



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: 12 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: 12 December 2007

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

**DECISION ON LUKIĆ MOTION TO RECONSIDER DENIAL OF MOTION FOR
TEMPORARY 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 “Sreten Lukic’s Motion to Reconsider Denial of Motion for Provisional Release During Winter Recess on Grounds of Compassion,” filed confidentially by the Defence of Accused Sreten Lukić (“Accused”) on 10 December 2007 (“Motion”), and hereby renders its decision thereon.

1. On 5 December 2006, the 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 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.³

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.⁴ 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.⁵ 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.⁶

¹ Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006.

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 2006.

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

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

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

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

3. On 4 December 2007, the Accused filed a motion for temporary provisional release on compassionate or humanitarian grounds.⁷ In its decision of 7 December 2007, the Trial Chamber denied that motion, noting that 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) and that, therefore, the Accused had had adequate opportunities to tend personally to pressing personal matters. Furthermore, the Chamber reasoned that it did not consider that circumstances had materially changed so as to justify a temporary provisional release on compassionate or humanitarian grounds at that point in time.⁸

4. In the Motion, the Accused requests the Chamber to reconsider its denial of the Accused's motion for temporary provisional release of seven days on compassionate or humanitarian grounds and sets forth various arguments in support thereof.⁹

5. The Prosecution has indicated that it does not intend to respond to the Motion.

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. Moreover, 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.'"¹⁰

7. The Accused argues first that the Chamber did not adequately consider the purportedly changed circumstances since the last provisional release of the Accused in summer 2006.¹¹

8. [See confidential annex.]

9. The Accused misapprehends the Chamber's decision. The Chamber held that the Accused had had adequate opportunities to attend to pressing personal matters during the pre-trial phase of the proceedings and during the summer recess last year (July 2006). The Chamber then went on to hold that it did not consider that circumstances had materially changed so as to justify a temporary

⁷ Confidential Sreten Lukić's Motion for Provisional Release During Winter Recess on Grounds of Compassion, 4 December 2007 ("Motion").

⁸ Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007, para. 8 (public with confidential annex).

⁹ Motion, paras. 1–13.

¹⁰ See *Prosecutor v. Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber's Decision of 6 December 2005, para. 25, note 40 (quoting *Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras 203–204); see also *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence "Requête de l'Appelant en Reconsidération de la Décision du 4 avril 2006 en Raison d'une Erreur Matérielle", 14 June 2006, para. 2.

¹¹ Motion, paras. 5–7.

provisional release on compassionate or humanitarian grounds at this point in time. The Chamber therefore did indeed consider the change in the circumstances cited by the Accused, but nevertheless found they did not warrant a temporary provisional release. The reference to the prior provisional releases was not determinative of the motion, but rather simply added weight to the foregoing conclusion of the Chamber. Reconsideration on this basis is therefore not warranted.

10. The Accused next argues that the Chamber did not adequately address his efforts to cure the deficiencies of his prior motions for provisional release regarding the arrangements for the Accused's father to be transported to the Republic of Serbia so the requested visitation can take place.¹² Moreover, the Accused claims that the Chamber's denial of the motion is inconsistent with its decision of 4 July 2007. In the summer, the Chamber denied the Accused's motion for temporary provisional release and also for reconsideration of that denial because it had "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."¹³ The Chamber did not, however, state that the motion would have been granted, had the Accused furnished the necessary information. That point was never reached in the summer, and thus the matter never decided. Under the present circumstances, it cannot be said that the Chamber did not address the Accused's attempts to remedy the failures of his last motions; rather, this factor was indeed considered by the Chamber when coming to its conclusion on the motion.¹⁴ Therefore, reconsideration on this basis is neither necessary nor justified.

11. Finally, the Accused points out that he is the only Accused who has not been granted temporary provisional release on compassionate or humanitarian grounds since summer 2006 and that "there has been no showing by the Trial Chamber that it has adequately considered the aforesaid, in rendering its denial of the motion" and that "the Trial Chamber has not demonstrated how and why Mr. Lukić is not entitled to the same right to compassionate release as granted previously to his other co-accused".¹⁵ The Accused cites Article 21 of the Statute of the Tribunal as support for this argument:

Article 21
Rights of the Accused

1. All persons shall be equal before the International Tribunal.

¹² Motion, paras. 8–10.

¹³ Decision on Lukić Motion for Reconsideration of Decision on Provisional Release, 4 July 2007, para. 6.

¹⁴ Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007, para. 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.").

¹⁵ Motion, paras. 12–13.

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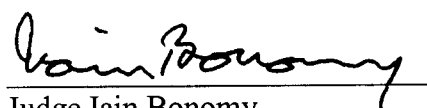
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

12. First, the Accused pointed to a number of factors in support of his request for relief: his purported voluntary surrender to the Tribunal; the fact that he had 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").¹⁶ The Chamber not only considered all these factors, but also reproduced them in its decision, for the avoidance of doubt. Second, the Accused did not raise the presumption of innocence as a factor in favour of his temporary provisional release. However, this was taken into consideration by the Chamber;¹⁷ and, even if it had been mentioned by the Accused in his motion, the result reached by the Chamber would have been the same. Finally, the Chamber does not consider that the other provisional releases of the Accused have a bearing upon its determination of the Accused's motion for temporary provisional release, and disagrees that the Accused is being treated unequally. His motion was considered upon its own merits and rejected. Therefore, the Accused's final attempt to satisfy the Chamber that reconsideration should be granted in the present matter fails.

13. The Chamber notes that it is open to the Accused to appeal pursuant to Rule 65(D).

14. For the foregoing reasons and pursuant to Rules 54 and 65 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby DENIES the Motion.

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


Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]

¹⁶ Confidential Sreten Lukić's Motion for Provisional Release During Winter Recess on Grounds of Compassion, 4 December 2007, paras. 3–16 (public with confidential annex).

¹⁷ Decision on Lukić Motion for Temporary Provisional Release, 7 December 2007, para. 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.") (public with confidential annex).