



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: 21 July 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:** 21 July 2008

**PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON GVERO'S MOTION FOR PROVISIONAL RELEASE**

**Office of the Prosecutor**

Mr. Peter McCloskey

**Government of the Republic of Serbia**

**Government of The Netherlands**

**Counsel for the Accused**

Mr. Zoran Živanović and Ms. Mira Tapušević for Vujadin Popović  
Mr. John Ostojić and Mr. Predrag Nikolić 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”), is seised of the “Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons During the Summer 2008 Recess”, filed confidentially on 4 July 2008 (“Motion”), and hereby renders its decision thereon.

## I. PROCEDURAL BACKGROUND

1. Since his voluntary surrender, Gvero has been granted provisional release several times,<sup>1</sup> with the last occasion being in December 2007.<sup>2</sup> This Trial Chamber decided to grant Gvero a further period of provisional release in April 2008,<sup>3</sup> however this decision was overturned on appeal.<sup>4</sup>

2. In the Motion, Gvero requests provisional release during the forthcoming recess in the proceedings.<sup>5</sup> On 11 July 2008, the Prosecution filed confidentially the “Prosecution’s Consolidated Response to Accused Gvero, Miletić, Nikolić and Pandurević’s Motions for Provisional Release” (“Response”), and on 17 July 2008, Gvero filed confidentially the “Request for Leave to Reply and Reply to Prosecution Response to Milan Gvero’s Application for Provisional Release During the Summer Break 2008” (“Reply”).

## II. SUBMISSIONS OF THE PARTIES

### A. Motion

3. Gvero requests provisional release during the period 2 to 19 August 2008, for such time and with such conditions as deemed appropriate by the Trial Chamber.<sup>6</sup>

<sup>1</sup> Decision on Motion for Provisional Release, 19 July 2005; Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 Until the Continuation of Trial, 13 July 2006; Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 December 2006; Decision on Motion for Provisional Release from 21 July 2007 Until the Resumption of Trial, 13 July 2007.

<sup>2</sup> Decision on Motions for Provisional Release During the Winter Judicial Recess, 7 December 2007.

<sup>3</sup> Decision on Gvero’s Motion for Provisional Release During the Break in the Proceedings, 9 April 2008 (“Decision of 9 April 2008”).

<sup>4</sup> *Prosecutor v. Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, 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, 15 May 2008 (“Appeals Chamber Decision of 15 May 2008”).

<sup>5</sup> Motion, para. 1.

<sup>6</sup> Motion, para. 23.

4. Gvero advances two humanitarian grounds in support of the Motion, first, the opportunity to visit his ailing sister when she travels to Belgrade for treatment, and second, his deteriorating physical and psychological well-being.<sup>7</sup>

5. Gvero's sister is 79 years of age.<sup>8</sup> She is Gvero's only surviving sibling and he has not seen her for approximately five years.<sup>9</sup> The medical documentation attached to the Motion outlines Gvero's sister's health condition.<sup>10</sup> According to Gvero, because of these conditions, there is "absolutely no possibility or prospect" of his sister being able to travel to The Hague.<sup>11</sup> Gvero states that his sister's health has deteriorated recently, and as a result, she has been referred for treatment in Belgrade at the beginning of August 2008.<sup>12</sup>

6. In terms of Gvero's own health, the Motion outlines the important positive effect that provisional release has had on Gvero in the past, and would have again if granted.<sup>13</sup> While no medical evidence is offered to support a formal diagnosis, the Motion notes the anxiety associated with Gvero's motion for provisional release filed upon the close of the Prosecution case initially being granted, then denied on appeal.<sup>14</sup> The physical and psychological effect of this course of events was evident in Gvero's demeanour when he appeared at the Pre-Defence Conference.<sup>15</sup>

7. Gvero further notes that he is receiving treatment at the United Nations Detention Unit ("UNDU") for various health issues, and the Medical Officer of the UNDU observed in April 2007 that a medical examination undertaken by Gvero while in Belgrade was beneficial from a psychological point of view.<sup>16</sup>

8. The Motion highlights the risk that Gvero's psychological condition will worsen still should he be denied the opportunity to return to his home, and indicates that Gvero intends to seek medical treatment in Belgrade in the event that he is granted provisional release.<sup>17</sup>

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<sup>7</sup> Motion, paras. 10–11, 12–20.

<sup>8</sup> Motion, para. 10. *See also* Confidential Annex A.

<sup>9</sup> Motion, para. 11.

<sup>10</sup> Motion, Confidential Annex A.

<sup>11</sup> Motion, para. 10.

<sup>12</sup> Motion, para. 11. *See also* Confidential Annex A.

<sup>13</sup> Motion, paras. 13, 17.

<sup>14</sup> Motion, paras. 14–15.

<sup>15</sup> Motion, paras. 14–17.

<sup>16</sup> Motion, para. 19. *See also* Confidential Annex B.

<sup>17</sup> Motion, paras. 17, 19–20.

## **B. Response**

9. In its Response, the Prosecution argues that there is no sufficiently compelling humanitarian reason on which Gvero should be granted provisional release.<sup>18</sup> The Prosecution notes an absence of evidence to support the claim that Gvero's sister's ailments prevent her from travelling to The Hague, and points out that while Gvero may not have seen his sister for five years, it appears that Gvero chose not to visit her while at liberty prior to February 2005, and that his sister had the opportunity to travel to Belgrade to see Gvero during his previous periods of provisional release.<sup>19</sup>

10. In terms of Gvero's own health, the Prosecution argues that the only medical evidence tendered in the Motion concerning Gvero's ill health is a summary medical memorandum from April 2007, and this document does not detail any ailment, physical or psychological, for which Gvero requires treatment in Belgrade.<sup>20</sup>

## **C. Reply**

11. Gvero first requests leave to file a reply.<sup>21</sup> Gvero emphasises the medical report annexed to the Motion, which recommends that Gvero's sister be transported to Belgrade in an ambulance. Gvero contends that "[b]earing this in mind, the prospect of this lady travelling to The Hague is clearly impossible".<sup>22</sup> Gvero also states that his sister has been ill and unable to travel for much of the last five years by way of explanation for the fact that the Accused has not seen her during this time, and asserts that while Gvero does not require specific medical treatment in Belgrade, a consultation with a local doctor will invariably have a positive effect on him.<sup>23</sup>

12. Gvero states that he is content to leave the determination of the period of any provisional release to the Trial Chamber, however he points to a recent decision concerning accused Dragoljub Ojdanić, where provisional release was granted from 10 July until 12 August 2008.<sup>24</sup>

## **III. APPLICABLE LAW**

13. 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

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<sup>18</sup> Response, para. 4.

<sup>19</sup> Response, paras. 5–6.

<sup>20</sup> Response, para. 7. *See also* Confidential Annex B.

<sup>21</sup> Reply, para. 3.

<sup>22</sup> Reply, para. 5. *See also* Motion, Confidential Annex A.

<sup>23</sup> Reply, paras. 6, 8.

<sup>24</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87, Decision on Ojdanić Motion for Temporary Provisional Release, 10 July 2008, para. 31.

of an accused 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, and after giving the host country and the state to which the accused seeks to be released the opportunity to be heard.<sup>25</sup> 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”.

14. 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 those relevant factors.<sup>26</sup> What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case,<sup>27</sup> since “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.”<sup>28</sup>

15. Furthermore the Appeals Chamber held 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.”<sup>29</sup> It further held that “when considering a provisional release motion at the post-98 *bis* stage of the proceedings, even when a Trial Chamber is satisfied that sufficient guarantees exist to offset the flight risk of an accused, it should not exercise its discretion to grant provisional release unless sufficiently compelling humanitarian reasons tip the balance in favour of allowing provisional release.”<sup>30</sup> The humanitarian grounds raised by an accused as a basis for

<sup>25</sup> See, *inter alia*, *Prosecutor v. Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, 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, 15 May 2008 (“Appeals Chamber Decision of 15 May 2008”), para. 5; Appeals Chamber Decision of 15 May 2008, para. 6; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović’s Interlocutory Appeal against the Decision on Popović’s Motion for Provisional Release, 1 July 2008 (“Appeals Chamber Decision of 1 July 2008”), para. 7.

<sup>26</sup> See, *inter alia*, Appeals Chamber Decision of 15 May 2008, para. 6; Appeals Chamber Decision of 1 July 2008, para. 8.

<sup>27</sup> See, *inter alia*, Appeals Chamber Decision of 15 May 2008, para. 6; Appeals Chamber Decision of 1 July 2008, para. 8.

<sup>28</sup> Appeals Chamber Decision of 15 May 2008, para. 6 (referring to *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Johan Tarčulovski’s Interlocutory Appeal on Provisional Release, 4 October 2005, para. 7).

<sup>29</sup> See, *inter alia*, *Prosecutor v. Prlić, et al.*, 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 Ćorić, 11 March 2008 (“Prlić Appeals Chamber Decision of 11 March 2008”), paras. 19–20.

<sup>30</sup> See, for example, Appeals Chamber Decision of 15 May 2008, para. 24.

provisional release must be assessed in the context of the two requirements of Rule 65(B),<sup>31</sup> 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).<sup>32</sup>

16. The Appeals Chamber has also held that where provisional release is found to be justified on humanitarian grounds, the duration of provisional release should be proportional to the period of time necessary to carry out the humanitarian purpose of the release.<sup>33</sup> Accordingly, “a Trial Chamber must address the proportionality between the nature and weight of the circumstances of a particular case and the duration of provisional release requested”.<sup>34</sup>

#### IV. DISCUSSION

17. The Trial Chamber notes that Gvero voluntarily surrendered to the Tribunal upon notification of the charges against him and that he has been granted provisional release on a number of occasions.<sup>35</sup> Gvero has always been compliant with the conditions imposed upon him during these previous periods of provisional release.<sup>36</sup>

18. In its Decision of 9 April 2008, this Trial Chamber explicitly addressed the impact of the decision pursuant to Rule 98 *bis*<sup>37</sup> (“Rule 98 *bis* Decision”) on the risk of flight posed by Gvero, taking into account, *inter alia*, the nature of the case against him, his personal circumstances, voluntary surrender and the fact that he has been provisionally released on several occasions and always abided by all conditions imposed by the Trial Chamber.<sup>38</sup> After weighing these factors against the Rule 98 *bis* Decision, the Trial Chamber concluded that Gvero did not pose a flight risk or a threat to witnesses, victims or other persons associated with the case.<sup>39</sup> The Appeals Chamber, in its decision of 15 May 2008, held that the Trial Chamber did not err “when it concluded that the 98*bis* Decision did not increase Gvero’s flight risk”.<sup>40</sup>

<sup>31</sup> *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-AR65.4, Decision on Johan Tarčulovski’s Interlocutory Appeal On Provisional Release, 27 July 2007, para. 14.

<sup>32</sup> *See*, for example, Decision on Borovčanin’s Motion for Custodial Visit, 9 April 2008, para. 24.

<sup>33</sup> Appeals Chamber Decision of 15 May 2008, paras. 18, 32.

<sup>34</sup> Appeals Chamber Decision of 15 May 2008, para. 18.

<sup>35</sup> *See supra*, fn. 1 and 2. *See also*, Decision of 9 April 2008, para. 11.

<sup>36</sup> *See* Decision of 9 April 2008, para. 15.

<sup>37</sup> T. 21460-21473 (3 March 2008).

<sup>38</sup> Decision of 9 April 2008, paras. 11–17.

<sup>39</sup> Decision of 9 April 2008, paras. 16–18.

<sup>40</sup> Appeals Chamber Decision of 15 May 2008, para. 23.

19. The Trial Chamber notes that there are no additional circumstances than those already considered since it made this assessment. It is therefore again satisfied that Gvero does not pose a flight risk or a threat to witnesses, victims or other persons associated with the case.

20. The Trial Chamber further notes, however, the Appeals Chamber's finding that Gvero, in his previous motion for provisional release, did not advance any compelling humanitarian justifications for his release and its conclusion that "a Trial Chamber properly exercising its discretion would have denied [for this reason] Gvero's provisional release request [...]".<sup>41</sup>

21. The Trial Chamber notes that in support of his current request for provisional release Gvero advances two humanitarian grounds: (i) his sister's ill health, and (ii) his own state of health. The Trial Chamber notes that the humanitarian grounds espoused in the Motion are different to those in place when Gvero's last application for provisional release was made. The Trial Chamber is satisfied, on the basis of the submissions and the documentation attached to the Motion, that the health situation of Gvero's sister is grave. She is 79 years old and suffers from a number of ailments.<sup>42</sup> It is submitted that she is the only surviving sibling. Furthermore, the Trial Chamber notes that Gvero is 70 years old, and suffers from a variety of ailments. It noted Gvero's condition during the Pre-Defence Conference on 22 May 2008, when he had to leave the courtroom for a short period.<sup>43</sup> His condition appeared to have deteriorated. It further notes counsel for Gvero's submissions that the Accused is "in extremely low spirits" and "a state of some despair",<sup>44</sup> as well as counsel's concern that unless granted provisional release, Gvero may not be well enough to participate on a daily basis (through his lawyers) in the trial, and in particular in the presentation of his own defence case.<sup>45</sup>

22. The Trial Chamber gives due consideration to his physical and psychological conditions, particularly in light of the concerns expressed by counsel at the Pre-Defence Conference and in the Motion. It takes into consideration that Gvero, should he be granted provisional release, would consult with his own physician in Belgrade and that when he did so during a previous period of provisional release, this had a positive effect on him, "especially from a psychological point of view", as confirmed by the UNDU Medical Officer.<sup>46</sup> Proceedings in the current trial will continue for several months and the Trial Chamber considers the meaningful participation of the Accused

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<sup>41</sup> Appeals Chamber Decision of 15 May 2008, para. 24.

<sup>42</sup> See Motion, para. 10–11 and Confidential Annex A.

<sup>43</sup> T. 21523–21524 (22 May 2008),

<sup>44</sup> T. 21538 (22 May 2008). See also, T. 21537–21540 (22 May 2008).

<sup>45</sup> Motion, para. 17.

<sup>46</sup> See Motion, para. 19. See also, Confidential Annex B.

during trial, especially his ability to contribute to the presentation of his own defence case, to be of the utmost importance.

23. The Trial Chamber therefore concludes that the two humanitarian grounds advanced by Gvero bring about a change in circumstances that materially affects the approach taken in the earlier provisional release decision by the Appeals Chamber.<sup>47</sup> It is further satisfied, in the particular circumstances of the case and of the Accused, that these grounds amount to compelling humanitarian reasons that justify the granting of provisional release.

24. Applying the test in Rule 65(B), considering all the particular circumstances of Gvero, the Trial Chamber is convinced that he will return for the continuation of his trial and that he poses no threat to witnesses, victims or any other person in this case. The Trial Chamber, however, noting the advanced stage of the proceedings and the time required to satisfy the humanitarian grounds upon which the Motion is based, is of the opinion that provisional release is justified only for a limited period of 7 days (excluding travel time) under the conditions specified below.

25. The Trial Chamber is satisfied with the guarantees provided by the Republic of Serbia<sup>48</sup>, and is in receipt of written confirmation from the host country that it has no objection to release.<sup>49</sup>

## V. DISPOSITION

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

- (a) **GRANTS** leave to Gvero to file the Reply;
- (b) **GRANTS** the Motion, and **ORDERS** the provisional release of Gvero on the following terms and conditions:
  - (i) Gvero shall be provisionally released for a period not exceeding 7 days (excluding 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;
  - (ii) Gvero shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable;

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<sup>47</sup> Appeals Chamber Decision of 15 May 2008.



- (iii) at Schiphol airport, Gvero shall be provisionally released into the custody of a designated official of the Republic of Serbia, who shall accompany him for the remainder of his travel to Belgrade, Republic of Serbia and to his place of residence therein;
- (iv) during the period of his provisional release, Gvero shall abide by the following conditions, and the authorities of the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
1. to provide the addresses at which he will be staying in Belgrade to the Ministry of Internal Affairs of the Republic of Serbia and the Registrar of the Tribunal, before leaving the UNDU in The Hague;
  2. to remain within the confines of the municipality of Belgrade;
  3. to surrender his passport to the relevant authorities of the Republic of Serbia;
  4. to report each day to the police in Belgrade at a local police station to be designated by the authorities of the Republic of Serbia;
  5. to consent to having the Ministry of Internal Affairs of the Republic of Serbia check with the local police about his presence and to the making of occasional, unannounced visits by the same Ministry or by a person designated by the Registrar of the Tribunal;
  6. not to have any contact with the co-accused in the case;
  7. 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;
  8. not to discuss his case with anyone, including the media, other than with his counsel;
  9. to comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under this Decision and their guarantees;

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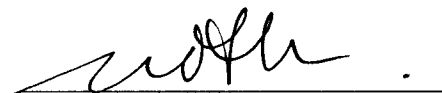
<sup>48</sup> Guarantee from the Government of Serbia in Support of Milan Gvero's Application for Provisional Release During the Summer Break 2008, filed separately by Gvero on 21 July 2008 (unofficial translation).

<sup>49</sup> Correspondence from Host Country Regarding the Provisional Release of Milan Gvero, 9 July 2008.

10. to comply strictly with any further order of the Tribunal varying the terms of or terminating his provisional release;
- (v) Gvero shall return to UNDU no later than 19 August 2008, unless otherwise ordered by the Trial Chamber. He shall be accompanied from his place of residence in Belgrade by the designated officials of the Republic of Serbia, 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;
- (c) **REQUIRES** the Republic of Serbia to assume responsibility as follows:
- (i) by designating officials of the Republic of Serbia into whose custody Gvero shall be provisionally released and who shall accompany Gvero from Schiphol airport to the Republic of Serbia and to his respective place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated officials;
- (ii) for the personal security and safety of Gvero while on provisional release;
- (iii) for all expenses concerning transport of Gvero from Schiphol airport to Belgrade and back;
- (iv) for all expenses concerning accommodation and security of Gvero while on provisional release;
- (v) 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;
- (vi) to arrest and detain Gvero immediately if he should breach any of the conditions of this Decision; and
- (vii) to report immediately to the Trial Chamber any breach of the conditions set out above;
- (d) **INSTRUCTS** the Registrar to consult with the Ministry of Justice of the Kingdom of the Netherlands as to the practical arrangements for the provisional release of Gvero;
- (e) **REQUESTS** the authorities of all states through which Gvero will travel:
- (i) to hold Gvero in custody for any time he will spend in transit at the airport;

- (ii) to arrest and detain Gvero pending his return to the UNDU, should he attempt to escape;
- (f) **ORDERS** that Gvero shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release;

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



Carmel Agius  
Presiding

Dated this twenty-first day of July 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**