



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: 22 May 2008

Original: English

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: 22 May 2008

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**FURTHER DECISION ON DECISION ON MILETIĆ'S MOTION FOR
PROVISIONAL RELEASE**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušević for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
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”);

BEING SEISED OF “General Miletić’s Motion for Provisional Release During Suspension of the Hearings”, filed partially confidentially in the original French on 15 February 2008 (“First Motion”),¹ “General Miletić’s Urgent Motion Amending the Motion for Provisional Release During Suspension of Hearings Filed on 15 February 2008”, filed confidentially in the original French on 11 March 2008 (“Second Motion”),² and the “Urgent Addendum to General Miletić’s Motions for Provisional Release Filed 15 February and 11 March 2008 ”, filed confidentially in the original French on 3 April 2008 (“Addendum to the First and Second Motions”);³

NOTING that Miletić requested to be provisionally released to the Republic of Serbia, where his wife and children reside, and to travel to the Republika Srpska, for a period not exceeding three days, to visit the graves of his relatives, during his provisional release to the Republic of Serbia;⁴

NOTING the “Decision on Miletić Request for Provisional Release During the Break in the Proceedings” rendered by the Trial Chamber on 9 April 2008 (“Decision of 9 April 2008”), in which the Trial Chamber granted Miletić’s request and authorized his provisional release to the Republic of Serbia for a limited period of 14 days, which could include a short visit of three days to the graves of his relatives in the Republika Srpska, under certain conditions detailed therein;⁵

NOTING the “Decision on Consolidated Appeal Against Decision on Borovčanin’s Motion for a Custodial Visit and Decisions on Gvero’s and Miletić’s Motions for Provisional Release During the Break in the Proceedings” rendered by the Appeals Chamber on 15 May 2008 (“Appeals Chamber Decision of 15 May 2008”), in which the Appeals Chamber remanded the Decision of 9 April 2008 to the Trial Chamber “for a *de novo* adjudication of the location and duration of provisional release granted to Miletić and all consequent arrangements”;⁶

CONSIDERING that in the Appeals Chamber Decision of 15 May 2008, the Appeals Chamber held “that the Trial Chamber did not err in determining that the humanitarian grounds provided by Miletić warranted his provisional release to the Republika Srpska for a three-day period to visit the

¹ English translation 20 February 2008.

² English translation 4 April 2008.

³ English translation 4 April 2008. On 4 April 2008, Miletić also filed confidentially the “Urgent Addendum to General Miletić’s Motions for Provisional Release with Annex”. English Translation 4 April 2008.

⁴ Addendum to First and Second Motions, paras. 7, 9.

⁵ Decision of 9 April 2008, paras. 38–40.

⁶ Appeals Chamber Decision of 15 May 2008, para. 34.


graves of his recently deceased relatives. However [...] the Trial Chamber's grant of an additional 11 days to visit his family in Belgrade was unreasonable. [...] [A] Trial Chamber properly exercising its discretion would have limited Miletić's provisional release to a visit to Republika Srpska for a period of time no longer than necessary for Miletić to visit the graves of his relatives";⁷

CONSIDERING, in light of the Appeals Chamber Decision of 15 May 2008, that a provisional release to the Republika Srpska for a limited duration of four days (including travel time), is proportional to the period of time necessary to allow Miletić to visit the gravesites of his relatives;

PURSUANT TO Article 29 of the Statute and Rules 54 and 65 of the Rules,

HEREBY GRANTS in part Miletić's request for provisional release, on the condition that any affected state has provided its agreement to the Registry, and **ORDERS** the provisional release of Miletić to the Republika Srpska during the dates and subject to the conditions set out in the annex attached to this decision.

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



O-Gon Kwon
Judge

Dated this twenty-second day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ *Ibid*, para. 32.

ANNEX

The Trial Chamber hereby,

- (1) **ORDERS** the provisional release of Miletić to the Republika for a period not exceeding four days (including travel time) between 26 and 30 May 2008, subject to the following conditions:
- a) the agreement from any affected state should be submitted to the Registry prior to the transfer of Miletić, failing which no transfer will occur;
 - b) Miletić shall provide the exact addresses (from among those he had listed in the Second Motion) at which he will be staying in Foča and/or Modrica in the Republika Srpska to a designated official of the Republika Srpska and the Registrar of the Tribunal, before leaving the United Nations Detention Unit (“UNDU”) in The Hague;
 - c) the exact dates of Miletić’s provisional release shall be determined in consultations between the UNDU, the Registrar of the Tribunal and a representative of the Trial Chamber;
 - d) Miletić shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable;
 - e) at Schiphol airport, Miletić shall be provisionally released into the custody of a designated official of the Republika Srpska, who shall accompany him to his place of residence in either Foča or Modrica in the Republika Srpska, at one of the addresses provided by Miletić at the Second Motion;
 - f) a designated official of the Republika Srpska shall escort Miletić during his journey between the municipalities of Foča and Modrica in the Republika Srpska;
 - g) during the period of his provisional release in the Republika Srpska, Miletić shall abide by the following conditions, and the authorities of the Republika Srpska, including the local police, shall ensure compliance with such conditions:
 - i. to remain within the confines of the municipalities of Foča and Modrica, Republika Srpska, Bosnia and Herzegovina, apart from his travel from and to the Airport as well as between the municipalities of Foča and Modrica;
 - ii. to surrender his passport to the relevant authorities of the Republika Srpska;
 - iii. to report each day to the police in Foča or Modrica at a local police station to be designated by the authorities of the Republika Srpska;

iv. to consent to having the relevant authorities of the Republika Srpska check with the local police about his presence and to the making of occasional, unannounced visits by the same authority or by a person designated by the Registrar of the Tribunal;

v. not to have any contact with the co-accused in the case;

vi. not to 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;

vii. not to discuss his case with anyone, including the media, other than with his counsel;

viii. to comply strictly with any requirements of the authorities of the Republika Srpska necessary to enable them to comply with their obligations under this Decision and their guarantees;

ix. to comply strictly with any further order of the Tribunal varying the terms of or terminating his provisional release;

h) Miletić shall return to UNDU in the Hague four days, at the latest, after his departure from the UNDU, which should not be later than 30 May 2008, unless otherwise ordered by the Trial Chamber;

i) on his return Miletić shall be accompanied from his place of residence in the Republika Srpska by the designated officials of the 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;

(2) **REQUIRES** the Republika Srpska to assume responsibility as follows:

a) by designating officials of the Republika Srpska into whose custody Miletić shall be provisionally released and who shall accompany Miletić from Schiphol airport to the Republika Srpska and to his place of residence in Republika Srpska, as well as during his journey between the municipalities of Foča and Modrica in the Republika Srpska, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated officials;

b) by ensuring that Miletić stays at the addresses that he will provide to a designated official of the Republika Srpska and the Registrar of the Tribunal;

c) for the personal security and safety of Miletić while on provisional release to the Republika Srpska;

d) for all expenses concerning transport of Miletić from Schiphol airport to the Republika Srpska and back;

e) for all expenses concerning accommodation and security of Miletić while on provisional release to the Republika Srpska;

f) at the request of the Tribunal, or the parties, to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;

g) to arrest and detain Miletić immediately if he should breach any of the conditions of this Decision; and

h) to report immediately to the Trial Chamber any breach of the conditions set out above;

(3) **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice of the Kingdom of the Netherlands as to the practical arrangements for the provisional release of Miletić;

(4) **REQUESTS** the authorities of all states through which Miletić will travel:

a) to hold Miletić in custody for any time he will spend in transit at the airport;

b) to arrest and detain Miletić pending his return to the UNDU, should he attempt to escape;

(5) **ORDERS** that Miletić shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release.