



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: 11 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: 11 December 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PANDUREVIĆ'S REQUEST FOR PROVISIONAL
RELEASE ON COMPASSIONATE GROUNDS**

Office of the Prosecutor
Mr. Peter McCloskey

The Government of the Republika Srpska

Counsel for the Accused

Kingdom of the Netherlands

Mr. Zoran Živanović and Ms. Mira Tapušковиć 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 seized of the confidential “Motion on behalf of the Accused Vinko Pandurević for Variation of the Terms of His Detention in Custody Such As to Permit Him a Short Visit to His Father on Compassionate Grounds”, filed on 22 November 2007 (“First Motion”), and the urgent and confidential “Further Motion on Behalf of the Accused Vinko Pandurević for Variation of the Terms of His Detention in Custody Such As to Permit Him to Attend a Memorial Service for His Father on Compassionate Grounds”, filed on 4 December 2007 (“Second Motion”), and hereby renders its decision thereon.

I. SUBMISSIONS

1. On 22 November 2007, Pandurević filed the First Motion. He requested, pursuant to Article 21, subparagraphs (1) and (3), of the Statute of the Tribunal and Rule 65 of the Rules of Procedure and Evidence (“Rules”), to be provisionally released during the winter judicial recess for a limited period of days in order to visit his father, who was in a very poor state of health.¹
2. On 26 November 2007, Defence Counsel for Pandurević informed the Trial Chamber of the death of Pandurević’s father.²
3. On 4 December 2007, Pandurević filed the Second Motion, requesting to be provisionally released for a limited number of days during the winter recess to attend the memorial service of his father in the Municipality of Sokolac, Republika Srpska, Bosnia and Herzegovina.³
4. Pandurević submits that “[a]ccording to Serbian tradition there must be held a memorial service within 40 days of death”, and “[t]he 40th day is a significant day according to Orthodox beliefs”.⁴ The memorial service of Pandurević’s father is scheduled for 30 December 2007, while “[t]he 40th day after death is 6 January 2008.”⁵ He requests to “be permitted to attend the memorial service of his father, [...] and [...] to visit his mother and other members of his family at Jasik, in the Municipality of Sokolac, on all other days of the period of his release.”⁶ He therefore further requests to be provisionally released “on a date between 14 December 2007 and 29 December

¹ First Motion, p. 2, paras. 5–7; Second Motion, p. 2, para. 1.

² See T. 18258 (27 November 2007).

³ Second Motion, p. 2, para. 4. The death certificate of Pandurević’s father is attached to the Second Motion. *Ibid*, Annex I.

⁴ *Ibid*, para. 5.

⁵ *Ibid*, para. 5, Annex II. The Trial Chamber notes that according to the English translation of the declaration of the Serbian Orthodox Church of the Sokolac Municipality attached to the Second Motion “the 40 day memorial” will be held on 30 December 2007. *Ibid*, Annex II.

2007” and to “be permitted to remain in Republika Srpska, in the Municipality of Sokolac[,] for a period of not less [then] 10 days”, which will “cover the dates 30 December 2007 and 6 January 2008.”⁷

5. Pandurević has provided the Trial Chamber with the Government of the Republika Srpska Guarantee, as well as the Guarantee of the Ministry of Internal Affairs of Republika Srpska (“RS MUP”).⁸ He additionally provides the Trial Chamber with his Personal Guarantee.⁹

6. Pandurević also refers to the decision of this Trial Chamber to provisionally release his co-accused Borovčanin for a short period of time during the summer recess (“Borovčanin Decision”).¹⁰ Pandurević points out that Borovčanin “was granted short-term release, on near identical grounds.”¹¹ He proposes terms and conditions under which he could be provisionally released,¹² and submits that there is no risk of flight and that “the credibility and efficacy of the scheme is assured, given that such was the regime imposed on the accused Borovčanin upon his release, which event passed without difficulty.”¹³

7. Furthermore, he submits that in light of the stage of the proceedings against him, and the terms and conditions under which it is suggested to provisionally release him, he will not pose a danger to any victim, witness or other person.¹⁴

8. Finally, Pandurević notes that he had already filed two requests for provisional release, one during the pre-trial stage and one during trial proceedings, which were both denied.¹⁵ He submits “that the death of his father is a material change of circumstances since his last application for provisional release was refused.”¹⁶

⁶ *Ibid.*, para. 3, p. 4.

⁷ *Ibid.*, p. 4. Pandurević specifies that “a period of release, say 28 December until 9 January would be appropriate to permit the accused to attend the memorial service of his father, to participate in at least some of the remaining ritual surrounding his father’s death, and share in the grief of his family.” *Ibid.*, para. 9.

⁸ *Ibid.*, para. 8; First Motion, Annexes III and IV.

⁹ First Motion, paras. 11, 13, Annex V.

¹⁰ Confidential Decision on Borovčanin’s Motion for Leave to Withdraw Application for Provisional Release and to File Application for ‘Custodial Visit to His Father for a Short Fixed Period Based on Humanitarian Grounds’, 24 July 2007.

¹¹ First Motion, para. 10.

¹² Second Motion, pp. 4–5; First Motion, para. 12.

¹³ Second Motion., para. 8; First Motion, para. 13.

¹⁴ First Motion, paras. 14–16.

¹⁵ *Ibid.*, para. 3 (referring to the Decision on Pandurević’s Renewed Motion for Provisional Release, 6 June 2006 (“Second Pandurević Decision”); *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Denying Vinko Pandurević’s Application for Provisional Release, 3 October 2005 (“Pandurević Appeal Decision”); *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Vinko Pandurević’s Application for Provisional Release, 18 July 2005 (“First Pandurević Decision”)).

¹⁶ Second Motion, para. 7.

9. On 6 December 2007, the Prosecution filed the confidential “Prosecution Response to Pandurević’s Request for a Short Custodial Visit” (“Prosecution Response”). The Prosecution submits that it does not oppose Pandurević’s application for custodial conditions, but requests the Trial Chamber to subject his provisional release to the same terms and conditions as set out in the Borovčanin Decision.¹⁷

II. LAW ON PROVISIONAL RELEASE

10. 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”.

11. In addition, Trial Chambers have, in the exercise of their discretion on whether to grant or deny provisional release, given due weight to the personal circumstances of the accused.¹⁸

12. Moreover, the jurisprudence of the Tribunal shows that where a previous request for provisional release was denied, as in this case, the applicant must satisfy the Trial Chamber that there has been a material change in circumstances since the last application justifying reconsideration of the previous decision.¹⁹

¹⁷ Prosecution Response, paras. 2, 4. The Prosecution lists certain terms and conditions that were imposed in the Borovčanin Decision but are not mentioned in the list of terms and conditions proposed by Pandurević. *Ibid*, para. 3.

¹⁸ Borovčanin Decision, para. 15; Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 December 2006, pp. 5–6; *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, 17 August 2006, p. 4; *Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Motion for Provisional Release, 1 September 2005, pp. 5–6. *See also* *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-T, Decision on Lazarević Motion for Temporary Provisional Release, 18 June 2007, para. 6.

¹⁹ Borovčanin Decision, para. 15; *Prosecutor v. Limaj, Bala and Musliu*, Case No. IT-03-66-T, Decision on Defence Renewed Motion for Provisional Release of Fatmir Limaj, 26 October 2005, para. 8; *Prosecutor v. Šainović*, Case No. IT-99-37-PT, Decision on Third Defence Request for Provisional Release, 14 April 2005, para. 5. *See also* *Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Second Motion for Provisional Release, 12 September 2005, para. 33.

III. DISCUSSION

13. The Trial Chamber understands Pandurević's First and Second Motions to be a request for provisional release. The Trial Chamber notes that Pandurević's previous requests for provisional release were denied.²⁰ In order for it to consider the new request for provisional release, Pandurević has to show that there has been a material change in the circumstances since the denial of his previous request for provisional release.

14. The Trial Chamber notes the personal circumstances of Pandurević, which have dramatically changed since he last applied for provisional release, as well as the new guarantees provided by the Republika Srpska. The Trial Chamber is consequently satisfied that Pandurević has shown that there has been a material change in the circumstances since his last request for provisional release was denied. In addition, the Trial Chamber notes that the Prosecution does not oppose his provisional release in the current circumstances.

15. Furthermore, in the light of the new guarantees provided by Republika Srpska, which state that Pandurević will remain in custody throughout his transfer to and stay in Bosnia and Herzegovina, the Trial Chamber is satisfied that Pandurević will appear for trial and will not pose a danger to any victim, witness or other person.²¹

16. The Trial Chamber is also in receipt of a letter 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 Pandurević.²²

17. In light of the above, in exercising its discretion, the Trial Chamber considers that exceptional circumstances warrant, on humanitarian grounds, the provisional release of Pandurević from the United Nations Detention Unit ("UNDU"). It agrees, however, with the Prosecution's submission that Pandurević should be released under the same terms and conditions which were applied in the Borovčanin Decision.

²⁰ Second Pandurević Decision; Pandurević Appeal Decision; First Pandurević Decision.

²¹ The Trial Chamber notes that in the First Pandurević Decision the Trial Chamber was satisfied that, if he were provisionally released, Pandurević would not pose a risk to victims, witnesses or any other person. This conclusion was taken into consideration in the Second Pandurević Decision. However, Pandurević's second request for provisional release was denied on another ground: the Trial Chamber was not satisfied that there has been a material change in circumstances since the denial of Pandurević's first request for provisional release. First Pandurević Decision, para. 23; Second Pandurević Decision, p. 4.

²² Correspondence from Host Country Regarding the Provisional Release of Vinko Pandurević, 26 November 2007.

IV. DISPOSITION

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

(1) **GRANTS** Pandurević's request for provisional release, on the condition that any affected state has provided its agreement to the Registry, and decides as follows:

(a) the agreement from any affected state should be submitted to the Registry prior to the transfer of Pandurević, failing which no transfer will occur;

(b) as soon as practicable on or after 28 December 2007, Pandurević shall be transported to Schiphol airport in The Netherlands by the Dutch authorities;

(c) at Schiphol airport, Pandurević shall be transferred into the custody of a designated official of the Republika Srpska, who shall accompany Pandurević on the airplane;

(d) the authorities of all states through whose territory Pandurević may travel will hold Pandurević in custody for any time he will spend in transit at the airport and arrest and detain Pandurević pending his return to the UNDU, should he attempt to escape;

(e) during the period of Pandurević's stay in Republika Srpska, he shall abide by the following conditions, and the authorities of the Republika Srpska shall ensure compliance with such conditions:

(i) Pandurević shall be in custody at all times, *i.e.*, have armed members of the RS MUP guarding him 24 hours per day, while being allowed to attend the memorial service of his father and to visit his mother and other members of his family at Jasik, in the Municipality of Sokolac, during the day-time,

(ii) Pandurević shall remain within the confines of the municipality of Sokolac, Republika Srpska, Bosnia and Herzegovina, apart from his travel to and from the Airport,

(iii) Pandurević's travel documents shall be given to the European Union Police Mission ("EUPM") in Sarajevo or to the Office of the Prosecutor in Sarajevo, or to the Public Security Station in Sokolac,

(iv) Pandurević shall spend every night in the local detention facility, which is part of the Sokolac Public Security Centre,

(v) a written report shall be filed with the Tribunal confirming the presence of Pandurević each day,

(vi) Pandurević shall not discuss his case with anyone other than his counsel,

(vii) Pandurević shall not have any contact with the co-accused in the case,

(viii) Pandurević shall not 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,

(ix) Pandurević shall comply strictly with any requirements of the authorities of the Republika Srpska necessary to enable them to comply with their obligations under this decision and their guarantees;

(f) Pandurević shall return to the UNDU in the Hague 10 days after his departure from the UNDU, which should not be later than 8 January 2008;

(g) on his return Pandurević shall be accompanied on the airplane by the designated officials of Republika Srpska, who shall deliver him into the custody of the Dutch authorities at Schiphol airport, the Dutch authorities shall then transport him back to the UNDU;

(2) **REQUIRES** the Republika Srpska to assume responsibility as set out above, to cover all expenses concerning transport of Pandurević from Schiphol airport to Republika Srpska and back, to arrest Pandurević immediately if he should breach any of the conditions of this decision, and to report immediately to the Trial Chamber any breach of the conditions set out above;

(3) **REQUESTS** the Registry to obtain confirmation of the agreement of any state affected by the transfer, prior to arranging for the transfer of Pandurević to Republika Srpska, and to assist in obtaining the views of any state affected by the transfer, and to distribute this decision to the relevant states and organisations.

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



Carmel Agius
Presiding

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

[Seal of the Tribunal]