

**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: 7 February 2013
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: 7 February 2013

PROSECUTOR

v.

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

PUBLIC

**DECISION ON URGENT PROSECUTION MOTION FOR A
DECLARATION THAT THE ADDITIONAL GUARANTEES
OFFERED BY REPUBLIKA SRPSKA ARE INSUFFICIENT
FOR THE RELEASE OF VUJADIN POPOVIĆ**

The Office of the Prosecutor:
Mr. Peter Kremer QC

Government of Bosnia and Herzegovina

Government of the Republika Srpska

Government of the Kingdom of The Netherlands

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović

Mr. John Ostojić 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 QC for Mr. Milan Gvero

Mr. Peter Haynes QC 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);

RECALLING the “Decision on Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds”, filed publicly on 30 January 2013 (“Decision”), in which the Appeals Chamber granted the request filed by Vujadin Popović (“Popović”) to be provisionally released for a period of three days from 8 February to 10 February 2013 on the condition that the Government of Republika Srpska, no later than 4 February 2013, provides additional guarantees indicating that it would respect and ensure compliance with specific conditions set out in the disposition of the Decision;

RECALLING the “Notice of Filing Additional Guarantees from the Government of Republika Srpska”, filed publicly with confidential annex by Popović on 1 February 2013 (“Notice”), in which Popović annexed additional guarantees provided by the Government of Republika Srpska (“Additional Guarantees I”);

BEING SEISED OF the “Urgent Prosecution Motion for a Declaration that the Additional Guarantees Offered by Republika Srpska are Insufficient for the Release of Vujadin Popović”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 5 February 2013 (“Motion”);

NOTING the “Additional Guarantees re: Decision on Vujadin POPOVIĆ’s Urgent Motion for Custodial Release on Compassionate Grounds issued by the ICTY Appeals Chamber”, filed confidentially by the Government of Republika Srpska on 5 February 2013 (“Additional Guarantees II”), in which the Government of Republika Srpska guarantees that Popović will spend every night from 23:00 hours to 7:00 hours in the morning on the premises of the Šekovići police station, and that it will send a written report to the Tribunal every day during Popović’s stay in the Republika Srpska;¹

NOTING the “Additional guarantees re. Decision on Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds issued by the ICTY Appeals Chamber”, filed confidentially by the Government of Republika Srpska on 5 February 2013 (“Additional Guarantees III”), in which the Government of Republika Srpska guarantees that it will take full responsibility for 24-hour surveillance of Popović “by armed employees of the Ministry of the

¹ Additional Guarantees II, paras 1-2.

Interior of Republika Srpska” and that it will bring Popović into the United Nations Detention Unit of the Tribunal should he attempt to escape;²

NOTING the “Response to Urgent Prosecution Motion for a Declaration that the Additional Guarantees Offered by Republika Srpska are Insufficient for the Release of Vujadin Popović”, filed confidentially by Popović on 5 February 2013 (“Response”), in which Popović argues that the Motion should be denied as “spurious”, as the guarantees provided by the Government of Republika Srpska on 17 January 2013 and the Additional Guarantees I are adequate and that, “[i]n any event, the Government of Republika Srpska has filed the [Additional Guarantees II] which include the missing clauses noted in the [Motion], thus rendering the [M]otion moot”;³

CONSIDERING that the Additional Guarantees I fail to refer to: (i) Popović’s 24-hour *armed* surveillance by authorised officials of the Ministry of Interior of the Republika Srpska;⁴ (ii) Popović’s immediate detention should he attempt to escape from the territory of the Republika Srpska or the custody of the authorised official(s) of the Ministry of Interior of the Republika Srpska, or should he in any other way breach the terms and conditions of his provisional release;⁵ (iii) the local prison facility in Šekovići, Republika Srpska where Popović shall stay each night between 23:00 hours and 7:00 hours the next day;⁶ and (iv) daily written reports being sent to the Tribunal during Popović’s stay in the Republika Srpska⁷ (together, “Missing Guarantees”);

FINDING THEREFORE that the Additional Guarantees I do not indicate that the Government of Republika Srpska would respect and ensure compliance with all conditions set out in the disposition of the Decision;

CONSIDERING, HOWEVER, that in the Additional Guarantees II and III the Government of Republika Srpska has confirmed that it will assume responsibility for the Missing Guarantees;

CONSIDERING that the Additional Guarantees II and III were filed one day after the expiration of the time-limit set out in the Decision, but that the matter at issue constitutes a special circumstance related to humanitarian and compassionate considerations, as it concerns Popović’s provisional release in order to attend the memorial service for his deceased mother;

² Additional Guarantees III, paras 1-2.

³ Response, paras 1, 3, referring to, *inter alia*, Guarantee of the Government of the Republika Srpska, S/M – 1/13 conf., dated 15 January 2013 attached to Addendum to Vujadin Popović’s Urgent Motion for Custodial Release, 17 January 2013 (confidential).

⁴ See Decision, p. 5.

⁵ Decision, p. 6.

FINDING THEREFORE that it is appropriate, in the circumstances of this case, to accept the Additional Guarantees II and III as being validly filed⁸, and that the Government of Republika Srpska has informed the Appeals Chamber that it will assume responsibility for all specific conditions set out in the Disposition of the Decision;

FINDING FURTHER that the present decision does not contain any information to warrant giving it a confidential status;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 65(I) of the Rules of Procedure and Evidence,

HEREBY DENIES the Motion and **AUTHORISES** provisional release for Popović for a period of three days from 8 February 2013 to 10 February 2013 as set out in the Decision.

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



Judge Patrick Robinson
Presiding

Dated this seventh day of February 2013,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ Decision, p. 5.

⁷ Decision, p. 6.

⁸ It is within the Appeals Chamber's discretion to recognise as validly done any act done after the expiration of a prescribed time-limit. *Cf.* Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal, Doc. IT/155 Rev. 4, 4 April 2012, para. 19.