



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: 30 March 2012  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Andréia Vaz

**Registrar:** Mr. John Hocking

**Decision:** 30 March 2012

**PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON SRETEN LUKIĆ'S MOTION FOR  
PROVISIONAL RELEASE**

**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**Counsel for the Defence:**

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 Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

**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),

**BEING SEISED OF** “Sreten Lukic’s [*sic*] Request for Provisional Release” filed confidentially and *ex parte* by Counsel for Sreten Lukić (“Lukić”) on 16 March 2012 (“Motion”);

**NOTING** the “Prosecution Response to Sreten Lukic’s Fourth Motion for Provisional Release” filed confidentially and *ex parte* by the Office of the Prosecutor (“Prosecution”) on 20 March 2012 (“Response”);

**NOTING** “Sreten Lukic’s [*sic*] Reply in Support of Request for Provisional Release” filed confidentially and *ex parte* by Lukić on 26 March 2012 (“Reply”);<sup>1</sup>

**NOTING** that Lukić requests that he be granted provisional release “for a time period up until the Oral Appeals Hearing, or in the alternative, for a period of time to be determined by the Chamber”;<sup>2</sup>

**NOTING** that Lukić claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”)<sup>3</sup> and avers that “humanitarian grounds” exist relating to his physical and psychological health, which warrant his provisional release;<sup>4</sup>

**NOTING** that Lukić submits that his underlying health problems coupled with the conditions of detention are detrimental to his wellbeing<sup>5</sup> and that, some “time out” or “change [in] the ambient environment of his daily life even for a short, fixed time” would “permit him to better prepare himself to endure continued detention” and would also have a “very tangible medical benefit”;<sup>6</sup>

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<sup>1</sup> Although the Motion, Response, and Reply were all filed confidentially and *ex parte*, the Appeals Chamber recalls that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential. The Appeals Chamber considers that there are no exceptional reasons for issuing this decision confidentially and therefore files it publicly. See *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Order Lifting Confidentiality of the “Decision on Prosecution’s Motion to Seal Defence Appeal Brief” Issued on 10 May 2007, 10 February 2012, p. 2, and references cited therein; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Order Lifting Confidentiality of the “Decision on Urgent Prosecution Motion Concerning Public Filings of Dragomir Milošević” Issued on 22 April 2009, 10 February 2012, p. 3, and references cited therein.

<sup>2</sup> Motion, para. 20; Reply, p. 3. See also Motion, para. 19.

<sup>3</sup> Reply, paras 7-10, Annex A. In this regard, the Appeals Chamber notes that Lukić contends that he is not a flight risk and does not pose a danger to any victim, witness, or other person. See Motion, paras 8-12. See also Motion, paras 1, 3, Annex A. The Appeals Chamber also notes that in the Motion, Lukić contends that the requirements of Rule 65(B) of the Rules have been met and that “compelling humanitarian reasons exist” for his provisional release. See Motion, paras. 12, fn. 6. See also Motion, paras 5-7, 20. However, in the Reply, Lukić contends that any reference to Rule 65(B) was merely a “typographical error” and underscores that the Motion correctly set forth the standard under Rule 65(I) of the Rules. See Reply, para. 4. See also Reply, fn. 1.

<sup>4</sup> Reply, para. 10. See also Motion, paras 13-20.

<sup>5</sup> Motion, paras 13-16.

<sup>6</sup> Motion, paras 16, 17.

**NOTING** that in support of these contentions, Lukić appends a medical report to his Motion dated 10 February 2012, which is signed and stamped by three Serbian doctors;<sup>7</sup>

**NOTING** that the Prosecution opposes the Motion;<sup>8</sup>

**RECALLING** that, pursuant to Rule 65(I) of the Rules provisional release may be granted if the Appeals Chamber 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;

**RECALLING** that “special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant’s medical need”;<sup>9</sup>

**CONSIDERING** that the Medical Report, which contains a general summary of Lukić’s medical condition and surgical history, was compiled by doctors who last treated him nearly seven years ago and does not indicate any complications or adverse developments related thereto but broadly refers to general risks associated with the effects of detention;<sup>10</sup>

**CONSIDERING** that Lukić fails to demonstrate that appropriate medical treatment is unavailable in The Netherlands;

**CONSIDERING FURTHER** that a desire for “time out” or “change [in] the ambient environment” does not amount to a “special circumstance” warranting provisional release;

**FINDING**, therefore, that Lukić has failed to demonstrate the existence of special circumstances required by Rule 65(I)(iii) of the Rules;

**CONSIDERING** that as the requirements of Rule 65(I) of the Rules are cumulative, there is no need to consider whether the requirements of Rules 65(I)(i) and (ii) are met;<sup>11</sup>

**FOR THE FOREGOING REASONS**

**DISMISSES** the Motion.

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<sup>7</sup> Motion, Annex B (“Medical Report”).

<sup>8</sup> Response, paras 1-4.

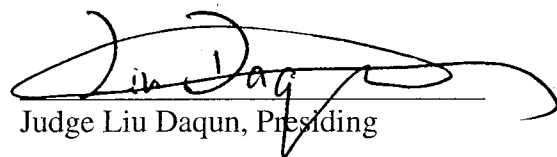
<sup>9</sup> Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release, 15 December 2011 (confidential) (“Decision of 15 December 2011”), p. 2, and references cited therein.

<sup>10</sup> See Medical Report.

<sup>11</sup> Decision of 15 December 2011, p. 3. See also Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release on Compassionate Grounds, 23 March 2011 (confidential), para. 16, and reference cited therein.

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

Dated this thirtieth day of March 2012,  
At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]