



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-T

Date: 4 July 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 4 July 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON LUKIĆ MOTION FOR RECONSIDERATION OF
DECISION ON PROVISIONAL RELEASE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk 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

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 the “Motion to reconsider denial of Sreten Lukić’s renewed motion for provisional release”, filed confidentially by the Lukić Defence on 27 June 2007 (“Motion”), and hereby renders its decision thereon.

1. On 30 March 2007, Lukić (“Applicant”) filed a motion for provisional release,¹ which the Trial Chamber denied in its decision of 22 May 2007.² On 29 May 2007, the Applicant confidentially filed “Sreten Lukić’s Renewed Motion For Provisional Release” (“Renewed Motion”) in which he moved the Trial Chamber for temporary provisional release on compassionate grounds.³ The basis for the Renewed Motion was the Applicant’s desire to return to Belgrade *inter alia* to visit his elderly father (who is in poor health and recovering from surgery) and his wife (who is also in poor health).⁴

2. Following the Prosecution’s filing of its response to the Renewed Motion,⁵ the Trial Chamber rendered its decision on 25 June 2007 in which it considered that it was not appropriate that the Applicant be granted provisional release for a limited duration on compassionate grounds.⁶

3. In the Motion, the Applicant now moves the Trial Chamber to reconsider its 25 June Decision and to provisionally release him from detention to return to Belgrade for a period of five to seven days on terms identical to those set for other accused in this case.⁷ As a compassionate ground, the Applicant relies on the frail and deteriorating health of his elderly father, who is unable either to fly or to drive to The Hague to visit the Applicant,⁸ and whom the Applicant may not be able to see again if his Motion is denied.⁹ The Trial Chamber notes that the Applicant’s father resides in Višegrad, a town and municipality located on the Drina river in eastern Bosnia and Herzegovina, and has been receiving treatment in Užice, a town across the border in Serbia.

¹ Sreten Lukić’s Motion for Provisional Release with Exhibits A, B and C, 30 March 2007.

² Decision on Lukić Motion for Provisional Release, 22 May 2007 (“22 May Decision”), para. 13.

³ In the “Supplement to Sreten Lukić’s Renewed Motion for Provisional Release” filed confidentially on 14 June 2007, the Applicant provided the address at which he would reside in the event the Trial Chamber granted his motion for provisional release.

⁴ Renewed Motion, paras 20–21, Exhibits A–B.

⁵ Confidential Prosecution Response to Sreten Lukić’s Renewed Motion for Provisional Release, 5 June 2007.

⁶ Decision on Lukić Motion for Temporary Provisional Release, 25 June 2007 (“25 June Decision”).

⁷ Motion, para. 3.

⁸ Motion, paras 5(a)–(e).

⁹ Motion, para. 5(f).

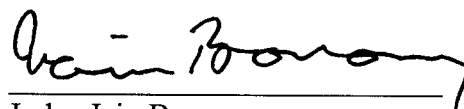
4. In correspondence by email on 28 June 2007, the Prosecution indicated that it did not intend to file a written response to the Motion.¹⁰
5. Following a request from the Trial Chamber on 28 June 2007 for further information, the Applicant confidentially filed the “Supplement to Motion to Reconsider Denial of Sreten Lukić’s Renewed Motion for Provisional Release” on 29 June 2007 (“Supplement”). The Supplement contains a summary report from the orthopaedic surgeon who has been treating the Applicant’s father, and which details the Applicant’s father’s condition, together with a recommendation that, where travel is necessary, it should be undertaken by ambulance.
6. In its “Decision on Šainović Motion for Temporary Provisional Release”, issued 7 June 2007 (“7 June Šainović Decision”), the Trial Chamber detailed the law in relation to granting provisional release on compassionate grounds. Applying the same legal principles to the Applicant’s Motion, as well as those relevant to a motion for reconsideration,¹¹ the Trial Chamber considers that, in the circumstances of this case, it is not appropriate for the Chamber to reconsider its decision to deny the Motion. The Applicant has demonstrated that his father’s health precludes him from travelling to The Hague; however, the Applicant has failed to demonstrate how his provisional release to Belgrade, as requested, would enable him to visit his father, who resides in Višegrad (Bosnia and Herzegovina) and is unfit to travel. The Chamber has simply not been furnished with the basic, requisite information to enable it to dispose of the Motion favourably, despite its diligent efforts to furnish the Applicant with opportunities to this effect.

¹⁰ Email from Mr. T. Hannis (STA, Prosecution) to Mr. C. Black (Chambers Associate Legal Officer), 28 June 2007.

¹¹ The legal standard for reconsideration is as follows: “a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases ‘if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.’” *See* Decision on Prosecution Motion for Reconsideration of Oral Decision Dated 24 April 2007 Regarding Evidence of Zoran Lilić, 27 April 2007, para. 4.

7. For the foregoing reasons and pursuant to Articles 20 and 21 of the Statute and Rules 54 and 65 of the Rules of Procedure and Evidence, the Trial Chamber hereby DENIES the Motion.

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



Judge Iain Bonomy
Presiding

Dated this fourth day of July 2007
At The Hague
The Netherlands

[Seal of the Tribunal]