



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 WITH CONFIDENTIAL ANNEX**

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

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**Office of the Prosecutor**

Mr. Thomas Hannis  
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**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 seized of “Sreten Lukic’s Motion for Provisional Release During Winter Recess on Grounds of Compassion,” filed confidentially by the Defence of Accused Sreten Lukić (“Accused”) on 4 December 2007 (“Motion”), and hereby renders its decision thereon.

### **Brief procedural background**

1. On 5 December 2006, the Chamber denied the six Accused’s joint application for provisional release over the winter recess.<sup>1</sup> The Appeals Chamber affirmed this decision.<sup>2</sup> On 22 May 2007, the Chamber denied the application of the 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. The Chamber left open the possibility that the Accused could apply for temporary provisional release on compassionate or humanitarian grounds.<sup>3</sup>

2. Following this denial, the Accused applied on 29 May 2007 for temporary provisional release arguing, *inter alia*, that the poor health conditions of his father and wife justified his request for relief.<sup>4</sup> On 25 June 2007, the Chamber denied this motion, reasoning that the Accused had not demonstrated that the health conditions of his father and wife precluded their travel to the Hague and that it was therefore unnecessary for the Accused to travel to Belgrade in order to visit with them.<sup>5</sup> On 4 July 2007, the Chamber denied the Accused’s motion for reconsideration on this matter on the basis that the Accused

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.<sup>6</sup>

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

<sup>2</sup> *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.

<sup>3</sup> Decision on Lukić Motion for Provisional Release, 22 May 2007, paras. 13, 15.

<sup>4</sup> Confidential Sreten Lukić’s Renewed Motion for Provisional Release, 29 May 2007.

<sup>5</sup> Decision on Lukić Motion for Temporary Provisional Release, 25 June 2007, para. 6.

<sup>6</sup> Decision on Lukić Motion for Reconsideration of Decision on Provisional Release, 4 July 2007, para. 6.

### Submissions

3. In the Motion, the Accused requests temporary provisional release of seven days on compassionate or humanitarian grounds and sets forth various arguments in support thereof.<sup>7</sup> 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.<sup>8</sup> 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 7 December 2007, the Prosecution responded to the Motion, expressing its general opposition to the provisional release of the Accused at this stage of the proceedings. However, the Prosecution recognises that there is precedent for temporary provisional release in cases of a compelling showing of unusual or special circumstances on compassionate or humanitarian grounds, a determination that, in the view of the Prosecution, is best left to the discretion of the Chamber. Should the Motion be granted, the Prosecution requests the Chamber to order 24-hour electronic surveillance of the Accused and that he be ordered to return to the United Nations Detention Unit no later than five days prior to the resumption of the trial.<sup>9</sup>

### Discussion

5. 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. While it is now settled law that Rule 65 of the Rules of Procedure and Evidence of the Tribunal governs provisional release generally,<sup>10</sup> motions for temporary provisional release on compassionate or humanitarian grounds are governed by a distinct set of principles. Rule 65(B), which governs provisional release during trial, makes no mention of compassionate or humanitarian grounds. However, the jurisprudence of the Tribunal has recognised that Chambers enjoy a measure of discretion when considering motions pursuant to Rule 65, and that, notwithstanding a finding that an accused does not meet the formal requirements for provisional

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<sup>7</sup> Motion, paras. 1–16, Exhibit A.

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

<sup>9</sup> Confidential Prosecution Response to Sreten Lukić's Motion for Provisional Release During Winter Recess on Grounds of Compassion, 7 December 2007 ("Response"), paras. 2–3.

<sup>10</sup> Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, paras. 8–10.

release pursuant to Rule 65, compassionate or humanitarian concerns may nevertheless permit a more limited provisional release.<sup>11</sup>

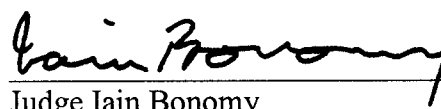
6. The Accused points to a number of factors in support of his request for relief: his purported voluntary surrender to the Tribunal; the fact that he has been granted provisional release on two prior occasions and complied with all the orders in connection thereto; and the guarantees from the Republic of Serbia ("Serbia").<sup>12</sup>

7. [See confidential annex.]

8. The Accused was on provisional release during the pre-trial phase of the proceedings and was released during the summer recess last year (July 2006). The Accused has therefore had adequate opportunities to tend personally to pressing personal matters, and the Chamber does not consider that circumstances have materially changed so as to justify a temporary provisional release on compassionate or humanitarian grounds at this point in time.

9. 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]**

<sup>11</sup> See Decision on Šainović Motion for Temporary Provisional Release, 7 June 2007, paras. 7–11; see also *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, para. 5; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision Granting Provisional Release to Haradin Bala to Attend His Brother's Memorial Service and to Observe the Traditional Period of Mourning, 1 September 2006, p. 1; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić for Provisional Release for a Fixed Period to Attend Memorial Services for His Mother, 5 May 2006, p. 3; *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision Granting Provisional Release to Haradin Bala to Attend His Daughter's Memorial Service, 20 April 2006, p. 2; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005, para. 15; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić Pursuant to Rule 65(I) for Provisional Release for a Fixed Period to Attend Memorial Service for His Father, 21 October 2004, para. 20; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Dario Kordić's Request for Provisional Release, 19 April 2004, paras. 5–12; *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Decision on Application for Provisional Release, 12 December 2002, para. 10.

<sup>12</sup> Motion, paras. 3–16.