on the basis of the particularly persuasive humanitarian grounds in the motion.<sup>7</sup>

8. In its Order reinstating Pavković’s temporary provisional release, the Chamber held as follows:

Based upon the further submissions of Pavković and Serbia, as well as the particularly persuasive humanitarian grounds set forth in the confidential annex of the Decision and the lack of objection from the Prosecution, the Chamber considers that it is appropriate to rescind the requirement of 24-hour electronic surveillance, provided that Pavković surrender to the Serbian authorities on each day of his provisional release the surveillance video-recording of his home.<sup>8</sup>

<sup>5</sup> The Chamber notes that the Prosecution’s submissions dated 25 and 26 March 2008 were filed confidentially, but nevertheless finds that it is appropriate to issue this Decision publicly.

<sup>6</sup> See Decision on Prosecution Motion for Reconsideration of Oral Decision Dated 24 April 2007 Regarding Evidence of Zoran Lilić, 27 April 2007, para. 4.

<sup>7</sup> See Decision, para. 22.

<sup>8</sup> Order Reinstating Temporary Provisional Release of Nebojša Pavković, 20 March 2008, para. 4.

9. The Chamber made it clear that it was basing its decision, in part, upon the lack of Prosecution objection to the initial motion for provisional release, to which the Prosecution has adhered. The current “objection” of the Prosecution would not have altered the decision of the Chamber to reinstate the release. The submissions of the Prosecution on 25 and 26 March 2008 do not demonstrate—nor even seem to argue—any “clear error of reasoning” on the part of the Chamber or how reconsideration of the reinstatement of Pavković’s release is necessary to prevent injustice.

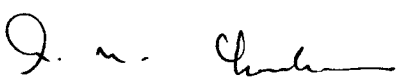
10. Regarding the condition that Pavković will be subject to 24-hour surveillance by police personnel, Serbia has set out, in its submission on 20 March 2008, the following details of the implementation of the Decision:

- (a) That at all times two police officers are in the presence of the Accused.
- (b) That the Accused is not allowed to move anywhere without these two police officers.
- (c) That two police officers are placed, at all times, in front of the Accused’s dwelling, in order to make sure that he does not leave the premises.
- (d) That the police officers will, at all times, ensure the apprehension of the Accused in the event of escape or failure to meet any of the conditions set out in the Decision.

The Chamber is satisfied that the above interpretation of the Chamber’s order of 24-hour surveillance is sufficient to ensure that Pavković will return for trial and not endanger victims, witnesses, or other persons. Moreover, in addition to these conditions, the Chamber has ordered that Pavković surrender to the Serbian authorities on each day of his provisional release the surveillance video-recording of his home.

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

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

  
Judge Ali Nawaz Chowhan

Dated this twenty-sixth day of March 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**