



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-05-88-T
Date: 9 April 2008
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IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 9 April 2008

PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

PUBLIC REDACTED VERSION

DECISION ON BOROVIČANIN'S MOTION FOR CUSTODIAL VISIT

Office of the Prosecutor
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The Government of the Republika Srpska

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Mr. Aleksandar Lazarević and Mr. Christopher Gosnell for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

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 “Defence Application for Ljubomir Borovčanin’s Custodial Visit to Republika Srpska (BiH) for a Short Fixed Period, With Annexes I to IV”, filed confidentially on 29 February 2008 (“Motion”), and renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. On 29 February 2008, Borovčanin filed the Motion. On 7 March 2008, Borovčanin filed the confidential “Submission of Medical Report in Support of Defence Application for Ljubomir Borovčanin’s Custodial Visit to Republika Srpska (BiH) for a Short Fixed Period, with Annexes I to IV”, attaching as Annex I a medical report of the Bijeljina Hospital regarding the medical state of his father (“Medial Report”). On 14 March 2008, the Prosecution filed confidentially the “Prosecution Response to Defence Application for Ljubomir Borovčanin’s Custodial Visit to Republika Srpska (BiH) for a Short Fixed Period With Annexes I to IV” (“Response”). On 25 March 2008, Borovčanin filed the confidential “Defence Motion for Leave to Reply and Reply to Prosecution Response to Defence Application for Ljubomir Borovčanin’s Custodial Visit to Republika Srpska (BiH) for a Short Fixed Period With Annexes I to IV” (“Reply”).

2. On 3 March 2008, the Trial Chamber rendered orally its decision on the Accused’s submissions made pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”) (“Rule 98 *bis* Decision”),¹ in which the Trial Chamber declined to enter a judgement of acquittal with respect to any of the Accused after the close of the Prosecution case.²

II. SUBMISSIONS

A. Motion

3. Borovčanin requests a custodial visit to the Municipality of Bijeljina, Republika Srpska, Bosnia and Herzegovina, for a short fixed period of up to 15 days, between 20 March and 10 April 2008, under terms and conditions determined by the Trial Chamber.³

4. The purposes of the visit would be for Borovčanin (1) to visit his father, who is seriously ill,⁴ (2) to undergo a medical evaluation to qualify for a national disability pension due to wounds

¹ T. 21460–21473 (3 March 2008).

² *Ibid.*

³ Motion, paras. 12, 21.

suffered during the war,⁵ and (3) to obtain official identification documents from the Republika Srpska, which are required in order to apply for a disability pension.⁶ Borovčanin submits that these constitute compelling personal circumstances, which militate in favour of granting his request.⁷

5. He argues that there is no risk of flight as he will be “in full custody at all times”,⁸ from the time he leaves the United Nations Detention Unit (“UNDU”) until his return, and that he will be guarded by armed members of the Republika Srpska Ministry of Interior (“RS MUP”) 24 hours per day while in Republika Srpska.⁹ Furthermore, he points out that he was granted a custodial visit to his ill father in July 2007, during which he complied with all the terms and conditions imposed on him by the Trial Chamber.¹⁰

6. Borovčanin has provided the Trial Chamber with the Republika Srpska Guarantee,¹¹ as well as the Guarantee of the RS MUP.¹² He submits that “[s]uch guarantees have been accepted as reliable in the past, and have been faithfully executed in practice.”¹³ He also points out his good behaviour at the UNDU, and submits a Personal Guarantee, in which he states his willingness to comply with any terms and conditions the Trial Chamber may deem necessary and appropriate under the circumstances.¹⁴

7. Borovčanin adds that the Rule 98 *bis* Decision “should not have any bearing on the Trial Chamber’s position”, since the standard applied in Rule 98 *bis* allows for the possibility that a Trial

⁴ *Ibid.*, paras. 12–14.

⁵ Borovčanin argues that “Republika Srpska regulations require an official medical examination as a condition of receiving such a pension. [...] [T]he Applicant is required to be personally present for such compulsory medical examination and disability assessment, as well as other legal procedures envisaged by the Republika Srpska regulations.” *Ibid.*, paras. 12, 15, Annex I. Furthermore, he submits that other Trial Chambers “have specially noted that dealing with pension matters is a valid reason for requesting provisional release.” *Ibid.*, para. 15 (referring to *Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, and Pušić*, Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Praljak, 26 June 2006 (“*Prlić* Trial Decision of 26 June 2006”), p. 2). *Ibid.*, para. 15

⁶ Borovčanin submits that all the official documents which identify him have now expired, and that “[u]nder the Republika Srpska law, identification cannot be issued unless a person physically presents himself before the issuing authority.” *Ibid.*, paras. 12, 16, Annex I, Annex II.

⁷ Borovčanin submits that the reasons which led the Trial Chamber to grant his request for custodial visit in July 2007 “are even more strongly in evidence today.” *Ibid.*, para. 33.

⁸ *Ibid.*, para. 17.

⁹ *Ibid.*, paras. 17, 19.

¹⁰ *Ibid.*, para. 18 (referring to the confidential Decision on Borovčanin’s Motion for Leave to Withdraw Application for Provisional Release and to File Application for “Custodial Visit to His Father for a Short Fixed Period Based on Humanitarian Grounds”, 24 July 2007 (“*Borovčanin* Decision of 24 July 2007”).

¹¹ *Ibid.*, para. 25–26, 33, Annex IV.

¹² *Ibid.*, Annex II.

¹³ *Ibid.*, para. 26 (referring to Borovčanin Decision of 24 July 2007; Decision On Pandurević’s Request For Provisional Release On Compassionate Grounds, 11 December 2007), Annex II.

¹⁴ *Ibid.*, paras. 20–21, Annex III. Borovčanin also indicates a number of terms and conditions that may be applied to the sought custodial visit and submits that he is committed to strictly comply with any term and condition that the Trial Chamber may deem appropriate. *Ibid.*, pp. 11–13.

Chamber will find that there is sufficient evidence for the purposes of the Rule 98 *bis* Decision, and yet even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial.¹⁵ He emphasizes that no material circumstance has changed since July 2007 to suggest that he is any more likely to abscond. “On the contrary, now that the defence phase of the Trial is about the start, the Applicant has a strong incentive to return and participate in the presentation of his case.”¹⁶

8. Moreover, Borovčanin asserts that he would not pose any threat to any victim, witness or other person, because (1) he will be within custody at all times during his visit, and (2) he made no effort to contact or influence any actual or prospective witness during his previous stay in Republika Srpska, and there is no reasonable basis to believe that he would do so now that the presentation of the Prosecution case is complete.¹⁷ Borovčanin has also pledged in his Personal Guarantee that he would not contact or otherwise interfere with any prospective witness, or discuss his case with anyone other than his counsel.¹⁸

9. If his request for a custodial visit is granted, Borovčanin further asks that he be permitted to stay at his father’s house, under constant 24-hour guard of armed members of the RS MUP.¹⁹ He submits that (1) a stay at his father’s house “would eliminate the need for daily transport between his father’s house and a detention facility”, (2) the RS MUP demonstrated that it is fully capable of maintaining custody and security of Borovčanin while at his father’s house, and that it is prepared to provide the same level of security again, and (3) “[t]he Municipality of Bijeljina is within the jurisdiction of the European Union Police Mission (“EUPM”) and the NATO forces.”²⁰

B. Response

10. The Prosecution opposes the Motion and requests that it be denied by the Trial Chamber.²¹ It asserts that Borovčanin “has not demonstrated any material change in the circumstances warranting his release”,²² and submits that Borovčanin has provided no evidence that his father’s illness poses any special circumstances justifying his release on humanitarian or any other grounds.²³ It further emphasizes that “[i]n its 24 July 2007 Decision, the Trial Chamber exceptionally granted the Accused’s [...] Motion for a custodial visit [...] [T]he Prosecution took

¹⁵ *Ibid.*, para. 34.

¹⁶ *Ibid.*, para. 35.

¹⁷ *Ibid.*, paras. 29–30.

¹⁸ *Ibid.*, para. 31, Annex III.

¹⁹ *Ibid.*, para. 22.

²⁰ *Ibid.*, paras. 22–23.

²¹ Response, paras. 2, 20.

²² *Ibid.*, para. 9.

²³ *Ibid.*, paras. 10–13.

no position with respect to the [...] Motion because the Accused had represented that his father's health was 'critical', which the Prosecution understood to mean that he was near death. However, the Prosecution no longer accepts this representation [...]"²⁴

11. Furthermore, the Prosecution argues, the justifications provided by Borovčanin for provisional release, which include the settlement of pension benefits and the procurement of personal documents, "do not constitute a material change in circumstances, or a compelling basis for his release, especially when balanced against the seriousness of the crimes with which he has been charged, the current posture of the case, and his prior fugitive status."²⁵ According to the Prosecution, the circumstances of this case are distinct from the circumstances detailed in other decisions which granted requests for provisional release.²⁶ Moreover, the Appeals Chamber overturned decisions of the *Prlić* Trial Chamber granting requests for provisional release based *inter alia* on the wish to undergo medical tests and to visit ailing family members.²⁷

12. The Prosecution submits that since Borovčanin was granted provisional release in July 2007, a number of material circumstances have changed providing "the Accused with a far greater disincentive to return than that which existed" in July 2007.²⁸ These circumstances include (1) the completion of the Prosecution case, (2) the admission of additional incriminating evidence against Borovčanin, and (3) the rendering of the Rule 98 *bis* Decision, in which the Trial Chamber determined that "there is sufficient evidence capable of supporting a conviction against the Accused for the serious crimes with which he has been charged."²⁹

13. Lastly, the Prosecution asserts that Borovčanin's assurances concerning his intention to reappear for trial should not be credited.³⁰ These assurances, the Prosecution argues, are "of little value and must be weighed in the context of his prior two-and-a-half year long status as a fugitive."³¹

²⁴ *Ibid.*, paras. 5–6.

²⁵ *Ibid.*, para. 15. *See also Ibid.*, para. 3.

²⁶ *Ibid.*, paras. 15–16 (referring to the *Prlić* Trial Decision of 26 June 2006; *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-T, Decision on Pavković Motion for Temporary Provisional Release, 14 March 2008).

²⁷ *Ibid.*, para. 14 (referring to *Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, and Pušić*, Case No. IT-04-74-AR65.5, Decision on Prosecution's consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2007 ("*Prlić* Appeal Decision")).

²⁸ *Ibid.*, para. 17.

²⁹ *Ibid.*

³⁰ *Ibid.*, paras. 9, 19.

³¹ *Ibid.*, para. 18.

14. Moreover the Prosecution requests a stay of the decision in order to file an appeal should the Trial Chamber grant the Motion.³²

C. Reply

15. Borovčanin seeks leave to reply to the Response, and addresses the arguments raised by the Prosecution.³³ He argues that a significant portion of the Prosecution's case had already been presented and introduced into evidence by the summer of 2007, and that "[n]o significant change in scope, strength, or persuasiveness of the prosecution case has intervened since" then.³⁴ He emphasizes that in the Rule 98 *bis* Decision, "[n]o newly-disclosed or unexpected evidence was relied on by the Chamber",³⁵ and that the "[d]enial of the motion for acquittal does not demonstrate that conviction is likely, but simply reflects that the *de minimis* threshold of Rule 98 *bis* had been met."³⁶

16. Furthermore, Borovčanin re-emphasizes that the guarantee provided by Republika Srpska was accepted by the Trial Chamber and faithfully executed by the Republika Srpska authorities in the past.³⁷ He argues that in light of this guarantee, the Trial Chamber did not hold in the past that Borovčanin "must be deemed a flight risk regardless of the conditions of his release because of his delayed surrender to the Tribunal", as currently argued by the Prosecution.³⁸

17. Therefore, Borovčanin submits, there has been no material change in circumstances since his request for a custodial visit was granted in July 2007, and he does not pose a flight risk.³⁹

18. Borovčanin further submits that the Medical Report concerning his father shows that his father is seriously ill.⁴⁰ He argues that "[t]he Prosecution's medical speculations are not a legitimate basis to doubt the descriptions, diagnoses, and conclusions offered in the report", and that the suggestion that he had exaggerated the seriousness of his father's health condition in his request for a custodial visit in July 2007 is unfounded.⁴¹ He also argues that the Trial Chamber should reject

³² *Ibid.*, para. 2.

³³ Reply, paras. 4, 6.

³⁴ *Ibid.*, para. 9.

³⁵ *Ibid.*, para. 11.

³⁶ *Ibid.*, para. 12.

³⁷ *Ibid.*, para. 15. Borovčanin submits that "[n]owhere does the Prosecution suggest that the Republika Srpska is unable or unwilling to perform the proposed terms of the release. [...] The Prosecution made no submissions in July 2007 when provisional release was proposed on the same terms as now. This is not a position it could have taken had it genuinely considered the Applicant to be a flight risk." *Ibid.*, para. 16.

³⁸ *Ibid.*, para. 14 (referring to Borovčanin Decision of 24 July 2007, para. 17).

³⁹ *Ibid.*, paras. 8, 17.

⁴⁰ *Ibid.*, para. 21.

⁴¹ *Ibid.*, paras. 19, 21–22.

the Prosecution's proposition that a patient must be shown to be 'near death' in order to militate in favour of granting the Accused's request for a custodial visit on humanitarian grounds.⁴²

19. Moreover, Borovčanin submits that the personal and financial reasons raised as grounds for his request are appropriate factors.⁴³ He argues that the *Prlić* Appeals Chamber decision, which overturned decisions of the *Prlić* Trial Chamber granting requests for provisional release, was based on the particular circumstances of the individuals in that case and the failure of the *Prlić* Trial Chamber to properly articulate the weight it accorded to the contending factors.⁴⁴

20. In light of the above, Borovčanin concludes that the particular circumstances of his case militate in favour of granting his request for a custodial visit.⁴⁵

III. APPLICABLE LAW

21. The Trial Chamber understands Borovčanin's Motion for a custodial visit to be a request for a limited provisional release from the UNDU with stringent conditions. Therefore, Borovčanin has to fulfil the requirements set out for provisional release in the Rules and in the jurisprudence.⁴⁶

22. Pursuant to Rule 65(A), once detained, an accused may not be provisionally released except upon an order of a Chamber. Under Rule 65(B), a Trial Chamber may order the provisional release of an accused 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 following two requirements are met: (1) the accused will appear for trial, and (2) if released, the accused will not pose a danger to any victim, witness or other person. Rule 65(C) provides that "[t]he 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".

23. The Appeals Chamber's jurisprudence emphasizes that a decision on a request for provisional release must address all relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision and include a reasoned opinion indicating its view on the relevant factors and the weight given to them. What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each

⁴² *Ibid.*, para. 23. Borovčanin submits that "[h]ealth conditions [...] cannot always be measured according to this standard until it is too late." *Ibid.*

⁴³ *Ibid.*, para. 24.

⁴⁴ *Ibid.*, para. 24 (referring to the *Prlić* Appeal Decision).

⁴⁵ *Ibid.*, para. 25.

⁴⁶ See Borovčanin Decision of 24 July 2007, para. 14.

case and individual accused, including the present context of the proceedings of the case.⁴⁷ In this regard, the Trial Chamber further notes the holding of the Appeals Chamber that a Rule 98 *bis* decision declining to enter a judgement of acquittal after the close of the Prosecution case is “a significant enough change in circumstance to warrant the renewed and explicit consideration by the Trial Chamber of the risk of flight by the Accused.”⁴⁸

24. The Appeals Chamber has further held that where humanitarian concerns are raised in support of a request for provisional release, such grounds must be assessed in the context of the two requirements of Rule 65(B).⁴⁹ They have to be compelling,⁵⁰ and the Trial Chamber must be satisfied that the conditions of provisional release are sufficient to address any concerns in relation to the requirements of Rule 65(B).

IV. DISCUSSION

25. The present motion is a request of Borovčanin on humanitarian grounds to be granted a limited provisional release with stringent conditions in order to see his ailing father, as well as to deal with other personal matters.

26. The Trial Chamber notes that in the past Borovčanin filed two requests for provisional release, one during the pre-trial stage and one during trial proceedings. On both occasions the Trial Chamber denied the requests.⁵¹ The decisions were upheld by the Appeals Chamber.⁵² However, approximately eight months ago the Trial Chamber granted, based on humanitarian grounds, Borovčanin’s similar request for a limited provisional release to visit his ailing father.⁵³

27. The Trial Chamber acknowledges the guarantees provided by Republika Srpska and is satisfied with them, particularly in light of the undertakings given and carried out on Borovčanin’s previous custodial visit. Furthermore, it is in receipt of a letter from the Ministry of Foreign Affairs

⁴⁷ *Prlić* Appeal Decision, paras. 7, 19; *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.4, Decision on Johan Tarčulovski’s Interlocutory Appeal On Provisional Release, 27 July 2007 (“*Boškoski and Tarčulovski* Appeal Decision”), para. 6.

⁴⁸ *Prlić* Appeal Decision, paras. 19–20.

⁴⁹ *Boškoski and Tarčulovski* Appeal Decision, para. 14.

⁵⁰ See *Prlić* Appeal Decision, para. 21.

⁵¹ Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006; Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin, confidential and *ex parte*, 15 December 2007.

⁵² Decision on Defence’s Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006; Decision on Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007.

⁵³ Borovčanin Decision of 24 July 2007.

of the Kingdom of the Netherlands, which in its capacity as the host country, affirms that it has no objection to the provisional release of Borovčanin.⁵⁴

28. On two previous occasions, the Trial Chamber has denied provisional release to Borovčanin on the basis of concerns as to whether he would appear for trial. In addition, on 3 March 2008, the Trial Chamber rendered its Rule 98 *bis* Decision, and therefore it is necessary to consider afresh the risk of flight by Borovčanin taking into account this particular change in circumstances.

29. Borovčanin has advanced humanitarian grounds in support of his request, namely his wish to visit his sick, elderly father and to take care of several important personal matters. The Trial Chamber notes that Borovčanin's father is of advanced age. He has been sick for an extended period of time, and, according to the Medical Report, he is in critical condition.⁵⁵ As Borovčanin's father is gravely ill, there may be few occasions left for a visit between father and son. The Trial Chamber is of the opinion therefore that the humanitarian grounds are sufficiently compelling so as to justify some form of provisional release. Assessing those grounds with reference to the requirements of Rule 65(B), after considering all the factors, including that a Rule 98 *bis* Decision has been rendered, the Trial Chamber continues to have some concerns as to the risk of flight on the part of Borovčanin. However, the Trial Chamber is satisfied that the limitation of the release to a very short period of time, under strict custodial conditions, will fully address these concerns. Furthermore, the Trial Chamber notes that in July 2007 it granted Borovčanin's request for a custodial visit,⁵⁶ and that this was carried out without incident. The Trial Chamber finds in this fact further re-assurance that there is no risk of flight in these circumstances.

30. Moreover, the Trial Chamber is satisfied that Borovčanin poses no threat to witnesses, victims or any other person in this case and in any event the stringent conditions will provide additional protections in this regard.

31. Taking into account the relevant factors, the Trial Chamber decides to allow provisional release for a limited duration of seven days only (including travel time), and to require that throughout the period of provisional release, Borovčanin must be kept under surveillance and in custody by armed guards at all times. In addition, during his stay in the Republika Srpska he must spend every night in the local detention facility, while being allowed to visit his father or attend to personal matters during the day-time. The Trial Chamber finds that such requirements constitute in practice a continuous detention of Borovčanin, and therefore eliminate the risk of his flight.

⁵⁴ Correspondence from Host Country Regarding the Provisional Release of Ljubomir Borovčanin, 4 April 2008.

⁵⁵ [Redacted]

⁵⁶ Borovčanin Decision of 24 July 2007.

V. DISPOSITION

32. For these reasons, pursuant to Article 29 of the Statute and Rules 54 and 65 of the Rules, the Trial Chamber hereby

- (1) **GRANTS** leave to Borovčanin to reply to the Prosecution Response;
- (2) **GRANTS** in part Borovčanin's request for provisional release, on the condition that any affected state has provided its agreement to the Registry, and decides as follows:
 - (a) the agreement from any affected state should be submitted to the Registry prior to the transfer of Borovčanin, failing which no transfer will occur;
 - (b) Borovčanin shall be provisionally released for a period of seven days (including travel time); the exact dates of his provisional release shall be determined in consultations between the UNDU, the Registrar and a representative of the Trial Chamber;
 - (c) Borovčanin shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable;
 - (d) at Schiphol airport, Borovčanin shall be transferred into the custody of a designated official of the Republika Srpska, who shall accompany Borovčanin on the airplane;
 - (e) the authorities of all states through whose territory Borovčanin may travel will hold Borovčanin in custody for any time he will spend in transit at the airport and arrest and detain Borovčanin pending his return to the UNDU, should he attempt to escape;
 - (f) during the period of Borovčanin's stay in Republika Srpska, he shall abide by the following conditions, and the authorities of the Republika Srpska shall ensure compliance with such conditions:
 - (i) Borovčanin shall be in custody at all times, *i.e.*, have armed members of the RS MUP guarding him 24 hours per day, while being allowed to visit his father as well as to undergo medical evaluation and obtain official identification documents, as requested in his Motion, during the day-time,
 - (ii) Borovčanin shall remain within the confines of the municipality of Bijeljina, Republika Srpska, Bosnia and Herzegovina, apart from his travel to and from the Airport,

- (iii) Borovčanin's travel documents shall be given to the EUPM in Sarajevo or to the Office of the Prosecutor in Sarajevo, or to the Public Security Station in Bijeljina,
- (iv) Borovčanin shall spend every night in the local detention facility, which is part of the Bijeljina Public Security Centre,
- (v) a written report shall be filed with the Tribunal confirming the presence of Borovčanin each day,
- (vi) Borovčanin shall not discuss his case with anyone other than his counsel,
- (vii) Borovčanin shall not have any contact with the co-accused in the case,
- (viii) Borovčanin shall not have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice,
- (ix) Borovčanin shall comply strictly with any requirement of the authorities of the Republika Srpska necessary to enable them to comply with their obligations under this decision and their guarantees;

(g) Borovčanin shall return to the UNDU in the Hague seven days, at the latest, after his departure from the UNDU, which should not be later than 16 May 2008;

(h) on his return Borovčanin shall be accompanied on the airplane by the designated officials of Republika Srpska, who shall deliver him into the custody of the Dutch authorities at Schiphol airport, the Dutch authorities shall then transport him back to the UNDU;

(3) **REQUIRES** the Republika Srpska to assume responsibility as set out above, to cover all expenses concerning transport of Borovčanin from Schiphol airport to Republika Srpska and back as well as concerning accommodation and security of Borovčanin while on custodial visit, to arrest Borovčanin immediately if he should breach any of the conditions of this decision, and to report immediately to the Trial Chamber any breach of the conditions set out above;

(4) **REQUESTS** the Registry to obtain confirmation of the agreement of any state affected by the transfer, prior to arranging for the transfer of Borovčanin to Republika Srpska, and to assist in

obtaining the views of any state affected by the transfer, and to distribute this decision to the relevant states and organisations;

(5) **GRANTS** the Prosecution request and **ORDERS** a stay of the decision pending an appeal.

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



Carmel Agius
Presiding

Dated this ninth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]