



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-05-88-T
Date: 7 December 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 7 December 2006

PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

**DECISION ON DEFENCE MOTIONS FOR PROVISIONAL
RELEASE OF RADIVOJE MILETIĆ AND MILAN GVERO**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

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”):

BEING SEISED OF the “Requête du Général Miletić aux Fins de Mise en Liberté Provisoire Pendant les Vacances Judiciaires d’Hiver”, filed confidentially on 6 November 2006 (“Miletić’s Motion”), and the “Motion for the Provisional Release of Milan Gvero During the Winter Recess”, filed confidentially on 8 November 2006 (“Gvero’s Motion”), in which the Defence for Miletić and Gvero (collectively the “Accused”) request that the Trial Chamber grant provisional release to the Accused pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) between 15 December 2006 and 8 January 2007;¹

NOTING the previous decisions of this Trial Chamber regarding provisional release of the two Accused, pursuant to which Miletić and Gvero were provisionally released between 22 July 2005 and 4 July 2006 and between 15 July 2006 and 14 August 2006;²

NOTING the arguments in support of Miletić’s Motion:

- (i) Miletić’s wife suffers from a serious illness and had to undergo urgent surgery on 6 November 2006³ and Miletić wishes to help his wife during her recovery,⁴
- (ii) Miletić surrendered to the Tribunal voluntarily on 28 February 2005; he was previously granted provisional release on two occasions and during those periods he acted in compliance with the Tribunal’s orders and decisions,⁵
- (iii) The conditions for provisional release set out in Rule 65 (B) have been met in the present case and Miletić’s “personal and family reasons” justify his being granted provisional release during the winter judicial recess;⁶

NOTING the “Addendum à la Requête du Général Miletić aux Fins de Mise en Liberté Provisoire Déposée le 6 Novembre 2006”, filed confidentially on 9 November 2006 (“Miletić’s First Addendum”), in which the Defence provides guarantees from the Government of the Republic of

¹ Both Defence for Miletić and Gvero request the period of provisional release until 8 January 2007 as the Orthodox Christmas is celebrated on 7 January. See Miletić’s Motion, para. 10 and Gvero’s Motion, para. 9.

² *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT (“*Tolimir et al.*”), Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005; *Tolimir et al.*, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005; *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, and Pandurević*, Case No. IT-05-88-PT (“*Popović et al.*”), Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 Until the Continuation of Trial, 13 July 2006.

³ The Defence provided Mrs. Miletić’s medical record in the Annex to the Motion.

⁴ Miletić’s Motion, para. 3.

⁵ Miletić’s Motion, para. 4.

⁶ Miletić’s Motion, paras 9-10.

Serbia (“Republic of Serbia”)⁷, and submits that Miletić’s mother died on 6 November 2006, and that he would like to attend the traditional Serb “40-day commemoration”;⁸

NOTING the “Addendum To General Miletić’s Motion for Provisional Release Filed on 6 November 2006” (“Miletić’s Second Addendum”), filed confidentially on 22 November 2006, providing the Trial Chamber with the death certificate of the Accused’s mother;⁹

NOTING the arguments in support of Gvero’s Motion:

- (i) Gvero was hospitalised during his provisional release between 28 November 2005 and 16 December 2005 for certain medical problems,¹⁰ and he has scheduled a follow-up appointment with the same team of physicians of the Belgrade Medical Military Academy between 18 and 22 December 2006,¹¹
- (ii) Gvero’s father-in-law died on 2 September 2006 and there will be a memorial service held in Belgrade on 24 December 2006, which Gvero would like to attend,¹²
- (iii) Gvero was provisionally released on two occasions; throughout both periods of release he complied with the conditions imposed upon him by the Trial Chamber, and therefore the requirements set out in Rule 65 (B) are met;¹³

NOTING that in an annex to Gvero’s Motion, the Defence provided the guarantees from the Republic of Serbia;¹⁴

NOTING the “Filing Pursuant to the Motion Seeking the Provisional Release of Milan Gvero During the Winter Recess” (“Gvero’s Filing”), filed confidentially on behalf of Gvero on 15 November 2006, in which it is indicated that Gvero’s medical appointment is scheduled for 20 December 2006 at the Cardiology Clinic of the Medical Military Academy in Belgrade;¹⁵

NOTING the “Prosecution’s Response to Defence Motions by the Accused Radivoje Miletić and Milan Gvero Regarding Provisional Release During the Winter Recess”, filed confidentially on 17 November 2006 (“Response”), in which the Prosecution opposes the Motions on the grounds that:

⁷ Miletić’s First Addendum, Annex, a translation was filed confidentially on 16 November 2006.

⁸ Miletić’s First Addendum, para. 3 .

⁹ Miletić’s Second Addendum, annex.

¹⁰ Gvero’s Motion, Annex A.

¹¹ Gvero’s Motion, para. 7(i) and Annex A; the English translation of the annex was filed on 21 November 2006.

¹² Gvero’s Motion, para. 7(ii) and Annex B; the English translation of the annex was filed on 21 November 2006.

¹³ Gvero’s Motion, paras 2-5.

¹⁴ Gvero’s Motion, para. 8 and Annex C; the English translation of the annex was filed on 21 November 2006.

¹⁵ Gvero’s Filing, para. 2; the Annex to this submission includes a copy from the Medical Military Academy confirming the appointment.

- (i) the authorities of the Republic of Serbia “have not provided satisfactory guarantees that the Accused M[iletić] and G[vero] will reappear for trial”,¹⁶
- (ii) the “Government of Serbia has not been helpful in securing the surrender of the remaining important fugitives, including General Mladić and General Tolimir, both of whom are also accused of the same Srebrenica-related crimes [...]”,¹⁷
- (iii) although the guarantees by a State are not “a prerequisite for provisional release [...] the Tribunal relies heavily on the cooperation from the countries of the former Yugoslavia to apprehend indicted fugitives within their borders”;¹⁸

NOTING that in the Response the Prosecution further submits that, should the Trial Chamber grant Miletić and Gvero’s Motions, the Prosecution intends to appeal such a decision, and therefore requests a stay of the Trial Chamber’s decision pursuant to Rule 65 (E) (“Prosecution’s Request for a Stay of the Decision”);¹⁹

NOTING the “Demande d’Autorisation de Réplique et la Réplique Jointe du Général Miletić et du Général Gvero à la Réponse du Procureur Relative à la Mise en Liberté Provisoire”, filed confidentially by the Defence of the two Accused on 20 November 2006 (“Joint Reply”), in which the Defence’s main arguments are the following:

- (i) in the *Milutinović et al.* case, the Prosecution also opposes the requests for provisional release of the accused during the winter judicial recess, but “did not have any reservations about the reliability of the guarantees provided by the Republic of Serbia”,²⁰
- (ii) the reliability of a government guarantee “must be determined in relation to the circumstances which arise in the particular case [...]”, and “the conduct of General Miletić and General Gvero leaves no doubt that they will return to the Detention Unit on the date determined by the Tribunal”,²¹

¹⁶ Response, para. 5.

¹⁷ *Ibid.*, the Prosecution notes that “this insufficient cooperation by the Republic of Serbia was remarked upon as early as December 2005” and cites Carla Del Ponte’s and Judge Fausto Pocar’s Addresses to the Security Council on 15 December 2005.

¹⁸ *Ibid.*, para. 6.

¹⁹ *Ibid.*, para. 8.

²⁰ Joint Reply, para. 8.

²¹ *Ibid.*, para. 11.

- (iii) the Accused should be granted provisional release for “principles of humanity”, as “[b]oth of them have submitted convincing reasons of a personal and family nature that justify their provisional release during the winter recess”,²²
- (iv) it has been sufficiently established that the Accused will return to the Detention Unit at the dates set by the Trial Chamber and “the Prosecution does not contest, that it has been established that the provisional release of General Miletić and General Gvero will not pose a danger to the victims, witnesses or any other person”;²³

NOTING the communication from the Registrar informing the Trial Chamber that there is a clear indication that the medical condition of Gvero is well-known and is being attended to at the United Nations Detention Unit;²⁴

CONSIDERING that, pursuant to Rule 65(B), a Trial Chamber may order the provisional release of an accused only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the following two requirements are met: (i) the accused will appear for trial, (ii) if released, the accused will not pose a danger to any victim, witness or other person;

CONSIDERING Rule 65 (C) according to which the Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others;

CONSIDERING Rule 65 (G) pursuant to which, where a Trial Chamber orders a stay of its decision to release the accused pending an appeal by the Prosecutor, the accused shall not be released until either (i) the time-limit of an appeal by the Prosecutor has expired and no such appeal is filed; (ii) the Appeals Chamber dismisses the appeal; or (iii) the Appeals Chamber otherwise orders;

NOTING that the host country was notified of the Motion, and does not object to the provisional release of the Accused;²⁵

²² *Ibid.*, para. 12.

²³ *Ibid.*, para. 13.

²⁴ Submission of the Registrar pursuant to a Request for Information by the Trial Chamber both filed confidentially and *ex parte* on 5 December 2006.

²⁵ Two letters from the Deputy Director of Protocol for the Minister of Foreign Affairs of The Netherlands were addressed to the Chief CMS of the Tribunal and filed on 16 November 2006, informing the Tribunal that The Netherlands does not object to the provisional release of the Accused.

CONSIDERING the guarantees provided by the Republic of Serbia, in which the government states that should the Trial Chamber grant provisional release to the Accused, the Republic of Serbia would comply with all orders of the Trial Chamber in order for the Accused to appear before the Tribunal at the time determined by the Trial Chamber;²⁶ and that the circumstances surrounding the guarantees do not differ from those considered by the Trial Chamber in its previous decisions;²⁷

CONSIDERING that the Accused Miletić and Gvero have voluntarily surrendered to the custody of the Tribunal on 28 February 2005 and 24 February 2005, respectively; that they were provisionally released twice before this date, and have, during both periods, complied with all conditions imposed upon them by the Trial Chamber, including returning to the Detention Unit in compliance with the Trial Chamber's Decision suspending provisional release;²⁸

CONSIDERING that, in light of the submissions of the Registrar,²⁹ Gvero's arguments with regards to his medical condition and the appointment scheduled for him in Belgrade on 20 December 2006 do not constitute grounds for provisional release;³⁰ however, if released, nothing would preclude him from attending any medical examination he wishes to;

CONSIDERING that the jurisprudence of the Tribunal gives due weight to the personal circumstances of the Accused in deciding whether to grant provisional release;³¹

CONSIDERING the personal circumstances submitted by the Defence, including the recent passing away of the Accused's close relatives and the ceremonies that will take place in this respect;

CONSIDERING that the Trial Chamber is satisfied that the Accused, if temporarily released during the break in proceedings over the Tribunal's winter judicial recess, will return for the resumption of the trial and will not pose a danger to any victim, witness or other person;

²⁶ Miletić's First Addendum, Annex, translation filed on 16 November 2006; Gvero's Motion, Annex C, translation filed on 21 November 2006.

²⁷ *Tolimir et al.*, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 3; *Tolimir et al.*, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005, para. 3; *Popović et al.*, Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 Until the Continuation of Trial, 13 July 2006, p. 2.

²⁸ *Popović et al.*, Order Suspending Provisional Release, 6 June 2006.

²⁹ See *supra* footnote 24.

³⁰ See for example *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel Request for Provisional Release, 23 February 2006, para. 17; *Prosecutor v. Strugar*, Case No. IT-01-42-A, Decision on Defence Motion: Request for Providing Medical Aid in the Republic of Montenegro in Detention Conditions", 8 December 2005, pp.3-4."

³¹ *Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić*, Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Prlić, 26 June 2006, and similar decisions on the same date for each accused in this case; *Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Motion for Provisional Release 1 September 2005.

CONSIDERING that the personal circumstances in this case justify a shorter period of provisional release than the one requested by the parties;

FOR THE FOREGOING REASONS,

PURSUANT to Article 29 of the Statute and Rules 54 and 65;

HEREBY GRANTS the Motion **IN PART** and **ORDERS** the provisional release of the Accused Radivoje Miletić as soon as practicable on or after 15 December 2006 until 23 December 2006 and the provisional release of the Accused Milan Gvero as soon as practicable on or after 19 December 2006 until 27 December 2006 on the following terms and conditions:

- a. Respectively, as soon as practicable on or after 15 December 2006, and 19 December 2006, the Accused Radivoje Miletić and Milan Gvero shall be transported to Schiphol airport in The Netherlands by the Dutch authorities,
- b. At Schiphol airport, the Accused shall be provisionally released into the custody of a designated official of the Government of the Republic of Serbia, who shall accompany the Accused for the remainder of their travel to Belgrade, Republic of Serbia and to their places of residence therein,
- c. during the period of their provisional release, the Accused shall abide by the following conditions, and the authorities of the Government of the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
 - i. to provide the addresses at which they will be staying in Belgrade to the Ministry of Internal Affairs of the Republic of Serbia and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague,
 - ii. to remain within the confines of the municipality of Belgrade;
 - iii. to surrender their passport to the Ministry of Internal Affairs of the Republic of Serbia,
 - iv. to report each day to the police in Belgrade at a local police station to be designated by the authorities of the Republic of Serbia,
 - v. to consent to having the Ministry of Internal Affairs of the Republic of Serbia check with the local police about their presence and to the making of

occasional, unannounced visits upon the Accused by the same Ministry or by a person designated by the Registrar of the International Tribunal,

vi. not to have any contact with the co-accused in the case,

vii. not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice,

viii. not to discuss their case with anyone, including the media, other than with their counsel,

ix. to continue to cooperate with the International Tribunal,

x. to comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees,

xi. to comply strictly with any further Order of the International Tribunal varying the terms of or terminating their provisional release,

- d. The Accused shall return to the Detention Unit no later than 23 December 2006 for Radivoje Miletić and 27 December 2006 for Milan Gvero. They shall be accompanied from their places of residence in Belgrade by the designated officials of the Government of the Republic of Serbia, who shall deliver the Accused into the custody of the Dutch authorities at Schiphol airport; the Dutch authorities shall then transport the Accused back to the Detention Unit;

REQUIRES the government of the Republic of Serbia to assume responsibility as follows:

- a. by designating officials of the Government of the Republic of Serbia into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to the Republic of Serbia and to their respective place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the International Tribunal of the name of the designated officials,
- b. for the personal security and safety of the Accused while on provisional release,
- c. for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back,

- d. for all expenses concerning accommodation and security of the Accused while on provisional release,
- e. at the request of the International Tribunal, or the parties, to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication,
- f. to arrest and detain the Accused immediately if they should breach any of the conditions of this Order, and
- g. to report immediately to the Trial Chamber any breach of the conditions set out above;

DENIES the Motions in all other aspects;

and **FURTHER GRANTS** the Prosecution's Request for a Stay of the Decision and **ORDERS** as follows,

(1) the Prosecution may file an appeal no later than one day from the rendering of this decision,

(2) the Accused shall not be released, save as provided in Rule 65(G);

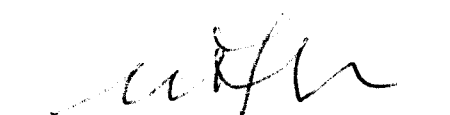
INSTRUCTS the Registrar to consult with the Ministry of Justice of the Netherlands as to the practical arrangements for their release; and

REQUESTS the authorities of all States through which they will travel:

- (i) to hold the Accused in custody for any time they will spend in transit at the airport,
- (ii) to arrest and detain the Accused pending their return to the United Nations Detention Unit, should they attempt to escape;

and **FURTHER ORDERS** that the Accused shall be immediately detained should they breach any of the foregoing terms and conditions of their provisional release.

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



Carmel Agius
Presiding Judge

Dated this seventh day of December 2006,
At The Hague,
The Netherlands

[Seal of the Tribunal]