

**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: 12 December 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge William H. Sekule
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Mandiaye Niang

Registrar: Mr. John Hocking

Decision of: 12 December 2014

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIOVOJE MILETIĆ
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON VINKO PANDUREVIĆ'S RENEWED MOTION
FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Barbara Goy

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. 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);

BEING SEISED OF the “Renewed Motion on Behalf of Vinko Pandurević for Provisional Release” filed publicly with a confidential annex by Vinko Pandurević (“Pandurević”) on 29 July 2014 (“Motion”),¹ in which Pandurević requests that he be granted provisional release “for the remainder of the appeal phase”;²

NOTING the “Prosecution Response to Pandurević’s Renewed Motion for Provisional Release” filed by the Office of the Prosecutor (“Prosecution”) on 8 August 2014 (“Response”), in which the Prosecution opposes the Motion;³

NOTING that Pandurević did not file a reply;

NOTING the “Decision on Vinko Pandurević’s Motion for Provisional Release” issued by the Appeals Chamber on 14 March 2014 (“14 March 2014 Decision”), in which it, Judge Mandiaye Niang dissenting, was “not satisfied that Pandurević’s time in detention, considering the specific facts of his case, amounts to a special circumstance warranting his provisional release at this time”⁴ and denied Pandurević’s application for provisional release;⁵

NOTING Pandurević’s submission that the circumstances have changed since the 14 March 2014 Decision and are now weighing in favour of his provisional release as he “has now served over 70% of the sentence passed upon him by the Trial Chamber and there is no apparent or immediate prospect of a judgment from the Appeals Chamber”;⁶

RECALLING that, pursuant to Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“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

¹ The confidential annex contains a guarantee from the Government of the Republic of Serbia. See Motion, Annex (confidential).

² Motion, paras 1, 25.

³ Response, paras 1-5.

⁴ 14 March 2014 Decision, para. 19. See also 14 March 2014 Decision, para. 18. The Appeals Chamber found that Pandurević did not pose a flight risk and that, if provisionally released under the same conditions previously imposed, he would not pose a danger to any victim, witness or other person. See 14 March 2014 Decision, paras 15, 17.

⁵ 14 March 2014 Decision, para. 20.

⁶ Motion, para. 4. See also Motion, paras 10, 13-24.

released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release;⁷

RECALLING that the requirements under Rule 65(I) of the Rules must be considered cumulatively, and the discretionary assessment of whether they have been met is made on a case-by-case basis;⁸

CONSIDERING that the passage of nine months since the issuance of the 14 March 2014 Decision does not constitute a material change having any impact on the factors previously considered by the Appeals Chamber as weighing against granting Pandurević provisional release – *i.e.* (i) the pending appeal of the Prosecution against Pandurević which could possibly result in an increased sentence; (ii) the fact that Pandurević did not surrender promptly upon learning of the indictment against him; and (iii) the fact that the hearing of the appeal in this case has been concluded;⁹

NOTING that the factors cited by Pandurević in support of the Motion are essentially repetitive of those previously rejected by the Appeals Chamber,¹⁰

CONSIDERING that by renewing his request for provisional release under the present circumstances Pandurević is, in effect, seeking a reconsideration of the 14 March 2014 Decision without filing a motion for reconsideration or presenting arguments in support of such a request;¹¹

CONSIDERING that the delivery of the judgement in the present case is scheduled for 30 January 2015;¹²

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

FOR THE FOREGOING REASONS

DISMISSES the Motion.

Judge Mandiaye Niang appends a declaration.

⁷ 14 March 2014 Decision, para. 5 and reference cited therein.

⁸ 14 March 2014 Decision, para. 5 and reference cited therein.

⁹ See 14 March 2014 Decision, para. 19.

¹⁰ See 14 March 2014 Decision, paras 7-9, 13-19.

¹¹ See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Vladimir Lazarević's Motion for Temporary Provisional Release, 15 December 2011 (confidential), p. 3. See also Decision on Drago Nikolić's Fourth Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 3 September 2014, p. 2.

¹² Scheduling Order for Pronouncement of Judgement, 17 November 2014.

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



Judge Patrick Robinson
Presiding

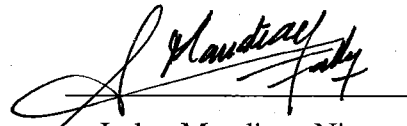
Dated this twelfth day of December 2014,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

DECLARATION OF JUDGE MANDIAYE NIANG

1. In my dissenting opinion appended to the Decision on Pandurević's Motion for Provisional Release of 14 March 2014, I expressed the view that a strong case was made for Vinko Pandurević to be granted provisional release. This view still holds.
2. It does not stretch however to the extent of supporting this Renewed Motion for Provisional Release which does not propose any meaningful new circumstances since the issuance of the earlier decision. Thus, I join my colleagues in rejecting the Motion.

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



Judge Mandiaye Niang

Done this twelfth day of December 2014,
At The Hague,
The Netherlands.

[Seal of the Tribunal]