



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: 13 June 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: 13 June 2008

PROSECUTOR

v.

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

PUBLIC

DECISION ON LUKIĆ MOTION FOR PROVISIONAL RELEASE

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

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 “Sreten Lukic’s Motion for Provisional Release,” filed on 5 June 2008 (“Motion”), and hereby renders its decision thereon.

1. On 5 December 2006, the Chamber denied the six Accused’s joint application for provisional release over the winter recess.¹ The Appeals Chamber affirmed this decision.² On 22 May 2007, the Chamber denied the application of the Accused Sreten Lukić (“Accused”) for provisional release over the summer recess, holding, *inter alia*, that he had not demonstrated how the circumstances that led to the denial of his application in December 2006 had changed so as to materially affect the approach taken by the Chamber at that time. The Chamber left open the possibility that the Accused could apply for temporary provisional release on compassionate or humanitarian grounds.³

2. Following this denial, the Accused applied on 29 May 2007 for temporary provisional release, arguing, *inter alia*, that the poor health conditions of his father and wife justified his request for relief.⁴ On 25 June 2007, the Chamber denied this motion, reasoning that the Accused had not demonstrated that the health conditions of his father and wife precluded their travel to the Hague and that it was therefore unnecessary for the Accused to travel to Belgrade in order to visit with them.⁵ On 4 July 2007, the Chamber denied the Accused’s motion for reconsideration on this matter.⁶

3. On 4 December 2007, the Accused filed a motion for temporary provisional release on compassionate or humanitarian grounds.⁷ In its decision of 7 December 2007, the Chamber denied that motion, noting that the Accused was on provisional release during the pre-trial phase of the proceedings and was released during the summer recess in July 2006 and that, therefore, the Accused had had adequate opportunities to tend personally to pressing personal matters. The Chamber also reasoned that it did not consider that circumstances had materially changed so as to justify a temporary provisional release on compassionate or humanitarian grounds at that point in

¹ Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006.

² *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During Winter Recess, 14 December 2006.

³ Decision on Lukić Motion for Provisional Release, 22 May 2007, paras. 13, 15.

⁴ Confidential Sreten Lukić’s Renewed Motion for Provisional Release, 29 May 2007.

⁵ Decision on Lukić Motion for Temporary Provisional Release, 25 June 2007, para. 6.

⁶ Decision on Lukić Motion for Reconsideration of Decision on Provisional Release, 4 July 2007, para. 6.

⁷ Confidential Sreten Lukić’s Motion for Provisional Release During Winter Recess on Grounds of Compassion, 4 December 2007.

time.⁸ On 12 December 2007, the Chamber denied the Accused's motion for reconsideration on this matter.⁹ This decision was affirmed on appeal.¹⁰

4. In the Motion, the Accused requests provisional release for 14 days during the current adjournment prior to closing arguments in the case and sets forth various arguments in support thereof.¹¹ The Trial Chamber is in receipt of guarantees from the Government of the Republic of Serbia ("Serbia") confirming that it will respect all orders made by the Chamber in respect of the provisional release of the Accused.¹² The Netherlands, in its capacity as host country, has stated that it has no objection to the Accused's provisional release.¹³

5. The Prosecution opposes the Motion on grounds that the Accused has not met his burden of showing that he will return for the conclusion of the trial, and expresses its reservations about the guarantees of Serbia "given the current unsettled political situation there". The Prosecution also requests a stay of any decision to grant the Motion.¹⁴

6. 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 Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person, after having given the host country and the state to which the accused seeks to be released the opportunity to be heard.¹⁵ Where one of the criteria required by Rule 65(B) has not been met, a Trial Chamber must deny provisional release and need not consider the other conditions.¹⁶

7. In deciding whether the requirements of Rule 65(B) have been met, a Chamber must consider all of those relevant factors that a reasonable Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned opinion indicating its

⁸ Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007 (public with confidential annex), para. 8.

⁹ Decision on Lukić Motion to Reconsider Denial of Motion for Temporary Provisional Release, 12 December 2007 (public with confidential annex).

¹⁰ Decision on "Sreten Lukić's Appeal Pursuant to Rule 116 *bis* Against the Trial Chamber's Denial of Temporary Provisional Release", 18 December 2007.

¹¹ Motion, paras. 1–2, p. 6.

¹² Motion, Annex A.

¹³ Letter from Dutch Ministry of Foreign Affairs, dated 12 June 2008.

¹⁴ Prosecution Response to Sreten Lukić's Motion for Provisional Release, 9 June 2008.

¹⁵ *Prosecutor v. Haradinaj, Balaj, and Brahimaj*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006, para. 6.

¹⁶ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-AR65.1, Decision on Defence Appeal Against Trial Chamber's Decision on Sredoje Lukić's Motion for Provisional Release, 16 April 2007, paras. 6, 23; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007 ("*Popović* Decision"), para. 6.

view on those relevant factors.¹⁷ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.¹⁸ This is because decisions on motions for provisional release are fact intensive and cases are considered on an individual basis in light of the particular circumstances of the individual accused.¹⁹ The Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.²⁰

8. Importantly, where an accused applies for provisional release following the denial of a previous application, “it is incumbent on 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.”²¹

9. However, before a Trial Chamber makes any decision on a significant issue raised before it, it must be satisfied that the facts have been accurately represented to it; and, in this case, this does not appear to be so. The apparent inaccuracy appears to fundamentally undermine the Motion, which is made for the purpose of ensuring adequate access of counsel to the Accused during the period of preparation of the final trial briefs and closing arguments.

10. The Chamber has carefully considered all the submissions in relation to this matter and has taken all relevant factors bearing upon the issue of provisional release into account.

11. The Accused first argues as follows:

The Registry has indicated that counsel are not entitled to remain in The Hague and claim DSA during the pending time period while working on the final brief and closing arguments.

Thus, unless there is a change in Registry policy, during this period of time, the Lukic Defense team will be in Belgrade preparing and drafting final submissions.²²

The Accused then goes on to argue that, unless he is provisionally released, he will not be able to consult with his counsel “efficiently and professionally”.²³

¹⁷ *Prosecutor v. Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić’s Provisional Release, 17 October 2005 (“*Stanišić Decision*”), para. 8.

¹⁸ *Ibid.*

¹⁹ *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Interlocutory Appeal from Trial Decision Denying Johan Tarčulovski’s Motion for Provisional Release, 4 October 2005, para. 7.

²⁰ *Stanišić Decision*, para. 8.

²¹ *Popović Decision*, para. 12.

²² Motion, paras. 3–4.

²³ Motion, paras. 4, 22–23.

12. The Accused does not elucidate precisely how the Registry has “indicated” that his counsel will not be paid DSA if they prepare their final trial briefs in the Hague, rather than in Belgrade. Perhaps he is referring to the “Defence Travel and DSA Policy,” dated 1 January 2007. Nevertheless, it would have been appropriate for the Accused to have provided more substantiation for how the Registry has “indicated” that his counsel will not be paid DSA, or to have approached the Registry for this purpose, received a denial of his request, and then sought relief from the Chamber. Part II(B)(a)(6) of the Policy provides that, for counsel to receive DSA during a “recess” period, it must be shown that he/she is required to work on the case in the Netherlands, including details on necessary work and why it had to be performed in the Netherlands.

13. The Chamber is of the view that a request from the Accused to the effect that he is detained here in the Hague and would like to consult his counsel in the preparation of the final trial brief would most likely yield a positive response from the Registry. If such an attempt is made and is rejected, then the Accused may approach the Chamber again for the appropriate relief, along with adequate substantiation thereof. The Chamber therefore rejects this argument for the relief requested in the Motion.

14. The Chamber considers that the foregoing is sufficient to dispose of the Motion.

15. 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 Iain Bonomy
Presiding

Dated this thirteenth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]