



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-T

Date: 7 December 2007

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 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTIONS FOR PROVISIONAL RELEASE DURING THE
WINTER JUDICIAL RECESS**

Office of the Prosecutor
Mr. Peter McCloskey

Republic of Serbia

Counsel for the Accused

Kingdom of the Netherlands

Mr. Zoran Živanović and Ms. Mira Tapušković 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 and Mr. Nenad Petrušić 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”) is seised of “General Miletić’s Motion for Provisional Release During Winter Judicial Recess”, filed confidentially in the original French on 20 November 2007 (“Miletić Motion”),¹ and the “Motion for the Provisional Release of Milan Gvero During the 2007–2008 Winter Recess”, filed confidentially on 26 November 2007 (“Gvero Motion”), and hereby renders its decision thereon.

I. SUBMISSIONS

1. Miletić requests to be provisionally released, pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”), from 15 December 2007 to 7 January 2008 or for such period as thought appropriate by the Trial Chamber, subject to the same terms and conditions under which he was provisionally released on several occasions.²

2. Gvero requests to be provisionally released, pursuant to Rule 65, from 16 December 2007 to 8 January 2008 or for such period as thought appropriate by the Trial Chamber, subject to the same terms and conditions under which he was provisionally released on several occasions.³

3. Both Miletić and Gvero present guarantees provided by the Republic of Serbia which confirm that the Republic of Serbia will respect all orders made by this Trial Chamber in respect of their provisional release.⁴ Furthermore, they submit that a number of factors, including their voluntarily surrender to the custody of the Tribunal,⁵ their previous provisional releases during which they complied with all the conditions imposed on them by the Trial Chamber,⁶ and personal circumstances,⁷ militate in favour of granting their requests.

4. The Prosecution submits that “[a] determination as to whether release is to be granted must be made in light of the particular circumstances of each case”, and therefore even if the requirements of Rule 65(B) are met, the Trial Chamber has the discretion to refuse to order

¹ English translation 23 November 2007. On 26 November 2007, Miletić filed confidentially in the original French the “Addendum to General Miletić’s Motion for Provisional Release Filed on 20 November 2007” (“Addendum to Miletić Motion”), English translation 27 November 2007.

² Miletić Motion, paras. 1–2, 11–12.

³ Gvero Motion, paras. 1, 12.

⁴ Miletić Motion, para. 9, Annex A; Gvero Motion, para. 9, Annex A.

⁵ Miletić Motion, para. 6; Gvero Motion, para. 2.

⁶ Miletić Motion, paras. 6, 8; Gvero Motion, paras. 3–6, 10. Miletić also appends a personal guarantee that lists a number of conditions that he will abide by during his provisional release and states that he will respect the conditions imposed by the Trial Chamber regarding his provisional release. Miletić Motion, paras. 7–8.

⁷ Miletić Motion, paras. 3–5, Annexes B and C; Addendum to Miletić Motion, para. 2, Annex; Gvero Motion, para. 11, Annexes B and C.

provisional release.⁸ It opposes the requests of Miletić and Gvero on the ground that the risk of their flight had increased “now that the Prosecution has nearly finished presenting its case in chief” and Miletić and Gvero “are aware of the extent of the evidence against them.”⁹

5. Miletić and Gvero seek leave to reply to the Prosecution Response.¹⁰ Gvero argues that the Prosecution has not expanded on why the fact that it has nearly completed its case significantly increases the risk of flight,¹¹ and submits that he “has, for a significant period of time, known the extent of the evidence against him.”¹² Miletić argues that the Prosecution did not show that he was unaware of the charges against him.¹³ Furthermore, he submits that in the case-law of the Tribunal accused were granted provisional release at an advanced stage of the proceedings, including after the completion of the Prosecution case.¹⁴

II. DISCUSSION

6. Rule 65 governs provisional release. 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, and (ii) if released, the accused will not pose a danger to any victim, witness or other person. Rule 65(C) provides that “[t]he 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”.

7. The Trial Chamber is in receipt of letters from the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which in its capacity as the host country, affirms that it has no objection to the provisional release of Miletić and Gvero.¹⁵

⁸ Confidential Prosecution Response to Defence Motions by the Accused Radivoje Miletić and Milan Gvero for Provisional Release During the Winter Judicial Recess, 3 December 2007 (“Prosecution Response”), para. 4.

⁹ *Ibid.*, paras. 2, 5, 7.

¹⁰ Confidential Request for Leave to Reply and Reply of General Miletić to the Prosecution Response to the Request for Provisional Release, filed confidentially in the original French on 5 December 2007 (“Miletić Reply”), paras. 3, 11; Confidential Request for Leave to Reply and Reply to Prosecution Response to Milan Gvero’s Application for Provisional Release During the Winter Recess, filed confidentially on 5 December 2007 (“Gvero Reply”), paras. 3, 10.

¹¹ Gvero Reply, paras. 6–8.

¹² Gvero adds that “if anything, the case has become less strong. Of course that is not the point, but one can fairly say that the case against him has become no stronger to any real extent.” *Ibid.*, para. 7.

¹³ Miletić Reply, para. 7.

¹⁴ *Ibid.*, para. 5.

¹⁵ Correspondence from Host Country Regarding the Provisional Release of Radivoje Miletić, 21 November 2007; Correspondence from Host Country Regarding the Provisional Release of Milan Gvero, 29 November 2007.

8. The Trial Chamber is not satisfied that the Prosecution has adduced sufficiently convincing arguments that in the present circumstances of Miletić and Gvero the fact that the Prosecution case is nearing its end will effect the risk of the flight of these accused.

9. It also does not find the personal circumstances raised by Miletić and Gvero to have any relevance or to carry any weight for the purpose of their request, which can be acceded to on different grounds, *i.e.* those grounds on the basis of which they were granted provisional release on previous occasions.

10. In addition, as on the previous occasions when it granted provisional release to Miletić and Gvero, the Trial Chamber takes into account the guarantees provided by the Republic of Serbia, the voluntary surrender of Miletić and Gvero, and the fact that on those occasions that they were provisionally released, Miletić and Gvero fully complied with the terms and conditions imposed on them. Consequently, even at this stage of the proceedings, the Trial Chamber is satisfied that, if temporarily released during the Tribunal's winter judicial recess, Miletić and Gvero will return for the resumption of the trial and will not pose a danger to any victim, witness or other person. The Trial Chamber therefore finds it appropriate to grant Miletić and Gvero's requests for provisional release.

III. DISPOSITION

11. For these reasons, pursuant to Article 29 of the Statute of the Tribunal and Rule 65 of the Rules, the Trial Chamber hereby

- a) **GRANTS** leave to Miletić and Gvero to reply to the Prosecution Response;
- b) **GRANTS** the Miletić and Gvero Motions, and **ORDERS** the provisional release of both Miletić and Gvero on the following terms and conditions:
 - 1) Miletić shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable on or after 15 December 2007;
 - 2) at Schiphol airport, Miletić shall be provisionally released into the custody of a designated official of the Republic of Serbia, who shall accompany him for the remainder of his travel to Belgrade, Republic of Serbia and to his place of residence therein;
 - 3) Gvero shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable on or after 16 December 2007;

4) at Schiphol airport, Gvero shall be provisionally released into the custody of a designated official of the Republic of Serbia, who shall accompany him for the remainder of his travel to Belgrade, Republic of Serbia and to his place of residence therein;

5) during the period of their provisional release, Miletić and Gvero shall abide by the following conditions, and the authorities 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 Tribunal, before leaving the United Nations Detention Unit ("UNDU") 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 by the same Ministry or by a person designated by the Registrar of the 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 comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under this Decision and their guarantees;

x. to comply strictly with any further order of the Tribunal varying the terms of or terminating their provisional release;

6) Miletić shall return to the UNDU no later than 7 January 2008, and Gvero shall return to UNDU no later than 8 January 2008, unless otherwise ordered by the Trial Chamber. They shall be accompanied from their places of residence in Belgrade by the designated officials of the Republic of Serbia, who shall deliver them into the custody of the Dutch authorities at Schiphol airport; the Dutch authorities shall then transport them back to the UNDU;

c) **REQUIRES** the Republic of Serbia to assume responsibility as follows:

1) by designating officials of the Republic of Serbia into whose custody Miletić and Gvero shall be provisionally released and who shall accompany Miletić and Gvero 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 name of the designated officials;

2) for the personal security and safety of Miletić and Gvero while on provisional release;

3) for all expenses concerning transport of Miletić and Gvero from Schiphol airport to Belgrade and back;

4) for all expenses concerning accommodation and security of Miletić and Gvero while on provisional release;

5) at the request of the Tribunal, or the parties, to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;

6) to arrest and detain Miletić and Gvero immediately if they should breach any of the conditions of this Decision; and

7) to report immediately to the Trial Chamber any breach of the conditions set out above;

d) **INSTRUCTS** the Registrar to consult with the Ministry of Justice of the Kingdom of the Netherlands as to the practical arrangements for the provisional release of Miletić and Gvero;

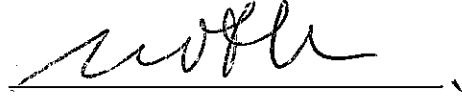
e) **REQUESTS** the authorities of all states through which Miletić and Gvero will travel:

1) to hold Miletić and Gvero in custody for any time they will spend in transit at the airport;

2) to arrest and detain Miletić and Gvero pending their return to the UNDU, should they attempt to escape; and

f) **ORDERS** that Miletić and Gvero 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 text being authoritative.



Carmel Agius
Presiding

Dated this seventh day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

