



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 BOROVIČANIN'S MOTION
FOR CUSTODIAL VISIT**

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 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”), in which Borovčanin requested to be granted a limited provisional release under stringent conditions in order to see his ailing father, as well as to deal with other personal matters;¹

NOTING the “Decision on Borovčanin’s Motion for Custodial Visit” rendered by the Trial Chamber on 9 April 2008 (“Decision of 9 April 2008”), in which the Trial Chamber granted in part Borovčanin’s request and allowed his provisional release for a limited duration of seven days (including travel time) under stringent conditions;²

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 duration of provisional release granted to Borovčanin and all consequent arrangements”;³

CONSIDERING that in the Appeals Chamber Decision of 15 May 2008, the Appeals Chamber held “that the Trial Chamber did not commit a discernible error in considering that the serious health condition of Borovčanin’s father justified his provisional release for a short duration” but “that a Trial Chamber properly exercising its discretion would have granted the custodial visit for a shorter period – namely, for a period no longer than the time necessary for Borovčanin to visit his ailing father”;⁴

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

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

¹ Motion, paras. 12–16, 21, Annex I, Annex II.

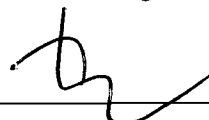
² Decision of 9 April 2008, paras. 31–32.

³ Appeals Chamber Decision of 15 May 2008, para. 34.

⁴ *Ibid*, paras. 17–18.

HEREBY GRANTS in part Borovčanin'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 Borovčanin 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]

ANNEX

The Trial Chamber hereby,

(1) **ORDERS** the provisional release of Borovčanin in the Republika Srpska 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 Borovčanin, failing which no transfer will occur;

(b) the exact dates of Borovčanin's provisional release shall be determined in consultations between the United Nations Detention Unit ("UNDU"), the Registrar of the Tribunal 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 the 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 Republika Srpska Ministry of Interior ("RS MUP") guarding him 24 hours per day, while being allowed to visit his father 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 from and to the Airport,

(iii) Borovčanin's travel documents shall be given to the European Union Police Mission 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 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;

(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;

- (2) **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;
- (3) **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.