



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: 15 April 2008
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: 15 April 2008

PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON LAZAREVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

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Government of Republic of Serbia

Government of The Netherlands

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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 a confidential “Vladimir Lazarevic Motion for Temporary Provisional Release on the Grounds of Compassion,” filed 18 March 2008 (“Motion”), and hereby renders its decision thereon.¹

Brief procedural background

1. On 5 December 2006, the Chamber denied the six Accused’s joint application for provisional release over the winter recess.² The Appeals Chamber affirmed this decision.³ On 22 May 2007, the Chamber denied the application of Vladimir Lazarević (“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.⁴ Following this denial, the Accused applied on 29 May 2007 for temporary provisional release on humanitarian grounds;⁵ and, on 18 June 2007, the Chamber granted this motion.⁶

2. On 7 December 2007, the Chamber denied a motion for temporary provisional release, holding,

Although the Chamber granted the Accused permission to travel to Serbia in June and July 2007 for reasons substantially similar to those advanced in the present Motion, it cannot discern a compelling reason to do so again. Moreover, 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 opportunities to tend personally to pressing personal matters, and the Chamber’s previous decision to grant temporary provisional release, far from being a reason to grant yet another, reinforces the notion that the Accused already has been granted an adequate opportunity in this regard.⁷

¹ The Chamber considers it appropriate to file this decision publicly, although the filings were accomplished on a confidential basis. No confidential information is contained herein.

² Decision on Joint Defence Motion for Provisional Release During Winter Recess, 5 December 2006.

³ *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.

⁴ Decision on Lazarević Motion for Provisional Release, 22 May 2007, paras. 13, 15.

⁵ Confidential Vladimir Lazarević’s Motion Requesting Provisional Release on the Grounds of Compassion with Confidential Annex, 29 May 2007.

⁶ Decision on Lazarević Motion for Temporary Provisional Release, 18 June 2007 (public with confidential annex).

⁷ Decision on Lazarević Motion for Temporary Provisional Release, 7 December 2007, para. 11 (public with confidential annex) (footnote omitted).

The Chamber denied a motion for reconsideration of this decision,⁸ and the Appeals Chamber affirmed.⁹

3. It is against this procedural backdrop that the Chamber will now turn to the submissions of the parties.

Submissions

4. In the Motion, the Accused requests temporary provisional release on humanitarian grounds for seven days. He sets forth personal reasons for his release, reasons which were also the subject of his last attempt to obtain provisional release.¹⁰ The Accused also argues that the guarantees of the Government of the Republic of Serbia ("Serbia") militate in favour of his release.¹¹

5. 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.¹² The Accused argues that Serbia recently implemented the decision granting Pavković's temporary provisional release without incident, and that this weighs in favour of his Motion.¹³ The Netherlands, in its capacity as host country, has no objection to the Accused's provisional release.¹⁴

6. The Prosecution opposes the Motion on the same grounds as it opposed the December 2007 motions in this case, since which time the evidence against the accused has only increased. This has heightened the flight risk. It is not in the interests of justice to allow a provisional release of an accused to disrupt the completion of a trial, and the humanitarian considerations of the Accused must be balanced against the legitimate interest of the international community in the proper administration of justice. Having said this, the Prosecution recognises the Chamber's discretion to grant temporary provisional release on compassionate and/or humanitarian grounds, which should

⁸ Decision on Lazarević Motion to Reconsider Denial of Motion for Temporary Provisional Release, 13 December 2007 (public with confidential annex).

⁹ Decision on "Lazarević Defence Appeal Pursuant to Rule 116 *bis* Against the Trial Chamber's Denial of Temporary Provisional Release", 18 December 2007.

¹⁰ Motion, paras. 4–10, 12; *see also* confidential Supplement to Vladimir Lazarevic Motion for Temporary Provisional Release on the Grounds of Compassion, 3 April 2008 ("Supplement"). The Motion's first request is for a period that has now past, and the Chamber will therefore only entertain the Motion in respect of the second, alternative period. Motion, paras. 1, 14.

¹¹ Motion, para. 11.

¹² Confidential Addendum to Vladimir Lazarević Motion for Temporary Provisional Release on the Grounds of Compassion, 15 April 2008.

¹³ Supplement, para. 5.

¹⁴ Letter from Dutch Ministry of Foreign Affairs, dated 14 April 2008.

be granted only in the most compelling circumstances. The Prosecution suggests that the Accused furnish updated substantiation of his personal reasons for release.¹⁵

7. In the event that the Chamber grants the release, the Prosecution argues that the Chamber “ought to require arrangements which provide an equivalent degree of control and monitoring of the accused [as 24-hour electronic surveillance] during his release” and states that “round-the-clock police escort by officers detailed to conduct exclusive surveillance of the Accused may well provide the necessary safeguards.”¹⁶

8. Finally the Prosecution requests, pursuant to Rule 65(E), a stay of any decision to grant to the Motion.¹⁷

Applicable Law

9. Pursuant to Rule 65(A), once detained, an accused may not be provisionally released except upon an order of a Chamber. Under Rule 65(B), a Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person, after having given the host country and the state to which the accused seeks to be released the opportunity to be heard.¹⁸

10. In deciding whether the requirements of Rule 65(B) have been met, a Chamber must consider all of those relevant factors that a reasonable Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned opinion indicating its view on those relevant factors.¹⁹ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.²⁰ This is because decisions on motions for provisional release are fact intensive and cases are considered on an individual basis in light of the particular circumstances of the individual accused.²¹ The Chamber is required to assess these circumstances not only as they exist at the time when it reaches its

¹⁵ Confidential Prosecution Response to Vladimir Lazarević’s Motion for Temporary Provisional Release on the Grounds of Compassion, 31 March 2008 (“Response”), paras. 4–7.

¹⁶ Response, 8–10.

¹⁷ Response, para. 12.

¹⁸ *Prosecutor v. Haradinaj, Balaj and Brahimaj*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj’s Interlocutory Appeal Against the Trial Chamber’s Decision Denying his Provisional Release, 9 March 2006, para. 6.

¹⁹ *Prosecutor v. Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić’s Provisional Release, 17 October 2005 (“*Stanišić Decision*”), para. 8.

²⁰ *Ibid.*

²¹ *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Interlocutory Appeal from Trial Decision Denying Johan Tarčulovski’s Motion for Provisional Release, 4 October 2005, para. 7.

decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.²²

11. 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 where compassionate or humanitarian concerns may permit a more limited provisional release.²³

12. Importantly, 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.”²⁴

Discussion

13. The Chamber has carefully considered all the submissions in relation to this matter and has taken all relevant factors bearing upon the issue of provisional release into account, including the guarantees from Serbia.

14. The Chamber finds it helpful to briefly discuss below the Appeals Chamber’s recent decision in the *Prlić et al.* case, in which it overturned the Trial Chamber’s grant of provisional release to five of the accused in that case. The Appeals Chamber stated (in relevant part) as follows:

19. The Appeals Chamber finds that the Trial Chamber committed a discernible error in failing to explicitly discuss the impact of its *98bis* Ruling when granting provisional release. In deciding to grant the Accused provisional release the Trial Chamber essentially relied on the compliance by the Accused with the terms imposed by the Trial Chamber in prior decisions on provisional release. In this regard, the Impugned

²² *Stanišić* Decision, para. 8.

²³ 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 (“*Popović* Decision”); *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. 8–12.

²⁴ *Popović* Decision, para. 12.

Decisions fail to assess the requirements of Rule 65(B) of the Rules in the present context of the proceedings, and particularly in light of the Trial Chamber's imminent 98bis Ruling.

20. The Appeals Chamber considers that the 98bis Ruling in this case constitutes a significant enough change in circumstance to warrant the renewed and explicit consideration by the Trial Chamber of the risk of flight posed by the accused pursuant to Rule 65(B) of the Rules. Significantly, the Trial Chamber held that ... "a reasonable Trial Chamber could conclude that there was a joint criminal enterprise during the periods covered by the indictment."

21. The Appeals Chamber further finds that the Trial Chamber committed a discernible error in considering that the justifications for release put forth by the Accused might be regarded as humanitarian grounds capable of justifying the granting of a short period of provisional release in the cases of Ćorić, Praljak and Petković. In the cases of Stojić and Prlić the Trial Chamber considered Prlić's request to visit his ailing father and brother and Stojić's request to visit his ailing spouse, brother and parents, to be requests based on humanitarian grounds without offering any indication of how much weight it ascribed thereto. Nonetheless, in all cases, the Appeals Chamber finds that the various justifications for release offered by the Accused are not sufficiently compelling, particularly in light of the 98bis Ruling, to warrant the exercise of the Trial Chamber's discretion in favour of granting the Accused provisional release. The Appeals Chamber accordingly finds that the circumstances of this case indicate that a Trial Chamber properly exercising its discretion should have denied provisional release.²⁵

The Appeals Chamber therefore held that the *Prlić* Chamber erred by not offering an indication of how much weight it ascribed to the justifications for temporary provisional release on humanitarian grounds. The Appeals Chamber then went on to hold that these various justifications were not sufficiently compelling, particularly in light of the Rule 98 bis ruling, to warrant the exercise of the Trial Chamber's discretion in favour of granting the accused provisional release *without offering any indication of how much weight it ascribed thereto*. This Chamber does not interpret the *Prlić* decision as a *per se* legal ruling that provisional release must always be denied after a Rule 98 bis ruling, provided that the Chamber discusses and weighs all the factors relevant to the provisional release motion.

15. [See confidential annex.]

16. Based upon the compelling humanitarian considerations set forth in the Motion (as well as the guarantees of Serbia), and noting the period of time that has elapsed since the Accused's last temporary provisional release during which he had an opportunity to attend to pressing personal matters, the Chamber considers that it would be appropriate for the Accused to be provisionally released for a limited duration, under strictly controlled conditions, including 24-hour surveillance.

²⁵ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić, 11 March 2008 (footnotes omitted).

Serbia has recently represented to the Chamber that its implementation of the Chamber's order of 24-hour surveillance includes the following:

- (a) That at all times two police officers are in the presence of the Accused.
- (b) That the Accused is not allowed to move anywhere without these two police officers.
- (c) That two police officers are placed, at all times, in front of the Accused's dwelling, in order to make sure that he does not leave the premises.
- (d) That the police officers will, at all times, ensure the apprehension of the Accused in the event of escape or failure to meet any of the conditions set out in the Decision.²⁶

The Chamber is satisfied that the above interpretation of the Chamber's order of 24-hour surveillance, as well as the other conditions set forth in the Order below, is sufficient to ensure that the Accused will return for trial and not endanger victims, witnesses, or other persons. For the foregoing reasons, the Chamber considers that the criteria of Rule 65(B) are satisfied and is prepared to exercise its discretion to grant provisional release on the basis of the humanitarian grounds set forth in the Motion.

17. The Chamber has taken into account the fact that it dismissed the Accused's Rule 98 *bis* motion for a judgement of acquittal, and it finds that this does not outweigh the foregoing humanitarian concern.

Disposition

18. For the foregoing reasons and pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **GRANTS** the Motion, in part, and **ORDERS** as follows:

- (a) On **Friday, 25 April 2008**, Vladimir Lazarević ("Accused") shall be transported to the appropriate airport in the Netherlands by the Dutch authorities.
- (b) At the appropriate airport, the Accused 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 Accused's release in accordance with operative paragraph

²⁶ Republic of Serbia's Submission Related to Trial Chamber's Order of 18 March 2008, 20 March 2008.

- (m) hereunder, who shall accompany the Accused for the remainder of his travel to and from the address detailed in the confidential annex to this Decision.
- (c) On his return, the Accused shall be accompanied by a designated official of Serbia, who shall deliver the Accused to the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague.
- (d) During the period of his provisional release, the Accused shall abide by the following conditions,
- i. the Accused shall remain at the address detailed in the confidential annex to this Decision;
 - ii. Serbia shall provide 24-hour surveillance of the Accused throughout his presence in Serbia; and
 - iii. the Accused 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 Accused shall provide details of his itinerary to the Ministry of Justice of the Netherlands and to the Registrar of the Tribunal.
- (f) The Accused shall not have any contact with any co-Accused in the case.
- (g) The Accused 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 Accused shall not discuss his case with anyone, including the media, apart from his counsel.
- (i) The Accused 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 Accused 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 Accused shall return to the United Nations Detention Unit in The Hague on **Thursday, 1 May 2008.**

- (l) The Accused 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 Accused shall be provisionally released and who shall accompany the Accused from the appropriate airport in The Netherlands to the address detailed in the confidential annex to this Decision, and ***notification, as soon as practicable, to the Trial Chamber and the Registrar of the Tribunal of the name of the designated official.***
 - (ii) Provision of 24-hour surveillance of the Accused throughout his stay in Serbia.
 - (iii) Provision of the personal security and safety of the Accused 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 assurance of the confidentiality of any such communication(s).
 - (v) Responsibility for informing the Trial Chamber of any failure by the Accused to comply with the terms of this Order.
 - (vi) Responsibility for immediately arresting and detaining the Accused, should he breach any of the conditions of this Order.
 - (vii) Responsibility, once the Accused 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.

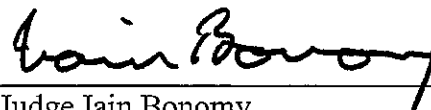
19. Pursuant to Rules 54 and 65 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the provisional release of the Accused, and to continue to detain the Accused 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.

20. Pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **REQUESTS** the authorities of all states through which the Accused will travel:

- (a) to hold the Accused 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.

21. The temporary provisional release of the Accused is scheduled to commence ten days from the date of this Decision and has been specifically timed to take place during the upcoming recess in the trial. The Chamber therefore does not find it necessary to grant a stay, seeing as there will be sufficient time for the Prosecution to lodge an expedited appeal of the Decision, pursuant to Rules 65(D) and 116 *bis*. Accordingly, the Trial Chamber, pursuant to Rule 65(E) of the Rules of Procedure and Evidence of the Tribunal, hereby **DENIES** the Prosecution's request for a stay.

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



Judge Iain Bony
Presiding

Dated this fifteenth day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]