



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-03-67-R77.1-PT
Date: 10 July 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Pre-Trial Judge Flavia Lattanzi

Registrar: Mr Hans Holthuis

Decision of: 10 July 2008

IN THE CASE AGAINST LJUBIŠA PETKOVIĆ

PUBLIC DOCUMENT

**DECISION REGARDING *REQUÊTE DE LA DÉFENSE AUX FINS DE
PERMETTRE LA LIBERTÉ PROVISOIRE DE L'ACCUSÉ***

Counsel for the Accused:

Ms Branislava Isailović

TRIAL CHAMBER III (“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”);

SEIZED of the motion on provisional release of the Accused (“Motion”)¹ filed on 8 July 2008 by the Counsel for Ljubiša Petković (“Defence” and “Accused” respectively);

NOTING Rule 65 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) which regulates provisional release, in particular Rule 65 (B), pursuant to which:

[r]elease may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person[;]²

~~**NOTING** the jurisprudence of the Appeals Chamber of the Tribunal (“Appeals Chamber”)~~ according to which the Chamber ruling on a motion for provisional release is to:

consider all relevant factors that a reasonable Trial Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned opinion indicating its view on those relevant factors. What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case. This is because 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. The Trial Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the International Tribunal[;]³

¹ *Requête aux fins de mise en liberté provisoire avec les [sic] annexes [confidentielles]* 1 à 6, 8 July 2008 (dated 7 July 2008).

² Emphasis added.

³ *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-AR65.9, “Decision on ‘Prosecution’s Appeal from *Décision relative à la demande de mise en liberté provisoire de l’Accusé Stojić* Dated 8 April 2008””, 29 April 2008 (French translation dated 19 May 2008), para. 9 (footnotes omitted); see also *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84-AR65.2, “Decision on Lahi Brahimaj’s Interlocutory Appeal against the Trial Chamber’s Decision Denying His Provisional Release”, 9 March 2006, para. 6.

CONSIDERING that the Defence argues that the Accused should be granted provisional release since:

- i) it is certain that the Accused will appear for trial if released in light of the relatively low level of gravity of the charges raised against him, the circumstances under which the Accused voluntarily surrendered to the Tribunal as well as the weight to be granted to the guarantees presented by the Republic of Serbia and by the Accused himself;⁴ and
- ii) if released, in the light of his personal commitment, the Accused will not pose a risk to any victim, witness or other person;⁵

CONSIDERING the guarantee that the Accused will appear for trial if released, the Chamber firstly notes that even if it is true that the Accused is charged with one count of contempt,⁶ he nevertheless faces a heavy sentence of seven years of imprisonment or a fine of 100,000 Euros;⁷

CONSIDERING furthermore that even if the Accused stated during his first appearance that he surrendered voluntarily to the Tribunal,⁸ the Chamber had nevertheless issued an order *in lieu* of an indictment and an arrest warrant against the Accused two weeks prior to his transfer to the Tribunal and had been regularly informed by the authorities of the Republic of Serbia during the three weeks preceding his transfer that they had actively searched for him but had not been able to locate him;

CONSIDERING that the weight to give the guarantees provided by the Republican authorities has to be assessed in the light of the circumstances in this case and that measured against the above, the guarantees of the Republic of Serbia do not satisfy the Chamber that the Accused will return to the Tribunal's Detention Unit if he is released;

⁴ Motion, paras. 7-18.

⁵ Motion, para. 19.

⁶ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Order *in lieu* of an Indictment for Contempt against Ljubiša Petković", confidential, 13 May 2008; "Order to Lift Confidentiality", 28 May 2008.

⁷ Rule 77 (G) of the Rules.

⁸ Initial appearance, 29 May 2008, Court Transcript in French ("CT (F)"), 1.

CONSIDERING, consequently, that the first of the two cumulative criteria for granting provisional release has not been established and that it is, therefore, not necessary to examine the second criterium;

CONSIDERING that the Chamber nevertheless seeks to underline its willingness to conduct this trial as expeditiously as possible, while respecting the rights of the Accused and not extending the provisional detention of the Accused beyond the strict minimum necessary for the preparation of his defence;⁹

CONSIDERING that, in this regard, at the Status Conference of 4 July 2008 the Defence stated that 45 days was a reasonable time limit for the preparation of the Accused's defence;¹⁰

CONSIDERING that the Chamber wishes to organise a Status Conference on 18 July 2008 in order to assess the progress in the preparation of the defence and to set a date for the trial in this case immediately upon return from the summer court recess;

FOR THE FOREGOING REASONS

PURSUANT TO Rules 65 (B) and 65 *bis* of the Rules,

DENIES the Motion by majority with a dissenting opinion to this Decision by the Presiding Judge attached hereto and **ORDERS** that a Status Conference of the Rules be scheduled for 14:15 hours on 18 July 2008 in Courtroom 1.

⁹ See Article 21(4)(b) of the Statute of the Tribunal.

¹⁰ Status Conference of 4 July 2008, CT (F), 17.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this tenth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

Dissenting Opinion by Presiding Judge Jean-Claude Antonetti

Given the position of the majority of the Judges of the Chamber regarding the motion for provisional release, I need to clarify my dissenting opinion.

The situation of the Accused Ljubiša PETKOVIĆ is the same as that of other accused who were released in the pre-trial period by several Trial Chambers and the Appeals Chamber.

Following such a finding, there is no reason for him not to be granted provisional release, noting that the charge against him is infinitely less serious than the charges against the other accused pursuant to the articles of the Statute.

The question of his reappearance, however, may be raised in theory.

The guarantees provided by the Republic of Serbia in this regard seem perfectly sufficient to me.

In addition, placing the concerned party under constant 24-hour surveillance would provide all guarantees against the risk of flight.

I also note that the concerned party surrendered voluntarily to the authorities. Consequently, it would seem difficult to conceive that he would now change his idea on his subsequent appearance before the Tribunal without running the risk of another prosecution for contempt of court.

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

/signed/
Jean-Claude Antonetti
Presiding Judge.

Done this tenth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]