

**UNITED  
NATIONS**



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-A  
Date: 16 January 2013  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andréia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Mr. John Hocking

**Decision of:** 16 January 2013

**PROSECUTOR**

v.

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

***PUBLIC***

**PUBLIC REDACTED VERSION OF 11 DECEMBER 2012  
DECISION ON VUJADIN POPOVIĆ'S APPLICATION FOR  
CUSTODIAL RELEASE ON COMPASSIONATE GROUNDS**

**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**Counsel for the Defence:**

**Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović**  
Mr. John Ostojić for Mr. Ljubiša Beara  
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić  
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić  
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero  
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

**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** “Vujadin Popović’s Application for Custodial Release on Humanitarian Grounds” filed confidentially with confidential annexes by Vujadin Popović (“Popović”) on 27 September 2012 (“Application”);

**NOTING** the “Prosecution Response to Vujadin Popović’s Application for Custodial Release on Humanitarian Grounds” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 4 October 2012 (“Response”);

**NOTING** the “Request for Leave to Reply and Reply to the Prosecution’s Response to Vujadin Popović’s Application for Custodial Release on Humanitarian Grounds” filed confidentially by Popović on 8 October 2012 (“Reply”);<sup>1</sup>

**NOTING** that Popović requests that he be granted provisional release for a period of up to four days to visit his ailing mother in the Republika Srpska;<sup>2</sup>

**NOTING** that Popović claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), in that: (i) he is not a flight risk and will surrender into detention at the conclusion of the provisional release; (ii) he will not pose a danger to any victim, witness or other person; and (iii) his mother’s health constitutes a special circumstance warranting his provisional release;<sup>3</sup>

**NOTING** Popović’s submission that humane and compassionate considerations exist which merit his provisional release, as: (i) his 81-year-old mother has been of ill health for many years and on

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<sup>1</sup> Popović requests leave to reply. See Reply, para. 1. The Appeals Chamber notes that where a motion is filed during an appeal from judgement, the moving party may file a reply within four days of the filing of the response without first seeking leave to file such a reply. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, Doc. IT/155 Rev. 4, 4 April 2012, para. 14. See also Decision on Radovan Karadžić’s Motion to Rescind Protective Measures: Witness KDZ122, 28 March 2012, p. 2 and references cited therein.

<sup>2</sup> Application, paras 1, 11 & fn. 2. The Government of the Republika Srpska has issued guarantees for Popović’s provisional release. See Application, Annex B, Correspondence from the Government of the Republika Srpska, Ministry of Internal Affairs, “Re: Guarantee for the supervised visit of the International Hague Tribunal convict Mr VUJADIN POPOVIĆ, with the reference to your act from August 14<sup>th</sup> 2012” dated 20 August 2012. Additionally, The Netherlands, in its capacity as host country, has not objected to Popović’s provisional release. See Correspondence from the Head Host Nation Division, on behalf of the Minister of Foreign Affairs of The Netherlands, “Re: Custodial Release Mr. Vujadin Popović”, 17 October 2012 (confidential).

<sup>3</sup> Application, paras 2-10. See also Application, Annex A, Solemn Declaration, dated 18 September 2012.

26 June 2012 was hospitalized with [REDACTED]; (ii) his mother is unable to visit him; and (iii) this visit will likely be his last opportunity to see his mother alive;<sup>4</sup>

**NOTING** that, in support of these contentions, Popović appends a medical certificate dated 29 June 2012 diagnosing Ms. Popović's [REDACTED] and indicating that her health condition had "worsened, becoming inoperable and life-threatening"<sup>5</sup> as well as the extract from Ms. Popović's medical file dated 4 July 2012 confirming that she: (i) [REDACTED] on 26 June 2012; (ii) has [REDACTED]; and (iii) had [REDACTED] in 1991;<sup>6</sup>

**NOTING** Popović's submission that the Application was filed three months after his mother's injury as a result of delays in securing and translating the necessary supporting documents;<sup>7</sup>

**NOTING** that the Prosecution opposes the Application on the basis that Popović has failed to demonstrate the existence of special circumstances as required by Rule 65(I) (iii) of the Rules, and specifically that the annexed medical reports are not sufficiently recent to give an accurate picture of the current state of Ms. Popović's health and "do not show that any threat to her life is or was imminent";<sup>8</sup>

**NOTING** Popović's submission in reply that the delay in filing his Application cannot be attributed to "any lack of imminence in respect of [his mother's] deteriorating health condition" and that her diagnosis is no less pressing now than when it was made;<sup>9</sup>

**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 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 the requirements under Rule 65(I) of the Rules must be considered cumulatively,<sup>10</sup> and the discretionary assessment of whether they have been met is made on a case-by-case basis;<sup>11</sup>

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<sup>4</sup> Application, paras 9-10.

<sup>5</sup> Application, Annex D, Certificate, [REDACTED], dated 29 June 2012.

<sup>6</sup> Application, Annex C, Extract from the Medical File [REDACTED], dated 4 July 2012.

<sup>7</sup> Application, para. 10 fn. 13.

<sup>8</sup> Response, paras 1, 3.

<sup>9</sup> Reply, para. 3.

**RECALLING** that special circumstances related to humane and compassionate considerations exist where there is an “acute justification”, such as an applicant’s medical need,<sup>12</sup> a memorial service for a close family member,<sup>13</sup> or a visit to a close relative in extremely poor health and whose death is believed to be imminent;<sup>14</sup>

**CONSIDERING** that the medical evidence filed with the Application is dated no later than 4 July 2012, eight days after Ms. Popović [REDACTED] and twelve weeks before the Application was filed, and no evidence as to her current medical condition has been submitted, which may show that there is an imminent threat to Ms. Popović’s life amounting to a “special circumstance” warranting provisional release;

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

**FOR THE FOREGOING REASONS**

**DISMISSES** the Application.

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




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Judge Patrick Robinson  
Presiding

Dated this sixteenth day of January 2013,  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]

<sup>10</sup> Decision on Motion on Behalf of Vinko Pandurević for Provisional Release, 6 June 2012 (“Pandurević Decision”), p. 2; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Sreten Lukić’s Motion for Provisional Release, 30 March 2012 (“Šainović et al. Decision”), p. 2 and references cited therein.

<sup>11</sup> Pandurević Decision, p. 3; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on Motion of Rasim Delić for Provisional Release, 11 May 2009, para. 5 and references cited therein.

<sup>12</sup> Pandurević Decision, p. 2; *Šainović et al. Decision*, p. 2.

<sup>13</sup> Pandurević Decision, p. 2 & fn. 17; Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012, para. 10 and references cited therein.

<sup>14</sup> *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Public Redacted Version of the Decision on Sreten Lukić’s Second Motion for Provisional Release on Compassionate Grounds, 14 July 2010, para. 11; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, para. 12 and references cited therein.