



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-98-32/1-R77.2-A

Date: 4 April 2012

Original: English

IN THE APPEALS CHAMBER

Before: Judge Khalida Rachid Khan, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Andréia Vaz

Registrar: Mr. John Hocking

Decision of: 4 April 2012

PROSECUTOR

v.

JELENA RAŠIĆ

PUBLIC

**DECISION ON JELENA RAŠIĆ'S URGENT MOTION FOR PROVISIONAL
RELEASE PURSUANT TO RULE 65(I)**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Jelena Rašić:

Ms. Mira Tapušković

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 seised of an urgent motion for provisional release filed publicly with a confidential annex by Jelena Rašić (“Rašić”) on 14 March 2012 (“Motion”).¹

I. BACKGROUND

2. On 31 January 2012, Trial Chamber III of the Tribunal (“Trial Chamber”) formally accepted Rašić’s guilty plea to five counts of contempt of the Tribunal.² At a sentencing hearing on 7 February 2012, the Trial Chamber sentenced Rašić to 12 months’ imprisonment, noting that credit would be given for the 78 days she had spent until then in detention, and suspended the last eight months of her sentence.³ On 6 March 2012, the Trial Chamber issued its reasons in writing (“Sentencing Judgement”), noting that the credit it had given Rašić for time served failed to take into account the six days that she had been detained in Serbia prior to her transfer to the Tribunal, and accordingly amended her sentence such that credit for 84 days spent in detention as of 7 February 2012.⁴ Rašić was therefore scheduled to be released from the United Nations Detention Unit in The Hague (“UNDU”) on 16 March 2012.⁵

3. On 12 March 2012, the Office of the Prosecutor (“Prosecution”) filed its notice of appeal against the Sentencing Judgement requesting the Appeals Chamber to quash the partial suspension of Rašić’s sentence and to confirm a sentence of 12 months’ imprisonment.⁶ Rašić submits that, because the Prosecution’s filing triggers Rule 102 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), which stays the enforcement of the Trial Chamber’s judgement until the judgement on appeal is delivered, she will be consigned to further detention.⁷ Rašić accordingly requests provisional release pursuant to Rule 65(I) of the Rules pending a judgement on appeal.⁸ On

¹ Jelena Rašić’s Urgent Motion for Provisional Release Pursuant to Rule 65(I), 14 March 2012.

² *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Procedural Matters, 31 January 2012, T. 34-41 (private session).

³ *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Sentencing Hearing, 7 February 2012, T. 73.

⁴ *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Written Reasons for Oral Sentencing Judgement, 6 March 2012, paras 32, 36.

⁵ *See also* Motion, paras 1, 8.

⁶ Prosecution Notice of Appeal, 12 March 2012. *See also* Prosecution Appeal Brief, 16 March 2012 (public with confidential annex), para. 25. Since filing her Motion, Rašić has also filed a notice of appeal against the Sentencing Judgement requesting the Appeals Chamber to reduce the 12-month sentence. *See* Jelena Rašić’s Notice of Appeal, 19 March 2012. *See also* Jelena Rašić’s Appeal Brief, 26 March 2012, para. 18.

⁷ Motion, paras 1-2, 8.

⁸ Motion, para. 1, p. 5.

16 March 2012, the Prosecution opposed the Motion, arguing that Rašić does not meet all the requirements of Rule 65(I) of the Rules (“Response”).⁹ Rašić replied on 20 March 2012.¹⁰

4. On 19 March 2012, the Appeals Chamber received a statement from the Dutch Ministry of Foreign Affairs indicating that The Netherlands, as host country, does not object to Rašić’s provisional release.¹¹ On 27 March 2012, Rašić filed an addendum to the Motion, to which were annexed guarantees by the Government of the Republic of Serbia, as well as a solemn declaration by Rašić (“Guarantees of the Republic of Serbia” and “Solemn Declaration”, respectively).¹²

II. APPLICABLE LAW

5. Rule 65(I) of the Rules provides that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period, 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.¹³ These requirements must be considered cumulatively.¹⁴ The Appeals Chamber recalls that “whether an applicant satisfies these requirements is to be determined on a 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.”¹⁵ The discretionary assessments of the requirements under Rule 65 are made on a case-by-case basis.¹⁶

III. DISCUSSION

A. Arguments of the Parties

6. Rašić submits that she presents no flight risk should she be released on appeal, as demonstrated by her compliance with all orders from the Trial Chamber throughout the course of

⁹ Prosecution Response to Jelena Rašić’s Urgent Motion for Provisional Release Pursuant to Rule 65(I), 16 March 2012.

¹⁰ Jelena Rašić’s Reply to the Prosecution’s Response to Urgent Motion for Provisional Release Pursuant to 65(I), 20 March 2012 (“Reply”).

¹¹ Correspondence of Host Country Re: Provisional Release Mrs Jelena Rašić, dated 15 March 2012 and filed 19 March 2012 (confidential).

¹² Addendum to Jelena Rašić’s Urgent Motion for Provisional Release Pursuant to 65(I), 27 March 2012 (“Addendum”). See also Corrigendum to Addendum to Jelena Rašić’s Motion for Provisional Release, 27 March 2012 (public with confidential annexes).

¹³ See, e.g., *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012 (“Decision of 11 January 2012”), para. 5.

¹⁴ Decision of 11 January 2012, para. 5.

¹⁵ Decision of 11 January 2012, para. 5.

¹⁶ Decision of 11 January 2012, para. 5.

her trial proceedings, during which time she was provisionally released for over one year.¹⁷ She further submits that she poses no danger to any victim, witness or other person, as previously noted by the Trial Chamber.¹⁸ Finally, she submits that special circumstances in her case warrant provisional release.¹⁹ In this respect, she specifically contends that, as the only female detainee at the UNDU, her detention is a form of quasi-solitary confinement.²⁰ She further argues that, should the Appeals Chamber uphold the sentence imposed by the Trial Chamber, she will have served time in detention in excess of the Trial Chamber's recommendation, amounting to excessive punishment.²¹

7. The Prosecution responds that there is a substantial risk that Rašić will not return to custody to face the remainder of her sentence should the Prosecution's appeal be successful, and argues that the Motion should be denied on this basis alone.²² The Prosecution accepts, however, that Rašić, if released, will not pose a danger to any victim, witness or other person.²³ The Prosecution adds that Rašić has not identified any special circumstances sufficient to warrant provisional release.²⁴ In this respect, it specifically contends that in order to be provisionally released on health grounds, there must be an "acute justification", and that being the only female detainee at the UNDU does not qualify as such.²⁵ The Prosecution further argues that, contrary to Rašić's submission that she will have served a substantial proportion of her sentence by the date she proposes to be provisionally released, she will in fact only have served a third of her entire 12-month sentence.²⁶ Finally, the Prosecution contends that, because contempt proceedings are governed by an expedited regime, "any portion of her 12-month sentence served [...] in addition to that imposed by the Trial Chamber will be kept to an acceptable minimum should the Prosecution appeal be rejected."²⁷

B. Analysis

1. Requirement under Rule 65(I)(i) of the Rules

8. The Appeals Chamber notes that, as of 16 March 2012, Rašić has served the entirety of the custodial portion of her sentence. However, the suspended portion of her sentence constitutes twice the length of time she has served thus far, or two thirds of her full 12-month sentence. The

¹⁷ Motion, paras 4-5.

¹⁸ Motion, para. 6.

¹⁹ Motion, paras 7-9.

²⁰ Motion, para. 7.

²¹ Motion, paras 8-9.

²² Response, para. 3.

²³ Response, para. 2.

²⁴ Response, para. 4.

²⁵ Response, para. 4.

²⁶ Response, para. 5.

²⁷ Response, para. 6.

possibility that Rašić may have to serve the suspended portion of her sentence should the Prosecution's appeal be successful is a factor to take into account when determining whether she presents a flight risk. Nevertheless, the Appeals Chamber finds that, in light of the discussion below, the requirement under Rule 65(I)(i) of the Rules is satisfied.

9. The Appeals Chamber is not aware of any instance of Rašić's non-compliance with the conditions imposed on her during previous periods of provisional release. To the contrary, the Trial Chamber indicated in its Sentencing Judgement that "Rašić has at all times complied with orders issued by the Trial Chamber, including with respect to her provisional release",²⁸ which the Trial Chamber granted from 12 November 2010 to 20 January 2012.²⁹ In addition, the Appeals Chamber notes that, in her Solemn Declaration, Rašić declares, *inter alia*, that, she will "unconditionally return to the UN[DU] upon the request and/or order of the Appe[a]ls Chamber."³⁰ The Appeals Chamber further notes that, in the Guarantees of the Republic of Serbia, the Serbian Government "commits itself to carry out all orders of the [Appeals Chamber], so that [Rašić] could at any time appear before the [Tribunal]." The combination of the above factors satisfy the Appeals Chamber that, if released, Rašić will surrender into detention at the conclusion of the period of her provisional release.

2. Requirement under Rule 65(I)(ii) of the Rules

10. The Appeals Chamber is not aware of any information suggesting that Rašić posed a danger to any victim, witness or other person during previous periods of provisional release. The Appeals Chamber notes that to the contrary, the Trial Chamber was satisfied that she posed no such danger when granting her provisional release on 12 November 2010,³¹ and affirming it on 28 June 2011.³² This, combined with her Solemn Declaration,³³ the Guarantees of the Republic of Serbia,³⁴ and the Prosecution's concession that Rašić would fulfil the requirement under Rule 65(I)(ii) of the Rules,³⁵ satisfy the Appeals Chamber that, if released, Rašić will not pose a danger to any victim, witness or other person.

²⁸ Sentencing Judgement, para. 27.

²⁹ Sentencing Judgement, para. 4. *See also Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Decision Granting Provisional Release Pending Trial, 12 November 2010 (confidential) ("First Provisional Release Decision"); *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Written Reasons for Oral Decision Granting Defence Motion for Modification of the Terms of Jelena Rašić's Provisional Release, 28 June 2011 (confidential) ("Second Provisional Release Decision").

³⁰ Solemn Declaration, para. 2(i).

³¹ First Provisional Release Decision, p. 4.

³² Second Provisional Release Decision, p. 3.

³³ *See, in particular*, Solemn Declaration, para. 2(v).

³⁴ *See, in particular*, Guarantees of the Republic of Serbia, paras (e)-(f).

³⁵ Response, para. 2.

3. Requirement under Rule 65(I)(iii) of the Rules

11. The Appeals Chamber notes Rašić's submission that, as the only female detainee at the UNDU, "[h]er detention is consequently a form of quasi-solitary confinement which, though not intended as punitive, threatens to substantially impact her well-being", and that "[t]his is true particularly in the context of her ongoing psychological condition."³⁶ The Appeals Chamber further notes that, in its Sentencing Judgement, the Trial Chamber considered that the fact that Rašić was the only female detainee at the UNDU constituted "special circumstances".³⁷ However, the Trial Chamber's findings in this respect were aimed solely at establishing mitigating factors in sentencing, and supported its decision to consider in mitigation her "good behaviour in detention".³⁸ In the Appeals Chamber's view, the fact that Rašić is the only woman detained at the UNDU does not constitute "special circumstances" pursuant to Rule 65(I)(iii) of the Rules.

12. However, the Appeals Chamber recalls that, as of 16 March 2012, Rašić has served the entirety of the custodial portion of her sentence. She was therefore eligible for release on 16 March 2012, were it not for the pending appeal.³⁹ In the Appeals Chamber's view, this constitutes a special circumstance that, when assessed in conjunction with Rašić's fulfilment of the other requirements of Rule 65(I) of the Rules, warrants granting her provisional release. The jurisprudence of the Tribunal supports this conclusion,⁴⁰ and the fact that contempt proceedings are governed by an expedited regime does not militate against granting provisional release where circumstances warrant it. As such, the Appeals Chamber finds that special circumstances warranting Rašić's provisional release have been established.

IV. DISPOSITON

13. For the foregoing reasons, and pursuant to Rules 102(A) and 65(I) of the Rules, the Appeals Chamber **GRANTS** the Motion and **ORDERS** that Rašić be provisionally released pending the

³⁶ Motion, para. 7. *See also* Reply, para. 4.

³⁷ Sentencing Judgement, para. 27.

³⁸ Sentencing Judgement, para. 27.

³⁹ According to Rule 102(A) of the Rules, the sentence shall begin to run from the day it is pronounced, but as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention.

⁴⁰ *See, e.g., Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Decision on Motion of Astrit Haraqija for Provisional Release, 8 April 2009, para. 12; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Decision on Motion of Bajrush Morina for Provisional Release, 9 February 2009, para. 10; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on the Motion of Veselin Šljivančanin for Provisional Release, 11 December 2007, p. 4; *Prosecutor v. Enver Hadžihanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motion on Behalf of Enver Hadžihanović for Provisional Release, 20 June 2007, para. 13; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on the Request for Provisional Release of Miroslav Kvočka, 17 December 2003, p. 3.

disposition of the Prosecution's and Rašić's respective appeals in the present case under the following terms and conditions:

1. As soon as practicable, Rašić shall be transported to Schiphol airport in The Netherlands by the Dutch authorities;
2. At Schiphol airport, Rašić shall be provisionally released into the custody of an official of the Serbian Government, who shall accompany Rašić for the remainder of her travel to her parents' place of residence in Belgrade, Serbia;
3. On her return, Rašić shall be accompanied by an official of Serbian Government, who shall deliver Rašić at Schiphol airport into the custody of the Dutch authorities, who shall then transport Rašić back to the UNDU; and
4. During the period of her provisional release, Rašić shall abide by the following conditions and the authorities of Serbia, including the local police, shall ensure compliance, where applicable, with such conditions:
 - i. Before leaving the UNDU, Rašić shall provide details of her itinerary to the Ministry of Justice of The Netherlands and to the Registrar of the Tribunal;
 - ii. To reside in her parents' place of residence in Belgrade at the address listed in her Solemn Declaration;
 - iii. To remain within the confines of the municipality of Belgrade;
 - iv. To surrender her expired passport or any replacement to the Ministry of Internal Affairs of Serbia for the entire duration of her provisional release;
 - v. To report to the police in Belgrade every Monday and Friday at a local police station to be designated by the authorities of Serbia;
 - vi. To consent to having the Ministry of Internal Affairs of Serbia check with the local police about her presence and to the making of occasional, unannounced visits upon her by the said Ministry or by a person designated by the Registrar of the Tribunal ("Registrar");
 - vii. To not have or attempt to have by herself, or through any agent, any contact of any nature with any victim, witness or potential witness or otherwise interfere in any way with the conduct of proceedings or the administration of justice;

- viii. To not discuss her case with anyone, including the media, other than with her Defence;
- ix. To continue to cooperate with the Tribunal;
- x. To comply strictly with any requirements of the authorities of Serbia necessary to enable them to comply with their obligations under this Decision and the Guarantees of the Republic of Serbia;
- xi. To return to the UNDU at such time and on such date as the Tribunal may order; and
- xii. To comply strictly with any further order of the Appeals Chamber varying the terms of or terminating her provisional release.

14. The Appeals Chamber **REQUIRES** the Serbian Government to assume responsibility as follows:

- a) To designate an official of its Government into whose custody Rašić shall be provisionally released and who shall accompany her from Schiphol airport to her parents' place of residence in Belgrade, as well as to designate an official of its Government who shall accompany her from her parents' place of residence in Belgrade to Schiphol airport, where Rašić shall be delivered into the custody of the authorities of The Netherlands, who will in turn transport her back to the UNDU;
- b) To notify, prior to the release of Rašić from the UNDU, the Appeals Chamber and the Registrar of the name of the official(s) designated pursuant to the previous sub-paragraph;
- c) For the personal security and safety of Rašić while on provisional release in Belgrade;
- d) For all expenses concerning the transport of Rašić from Schiphol airport to Belgrade and back;
- e) For all expenses concerning the security of Rašić while on provisional release;
- f) To submit a written report to the Appeals Chamber every week as to the compliance of Rašić with the terms of this Decision;
- g) To arrest and detain Rašić immediately should she attempt to escape from the territory of Serbia, or should she breach any of the conditions of this Decision;

- h) To report immediately to the Appeals Chamber any breach of the conditions set out above; and
- i) To submit a written report to the Appeals Chamber, upon Rašić's return to the UNDU, as to her compliance with the terms of the present decision.

15. The Appeals Chamber **INSTRUCTS** the Registrar to:

- a) Consult with the authorities of The Netherlands and of Serbia as to the practical arrangements for the release of Rašić;
- b) Request the authorities of the State(s) through which Rašić may travel to:
 - i. Hold her in custody for any time she may spend in transit at the airport of the State(s) in question; and
 - ii. Arrest and detain Rašić pending her return to the UNDU should she attempt to escape during travel;
- c) Continue to detain her at the UNDU until such time as the Appeals Chamber and the Registrar have been notified of the name of the designated official of Serbia into whose custody Rašić is to be provisionally released.

16. The Appeals Chamber **REQUESTS** the authorities of The Netherlands to ensure that Rašić is transported, under guard, from the UNDU and released into the custody of the designated official of Serbia at Schiphol airport and similarly, to take custody of Rašić from the designated official of Serbia at Schiphol airport, at such time and on such date as the Tribunal may order, to escort her back to the UNDU under guard.

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

Dated this fourth day of April 2012,
At The Hague,
The Netherlands.



Judge Khalida Rachid Khan
Presiding

[Seal of the Tribunal]