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 10 MARCH 2010

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-05-87-A
 Date: 10 March 2010
 Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision: 10 March 2010

PROSECUTOR

v.

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

PUBLIC

**PUBLIC REDACTED VERSION OF THE DECISION ON
 VLADIMIR LAZAREVIĆ'S MOTION FOR TEMPORARY
 PROVISIONAL RELEASE RENDERED ON 1 MARCH 2010**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

Mr. Toma Fila and Mr. Vladimir Petrović for Nikola Šainović
 Mr. Tomislav Višnjić and Mr. Peter Robinson for Dragoljub Ojdanić
 Mr. John Ackerman and Mr. Aleksander Aleksić for Nebojša Pavković
 Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Vladimir Lazarević
 Mr. Branko Lukić and Mr. Dragan Ivetić for 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 “Vladimir Lazarevic [*sic*] Motion for Temporary Provisional Release on the Grounds of Compassion with Confidential Annexes” filed confidentially¹ by Counsel for Vladimir Lazarević (“Lazarević”) on 19 February 2010 (“Motion”). The Office of the Prosecutor (“Prosecution”) filed its response on the same day objecting to the Motion.² Lazarević did not file a reply.

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.³ Lazarević was released on 25 May 2009 and was due to return to the United Nations Detention Unit in The Hague (“UNDU”) on 25 June 2009.⁴ On 24 June 2009, following Lazarević’s request, the Appeals Chamber extended the period of provisional release until 15 July 2009.⁵ On 14 July 2009, following another urgent request from Lazarević, the Appeals Chamber further extended the period of provisional release until 5 August 2009 and instructed the Registry of the Tribunal to appoint an independent medical expert to examine Lazarević in the Military Hospital in Niš, Serbia, (“Niš Hospital”) and submit a report,⁶ which was done on 31 July 2009.⁷ On 4 August 2009, the Appeals Chamber dismissed Lazarević’s third motion for prolongation of his provisional release,⁸ and ordered that he return to the UNDU no later than 5 August 2009,⁹ which he did.

¹ See, however, Status Conference, 18 January 2010, AT. 27 *et seq.*, where Lazarević made detailed oral submissions on his health situation in open session.

² Prosecution’s Response to Vladimir Lazarević’s Motion for Temporary Provisional Release, 19 February 2010 (confidential) (“Response”).

³ *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, paras 11, 17.

⁴ *Ibid.*, para. 17; 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).

⁵ Decision on Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 24 June 2009 (confidential; public redacted version filed the same day), para. 16.

⁶ Decision on Second Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 14 July 2009 (confidential; public redacted version filed the same day) (“Decision of 14 July 2009”), paras 13, 15.

⁷ Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević’s Health Status, 31 July 2009 (confidential and *ex parte*) (“Medical Report of 31 July 2009”).

⁸ Third Urgent Defence Motion Requesting Prolongation of Provisional Release of General Vladimir Lazarevic [*sic*] with Confidential Annexes, 3 August 2009 (confidential).

⁹ Decision on the Third Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 4 August 2009 (confidential; public redacted version file don the same date) (“Decision of 4 August 2009”), para. 14.

3. On 16 December 2009, Lazarević filed a further motion for provisional release, again arguing that he required urgent medical treatment in Serbia.¹⁰ The Duty Judge seized of the motion considered that Lazarević had failed to demonstrate that the treatment was urgent and declined to make any determination on the merits.¹¹ The motion was duly dismissed by the Appeals Chamber on 13 January 2010, on the basis that Lazarević had failed to establish the existence of special circumstances required by Rule 65(I)(iii) of the Rules of Procedure and Evidence (“Rules”).¹²
4. On 15 February 2010, the Appeals Chamber received the “Registry Submission Pursuant to Rule 33(B) Concerning Medical Report” (“Medical Report of 10 February 2010”) communicating, with Lazarević’s consent, the most recent report compiled by the UNDU Medical Officer. Furthermore, on 24 February 2010, the Registry provided further clarifications with respect to Lazarević’s claims presented in the Motion.¹³
5. The Netherlands, in its capacity as host country, has no objections to Lazarević’s provisional release as requested by the Motion.¹⁴

II. APPLICABLE LAW

6. Pursuant to Rule 65(I) of the 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.¹⁵ 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 warranting such release. These requirements must be considered cumulatively.¹⁶ 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

¹⁰ Vladimir Lazarevic [sic] Motion for Temporary Provisional Release on the Grounds of Compassion with Confidential Annexes, 16 December 2009 (confidential).

¹¹ Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release on the Grounds of Compassion, 23 December 2009 (confidential).

¹² Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release on the Grounds of Compassion, 13 January 2010 (confidential) (“Decision of 13 January 2010”).

¹³ Registry Submission Pursuant to Rule 33(B) Concerning Medical Treatment, 24 February 2010 (confidential) (“Submissions of 24 February 2010”).

¹⁴ Letter from the Deputy Director of Protocol for the Minister of Foreign Affairs titled “Provisional Release Mr Vladimir Lazarević”, 23 February 2010 (confidential).

¹⁵ Decision of 13 January 2010, para. 5, and references cited therein.

¹⁶ *Ibid.*

balancing the probabilities”.¹⁷ Finally, the discretionary assessments of the requirements under Rule 65 are made on a case-by-case basis.

III. DISCUSSION

A. Arguments of the parties

7. Lazarević requests to be provisionally released from 1 March until 12 April 2010, “so that he may be able to operate the thrombotic vein and to conduct necessary control examinations”.¹⁸ He recalls that during the time when he was provisionally released in July 2009, he was diagnosed with “a superficial thrombosis of the saphena magna vein of the right lower leg”.¹⁹ He avers that the Department for Surgical Diseases in the Niš Hospital is of the opinion that the “thrombosed vena saphena needs to be removed along with thrombotic masses”.²⁰ In support of his Motion, Lazarević appends a medical report from Dr. [REDACTED] in which it is further suggested that “all necessary examinations would be conducted” during the period of provisional release to address Lazarević’s various ongoing medical conditions.²¹

8. Lazarević insists that the medical treatment that he receives in the UNDU is inadequate and points out that “[s]ince he has returned from his last provisional release, he hasn’t been visited by a vascular surgeon yet”.²² He also underlines that the purpose of his provisional release would be strictly related to the medical necessity.²³ He further refers to the Tribunal’s Deputy Registrar’s recommendation to address his health concerns to the UNDU doctors and administration as “a pointless return to the beginning”.²⁴

9. [REDACTED]

10. Lazarević asserts that the guarantees previously issued by the Government of the Republic of Serbia for his provisional release are still valid.²⁵ On 26 February 2010, he filed a supplement to his Motion containing confirming that the guarantees issued on 24 December 2009 are still in

¹⁷ *Ibid.*

¹⁸ Motion, paras 1, 12.

¹⁹ *Ibid.*, para. 4.

²⁰ *Ibid.*, para. 5.

²¹ *Ibid.*, para. 7. See also Annex A (confidential) (“Dr. [REDACTED] Report”). Dr. [REDACTED] indicates that if granted provisional release to Serbia as requested, Lazarević would be examined by [REDACTED].

²² Motion, para. 9. See also Annex B (confidential) (“Lazarević’s Correspondence”).

²³ *Ibid.*, para. 8.

²⁴ *Ibid.*

²⁵ Motion, para. 10.

force.²⁶ Finally, he reiterates his personal undertaking not to pose any risk of flight or a danger to any victim, witness or other person.²⁷

11. In its Response, the Prosecution objects to the Motion arguing that Lazarević has failed to demonstrate the existence of special circumstances required by Rule 65(I)(iii) of the Rules to justify his request for provisional release.²⁸ It emphasizes that there has been no change in Lazarević's medical condition since his recent request for provisional release which was considered and rejected by the Appeals Chamber in January 2010.²⁹

12. The Prosecution asserts that the most current and detailed information on the status of Lazarević's health is contained in the Medical Report of 10 February 2010.³⁰ According to the Prosecution, this document indicates that Lazarević's deep vein thrombosis is being treated with anti-coagulants and suggests that he has been advised to wear compression stockings.³¹ The Prosecution avers that the Medical Report of 10 February 2010 also confirms that Lazarević has had regular consultations with a vascular surgeon specialist and that there is no present need for surgery.³²

13. [REDACTED].

B. Analysis

1. Preliminary matters

14. [REDACTED] The Appeals Chamber is satisfied that both the Registrar's Office and the UNDU officers constantly monitor Lazarević's detention conditions and adequately inform the Appeals Chamber of any relevant developments. [REDACTED]

2. Special circumstances

15. The Appeals Chamber recalls that the specificity of provisional release of convicted persons pending the resolution of their appeals is reflected by Rule 65(I)(iii) of the Rules, which provides for an additional criterion, *i.e.* that "special circumstances exist warranting such release".³³ In such

²⁶ Supplement to Vladimir Lazarevic [*sic*] Motion for Temporary Provisional Release on the Grounds of Compassion with Confidential Annex, 26 February 2010 (confidential), Annex.

²⁷ Motion, para. 11.

²⁸ Response, para. 1.

²⁹ *Ibid.*, para. 2.

³⁰ *Ibid.*, para. 3, referring to Medical Report of 10 February 2010, para. II(7).

³¹ *Ibid.*

³² *Ibid.*

³³ Decision on Vladimir Lazarević's Motion for Temporary Provisional Release on the Grounds of Compassion, 2 April 2009 (confidential) ("Decision of 2 April 2009"), para. 8, and references cited therein.

situations, the Appeals Chamber has concluded that special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant's medical need or a memorial service for a close family member.³⁴

16. The Appeals Chamber further recalls that the report prepared by the medical expert appointed pursuant to its Decision of 14 July 2009, confirmed that Lazarević had "thrombophlebitis of the side branch of the V. saphena magna of the right lower limb" and that the "thrombus [was] organised and fully wall-adherent".³⁵ In its Decision of 4 August 2009, the Appeals Chamber found, on the basis of the entirety of the medical evidence before it at that time, that Lazarević had "failed to demonstrate the existence of special circumstances under Rule 65(I)(iii) of the Rules given that there [was] no acute justification from the medical point of view for him to remain in Serbia".³⁶ It also found that "Lazarević ha[d] not shown that any surgical treatment [was] required in the immediate future".³⁷ The Appeals Chamber confirmed these conclusions in its Decision of 13 January 2010 and dismissed Lazarević's motion for provisional release on the same grounds.

17. The Appeals Chamber is not convinced that in his present Motion, Lazarević has demonstrated any change in his medical condition as compared to the situation analyzed by the Appeals Chamber in August 2009 and, by extension, January 2010. Similarly to the medical evidence considered in relation to its Decision of 13 January 2010, the Appeals Chamber observes that Dr. [REDACTED] Report is not based on any recent medical examination of Lazarević but refers to the diagnoses and recommendations made by the Niš Hospital in July 2009. The Appeals Chamber notes that beyond referring to Dr. [REDACTED] Report and to his own general concerns, Lazarević does not show why surgery would be necessary for this condition at this time.³⁸

18. On the other hand, the Appeals Chamber observes that in his Medical Report of 10 February 2010, the UNDU Medical Officer states that all the diagnoses indicated in the discharge papers from the Niš Hospital in May 2009 "have been under [his] constant attention" and further

³⁴ Decision of 2 April 2009, para. 8, referring to *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), para. 12.

³⁵ Medical Report of 31 July 2009, p. 4 (Discharge Summary). See also Decision of 4 August 2009, para. 11.

³⁶ Decision of 4 August 2009, para. 12.

³⁷ *Ibid.*, referring to a report from Dr. [REDACTED], Specialist in Vascular and General Surgery, stating that "patient Valdimir Lazarevic [*sic*] was advised to have a surgical treatment after the inflammation is healed, which was expected to happen in two weeks after the occurrence of the acute thrombosis"; that such surgery is not indicated at the moment; and that the assessment of the necessity of the surgery can only be performed after the treatment is completed (*ibid.*, fn. 28).

³⁸ Motion, paras 5, 8, 9. See also Lazarević's Correspondence.

examinations and consultations with medical specialists have been conducted.³⁹ The Medical Report of 10 February 2010 concludes that none of Lazarević's confirmed diagnoses is life threatening or requires urgent surgical intervention.⁴⁰ Specifically with respect to the issues raised in the Motion, the Medical Report of 10 February 2010 states that (i) Lazarević's "deep venous thrombosis" has been treated with anti-coagulants; (ii) he has been advised to wear medical compression stockings; and (iii) regular consultations with the vascular surgeon are provided.⁴¹ In light of the above, the Appeals Chamber agrees with the Registry that neither the Motion nor Lazarević's correspondence correctly reflect "the most current and updated information".⁴²

19. Consequently, the Appeals Chamber is not satisfied that Lazarević has shown the existence of special circumstances required by Rule 65(I)(iii) of the Rules. Considering that the requirements under Rule 65(I) of the Rules are cumulative, there is no need to consider whether the requirements of Rules 65(I)(i) or 65(I)(ii) are met in the present case.⁴³

IV. DISPOSITION

20. For the foregoing reasons, the Appeals Chamber hereby **DISMISSES** the Motion.

21. Taking into account the Medical Report of 10 February 2010, the Submissions of 24 February 2010, as well as previous submissions and correspondence on the matter, the Appeals Chamber further encourages the Registry and the UNDU to continue monitoring Lazarević's health situation and well-being, and to inform the Appeals Chamber accordingly on a regular basis.⁴⁴

³⁹ Medical Report of 10 February 2010, paras I-II. See also, *ibid.*, para. III providing a list of Lazarević's consultations with numerous medical specialists and clinical tests performed since September 2009, including further consultations with a vascular surgeon and a duplex test for leg veins scheduled [REDACTED].

⁴⁰ Medical Report of 10 February 2010, para. II. See also, *ibid.*, para. IV, referring to a meeting held between Lazarević, the UNDU Commanding Officer and the UNDU Medical Officer on 5 February 2010, which in the Medical Officer's view, "helped to calm Mr. Lazarević and put his medical issues in a broader perspective".

⁴¹ *Ibid.*, para. II.7. Although the Medical Report of 10 February 2010, refers to Lazarević's left leg, the Appeals Chamber understands this to be a typographical error and that the reference is made to his right leg instead. This interpretation is consistent with Dr. Falke's assessment of Lazarević's health on 6 November 2009 (see Registry Submission Pursuant to Rule 33(B) Regarding the Accused Lazarević's Health Situation, 17 December 2009 (confidential and *ex parte*); see also Medical Report of 31 July 2009).

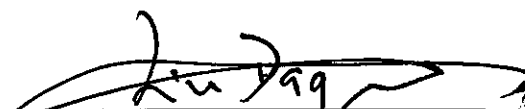
⁴² Submissions of 24 February 2010, para. 3.

⁴³ *Cf.* Decision 13 January 2010, para. 13.

⁴⁴ *Cf.* Internal Memorandum from Judge Liu Daqun to the Deputy Registrar of the Tribunal, Health Status of Vladimir Lazarević and Nebojša Pavković, 19 January 2010.

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

Done this 10th day of March 2010,
At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]