

**UNITED
NATIONS**



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-04-75-T
Date: 31 October 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 31 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

DECISION ON HADŽIĆ'S URGENT REQUEST FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Mr. Douglas Stringer

The Government of the Republic of Serbia

via The Embassy of the Republic of Serbia to The
Netherlands, The Hague

Counsel for Goran Hadžić:

Mr. Zoran Živanović
Mr. Christopher Gosnell

The Government of The Netherlands

1. **THIS TRIAL 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 (“Tribunal”) is seised of “Hadžić’s Urgent Request for Provisional Release”, filed by the Defence confidentially with confidential annexes on 25 October 2012 (“Motion”). The Prosecution confidentially filed the “Prosecution Response to Accused’s Urgent Request for Provisional Release” on 29 October 2012 (“Response”). The Defence filed its confidential “Reply to Prosecution’s Response to Hadžić’s Urgent Request for Provisional Release” on 30 October 2012 (“Reply”).

A. Submissions

2. The Defence requests that Hadžić be granted provisional release for three days from 2 to 4 November 2012 to attend a memorial service for his mother who passed away on 25 September 2012.¹ The Defence submits that Hadžić’s flight risk is minimal because the trial is at its “earliest stage” and that Hadžić poses no danger to any victims or witnesses.² It argues that the death of a parent is a compelling humanitarian justification for provisional release.³ Hadžić is prepared to subject himself to 24-hour supervision and surveillance by the Ministry of the Interior of Serbia and is ready to comply with any other terms or conditions that the Trial Chamber deems necessary and appropriate for his release.⁴ The Defence submits that provisional release for this period of time will not disrupt the trial proceedings.⁵

3. In the Response, the Prosecution submits that the Motion fails to meet the cumulative requirements of Rule 65 and should be denied.⁶ The Prosecution submits that Hadžić is a flight risk because he evaded the Tribunal for over seven years and that this flight risk has increased now that Hadžić has been confronted in court with the Prosecution’s anticipated evidence against him, the gravity of the charged crimes, and the severity of the consequences should he be convicted.⁷ It adds that the guarantees of Hadžić and the Government of Serbia (“Serbia”) are insufficient⁸ and that Hadžić’s presence in the region would likely have a negative impact on victims and witnesses.⁹ The Prosecution argues that the cases referred to by the Defence in support of its claim that compelling humanitarian reasons justify Hadžić’s provisional release did not involve former fugitives and

¹ Motion, paras 1, 8, 10.

² Motion, para. 8.

³ Motion, para. 9.

⁴ Motion, paras 6-7, 10-11; *see* Motion, confidential Annex B.

⁵ Motion, para. 8.

⁶ Response, paras 1-2, 8.

⁷ Response, paras 1, 3-5.

⁸ Response, para. 5.

⁹ Response, para. 6.

therefore are not apposite to the present case.¹⁰ Finally, the Prosecution submits that the compelling humanitarian grounds alleged by Hadžić cannot on their own justify provisional release when the cumulative criteria of Rule 65(B) have not been satisfied.¹¹

4. The Defence replies that the restrictions that may be imposed on the provisional release are a relevant consideration in determining the risk of flight,¹² that the guarantees provided by Serbia can be relied upon by the Chamber,¹³ that there is no reasonable basis to believe that Hadžić would interfere with any victim or witness,¹⁴ and that humanitarian justifications for provisional release should not be dependent on whether an individual was previously a fugitive.¹⁵

B. Applicable Law

5. Rule 65 governs provisional release at the Tribunal. Rule 65(B) provides as follows:

Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgment by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release.

Rule 65(C) provides that the Trial Chamber may impose those conditions that it determines are appropriate upon the release of an accused. Rule 65(H) authorises a Chamber to issue an arrest warrant if necessary to secure the presence of an accused who has been released.

6. When determining a request for provisional release, a Trial Chamber must address all relevant factors that a reasonable Trial Chamber is expected to take into account before coming to a decision and must include a reasoned opinion indicating its view on those relevant factors. The determination of what constitutes “relevant factors” and the weight to be attributed to them depends upon the particular circumstances of each case given that “decisions on motions for provisional release are fact sensitive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused”.¹⁶

¹⁰ Response, para. 7.

¹¹ Response, para. 7.

¹² Reply, para. 2.

¹³ Reply, para. 3.

¹⁴ Reply, para. 4.

¹⁵ Reply, para. 5.

¹⁶ *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision Denying Mićo Stanišić’s Request for Provisional Release During the Upcoming Summer Court Recess, 29 June 2011, para. 14; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.4-6, Decision on Consolidated Appeal Against Decision on Borovčanin’s Motion for a Custodial Visit and Decisions on Gvero’s and Miletić’s Motions for Provisional Release During the Break in the Proceedings, 15 May 2008, para. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.6, Decision on Prosecution’s Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković, and Čorić, 11 March 2008, para. 7.

7. Rule 65(D) provides that any decision under Rule 65 shall be subject to appeal, which, subject to paragraph (F), is to be filed within seven days of the filing of the impugned decision. Rule 65(E) provides that the Prosecution may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecution intends to appeal the decision. If a stay is granted, Rule 65(F) requires the Prosecution to file the appeal no later than one day from the rendering of that decision.

C. Discussion

8. The Trial Chamber notes that there is no objection to the provisional release in this instance from the host country.¹⁷ The Chamber notes the guarantees from Serbia that it “commits itself to carry out all orders of the Trial Chamber of the ICTY, so that the accused could at anytime appear before the ICTY.”¹⁸

9. Hadžić did not voluntarily surrender himself to the custody of the Tribunal; on the contrary, he evaded arrest for seven years. Hadžić is alleged to have committed crimes of considerable gravity while in a senior position.¹⁹ The Trial Chamber has evaluated the personal guarantee of Hadžić in light of his conduct prior to arrest.²⁰ Due to the incentives for Hadžić to abscond and his proven ability and determination to avoid arrest, the Trial Chamber is not satisfied that Hadžić will appear for the remainder of his trial, if provisionally released. Moreover, under the present circumstances, the Chamber is not satisfied that the security conditions suggested by the Defence (24 hour surveillance), even if accepted by the Serbian government, negate the foregoing finding.

¹⁷ Letter from The Netherlands Ministry of Foreign Affairs to Tribunal, 31 October 2012.

¹⁸ Motion, confidential Annex B; *see* Conclusion of the Government of the Republic of Serbia, dated 18 October 2012; Guarantee of the Government of the Republic of Serbia, dated 18 October 2012.

¹⁹ Hadžić is charged in the Indictment with crimes of persecutions on political, racial, and religious grounds; extermination; murder; imprisonment; torture; inhumane acts; cruel treatment; and deportation and forcible transfer of the non-Serb population as violations of laws and customs of war and crimes against humanity under Articles 3 and 5 of the Statute of the Tribunal from at least June 1991 through December 1993 in the areas known as the SAO SBWS and RSK. *See also* *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-PT, Decision on Stojan Župljanin’s Motion for Provisional Release, 30 June 2009, para. 8; *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber’s Decision Denying Provisional Release, 2 December 2004, para. 25; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-AR65.2, Decision on Haradin Bala’s Request for Provisional Release, 31

D. Disposition

10. For the aforementioned reasons and pursuant to Rules 54, 65, and 126 *bis* of the Rules, the Trial Chamber hereby **GRANTS** the Defence leave to file the Reply, **DENIES** as moot the Prosecution request for a stay, and **DENIES** the Motion.

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

Done this thirty-first day of October 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]

October 2003, para. 25; *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-T, Decision on Motion by Radoslav Brdanin for Provisional Release, 25 July 2000, para. 16.

²⁰ Motion, confidential Annex C.