



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-98-29/1-A
Date: 29 April 2008
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 29 April 2008

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC REDACTED VERSION

**DECISION ON APPLICATION FOR PROVISIONAL RELEASE
PURSUANT TO RULE 65(I)**

The Office of the Prosecutor:

Ms. Shelagh McCall

Counsel for the Appellant:

Mr. Branislav Tapušković
Ms. Branislava Isailović

SM

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 “Defence Application for Provisional Release Pursuant to Rule 65(I) with Public Attachment A and Confidential Attachments B, C and D” (“Application”) filed by Dragomir Milošević (“Mr. Milošević”) on 14 April 2008. The Office of the Prosecutor (“Prosecution”) responded on 18 April 2008, opposing the Request.¹ Mr. Milošević did not file a reply.

I. BACKGROUND

2. On 12 December 2007, Trial Chamber III convicted Mr. Milošević pursuant to Article 7(1) of the International Tribunal’s Statute (“Statute”) for the crimes of terror, murder, and inhumane acts under Articles 3 and 5 of the Statute.² It sentenced Mr. Milošević to thirty-three years’ imprisonment.³ The Appeals Chamber is currently seized of the appeals against the Trial Judgement filed by both parties.⁴

II. APPLICABLE LAW

3. Pursuant to Rule 65(I) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Appeals Chamber may grant provisional release to convicted persons pending appeal 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. These requirements must be considered cumulatively.⁵ 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

¹ Prosecution’s Response to Dragomir Milošević’s Application for Provisional Release, 12 April 2008, *Confidential*, (“Response”).

² *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1 (“Trial Judgement”), 12 December 2007, Judgement, paras 870, 913, 915, 920, 938, 984, 1006.

³ *Ibid.*, para. 1008.

⁴ See, *inter alia*, Prosecution Notice of Appeal, 12 December 2007 and Defense Notice of Appeal Against the Trial Judgement, filed confidentially 11 January 2008 (jointly “Appeals”).

⁵ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, 2 April 2008, *Public Redacted Version* (“Strugar Decision”), para. 3; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision on Motion for Provisional Release, 21 February 2008, para. 3; *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. 5; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005 (“Galić Decision”), para. 3; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Mario Čerkez’s Request for Provisional Release, 12 December 2003 (“Čerkez Decision”), para. 10.

already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities.”⁶

III. DISCUSSION

4. In his Application, Mr. Milošević seeks provisional release from 3 May to 13 May 2008 in order to attend the wedding of his son and to visit his terminally ill brother.⁷ Mr. Milošević certifies that he will “comply with any order that the Appeals Chamber may make in its decision on the application for provisional release”,⁸ that “after expiration of the period determined by the Appeals Chamber he will return to the United Nations Detention Unit in The Hague voluntarily”,⁹ and will not pose a danger to any victim, witness or other person.¹⁰ In support of his Application, he provides a written undertaking from the Government of the Republic of Serbia.¹¹

5. Mr. Milošević submits that special circumstances warrant the granting of his Application. Specifically, he explains that his son, who left his parents home as a refugee in 1992, works in a factory in Canada because he could not afford to continue his schooling, and has only been able to visit Mr. Milošević three times in the United Nations Detention Unit (“UNDU”), will marry in Belgrade on 4 May 2008.¹² He also invokes the health situation of his elder brother, to whom he owes special respect for helping their mother to bring up Mr. Milošević and his younger siblings in the absence of their father.¹³ Mr. Milošević claims that his brother has been “seriously ill for a protracted period of time” and so has been unable to visit him while in the UNDU.¹⁴ Further he claims that doctors assess that the outcome of his brother’s illness “is highly uncertain”.¹⁵ Mr. Milošević states that if his Application is granted, his brother will be transported to his flat in

⁶ *Strugar* Decision, para. 3; *Galić* Decision, para. 3; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić Pursuant to Rule 65(I) for Provisional Release for a Fixed Period to Attend Memorial Services for his Father, 21 October 2004 (“*Simić* Decision”), para. 14; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion on Behalf of Haradin Bala for Temporary Provisional Release, 14 February 2008 (“*Bala* Decision”), para. 14.

⁷ Request, paras. 9, 23-37; see also *Confidential* Attachments C to the Application, providing evidence that the wedding of Mr. Milošević’s son is scheduled for 4 May 2008; see further *Confidential* Attachment D, consisting of a 2 April 2008 report from a specialist doctor, a 2004 health center discharge, and 2005 and 2008 treatment records.

⁸ Application, para. 16 and Solemn Declaration of Mr. Milošević dated 7 April 2008 contained in *Confidential* Attachment B (“Solemn Declaration”).

⁹ Application, para. 17 and Solemn Declaration.

¹⁰ Application, paras 18 – 22 and Solemn Declaration.

¹¹ Public Attachment A to the Application; see also Application, paras 15 and 18-19.

¹² Application, paras 23 – 25. Mr. Milošević cites the European Convention on Human Rights as supporting the proposition that “everyone has the right to respect for his or her private and family life” and quotes from the *Galić* Decision (para. 18) wherein the Appeals Chamber discussed the balancing function it performs and described how it “fulfils its obligation to pursue justice for all parties involved” by granting provisional release “when special circumstances exist and when the criteria of Rule 65(I) are met”, Application paras 28 – 29, 35 – 36.

¹³ Application, paras 30 – 33.

¹⁴ Application, para. 30.

¹⁵ Application, para. 30.

Belgrade to facilitate the visit.¹⁶ Finally, Mr. Milošević argues that a 2002 Appeals Chamber decision in the *Krnojelac* case, in which the Appeals Chamber granted a four day provisional release to the defendant to visit his terminally ill brother, supports his Application.¹⁷

6. The Prosecution responds that Mr. Milošević's Application does not meet the requirements for provisional release under Rule 65(I) of the Rules, and in particular, fails to demonstrate the existence of "special circumstances" within the meaning of Rule 65(I)(iii) of the Rules.¹⁸ The Prosecution contends that under the International Tribunal's jurisprudence, neither his son's wedding, nor his brother's health situation, constitute "acute justification" for granting provisional release.¹⁹ The Prosecution also insists that Mr. Milošević has been convicted of serious crimes and has been sentenced by the Trial Chamber to 33 years' imprisonment,²⁰ and considers that the guarantees provided by the Republic of Serbia do not directly refer to the reasons provided by the Mr. Milošević for requesting provisional release.²¹

7. In previous cases, the Appeals Chamber has found special circumstances where there is an acute justification, such as the applicant's medical need or a memorial service for a near family member.²² The Appeals Chamber has also granted provisional release for a visit to a close family member in "extremely poor health and whose death is believed to be imminent".²³ Where a convicted person simply "wishes to spend time with his family"²⁴ or seeks to visit a close relative in poor health,²⁵ the Appeals Chamber has refused the application upon the grounds that such reasons are not sufficient to establish special circumstances. In the present case, the medical evidence presented by Mr. Milošević indicates that [REDACTED].²⁶ The Appeals Chamber considers that even if [REDACTED], there is no suggestion of an acute crisis or of life-threatening medical condition that constitutes a "special circumstance" warranting provisional release. Further, Mr. Milošević's request to attend his son's wedding is not a "special circumstance" within the meaning of Rule 65(I)(iii) of the Rules and under the Appeals Chamber's jurisprudence. In light of the foregoing, the Appeals Chamber finds that Mr. Milošević fails to show the existence of "special

¹⁶ Application, para. 34.

¹⁷ Application, para. 37, citing *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Decision on Application for Provisional Release, 12 December 2002, p. 3 ("*Krnojelac* Decision").

¹⁸ Response, paras. 2 and 7-9.

¹⁹ Response, paras 7, 9.

²⁰ Response, para. 5.

²¹ Response, para. 5.

²² *Brdanin* Decision, para. 6; *Galić* Decision, para 15; *Simić* Decision, para. 20.

²³ *Krnojelac* Decision, pp. 2-3; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on the Renewed Defence Request Seeking Provisional Release on Compassionate Grounds, 15 April 2008, para. 11.

²⁴ *Simić* Decision, para 21.

²⁵ *Strugar* Decision, para. 13; *Brdanin* Decision, para. 6, referring to *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, order of the Appeals Chamber on the Motion for provisional Release by Miroslav Kvočka, 11 September 2002, p. 4.

²⁶ Confidential Attachment D to the Application.

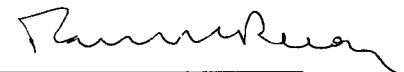
circumstances” under Rule 65(I)(iii) of the Rules and does not therefore deem it necessary to assess whether the requirements of Rule 65(I)(i)-(ii) are satisfied.

III. DISPOSITION

8. For the foregoing reasons, the Application is **DENIED**.

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

Dated this 29th day of April 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]