



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: 14 June 2012
Original: English

IT-05-87-A
12511 - # 12509
16 June 2012

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IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision: 14 June 2012

PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

**DECISION ON NEBOJŠA PAVKOVIĆ'S MOTION FOR
PROVISIONAL RELEASE ON COMPASSIONATE GROUNDS**

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 the “Partly Confidential General Pavković Request for Provisional Release on Compassionate Grounds” filed publicly with a confidential annex by Counsel for Nebojša Pavković (“Pavković”) on 5 June 2012 (“Motion”);

NOTING the “Prosecution Response to Nebojša Pavković’s Fourth Motion for Provisional Release” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 7 June 2012 (“Response”);

NOTING that Pavković did not file a reply;

NOTING that Pavković requests that he be granted provisional release from 15 June 2012 until 29 June 2012 to be with his family while his four year-old son undergoes surgery in Belgrade;¹

NOTING that Pavković claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”)² and avers that his son’s surgical procedure “constitutes special circumstances justifying his release on compassionate grounds”;³

NOTING that, in support of these contentions, Pavković appends a medical report to his Motion dated 16 May 2012, which is signed and stamped by two Serbian doctors;⁴

NOTING that the Prosecution opposes the Motion;⁵

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

¹ Motion, paras 1, 5-6, 11. According to Pavković, the surgery is scheduled for 18 June 2012 at the Military Medical Academy in Belgrade. See Motion, para. 6.

² Motion, para. 8. Specifically, Pavković contends that he is not a flight risk and does not pose a danger to any victim, witness, or other person. In addition, he states that he is willing to strictly comply with any and all conditions the Appeals Chamber may impose. See Motion, para. 8.

³ Motion, para. 5. Pavković also submits that “[a]mong life events, one of the most trying and one crying out for compassion is surgery to be performed on a small child, both from the standpoint of the child and also from the standpoint of the parent.” See Motion, para. 10.

⁴ Motion, Annex A (confidential) (“Medical Report”). Specifically, the Medical Report states that “[t]he *support* of the entire family (mother and father) is *recommended* for this surgical procedure. Due to the complex family situation, the mother is currently single, and has three minor children vested to her for care and custody, and she needs both practical and emotional support, which is in the interest of the ill child.” See Medical Report (emphasis added).

⁵ Response, paras 1-5.

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 or a memorial service for a close family member”;⁶

CONSIDERING that the Medical Report merely suggests that Pavković’s son is due to be admitted for [REDACTED] surgery and provides no indication that the surgery will be anything other than routine procedure;

CONSIDERING, therefore, that there is no suggestion that the medical condition of Pavković’s son is critical or that there is a risk of imminent death;

CONSIDERING FURTHER that the general recommendation of the Serbian doctors that Pavković “support” his family during the surgical procedure does not amount to a “special circumstance” warranting provisional release;

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

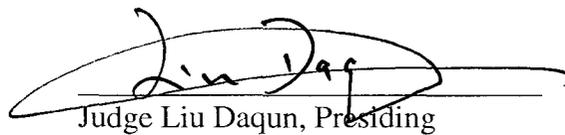
CONSIDERING that, as the requirements of Rule 65(I) of the Rules are cumulative, there is no need to consider whether the requirements of Rules 65(I)(i) and (ii) are met;⁷

FOR THE FOREGOING REASONS

DISMISSES the Motion.

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

Dated this 14th day of June 2012,
At The Hague, The Netherlands.


Judge Liu Daqun, Presiding

[Seal of the Tribunal]

⁶ 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. In this regard, the Appeals Chamber recalls that it has also granted provisional release for a visit to a close family member in “extremely poor health and whose death is believed to be imminent”. See Decision of 15 December 2011, fn. 8, and reference cited therein.

⁷ Decision on Sreten Lukic’s Motion for Provisional Release, 30 March 2012, p. 2, and references cited therein.