



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: 7 December 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: 7 December 2007

PROSECUTOR

v.

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

PUBLIC

DECISION ON PAVKOVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

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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 seized of a “Pavković Motion for Temporary Provisional Release,” filed publicly on 28 November 2007 (“Motion”), and hereby renders its decision thereon.

Brief procedural background

1. On 5 December 2006, the Trial Chamber denied the six Accused’s joint application for provisional release over the winter recess.¹ The Appeals Chamber affirmed this decision.² On 22 May 2007, the Chamber denied the application of Accused Nebojša Pavković (“Accused”) for provisional release over the summer recess, holding, *inter alia*, that he had not demonstrated how the circumstances that led to the denial of his application in December 2006 had changed so as to materially affect the approach taken by the Chamber at that time.³ On 18 June 2007, the Chamber granted the Accused’s motion for temporary provisional release upon circumstances related to the ill health of his father.⁴

Submissions

2. In the Motion, the Accused requests “temporary provisional release in accordance with Rule 65 of the Rules of Procedure and Evidence from Saturday 15 December 2007 until Monday 14 January 2008, or any other length of time the Trial Chamber deems appropriate, on the same terms and conditions under which he was released during the summer recess 2007.”⁵ In the Motion, the Accused asserts that “[s]ince May 2007, there have been material changes that eliminate or at least minimize the risk that the Accused will flee” and that “[s]ecurity of witnesses and victims in relation to provisional release is not a legitimate concern at this stage of the trial proceedings”.⁶

3. The Trial Chamber is in receipt of guarantees from the Republic of Serbia confirming that it will respect all orders made by the Chamber in respect of the provisional release of the Accused.⁷

¹ Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2007.

² *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During Winter Recess, 14 December 2007.

³ Decision on Pavković Motion for Provisional Release, 22 May 2007, para. 13.

⁴ Decision on Pavković Motion for Temporary Provisional Release, 18 June 2007, para. 6.

⁵ Motion, para. 2.

⁶ Motion, paras. 5–7, 9.

⁷ Motion, Annex A.

For the purposes of the present decision, the Chamber assumes that The Netherlands, in its capacity as host country, would have no objection to the Accused's provisional release.

4. On 5 December 2007, the Prosecution responded to the Motion, expressing its opposition to the provisional release of any of the six Accused, on the same grounds it advanced in connection with the last winter recess and summer recesses. Moreover, the Prosecution submits that granting provisional release at this advanced stage of the proceedings is not in the interests of justice and could disrupt the trial and prevent it from being brought to a fair and expeditious conclusion. According to the Prosecution, "[t]he rights of the Accused to temporary provisional release should be carefully balanced against the legitimate interest of the international community in the proper administration of justice which can only be achieved by completing this trial."⁸

5. The Prosecution also argues that, although it is within the discretion of the Chamber to grant temporary provisional release on compassionate or humanitarian grounds, the Accused has made no showing for such a request.⁹

Discussion

6. The Chamber has carefully considered all the submissions of the parties in relation to this matter and has taken all relevant factors bearing upon the issue of provisional release into account.

7. In deciding a request for provisional release, a Trial Chamber must determine whether the applicant has satisfied the burden of showing that, if released provisionally, he or she will (a) return for the continuation of the trial and (b) not pose a danger to any victim, witness, or other person. Where an accused applies for provisional release following the denial of a previous application, "it is incumbent on that accused to satisfy the Trial Chamber that there has been a change in circumstances that materially affects the approach taken in earlier provisional release decisions regarding the same accused."¹⁰

8. The Accused points to the following purported changes in circumstances: (a) the guarantees from the Republic of Serbia; (b) his respect for previous orders for provisional release; (c) "General Ojdanic, General Pavkovic and General Lazarevic in part have presented their defence cases; therefore, the Prosecution case is not as strong as it had been immediately upon its completion at the summer recess"; and (d) all the victims and witnesses for both the Prosecution

⁸ Prosecution's Response to Pavković's Motion for Temporary Provisional Release, 5 December 2007 ("Response"), paras. 5, 7–8.

⁹ Response, para. 6.

¹⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 1 March 2007 ("*Popović Decision*"), para. 12.

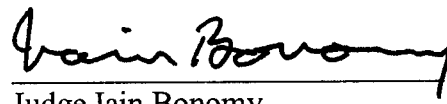
and the Accused have already testified".¹¹ The Chamber disagrees that these points have a determinative bearing upon the circumstances that led to the denial of the Accused's application in December 2006 so as to materially affect the approach taken by the Chamber at that time.

9. There has been no change in circumstances to persuade the Chamber that the Accused is no longer a flight risk. The Accused's return from a strictly controlled, temporary provisional release on humanitarian grounds does not alter the situation. For the Chamber to agree with the Accused's point about the purported weakening of the Prosecution case, it would have to weigh the evidence adduced by the Prosecution against that of the Accused, and this is a task reserved for the Chamber's final assessment of all the evidence at the conclusion of the trial, not at this stage. The fact that the Prosecution and Accused have finished adducing their evidence does not obviate the previous finding of the Chamber that the Accused, if provisionally released, will pose a danger to any victim, witness, or other person.

10. The Accused neither requests temporary provisional release on compassionate or humanitarian grounds, nor raises any such matters in the Motion.

11. For the foregoing reasons and pursuant to Rules 54 and 65, the Trial Chamber hereby DENIES the Motion.

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


Judge Iain Bonomy
Presiding

Dated this seventh day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Motion, paras. 6-7, 9.