



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: 13 May 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

Decision: 13 May 2013

PROSECUTOR

v.

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

PUBLIC

**DECISION ON VLADIMIR LAZAREVIĆ'S MOTION FOR
TEMPORARY 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. 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 “Vladimir Lazarevic [*sic*] Motion for Temporary Provisional Release on the Grounds of Compassion” filed confidentially by Counsel for Vladimir Lazarević (“Lazarević”) on 12 April 2013 (“Motion”);

NOTING the “Prosecution Response to Vladimir Lazarević Motion for Temporary Provisional Release on the Grounds of Compassion” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 22 April 2013 (“Response”);¹

NOTING that Lazarević did not file a reply;

NOTING that Lazarević requests that he be granted temporary provisional release “for a period of 20 (twenty) days, in the period that the Appeals Chamber deems appropriate, so that he may be able to treat his dental problems and to conduct necessary control examinations”;²

NOTING that Lazarević claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”)³ and avers that his “severe dental problems” warrant his provisional release;⁴

NOTING Lazarević’s contention that he requires follow-up treatment to the provisional dental care he received in 2009⁵ and that, although this treatment is available in The Netherlands, it was not provided to him;⁶

NOTING that Lazarević asserts that the “adequate dental care” he identifies is required as soon as possible to prevent further deterioration of his health;⁷

¹ Although the Motion and the Response were filed confidentially, 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 Decision on Sreten Lukić’s Motion for Provisional Release, 3 April 2013 (“Decision of 3 April 2013”), fn. 1, and reference cited therein

² Motion, para. 1. See also Motion, para. 14.

³ Motion, paras 9-10. The Appeals Chamber notes that Lazarević contends that he is not a flight risk and does not pose a danger to any victim, witness, or other person. See Motion, para. 10. See also Correspondence from the Head Host Nation Division for the Minister of Foreign Affairs, “Re Provisional release Mr. Vladimir Lazarević”, 19 April 2013 (confidential); Defence Submission, 26 April 2013 (confidential).

⁴ See Motion, paras 1, 3, 14. See also Motion, paras 4-6.

⁵ Motion, para. 4.

⁶ Motion, paras 5-6.

⁷ See Motion, paras 5-6, referring to Deputy Registrar’s Submission Regarding Medical Reports by External Medical Doctors, 7 March 2013 (confidential). Annexes A and B. Lazarević further asserts that the necessary treatment could be

NOTING that the Prosecution opposes the Motion;⁸

NOTING the submissions filed by the Registrar of the Tribunal pursuant to Rule 33(B) of the Rules appending relevant dental reports;⁹

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”;¹⁰

CONSIDERING that, as the applicant seeking provisional release, Lazarević bears the burden of demonstrating that the appropriate medical care is unavailable in The Netherlands;¹¹

CONSIDERING that Lazarević concedes that the requested treatment is available in The Netherlands;¹²

CONSIDERING FURTHER that Lazarević has consented to the dental treatment recommended by the dentist at the United Nations Detention Unit and that this treatment will commence as planned;¹³

FINDING, therefore, that Lazarević 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;¹⁴

completed in a short period of time at the Military Hospital in Niš, Serbia, which is “professionally qualified and technically equipped” for such treatment. See Motion, paras 7-8.

⁸ Response, paras 1, 4-6. See also Supplement to Prosecution Response to Vladimir Lazarević Motion for Temporary Provisional Release on the Grounds of Compassion, 1 May 2013 (confidential).

⁹ Registrar’s Submission Regarding Vladimir Lazarevic [sic] Motion for Temporary Provisional Release on the Grounds of Compassion, 25 April 2013 (confidential and *ex parte*) (“Registrar’s Submission”)

¹⁰ Decision of 3 April 2013, p. 2, and reference cited therein.

¹¹ Decision of 3 April 2013, p.2, and reference cited therein

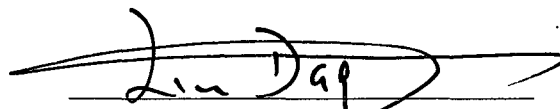
¹² Motion, para. 6.

¹³ Registrar’s Submission, Annex C. See also Registrar’s Submission, paras 4-5.

¹⁴ Decision of 3 April 2013, p. 3.

FOR THE FOREGOING REASONS**DISMISSES** the Motion.

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

Dated this 13th day of May 2013,
At The Hague,
The Netherlands.
Judge Liu Daqun, Presiding**[Seal of the Tribunal]**