



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: 18 June 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:** 18 June 2007

**PROSECUTOR**

v.

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

**PUBLIC WITH CONFIDENTIAL ANNEX**

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**DECISION ON PAVKOVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE**

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**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 “Pavković Motion for Compassionate Provisional Release”, filed confidentially on 6 June 2007 (“Motion”), and hereby renders its decision thereon.

1. On 15 March 2007, Pavković (“Applicant”) filed a motion for provisional release.<sup>1</sup> In its decision of 22 May 2007, the Trial Chamber denied that motion, reasoning that the Applicant had not satisfied the Trial Chamber that there has been a change in circumstances that materially affected the approach taken in the decision denying the Applicant provisional release of 5 December 2006.<sup>2</sup> However, the Trial Chamber noted the inclusion of the Applicant’s family circumstances as “an appeal to compassionate considerations”,<sup>3</sup> and stated that its decision was without prejudice to any future motion for provisional release of a more limited duration on compassionate grounds.<sup>4</sup>

2. The Applicant now moves the Trial Chamber for temporary provisional release on compassionate grounds for a period not less than twenty-one days beginning on or shortly after the date of this decision.<sup>5</sup> The grounds on which the Applicant bases his Motion are as follows: his desire to visit his ailing father who is 85 years old, perhaps for the last time;<sup>6</sup> his wish to see his expectant wife and infant daughter;<sup>7</sup> and his desire to undergo medical examinations in Serbia for his own “significant health conditions”.<sup>8</sup> The Applicant submits that the governmental authorities in Serbia have “maintained a perfect record with this tribunal regarding the return of those previously provisionally released”,<sup>9</sup> and he undertakes to accept whatever conditions that the Trial Chamber may impose should his Motion be granted.<sup>10</sup>

3. The Applicant specifies two locations in Belgrade, Republic of Serbia, to which he proposes to travel should his Motion be granted, one of which is a medical facility. The other location is

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<sup>1</sup> Pavković Motion for Provisional Release During the Upcoming Court Recess, 15 March 2007 (“15 March Motion”).

<sup>2</sup> Decision on Joint Motion for Provisional Release During the Winter Recess, 5 December 2006; Decision on Pavković Motion for Provisional Release, 22 May 2007 (“22 May Decision”), para. 13.

<sup>3</sup> 22 May Decision, para. 11.

<sup>4</sup> 22 May Decision, para. 15.

<sup>5</sup> Motion, para. 3.

<sup>6</sup> Motion, paras 8–9, 13, Exhibit A.

<sup>7</sup> Motion, para. 10, Exhibit C.

<sup>8</sup> Motion, para. 9, Exhibit B.

<sup>9</sup> Motion, para. 11.

<sup>10</sup> Motion, para. 12.

detailed in the confidential annex to this Decision.<sup>11</sup> The Applicant specifies that he would travel between these locations as necessary.<sup>12</sup>

4. On 11 June 2007, the Prosecution filed its response to the Motion,<sup>13</sup> in which it states its “general opposition” to the provisional release of any of the six Accused in this case at this stage, but recognises the Trial Chamber’s discretion nevertheless to grant provisional release on compassionate grounds.<sup>14</sup> The Prosecution notes that (a) the information provided in the Motion does not “indicate an immediate, urgent, life-threatening crisis or condition” to either the Applicant, his wife, expected child, or father<sup>15</sup> and (b) there is no showing that the Applicant’s doctor could not travel to, and examine the Applicant in, The Hague, or that the care provided at the United Nations Detention Unit is not fully adequate for the Applicant’s current needs.<sup>16</sup> The Prosecution submits that, should the Applicant be granted provisional release, the Trial Chamber should consider requiring “electronic monitoring and/or 24-hour security details”.<sup>17</sup>

5. The Trial Chamber is in receipt of a letter from the Ministry of Foreign Affairs of The Netherlands, in which The Netherlands – in its capacity as host country – represents that it has no objection to the Applicant’s provisional release.<sup>18</sup> The Trial Chamber is also in receipt of the confidential “Conclusion of the Government of the Republic of Serbia”, dated 22 March 2007, confirming that Serbia will respect all orders made by this Trial Chamber in respect of the provisional release of the Applicant.

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, the Trial Chamber considers that in this case it is appropriate, based upon the circumstances relevant to the health of the Applicant’s elderly father, that the Applicant be granted provisional release for a limited duration on compassionate grounds. However, the Trial Chamber does not consider it appropriate to grant the Motion on the other bases advanced therein, especially the Applicant’s desire to see his physician in Serbia. The Applicant has made no showing that he is

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<sup>11</sup> Motion, para. 5.

<sup>12</sup> Motion, para. 11.

<sup>13</sup> Confidential Prosecution Response to Pavković’s Motion for Compassionate Provisional Release, 11 June 2007 (“Response”).

<sup>14</sup> Response, para. 4.

<sup>15</sup> Response, para. 5.

<sup>16</sup> Response, para. 6.

<sup>17</sup> Response, para. 7.

receiving inadequate health care in the UNDU, and the Chamber therefore does not base its Decision thereon. The Chamber will order below that the Applicant receive a medical examination prior to his travel to Serbia, to ensure that he is fit to travel to Serbia *and then back again* to The Hague five days later in order to attend the continuation of the trial.

7. The Trial Chamber reiterates that, in cases similar to the instant case where limited provisional release has been granted on compassionate grounds, the period for which an accused has been provisionally released has varied from three to five days.<sup>19</sup> The Trial Chamber therefore considers that granting the Applicant provisional release on compassionate grounds for a period of five days is consistent with the practice of the Tribunal.

8. For the foregoing reasons and pursuant to Articles 20, 21, and 29 of the Statute and Rules 54 and 65, the Trial Chamber hereby **GRANTS** the Motion in part and **ORDERS** as follows:

- (a) On Wednesday, 4 July 2007, Nebojša Pavković (“Applicant”) shall be transported to the appropriate airport in the Netherlands by the Dutch authorities.
- (b) At the appropriate airport, the Applicant shall be provisionally released into the custody of an official of the Government of the Republic of Serbia (“Serbia”) to be designated prior to the Applicant’s release in accordance with operative paragraph (m) hereunder, who shall accompany the Applicant for the remainder of his travel to and from the address detailed in the confidential annex to this Decision.
- (c) On his return, the Applicant shall be accompanied by a designated official of Serbia, who shall deliver the Applicant to the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport the Applicant back to the United Nations Detention Unit in The Hague.
- (d) During the period of his provisional release, the Applicant shall abide by the following conditions:
  - i. the Applicant shall remain at the address detailed in the confidential annex to this Decision and shall be permitted to travel to the other address indicated in the Motion;
  - ii. Serbia shall provide 24-hour surveillance of the Applicant throughout his presence in Serbia; and

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<sup>18</sup> Letter from Mr. J.H.P.A.M. de Roy, Deputy Director of Protocol for the Minister of Foreign Affairs, to Chief CMSS, dated 11 2007.

- iii. the Applicant shall surrender his passport to the Ministry of Justice of Serbia for the duration of his provisional release.
- (e) Before leaving the United Nations Detention Unit in The Hague, the Applicant shall provide details of his itinerary to the Ministry of Justice of the Netherlands and to the Registrar of the Tribunal.
- (f) The Applicant shall not have any contact with any co-accused in the case.
- (g) The Applicant shall not have any contact whatsoever, or in any way interfere with, any victim or potential witness or otherwise interfere in any way with proceedings before the Tribunal or with the administration of justice.
- (h) The Applicant shall not discuss his case with anyone, including the media, apart from his counsel.
- (i) The Applicant shall continue to cooperate with the Tribunal and comply with any further Orders or Decisions of this Trial Chamber regarding his provisional release.
- (j) The Applicant shall comply strictly with any requirements of the authorities of Serbia, which are necessary for them to comply with their obligations pursuant to this Order.
- (k) The Applicant shall return to the Tribunal on Tuesday, 10 July 2007.
- (l) The Applicant shall comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.
- (m) The Government of Serbia shall assume the following responsibilities:
- (i) Designation of an official of Serbia, into whose custody the Applicant shall be provisionally released and who shall accompany the Applicant from the appropriate airport in The Netherlands to and from the address detailed in the confidential annex to this Decision and notify, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated official.
- (ii) Provision of 24-hour surveillance of the Applicant throughout his stay in Serbia.

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<sup>19</sup> See 7 June Šainović Decision, para. 12.

- (iii) Provision of the personal security and safety of the Applicant while on provisional release.
- (iv) Responsibility, at the request of the Trial Chamber or the parties, for facilitating all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication(s).
- (v) Responsibility for informing the Trial Chamber of any failure by the Applicant to comply with the terms of this Order.
- (vi) Responsibility for arresting and detaining the Applicant immediately should he breach any of the conditions of this Order.
- (vii) Responsibility, once the Applicant has returned to the United Nations Detention Unit in The Hague, for the submission of a written report to the Trial Chamber as to the compliance of the Applicant with the terms of this Order.

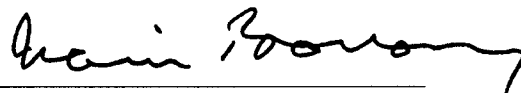
9. The Trial Chamber hereby **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the provisional release of the Applicant, and to continue to detain the Applicant at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the Government of the Republic of Serbia into whose custody the Accused is to be provisionally released.

10. The Trial Chamber hereby **REQUESTS** the authorities of all States through which the Accused will travel:

- a. to hold the Applicant in custody for any time that he will spend in transit at an airport in their territories; and
- b. to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

11. The Trial Chamber hereby **REQUESTS** the Registrar of the Tribunal to arrange a medical examination of the Applicant in order to certify that he is in adequate health to travel to Serbia and then back again to The Hague five days later. This report shall be filed with the Registry prior to the Applicant's temporary provisional release.

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



Judge Iain Bonomy  
Presiding

Dated this eighteenth day of June 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]