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UNITED
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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: 24 June 2009
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision: 24 June 2009

PROSECUTOR

v.

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

PUBLIC REDACTED VERSION

**DECISION ON 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 “Urgent Defence Motion Requesting Prolongation of Provisional Release of General Vladimir Lazarevic [sic] with Confidential Annexes” filed confidentially by Counsel for Vladimir Lazarević (“Lazarević”) on 19 June 2009 (“Motion”). The Office of the Prosecutor (“Prosecution”) filed its response on 22 June 2009.¹ In light of the urgency of the matter and considering the fact that Lazarević would not be prejudiced by the outcome of this decision, the Appeals Chamber finds it in the interests of justice to render this decision prior to the expiration of the deadline for filing a reply to the Response.

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.² Lazarević was released on 25 May 2009 and is due to return to the United Nations Detention Unit in The Hague (“UNDU”) on 25 June 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

¹ Prosecution Response to “Urgent Defence Motion Requesting Prolongation of Provisional Release of General Vladimir Lazarević”, 22 June 2009 (confidential) (“Response”).

² *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. The Appeals Chamber notes that, until 27 May 2009, the present case was referred to as *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A. Given that the Prosecution did not file an appeal against Milan Milutinović’s acquittal by the Trial Chamber and the Trial Judgement has thus become final with respect to Milan Milutinović, the case is now referred to as *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A.

³ 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).

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 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 finds that the same legal principles apply *mutatis mutandis* to a motion for extension of provisional release.

III. DISCUSSION

A. Arguments of the parties

5. Lazarević requests that the period of his provisional release ordered by the Decision of 21 May 2009, be extended for three weeks, *i.e.* until 15 July 2009, “so that he may be able to finish most of initiated therapies as well as to prevent further deterioration of his general health condition”.⁸

6. [REDACTED].

7. [REDACTED].

8. [REDACTED]. These complications require special medical attention which, according to the Motion, cannot be provided in the UNDU.⁹

9. [REDACTED].

10. In support of his application for extension of the provisional release, Lazarević submitted the renewed guarantees issues by the Government of Serbia.¹⁰

11. The Prosecution opposes the Motion on the basis that the special circumstances warranting provisional release on appeal no longer exist.¹¹ It avers that Lazarević may be adequately treated in

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

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Motion, paras 2, 26.

⁹ *Ibid.*, para. 16.

¹⁰ *Ibid.*, para 23 and Annex D.

¹¹ Response, para. 1.

The Netherlands in the UNDU since there is no medical evidence that indicates these conditions require urgent treatment in Serbia.¹²

B. Analysis

12. 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.¹³ It also found the requested period of one month was justified by and proportional to the circumstances and would not result in any a delay of the appellate proceedings in this case.¹⁴

13. Contrary to the Prosecution's submissions, the Appeals Chamber finds that the circumstances justifying the provisional release at that stage have not changed and that, in light of the medical evidence provided by Lazarević, an extension of his provisional release for three weeks is warranted to ensure adequate treatment and rehabilitation.

14. The Appeals Chamber finally finds that all other requirements under Rule 65(I) of the Rules continue to be satisfied. In particular, the Appeals Chamber takes note of the guarantees reiterated by Serbia.¹⁵ It also notes that the strictly controlled conditions, including 24-hour surveillance, currently applied to Lazarević's provisional release,¹⁶ will continue to remain in force.

15. 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.¹⁷

IV. DISPOSITION

16. 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 15 July 2009;

¹² *Ibid.*, para. 4.

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

¹⁴ *Ibid.*, para. 12.

¹⁵ Motion, Annex D. See also, Letter from the President of the Office of the National Council of the Republic of Serbia to the Presiding Judge in the present case dated 22 June 2009, supporting the Motion and stating that the guarantees provided by the Republic of Serbia for Lazarević's provisional release are still valid and that Serbia will continue to comply with the conditions set out in the Decision of 21 May 2009.

¹⁶ Decision of 21 May 2009, paras 17-19.

¹⁷ Correspondence from the Protocol Department of the Dutch Ministry of Foreign Affairs, 23 June 2009 (confidential).

2. 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; and
3. 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;¹⁸
 - 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
 - h. Lazarević shall return to the UNDU no later than 15 July 2009.

17. The Appeals Chamber further **REQUIRES** the Government of the Republic of Serbia to continue assuming 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;

¹⁸ Decision of 21 May 2009, para. 17.5.b.

4. 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;
 5. 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;
 6. 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;
 7. Respecting the primacy of the Tribunal in relation to any existing or future proceedings in the Republic of Serbia concerning Lazarević; and
 8. 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.
18. Finally, the Appeals Chamber **INSTRUCTS** the Registrar of the Tribunal to:
1. 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;
 2. 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 24th day of June 2009,

At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]