



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-95-13/1-A
Date: 22 July 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohammed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Decision of: 22 July 2008

PROSECUTOR

v.

**MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN**

PUBLIC

**DECISION ON VESELIN ŠLJIVANČANIN'S MOTION FOR
MODIFICATION OF CONDITIONS OF PROVISIONAL
RELEASE**

The Office of the Prosecutor:

Ms. Helen Brady

Defense Counsel:

Mr. Miroslav Vasić and Mr. Vladimir Domazet for Mile Mrkšić
Mr. Novak Lukić and Mr. Stéphane Bourgon for Veselin Šljivančanin

Republic of Serbia

Republic of Montenegro

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),

NOTING that on 27 September 2007, the Trial Chamber convicted Veselin Šljivančanin (“Mr. Šljivančanin”) of one count of aiding and abetting torture and sentenced him to a single term of five years imprisonment;¹

NOTING that on 29 October 2007, Mr. Šljivančanin filed his Notice of Appeal and the Appeals Chamber is presently seized of the case;²

BEING SEIZED OF the Motion for the Modification of Conditions of the Provisional Release With Confidential Annex I, filed as a partly confidential document by Mr. Šljivančanin on 26 June 2008 (“Motion”);

NOTING that on 13 November 2007, Mr. Šljivančanin filed a motion for provisional release³ which was granted by the Appeals Chamber subject to certain terms and conditions in a decision issued on 11 December 2007;⁴

NOTING that, in his motion for provisional release, Mr. Šljivančanin only sought to be provisionally released to Serbia and that the Appeals Chamber therefore required that he “remain within the boundaries of the territory of the Republic of Serbia” throughout the period of his provisional release;⁵

NOTING that in the Motion, Mr. Šljivančanin requests modification of this condition of his provisional release so that he may travel to the Municipality of Zabljak, in the Republic of Montenegro, for thirty days, in order to visit the graves of some of his family members (including his parents) and to perform repairs and maintenance on the family house;⁶

NOTING the Prosecution’s Response⁷ in which the Prosecution submits that that the Motion should be denied, *inter alia*, on the grounds that: (a) Mr. Šljivančanin provides no reasons as to why he needs to repair his family home and to visit his family graves now, or why he needs thirty days to do so; (b) the guarantees offered by the Government of Montenegro are over five months old and

¹ *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007, paras 715, 716.

² Notice of Appeal from the Judgement of 27 September 2007 by the Defence of Veselin Šljivančanin, 29 October 2007.

³ Veselin Šljivančanin’s Amended Motion for Provisional Release, Confidential, 13 November 2007.

⁴ Decision on the Motion of Veselin Šljivančanin for Provisional Release, 11 December 2007 (“Decision of 11 December 2007”).

⁵ Decision of 11 December 2007, p. 4, para. 5(c).

⁶ Motion, paras 5-6.

(c) variations on conditions of provisional release are usually granted for medical or compassionate grounds;⁸

NOTING Mr. Šljivančanin's Reply;⁹

NOTING that the jurisprudence relied upon by the Prosecution in support of its arguments opposing the Motion¹⁰ does not provide useful guidance given that it concerns the modification of provisional release conditions for accused who were released under Rule 65(B) of the Rules of Procedure and Evidence ("Rules");

CONSIDERING that the Decision of 11 December 2007 granted Mr. Šljivančanin's provisional release because all the requirements set out in Rule 65(I) of the Rules were fulfilled and in particular the criterion of "special circumstances" within the meaning of Rule 65(I)(iii) of the Rules, as he had served almost 90 percent of the sentence imposed by the Trial Chamber;¹¹

CONSIDERING that Mr. Šljivančanin has been complying with his conditions for provisional release;¹²

CONSIDERING FURTHER that the Government of Montenegro has provided the necessary guarantees¹³ and the fact that such guarantees date from January 2008 does not render them invalid;

HEREBY GRANTS the Motion, **ALLOWS** Mr. Šljivančanin to remain in the Municipality of Zabljak for a period of thirty days which will start running once the necessary arrangements for his travel have been finalized upon receipt of the present decision by Mr. Šljivančanin's Counsel and the relevant authorities in the States concerned, and **FURTHER ORDERS** that Mr. Šljivančanin be transported to the Municipality of Zabljak in the Republic of Montenegro under the following terms and conditions:

1. Mr. Šljivančanin shall be transported to the Republic of Montenegro by the relevant Serb authorities who shall deliver him into the custody of the designated officials of the Government of the Republic of Montenegro (whose names shall be provided in advance to the Appeals Chamber and the Registry);

⁷ Prosecution's Response to Veselin Šljivančanin's Motion for Modification of Conditions of Provisional Release, filed 3 July 2008 ("Prosecution's Response").

⁸ Prosecution's Response, paras 3-5.

⁹ Veselin Šljivančanin's Motion for Leave to File a Reply and the Reply to the Prosecution's Response to Veselin Šljivančanin's Motion for the Modification of Conditions of the Provisional Release, 4 July 2008 ("Reply").

¹⁰ Prosecution's Response, para. 5, footnotes 5 and 6.

¹¹ Decision of 11 December 2007, pp. 2-3.

¹² See State Reports submitted to the Appeals Chamber by the Ministry of Justice of the Republic of Serbia on 23 January 2008, 27 February 2008, 26 March 2008 (filed on 2 April 2008), 28 April 2008, 27 May 2008 (filed on 3 June 2008) and 26 June 2008.

¹³ Motion, Annex 1.

2. On his return to Serbia, Mr. Šljivančanin shall be accompanied by a designated official of the Republic of Montenegro (or by such other designated officials as the Appeals Chamber may order or accept) who shall deliver Mr. Šljivančanin into the custody of the Serb authorities;
3. During the thirty day period of his stay in the Municipality of Zabljak, Mr. Šljivančanin shall abide by the following conditions, and the authorities of the Republic of Montenegro shall ensure compliance with such conditions:
 - a. Within three days of his arrival, to report the address where he will be staying to the Registrar of the International Tribunal and to indicate any change of address to the Registrar within three days of such change;
 - b. To surrender his passport to the police station of his residence;
 - c. To remain within the boundaries of the territory of the Municipality of Zabljak;
 - d. To report every week to his local police station whose officers shall maintain a log and file a written report with the International Tribunal confirming his presence each time;
 - e. Not to have any direct contact or in any way interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - f. Not to discuss his case with anyone, including the media, other than his Counsel and immediate members of his family;
 - g. To comply with any order of the Appeals Chamber varying the terms of, or terminating, his provisional release or any order concerning the present decision;
 - h. To comply strictly with any requirements imposed by the authorities of the Republic of Montenegro as necessary to enable them to comply with their obligations under the present decision;
 - i. To return to the International Tribunal at such time and on such date as the Appeals Chamber may order;

REQUIRES the Government of the Republic of Montenegro to assume responsibility for:


1. The personal security and safety of Mr. Šljivančanin while in the Republic of Montenegro;
2. All arrangements and expenses in connection with securing the transport of Mr. Šljivančanin from Serbia to the Municipality of Zabljak in Montenegro and back to Serbia;

3. Reporting immediately to the Registrar of the International Tribunal the substance of any threats to the security of Mr. Šljivančanin, including full reports of investigations related to such threats;
4. Facilitating, at the request of the Appeals Chamber or of the Parties, all means of cooperation and communication between the Parties and ensuring the confidentiality of any such communication;
5. Immediately detaining Mr. Šljivančanin should he breach any of the terms and conditions of his provisional release as set out in the Decision of 11 December 2007, and reporting immediately any such breach to the Registry and the Appeals Chamber;
6. Respecting the primacy of the International Tribunal in relation to any existing or future proceedings in the Republic of Montenegro concerning Mr. Šljivančanin;

REQUESTS the Ministry of Justice in the Republic of Serbia to consult with the relevant authorities in the Republic of Serbia and the Republic of Montenegro as to the practical arrangements necessary for the transportation of Mr. Šljivančanin to the Municipality of Zabljak.

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

Done this 22nd day of July 2008,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the International Tribunal]