



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-A
Date: 30 March 2012
Original: English

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IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Andréia Vaz

Registrar: Mr. John Hocking

Decision: 30 March 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON SRETEN LUKIĆ'S MOTION FOR
PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson 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

THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively),

BEING SEISED OF “Sreten Lukic’s [*sic*] Request for Provisional Release” filed confidentially and *ex parte* by Counsel for Sreten Lukić (“Lukić”) on 16 March 2012 (“Motion”);

NOTING the “Prosecution Response to Sreten Lukić’s Fourth Motion for Provisional Release” filed confidentially and *ex parte* by the Office of the Prosecutor (“Prosecution”) on 20 March 2012 (“Response”);

NOTING “Sreten Lukic’s [*sic*] Reply in Support of Request for Provisional Release” filed confidentially and *ex parte* by Lukić on 26 March 2012 (“Reply”);¹

NOTING that Lukić requests that he be granted provisional release “for a time period up until the Oral Appeals Hearing, or in the alternative, for a period of time to be determined by the Chamber”;²

NOTING that Lukić claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”)³ and avers that “humanitarian grounds” exist relating to his physical and psychological health, which warrant his provisional release;⁴

NOTING that Lukić submits that his underlying health problems coupled with the conditions of detention are detrimental to his wellbeing⁵ and that, some “time out” or “change [in] the ambient environment of his daily life even for a short, fixed time” would “permit him to better prepare himself to endure continued detention” and would also have a “very tangible medical benefit”;⁶

¹ Although the Motion, Response, and Reply were all filed confidentially and *ex parte*, the Appeals Chamber recalls that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential. The Appeals Chamber considers that there are no exceptional reasons for issuing this decision confidentially and therefore files it publicly. See *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Order Lifting Confidentiality of the “Decision on Prosecution’s Motion to Seal Defence Appeal Brief” Issued on 10 May 2007, 10 February 2012, p. 2, and references cited therein; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Order Lifting Confidentiality of the “Decision on Urgent Prosecution Motion Concerning Public Filings of Dragomir Milošević” Issued on 22 April 2009, 10 February 2012, p. 3, and references cited therein.

² Motion, para. 20; Reply, p. 3. See also Motion, para. 19.

³ Reply, paras 7-10, Annex A. In this regard, the Appeals Chamber notes that Lukić contends that he is not a flight risk and does not pose a danger to any victim, witness, or other person. See Motion, paras 8-12. See also Motion, paras 1, 3, Annex A. The Appeals Chamber also notes that in the Motion, Lukić contends that the requirements of Rule 65(B) of the Rules have been met and that “compelling humanitarian reasons exist” for his provisional release. See Motion, paras. 12, fn. 6. See also Motion, paras 5-7, 20. However, in the Reply, Lukić contends that any reference to Rule 65(B) was merely a “typographical error” and underscores that the Motion correctly set forth the standard under Rule 65(I) of the Rules. See Reply, para. 4. See also Reply, fn. 1.

⁴ Reply, para. 10. See also Motion, paras 13-20.

⁵ Motion, paras 13-16.

⁶ Motion, paras 16, 17.

NOTING that in support of these contentions, Lukić appends a medical report to his Motion dated 10 February 2012, which is signed and stamped by three Serbian doctors;⁷

NOTING that the Prosecution opposes the Motion;⁸

RECALLING that, pursuant to Rule 65(I) of the Rules provisional release may be granted if the Appeals Chamber is satisfied that: (i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release;

RECALLING that “special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant’s medical need”;⁹

CONSIDERING that the Medical Report, which contains a general summary of Lukić’s medical condition and surgical history, was compiled by doctors who last treated him nearly seven years ago and does not indicate any complications or adverse developments related thereto but broadly refers to general risks associated with the effects of detention;¹⁰

CONSIDERING that Lukić fails to demonstrate that appropriate medical treatment is unavailable in The Netherlands;

CONSIDERING FURTHER that a desire for “time out” or “change [in] the ambient environment” does not amount to a “special circumstance” warranting provisional release;

FINDING, therefore, that Lukić has failed to demonstrate the existence of special circumstances required by Rule 65(I)(iii) of the Rules;

CONSIDERING that as the requirements of Rule 65(I) of the Rules are cumulative, there is no need to consider whether the requirements of Rules 65(I)(i) and (ii) are met;¹¹

FOR THE FOREGOING REASONS

DISMISSES the Motion.

⁷ Motion, Annex B (“Medical Report”).

⁸ Response, paras 1-4.

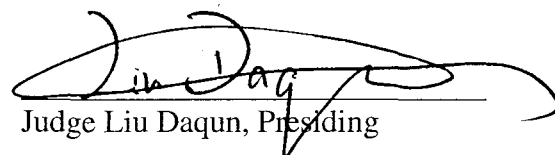
⁹ Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release, 15 December 2011 (confidential) (“Decision of 15 December 2011”), p. 2, and references cited therein.

¹⁰ See Medical Report.

¹¹ Decision of 15 December 2011, p. 3. See also Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release on Compassionate Grounds, 23 March 2011 (confidential), para. 16, and reference cited therein.

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

Dated this thirtieth day of March 2012,
At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]