



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 July 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 14 July 2009

PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

**DECISION ON SECOND URGENT DEFENCE MOTION
REQUESTING PROLONGATION OF PROVISIONAL
RELEASE OF VLADIMIR LAZAREVIĆ**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Appellants:

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 Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 “Tribunal”, respectively) is seized of the “Second Urgent Defence Motion Requesting Prolongation of Provisional Release of General Vladimir Lazarević with Confidential Annex” filed confidentially by Counsel for Vladimir Lazarević (“Lazarević”) on 13 July 2009 (“Motion”). The Office of the Prosecutor informed the Appeals Chamber and Lazarević’s Defence that it will not make any submissions in response to the Motion.

I. BACKGROUND

2. On 21 May 2009, the Appeals Chamber granted Lazarević’s request for provisional release and ordered that he be released to Serbia for a period of one month in order to receive the required medical treatment, including subsequent recovery therapy.¹ Lazarević was released on 25 May 2009 and was due to return to the United Nations Detention Unit in The Hague (“UNDU”) on 25 June 2009.² On 24 June 2009, following Lazarević’s request, the Appeals Chamber extended the period of provisional release until 15 July 2009.³

II. APPLICABLE LAW

3. Pursuant to Rule 65(I) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), a convicted person may bring an application seeking provisional release for a fixed period. 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.⁴ Rule 65(I) of the Rules thus provides that the Appeals Chamber may grant provisional release if it 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. These requirements must be considered cumulatively.⁵ The Appeals Chamber recalls that “whether an applicant satisfies these requirements is to be determined on a

¹ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Public Redacted Version of the “Decision on Vladimir Lazarević’s Second Motion for Temporary Provisional Release on the Grounds of Compassion” Issued on 21 May 2009, 22 May 2009 (“Decision of 21 May 2009”), paras 11, 17.

² Correspondence from the Embassy of the Republic of Serbia, 22 May 2009, No. 515/2009 (confidential); Correspondence from the Embassy of the Republic of Serbia, Re: Return of Vladimir Lazarević, 19 June 2009, No. 665-1/2009 (confidential).

³ Decision on Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 24 June 2009 (confidential) (“Decision of 24 June 2009”), para. 16. The public redacted version was filed the same day.

⁴ Decision of 21 May 2009, para. 4, and references cited therein.

⁵ *Id.*

balance of probabilities, 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.”⁶ Finally, the discretionary assessments of the requirements under Rule 65 are made on a case-by-case basis.⁷

4. The Appeals Chamber recalls its finding that the same legal principles apply *mutatis mutandis* to a motion for extension of provisional release.⁸

III. DISCUSSION

A. Arguments of the parties

5. Lazarević requests that the period of his provisional release ordered by the Decision of 24 June 2009, be extended for three weeks, *i.e.* until 5 August 2009, “considering the new drastic circumstances related to [Lazarević’s] state of health”.⁹

6. Lazarević submits that he was admitted to the Department of Surgical Diseases of the Military Hospital in Niš (“Niš Hospital”) in the evening hours of 12 July 2009, where he was diagnosed with [REDACTED].¹⁰ Lazarević submits that (i) he was advised to “strictly rest” and then undergo a check-up examination in seven days; (ii) “the treatment would require a minimal period of three (3) weeks, and after that, the assessment of the future treatment should be made”; and (iii) it is not recommended for him to travel by plane during the acute phase of his condition.¹¹

7. Lazarević emphasizes that the current situation could not be predicted and constitutes “a case of *vis major*”.¹² He also suggests that, should the Appeals Chamber deem this necessary, a UNDU physician could travel to Niš to ascertain Lazarević’s condition.¹³

8. On 14 July 2009, Lazarević filed the “Supplement to Second Urgent Defence Motion Requesting Prolongation of Provisional Release of General Vladimir Lazarević with Confidential Annex” (“Supplement”) containing the Decree issued by the Government of the Republic of Serbia 1/0-6/22-09 dated 14 July 2009 confirming the guarantees issued by the Government of Serbia on 7 May 2009 in relation to his initial request for provisional release.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ Decision of 24 June 2009, para. 4.

⁹ Motion, para. 3.

¹⁰ *Ibid.*, paras 4-5; see also Annex to the Motion.

¹¹ *Ibid.*, paras 6-9; see also Annex to the Motion.

¹² *Ibid.*, para. 10.

¹³ *Ibid.*, para. 11.

¹⁴ Annex A to the Supplement.

B. Analysis

9. The Appeals Chamber recalls that, when rendering its Decision of 21 May 2009, it was satisfied that all the requirements of Rule 65(I) of the Rules, including the existence of special circumstances warranting the provisional release, were satisfied.¹⁵ It also found the requested period of one month was justified by and proportional to the circumstances and would not result in any delay of the appellate proceedings in this case.¹⁶ In its Decision of 24 June 2009, the Appeals Chamber found that “the circumstances justifying the provisional release at that stage ha[d] not changed and that, in light of the medical evidence provided by Lazarević, an extension of his provisional release for three weeks [was] warranted to ensure adequate treatment and rehabilitation”.¹⁷ It further found that “all other requirements under Rule 65(I) of the Rules continue[d] to be satisfied”.¹⁸

10. In light of the medical evidence presented in support of the Motion, the Appeals Chamber is satisfied that the special circumstances required under Rule 65(I)(iii) exist, particularly given the acute phase of Lazarević’s condition and the fact that it is not recommended that he travels by plane in his current state.¹⁹ Given the fact that this is Lazarević’s second request for extension of the provisional release and considering Lazarević’s submissions that his treatment would require a *minimal* period of three weeks with a recommended *further assessment* of his condition after the expiration of such period,²⁰ the Appeals Chamber takes note of the suggestion to appoint a medical expert to ascertain Lazarević’s condition and the required treatment.²¹ Consequently, while the Appeals Chamber is of the view that, at this stage, Lazarević should remain in Niš and follow the prescribed treatment, it finds that in order to assist in evaluating the developments of Lazarević’s condition and possibly reassess the period of provisional release, it is necessary to appoint an independent medical expert (if possible, Dutch) to examine Lazarević in the Niš Hospital and submit a report to the Appeals Chamber, Lazarević’s Defence and the Prosecution by 01 August 2009.

11. The Appeals Chamber is further satisfied that all other conditions under Rule 65(I) of the Rules are satisfied and takes note of the guarantees reiterated by Serbia with respect to its

¹⁵ Decision of 21 May 2009, paras 11, 13-16.

¹⁶ *Ibid.*, para. 12.

¹⁷ Decision of 24 June 2009, para. 13.

¹⁸ *Ibid.*, para. 14.

¹⁹ Motion, para. 9 and Annex to the Motion.

²⁰ *Ibid.*, para. 8; see also Annex to the Motion.

²¹ *Ibid.*, para. 11.

compliance with the strictly controlled conditions, including 24-hour surveillance, currently applied to Lazarević's provisional release.²²

12. Finally, the Appeals Chamber understands that The Netherlands, in its capacity as host country, has no objections to the extension of Lazarević's provisional release.²³

IV. DISPOSITION

13. For the foregoing reasons, the Appeals Chamber hereby **GRANTS** the Motion and **ORDERS** as follows:

1. Lazarević shall remain on provisional release as ordered by the Decision of 21 May 2009 until 05 August 2009, subject to the conclusions of the independent medical expert appointed pursuant paragraph 15.1 below;
2. During the extended period of his provisional release, Lazarević shall continue to abide by the following conditions, and the government authorities of the Republic of Serbia shall continue to ensure compliance with such conditions:
 - a. Lazarević shall be staying at the location specified in the Decision of 21 May 2009;²⁴
 - b. the Republic of Serbia shall provide 24-hour surveillance of Lazarević throughout his presence in Serbia;
 - c. Lazarević's passport shall remain with the Ministry of Justice of Serbia for the entire duration of his provisional release;
 - d. Lazarević shall not have any contact whatsoever or in any way interfere with victims or (potential) witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - e. Lazarević shall not discuss his case with anyone, including the media, other than his counsel;
 - f. Lazarević shall comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under the present decision;
 - g. Lazarević shall comply with any order of the Appeals Chamber varying the terms of or terminating his provisional release; and

²² See Annex A to the Supplement.

²³ Correspondence from the Protocol Department of the Dutch Ministry of Foreign Affairs, 14 July 2009 (confidential).

²⁴ Decision of 21 May 2009, para. 17.5.b.

- h. Lazarević shall return to the UNDU no later than 05 August 2009, subject to the conclusions of the independent medical expert appointed pursuant paragraph 15.1 below.
 3. On his return flight, Lazarević shall be accompanied by the authorised representatives of the Government of the Republic of Serbia who shall deliver Lazarević into the custody of the Dutch authorities at Schiphol airport; the Dutch authorities shall then transport Lazarević back to the UNDU in The Hague.
14. The Appeals Chamber further **REQUIRES** the Government of the Republic of Serbia to assume responsibility for:
 1. Ensuring Lazarević's personal security and safety while on provisional release;
 2. Providing 24-hour surveillance of Lazarević throughout his stay in Serbia;
 3. All expenses in connection with the transport from Niš to Schiphol airport;
 4. Providing the necessary assistance and cooperation to the medical expert appointed pursuant paragraph 15.1 below for the purposes of evaluating Lazarević's state of health, including access to the Niš Hospital and usage of its facilities, if necessary.
 5. Facilitating, at the request of the Appeals Chamber or of the parties, all means of co-operation and communication between the parties and ensuring the confidentiality of any such communication;
 6. Reporting immediately to the Registrar of the Tribunal as to the substance of any threats to Lazarević's security, including full reports of investigations related to such threats;
 7. Detaining Lazarević immediately should he attempt to escape from the territory of the Republic of Serbia, or should he in any other way breach the terms and conditions of his provisional release as set out in the present decision and reporting immediately any such breach to the Registry of the Tribunal and the Appeals Chamber;
 8. Respecting the primacy of the Tribunal in relation to any existing or future proceedings in the Republic of Serbia concerning Lazarević; and
 9. Submitting a written report to the Appeals Chamber, upon Lazarević's return to the UNDU, as to Lazarević's compliance with the terms of the present decision.
15. Finally, the Appeals Chamber **INSTRUCTS** the Registrar of the Tribunal to:

1. Appoint a specialised medical expert (if possible, Dutch) to examine Lazarević at the Niš Hospital and to submit a report to the Appeals Chamber, Lazarević's Defence and the Prosecution as early as possible and in any event no later than 01 August 2009.
2. Consult with the Dutch authorities and the authorities of the Republic of Serbia, as to the practical arrangements for the continuation of Lazarević's provisional release;
3. Request the authorities of the State(s) through whose territory Lazarević may travel to:
 - a. hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
 - b. arrest and detain Lazarević pending his return to the UNDU should he attempt to escape during travel.

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

Done this 14th day of July 2009,

At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]