

**UNITED
NATIONS**



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-05-88-A
Date: 6 June 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 6 June 2012

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON MOTION ON BEHALF OF VINKO
PANDUREVIĆ FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušević for Mr. Vujadin Popović
Mr. John Ostojčić and Mr. Theodor Scudder for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEISED OF the “Motion on Behalf of Vinko Pandurević for Provis[i]onal Release” filed confidentially with annexes by Counsel for Vinko Pandurević (“Pandurević”) on 23 May 2012 (“Motion”);¹

NOTING the “Prosecution Response to Pandurević’s Motion for Provisional Release” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 24 May 2012 (“Response”);²

NOTING that Pandurević requests that he be granted provisional release “for a period of not less than 10 days”³ from “a date between 12 and 13 June 2012”;⁴

NOTING that Pandurević claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), in that: (1) he will surrender into detention on conclusion of the provisional release;⁵ (2) he will not pose a danger to any victim, witness or other person;⁶ and (3) special circumstances exist warranting his provisional release;⁷

NOTING that Pandurević seeks provisional release to attend the wedding ceremony of his only daughter to be held on 16 June 2012 in Belgrade, Republic of Serbia⁸ and also to record his biometric data in Belgrade in order to obtain a personal identification document;⁹

¹ The Appeals Chamber notes that the Motion exceeds the 3000-word limit envisaged for such a filing. See Motion, p. 11; Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005, para. 5. It further notes that Pandurević fails not only to provide an explanation of the exceptional circumstances that necessitate the oversized filing but even to formally ask for extension of the word limit. However, the Appeals Chamber considers that it is in the interest of judicial economy and expeditiousness of the proceedings to review the Motion rather than to require its re-filing at this stage. Nevertheless, the Appeals Chamber strongly reminds Pandurević to comply with the relevant practice directions in his filings in the future and in particular reserves its discretion to reject any oversized filing for which leave has not been granted in advance. See, e.g., *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on the Motion to Strike Annexes A, C, D and E of the Prosecution’s Appeal Brief, 18 May 2007, para. 4.

² Although the Motion and Response were filed confidentially, the Appeals Chamber recalls that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential. The Appeals Chamber considers that there are no exceptional reasons for issuing this decision confidentially and therefore files it publicly. See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Sreten Lukić’s Motion for Provisional Release, 30 March 2012 (“*Šainović et al.* 30 March 2012 Decision”), fn. 1 and references cited therein.

³ Motion, para. 22(e).

⁴ Motion, para. 22(a).

⁵ Motion, paras 7-10.

⁶ Motion, paras 11-12.

⁷ Motion, paras 13-21.

⁸ Motion, p. 2, para. 13. The Appeals Chamber notes that Pandurević has not yet filed a guarantee from the Government of Serbia ensuring their co-operation with the provisional release, if granted. However, in view of the outcome of this decision, the Appeals Chamber has considered the Motion without awaiting the filing of a guarantee. Additionally, the Netherlands, as host country, does not have any objections to the provisional release, if granted. See Correspondence from the Head Host Nation Division, on behalf of the Minister of Foreign Affairs of the Netherlands, “Re Provisional release Mr Vinko Pandurević”, 24 May 2012 (confidential).

NOTING that Pandurević submits that the wedding of his only daughter is “a unique family event”¹⁰ and that the lack of a personal identification document has resulted in “very real hardship for his wife and children”;¹¹

NOTING Pandurević’s submission that “special circumstances have been held to include detention for a substantial period of time, in the context of a case where the date for an appeal hearing had not yet been set, and the appellant had shown good behaviour while in detention”¹² and that he has been a model detainee and has passed the halfway mark of his sentence;¹³

NOTING Pandurević’s submission that the reasons for his request in combination with the stage of his sentence and his history in detention can properly be considered special circumstances which warrant the granting of provisional release;¹⁴

NOTING the submissions of the Prosecution that Pandurević has failed to demonstrate the special circumstances required under Rule 65(I)(iii) of the Rules for provisional release on appeal;¹⁵

RECALLING that, pursuant to Rule 65(I) of the Rules, provisional release may be granted if the Appeals Chamber is satisfied that: (i) the convicted person, if released, will appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release;

RECALLING that the requirements under Rule 65(I) of the Rules must be considered cumulatively;¹⁶

RECALLING that special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant’s medical need or a memorial service for a close family member;¹⁷

⁹ Motion, p. 2, para. 17.

¹⁰ Motion, para. 16.

¹¹ Motion, para. 17.

¹² Motion, para. 15 referring, *inter alia*, to *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009, para. 16; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Decision on Motion of Astrit Haraqija for Provisional Release, 8 April 2009, para. 12.

¹³ Motion, para. 15. See also Motion, para. 7.

¹⁴ Motion, para. 21.

¹⁵ Response, paras 1-4.

¹⁶ *Šainović et al.* 30 March 2012 Decision, p. 2 and references cited therein; Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012 (“11 January 2012 Decision”), para. 5 and references cited therein.

¹⁷ *Šainović et al.* 30 March 2012 Decision, p. 2 and references cited therein; 11 January 2012 Decision, para. 10 and references cited therein.

FURTHER RECALLING that a desire to attend a wedding ceremony of a close relative does not amount to a “special circumstance” warranting provisional release;¹⁸

CONSIDERING that taking the opportunity of a provisional release to conduct personal business such as obtaining a personal identification document does not amount to a “special circumstance” warranting provisional release and that Pandurević has not shown that making the relevant application in Belgrade is the only option open to him;¹⁹

RECALLING that detention for a substantial period of time may amount to a special circumstance within the meaning of Rule 65(I)(iii) of the Rules and that this determination must be made on a case-by-case basis;²⁰

CONSIDERING that in the circumstances of the present case, Pandurević has not been detained for a period of time in relation to his overall adjudged sentence which would amount to a “special circumstance”;²¹

FINDING, therefore, that Pandurević has failed to demonstrate the existence of special circumstances as required by Rule 65(I)(iii) of the Rules;

CONSIDERING the foregoing, **DISMISSES** the Motion.

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



Judge Patrick Robinson
Presiding

Dated this sixth day of June 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

¹⁸ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Application for Provisional Release Pursuant to Rule 65(I), 29 April 2008 (confidential), para. 7.

¹⁹ See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Tarčulovski’s Motion for Provisional Release, 19 January 2010, p. 2. The Appeals Chamber considers that the Republic of Serbia should resolve any difficulties with respect to the issuance of a valid identification document for one of its citizens detained abroad. See Decision on Vinko Pandurević’s Motion for Temporary Alteration of the Conditions of His Detention, 22 July 2011 (confidential), p. 4.

²⁰ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on Motion of Rasim Delić for Provisional Release, 11 May 2009 (“*Delić* 11 May 2009 Decision”), para. 17 and references cited therein.

²¹ Pandurević has spent approximately 7 years in custody and received a sentence of 13 years’ imprisonment. The Appeals Chamber notes that the convicted persons in the cases relied upon by Pandurević had served two-thirds or more of their sentences at the time provisional release was granted. See *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2-A, Decision on Jelena Rašić’s Urgent Motion for Provisional Release Pursuant to Rule 65(I), 4 April 2012, para. 12. See also *Delić* 11 May 2009 Decision, para. 18.