



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-03-66-A
Date: 14 February 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Andréia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 14 February 2008

THE PROSECUTOR

v.

**FATMIR LIMAJ
HARADIN BALA
ISAK MUSLIU**

PUBLIC

**DECISION ON MOTION ON BEHALF OF HARADIN BALA
FOR TEMPORARY PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Helen Brady

Counsel for Haradin Bala:

Mr. Gregor Guy-Smith

Mr. Richard Harvey

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1. 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 “International Tribunal”, respectively) is seized of the “Motion on Behalf of Haradin Bala for Temporary Provisional Release”, filed on 6 February 2007 (“Motion”).

I. BACKGROUND

2. The Appeals Chamber rendered its Judgement against Haradin Bala (“Bala”) on 27 September 2007, (“Appeal Judgement”). Bala remains in the custody of the International Tribunal pursuant to Rule 103(C) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), pending the finalisation of his transfer to the State in which he will serve his sentence. The President seized this Chamber of the Motion by Order of 7 February 2008.¹

3. On 12 February 2008, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s Response to Motion on Behalf of Haradin Bala for Temporary Provisional Release” (“Response”), in which it opposes the Motion.

II. APPLICABLE LAW

4. A convicted person who seeks provisional release for a fixed period may bring an application pursuant to Rule 65(I) of the Rules. By virtue of Rule 107 of the Rules, the whole of Rule 65 applies *mutatis mutandis* to applications brought before the Appeals Chamber under this provision.

5. In the case of a convicted person awaiting transfer to the State in which the sentence will be served, Rule 65(I) of the Rules provides that the Appeals Chamber may grant provisional release if it is satisfied that the convict, if released, (i) will surrender into detention at the conclusion of the fixed period; (ii) will not pose a danger to any victim, witness or other person; and that (iii) special circumstances exist that warrant release. These requirements must be considered cumulatively.² “Whether an applicant satisfies these requirements is to be determined on a balance of probabilities,

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 7 February 2008.

² *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Radoslav Brđanin’s Motion for Provisional Release, 23 February 2007 (“*Brđanin Decision*”), para. 2.

and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities.”³

III. DISCUSSION

6. Bala requests temporary provisional release from 17 February 2008 to 20 February 2008 on humanitarian grounds, stating that he wishes to attend a memorial service for his cousin Ali Thaqi who passed away on 9 January 2008.⁴ Bala argues that, although he and his cousin were “technically cousins, in Kosovar Albanian society they are, according to cultural traditions, brothers.”⁵

7. Bala further explains that, according to Kosovar Albanian traditions, the memorial service is held forty days after the death, specifying that this specific service is to be held on 18 February 2008 in the village of Llapushnik/Lapušnik.⁶ Bala submits that “it would be appropriate, in view of the strong family ties and cultural traditions present in Kosovar Albanian society, that [he] be present during the memorial service to pay his respects and support the close family.”⁷

8. Lastly, Bala submits that in the two previous cases where he was granted temporary provisional release on humanitarian grounds,⁸ UNMIK provided the necessary guarantees and he complied with all conditions required by the Chamber.⁹ In this case, Bala requests that the President of the International Tribunal invite UNMIK to provide the necessary guarantees.¹⁰ For the reasons that follow, the Appeals Chamber declines to grant the requested provisional release and therefore does not consider it necessary to seek the views or guarantees of UNMIK in this case.

9. The Appeals Chamber is not satisfied that, if released, Bala would surrender into detention at the conclusion of the fixed period. In the two instances where the Appeals Chamber previously granted him temporary provisional release on humanitarian grounds, his appeal proceedings were ongoing and letters of support and guarantees for his release were provided by UNMIK.¹¹ However,

³ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Second Defence Request for Provisional Release of Stanislav Galić, 31 October 2005, para. 3.

⁴ Motion, paras 1, 5.

⁵ *Ibid.*, para. 2.

⁶ *Ibid.*, para. 3.

⁷ *Ibid.*, para. 4.

⁸ Decision Granting Provisional Release to Haradin Bala to Attend His Brother’s Memorial Service and to Observe the Traditional Period of Mourning, 1 September 2006; Decision Granting Provisional Release to Haradin Bala to Attend His Daughter’s Memorial Service, 20 April 2006.

⁹ *Ibid.*, para. 6.

¹⁰ *Id.*

¹¹ Extremely Urgent Motion on Behalf of Haradin Bala for Provisional Release, 20 April 2006, Annex A and B (“Motion of 20 April 2006”); Urgent Motion on Behalf of Haradin Bala for Provisional Release, 31 August 2006, Annex A (“Motion of 31 August 2006”).

Bala's circumstances have now changed. Appeal proceedings against him have been finalised, and he is awaiting transfer for the enforcement of his sentence. In the view of the Appeals Chamber there is an increased incentive to abscond once proceedings have been completed and the convicted person is awaiting transfer to a State in which his sentence will be served. In these circumstances, the Appeals Chamber considers that Bala's high risk of flight is sufficient to deny him the temporary provisional release he seeks.

10. The Appeals Chamber further finds that the humanitarian case put forward by Bala is not compelling enough to override the serious flight risk he poses.¹² As previously held by the Appeals Chamber, special circumstances warranting such a release require an "acute justification, such as a medical need or a memorial service for a near family member."¹³ Bala's prior requests for temporary provisional release immediately followed the death of his daughter in one case¹⁴ and the death of his brother in the other.¹⁵ In this case, Bala is asking to attend the memorial service of his cousin who passed away on 9 January 2007. However, according to the evidence given by the deceased person at trial, he was not a cousin of Bala, but rather his uncle.¹⁶ This confusion adds to the perception that special circumstances are not met in the instant case. Further, Bala claims that according to Kosovar Albanian traditions, the memorial service takes place forty days after the death, yet he only brought the Motion on 6 February 2008.

11. The Appeals Chamber further notes that the memorial service Bala wishes to attend is to be held in the village of Llapushnik/Lapušnik.¹⁷ The Appeals Chamber recalls that Bala was found guilty pursuant to Article 7(1) of the Statute of torture, cruel treatment, and murder as a violation of the laws or customs of war under Article 3 of the Statute. He was found to have personally participated in the detention of civilians in the Llapushnik/Lapušnik prison camp and in their interrogation, assault, mistreatment and torture. Bala was also found to be directly responsible for the murder of nine detainees in the Berishe/Beriša Mountains near the prison camp.¹⁸

12. The fact that Bala requests to be released to the place where he perpetrated the many and serious crimes for which he was convicted also militates strongly against granting his request for

¹² See e.g. *Prosecutor v. Dario Kordić et al.*, Case No. IT-95-14/2-A, Decision on Dario Kordić's Request for Provisional Release, 19 April 2004, para. 12 (The Appeals Chamber, having found that it was not satisfied that Dario Kordić would not try to flee, still allowed for the possibility that "in the case of exceptional circumstances such as e.g. a substantial deterioration of the health conditions of Dario Kordić's mother, the Defence may submit a detailed request for a temporarily controlled visit to his mother.").

¹³ *Brdanin* Decision, para. 6.

¹⁴ Motion of 20 April 2006.

¹⁵ Motion of 31 August 2006.

¹⁶ *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, T.7023, 7028, 8 June 2005.

¹⁷ Motion, para. 3.


temporary provisional release.¹⁹ As the Prosecution notes in its Response, “[l]earning that Bala has been allowed to return to Llapushnik, albeit briefly, may cause additional suffering for the victims and their families.”²⁰ The Appeals Chamber notes that Bala fails to provide anything in his Motion to suggest that he will not pose a danger to any victim, witness or other person during his provisional release. The Appeals Chamber therefore concludes that Bala has failed to fulfil all three cumulative criteria under Rule 65(I) of the Rules.

IV. DISPOSITION

13. On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Motion.

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

Dated this 14th day of February 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]

¹⁸ *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005, para. 741; The Appeal Judgement dismisses Bala’s appeal in its entirety.

¹⁹ On the proximity of the accused to victims and witness see *Prosecutor v. Milan Lukić et al.*, Case No. IT-98-32/1-PT, Decision on Sredoje Lukić’s Motion for Provisional Release, 13 December 2006, para. 30; *Prosecutor v. Ljube Bošković et al.*, Case No. IT-04-82-PT, Decision on Defence Motion of Ljube Bošković for Provisional Release, 18 July 2005, para. 43.

²⁰ Response, para. 14.