



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: 9 April 2008

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:** 9 April 2008

**PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON MILETIĆ REQUEST FOR PROVISIONAL RELEASE  
DURING THE BREAK IN THE PROCEEDINGS**

**Office of the Prosecutor**

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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. Christopher Gosnell 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 Suspension of the Hearings”, filed partially confidentially in the original French on 15 February 2008 (“First Motion”),<sup>1</sup> “General Miletić’s Urgent Motion Amending the Motion for Provisional Release During Suspension of Hearings Filed on 15 February 2008”, filed confidentially in the original French on 11 March 2008 (“Second Motion”),<sup>2</sup> “Urgent Addendum to General Miletić’s Motions for Provisional Release Filed 15 February and 11 March 2008”, filed confidentially in the original French on 3 April 2008 (“Addendum to First and Second Motions”),<sup>3</sup> and hereby renders its decision thereon.<sup>4</sup>

## I. PROCEDURAL BACKGROUND

1. On 15 February 2008, Miletić filed partially confidentially the First Motion. On 22 February 2008, the Prosecution filed confidentially the “Prosecution Response to Gvero’s and Miletić’s Motions for Provisional Release During the Forthcoming Break in the Proceedings” (“First Response”). On 25 February 2008, Miletić filed confidentially in the original French “General Miletić’s Request for Leave to Reply and Reply to Prosecution Response Regarding Provisional Release” (“First Reply”).<sup>5</sup>

2. On 11 March 2008, Miletić filed confidentially the Second Motion. On 17 March 2008, the Prosecution filed confidentially the “Prosecution Response to Radivoje Miletić’s Urgent Request Modifying his Motion for Provisional Release of 15 February 2008” (“Second Response”). On 19 March 2008, Miletić filed confidentially in the original French “General Miletić’s Request for Authorization to Reply and Reply to Prosecution Response to the Motion Amending the Motion for Provisional Release” (“Second Reply”).<sup>6</sup>

3. On 3 April 2008, Miletić filed confidentially in the original French the Addendum to the First and Second Motions. The Prosecution informed the Trial Chamber, on 3 April 2008, that it was not going to respond to this filing. On 4 April Miletić filed confidentially in the original French the Second Addendum to the First and Second Motions.

<sup>1</sup> English translation 20 February 2008.

<sup>2</sup> English translation 4 April 2008.

<sup>3</sup> English translation 4 April 2008. On 4 April 2008, Miletić also filed confidentially the “Urgent Addendum to General Miletić’s Motions for Provisional Release with Annex” (“Second Addendum to the First and Second Motions”). English Translation 4 April 2008.

<sup>4</sup> The Trial Chamber has decided to render this Decision publicly.

<sup>5</sup> English translation 28 February 2008.

<sup>6</sup> English translation 26 March 2008.

## II. SUBMISSIONS

### A. First Motion

4. Miletić requests to be provisionally released to go to the Republic of Serbia from the period following the pronouncement of the Decision on the Accused's submissions made pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("Rules") ("Rule 98 *bis* Decision").<sup>7</sup> and until 19 May 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.<sup>8</sup>

5. Miletić submits that the Defence case is scheduled to commence not before 2 June 2008, and that "[i]n the trial phase of other cases before the Tribunal, provisional release has been granted to the accused during a suspension of the hearing".<sup>9</sup>

6. Furthermore, Miletić presents 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 his provisional release.<sup>10</sup> Moreover, he submits that a number of factors, including his voluntary surrender to the custody of the Tribunal and his previous provisional releases during which he complied with all the conditions imposed on him by the Trial Chamber, militate in favour of granting his request.<sup>11</sup>

7. The Prosecution opposes the Motion arguing that the circumstances since the last provisional release of Miletić have changed and the risk of flight has increased. The Prosecution submits that it "has closed its case-in-chief, the Trial Chamber has heard the Accuseds' Rule 98 *bis* submissions and the Prosecution response and soon will render its 98 *bis* decision. Now that the Accused know in full the evidence against them, there is an increased risk that they will not return to detention if they are granted provisional release."<sup>12</sup>

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<sup>7</sup> The Rule 98 *bis* Decision was rendered on 3 March 2008. T. 21460–21473 (3 March 2008).

<sup>8</sup> First Motion, paras. 2, 9.

<sup>9</sup> *Ibid.*, paras. 1, 7.

<sup>10</sup> *Ibid.*, para. 6, Annex. 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. *Ibid.*, paras. 4–5.

<sup>11</sup> *Ibid.*, para. 3.

<sup>12</sup> First Response, para. 5.

8. The Prosecution also submits that the length of the proposed period of provisional release is excessive and likely to adversely affect the level and quality of surveillance provided by the Serbian authorities, and thus to increase the risk of flight.<sup>13</sup>

9. Moreover the Prosecution requests a stay of the decision in order to file an appeal should the Trial Chamber grant provisional release to Miletić.<sup>14</sup>

10. Miletić seeks leave to reply to the Prosecution Response.<sup>15</sup> In addition to reiterating the submissions raised in the First Motion,<sup>16</sup> Miletić argues that the Prosecution has adduced no evidence against him of which he was not aware at the time of his indictment<sup>17</sup> and that it has provided no reason that would raise doubts as to his willingness to return to the Detention Unit should he be provisionally released.<sup>18</sup> He also submits that in the case-law of the Tribunal many accused were granted provisional release “at an advanced stage in the Prosecution case-in-chief or after the Prosecution had closed its case”.<sup>19</sup>

11. Miletić also submits that the Republic of Serbia provided assurances with full knowledge of the duration of the provisional release period requested.<sup>20</sup> He argues that during the pre-trial phase he was released for a period of 11 months, and that “the Republic of Serbia has never failed in its obligations to monitor and carry out the surveillance of Accused persons on provisional release.”<sup>21</sup>

## **B. Second Motion**

12. On 11 March 2008, Miletić filed confidentially a request to modify his First Motion.<sup>22</sup> In the Second Motion, Miletić requests the Trial Chamber to authorize him to travel to Republika Srpska, Bosnia and Herzegovina (BiH), for a period not exceeding five days<sup>23</sup> in order to visit his ailing father at his home in Višegrad or at the hospital in Foča, as well as to visit the graves of his mother and sister, who both deceased during his trial, respectively in Foča and Modrica,<sup>24</sup> during his provisional release to the Republic of Serbia.<sup>25</sup> In the event that his request to be provisionally

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<sup>13</sup> *Ibid.*, para. 6.

<sup>14</sup> *Ibid.*, paras. 2, 7.

<sup>15</sup> First Reply, paras. 3, 14.

<sup>16</sup> *Ibid.*, paras. 11–13.

<sup>17</sup> *Ibid.*, para. 7.

<sup>18</sup> *Ibid.*, paras. 6–7.

<sup>19</sup> *Ibid.*, para. 5.

<sup>20</sup> *Ibid.*, para. 9.

<sup>21</sup> *Ibid.*, paras. 9–10.

<sup>22</sup> Second Motion.

<sup>23</sup> *Ibid.*, para. 11.

<sup>24</sup> *Ibid.*, paras. 3–4, 9, 11, Annex II to IV.

<sup>25</sup> *Ibid.*, paras. 7, 11

released to the Republic of Serbia is denied, Miletić requests the Trial Chamber, in the alternative, to grant his request to be provisionally released for a short period of time, as thought appropriate by the Trial Chamber, in order to visit his father and the graves of his mother and sister in the Republika Srpska, on the basis of humanitarian grounds.<sup>26</sup>

13. Miletić presents guarantees provided by the Republic of Serbia and Republika Srpska, which confirm that they will respect all orders made by this Trial Chamber in respect of his provisional release.<sup>27</sup> Furthermore, he provides the Trial Chamber with names and addresses of potential hosts with whom he could reside during his stay in Višegrad, Foča and Modrica, Republika Srpska.<sup>28</sup> Miletić submits that, if the Trial Chamber grants his request to go to Republika Srpska during his provisional release to the Republic of Serbia, the risk of his flight would not be increased, and he would not pose a danger to any victim, witness or other person.<sup>29</sup>

14. The Prosecution maintains its opposition to the First Motion, and requests the Trial Chamber to deny also the Second Motion.<sup>30</sup> It argues that the Second Motion fails to establish a sufficient basis for Miletić's release on humanitarian grounds, particularly at this advanced stage of the proceedings,<sup>31</sup> and to suggest why his visit is warranted now.<sup>32</sup> The Prosecution argues that the information provided by Miletić regarding his father's health "does not establish that the Accused's father's health condition is critical",<sup>33</sup> and that Miletić fails to offer any justification as to why the visit to the graves of his mother and sister, who passed away on 6 November 2006 and on 3 January 2008, respectively, is necessary at this time.<sup>34</sup> Furthermore, the Prosecution argues that Miletić was in a position to raise these issues in the First Motion.<sup>35</sup>

15. Moreover, the Prosecution submits that the Second Motion fails to provide sufficient guarantees that Miletić will appear for trial.<sup>36</sup> It argues that the Rule 98 *bis* Decision warrants

<sup>26</sup> *Ibid.*, paras. 8, 12.

<sup>27</sup> *Ibid.*, paras. 7, 9, Annex I; First Motion, Annex. Miletić submits that the Serbian authorities will escort him from his residence in Belgrade, or the airport if the Trial Chamber grants his request to visit the Republika Srpska only, to and back from the border post with the Republika Srpska. The authorities of the Republika Srpska confirm that they will then escort Miletić during his visit and hand him over to the Serbian authorities at the border post after the agreed period of his stay. Second Motion, paras. 7, 9, Annex I.

<sup>28</sup> Second Motion, paras. 5–6.

<sup>29</sup> *Ibid.*, para. 10.

<sup>30</sup> Second Response, paras. 3, 15.

<sup>31</sup> *Ibid.*, paras. 5, 7, 10.

<sup>32</sup> *Ibid.*, para. 8.

<sup>33</sup> *Ibid.*, para. 8.

<sup>34</sup> *Ibid.*, para. 9.

<sup>35</sup> *Ibid.*, paras. 8–9.

<sup>36</sup> *Ibid.*, paras. 5, 13–14. The Prosecution argues that "the Accused provides no guarantee of the Republic of Serbia ensuring that he will remain in custody between his arrival and departure at and from the airport in Serbia, and during his handover to and from the authorities of the Republika Srpska at the border. Rather, the Serbian guarantee provided by the Accused only addresses a possible provisional release on non-custodial terms. Hence, the Serbian

increased consideration of the Accused's risk of flight.<sup>37</sup> Moreover, it submits that Miletić's request to travel to Republika Srpska, during his provisional release to Republic of Serbia, "proposes a procedure for the custodial visit that is unnecessarily complicated and unprecedented", and that "there is no precedent for the successful implementation of such an arrangement."<sup>38</sup>

16. The Prosecution requests a stay of the decision in order to file an appeal should the Trial Chamber grant Miletić's requests.<sup>39</sup>

17. Miletić seeks leave to reply to the Second Response.<sup>40</sup> He submits that the tragedies which took place in his family within a period of 14 months and his behaviour since his indictment should militate in favour of granting his request for provisional release on humanitarian grounds.<sup>41</sup>

18. Miletić argues that he "has always been granted provisional release, both in the pre-trial phase and during suspensions of the proceedings."<sup>42</sup> Furthermore, he clarifies that he did not rely on humanitarian grounds in the First Motion because when the First Motion was filed he was not in possession of the guarantees from the Republika Srpska, and because in the last decision regarding his provisional release the Trial Chamber stated that it does not find the personal circumstances raised by Miletić to have any relevance for the purpose of his request to be provisional released.<sup>43</sup>

19. With respect to the request to visit the graves of his mother and sister, he clarifies that the death of his sister occurred while he was on provisional release in the Republic of Serbia, but he could not go to Republika Srpska as he was unable to obtain the necessary guarantees,<sup>44</sup> and that the grave of his mother is located in the same municipality where his ailing father stays.<sup>45</sup>

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authorities did not undertake a commitment to escort the Accused during his entire stay in Serbia." *Ibid.*, para. 13. Furthermore, the Prosecution argues that Miletić "has failed to provide a signed declaration, in the light of the changed circumstance since the Rule 98 *bis* Ruling, that he will adhere to any conditions imposed on him by the Trial Chamber during his provisional release." *Ibid.*, para. 14.

<sup>37</sup> *Ibid.*, para. 11 (relying on *Prosecutor v. Prlić*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić, 11 March 2008 ("Prlić Appeal Decision"), para. 20). Furthermore, the Prosecution argues that the situation in this case is distinguishable from the situation in *Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević, and Lukić*, Case No. IT-05-87-T, Decision on Pavković Motion for Temporary Provisional Release, 14 March 2008 ("Milutinović Trial Decision of 14 March 2008"). *Ibid.*, fn. 16.

<sup>38</sup> *Ibid.*, para. 12.

<sup>39</sup> *Ibid.*, para. 3.

<sup>40</sup> Second Reply, paras. 5, 18.

<sup>41</sup> *Ibid.*, paras. 11 (referring to *Prlić Appeal Decision*), 17.

<sup>42</sup> *Ibid.*, para. 7.

<sup>43</sup> *Ibid.*, paras. 7–8 (referring to Decision on Motions for Provisional Release During the Winter Judicial Recess, 7 December 2007 ("Decision of 7 December 2007")).

<sup>44</sup> *Ibid.*, para. 10.

<sup>45</sup> *Ibid.* With respect to the requested visit of his ailing father, he submits that "the medical documentation is sufficiently clear and leaves no doubt that General Miletić's father is in a very serious state." *Ibid.*, para. 9.

20. Miletić argues that the procedures he proposes for his visit to the Republika Srpska comply with the guarantees provided by the Republic of Serbia and Republika Srpska.<sup>46</sup> He submits that similar arrangements have been implemented in the past during his visit to Republika Srpska in 2005.<sup>47</sup>

21. Miletić further requests the Trial Chamber to deny the Prosecution's request for a stay of the decision should the Trial Chamber grant him provisional release.<sup>48</sup> In that respect, he submits that in light of his father's critical health condition, a stay of the decision "could lead to irreparable consequences."<sup>49</sup>

### C. Addendum to First and Second Motions

22. On 3 April 2008, Miletić filed confidentially a request to modify his First and Second Motions,<sup>50</sup> as a result of the death of his father on 3 April 2008.<sup>51</sup> Miletić requests the Trial Chamber to grant him the authorization to be provisionally released in Belgrade where his wife and children reside, and to travel to Foča and Modrica in the Republika Srpska, for a period not exceeding three days, to visit the graves of his relatives, during his provisional release to the Republic of Serbia.<sup>52</sup>

23. Miletić submits that the tragedies that took place in his family in 2008, namely the death of his sister and his father, should militate in favour of granting both of his requests for provisional release on humanitarian grounds, so that he may spend these difficult moments for him with his family.<sup>53</sup>

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<sup>46</sup> *Ibid.*, paras. 12–13. Furthermore, he argues that "he contacted the National Council of Serbia for Cooperation with the ICTY and received the information that the guarantees provided to the accused Pavković were identical to those provided for General Miletić." *Ibid.*, para. 14 (referring to *Milutinović* Trial Decision of 14 March 2008). He also submits that he is willing to sign a declaration, in the light of the changed circumstance since the Rule 98 *bis* Ruling, that he will adhere to any conditions imposed on him by the Trial Chamber during his provisional release, and re-emphasizes his voluntary surrender to the custody of the Tribunal and his compliance with all the conditions imposed on him by the Trial Chamber during those occasions in which he was provisionally released in the past. *Ibid.*, paras. 14, 16.

<sup>47</sup> *Ibid.*, para. 12 (referring to Decision on the Requête Urgente du General Miletić aux Fins de Modifications Temporaires des Conditions de la Mise en Liberté Provisoire, 7 December 2005 ("Decision of 7 December 2005")). Furthermore, he submits that he "is not opposed to entering Republika Srpska via Sarajevo if the Tribunal considers such an itinerary more appropriate." *Ibid.*

<sup>48</sup> *Ibid.*, para. 18.

<sup>49</sup> *Ibid.*, para. 15.

<sup>50</sup> Addendum to First and Second Motions.

<sup>51</sup> *Ibid.*, para. 4. The Trial Chamber notes that Miletić has also submitted his father's death certificate. Second Addendum to the First and Second Motions, Annex.

<sup>52</sup> Addendum to First and Second Motions, paras. 7, 9. Miletić submits that in light of the recent change of circumstances he does not need to travel to Višegrad anymore. *Ibid.*, para. 5.

<sup>53</sup> *Ibid.*, para. 6.

24. Furthermore, Miletić reiterates the submissions raised in his First and Second Motions and submits that both the Republic of Serbia and Republika Srpska provided explicit guarantees which confirm that they will respect all orders made by this Trial Chamber in respect of his provisional release and his authorization to travel to Republika Srpska.<sup>54</sup> In addition, Miletić reiterates that he provided the Trial Chamber with addresses of potential hosts with whom he could reside during his stay in Republika Srpska.<sup>55</sup>

25. As previously noted, the Prosecution informed the Trial Chamber orally, on 3 April 2008, that it was not going to file a response to the Addendum to the First and Second Motions.

### III. APPLICABLE LAW

26. Pursuant to Rule 65(A), once detained, an accused may not be provisionally released except upon an order of a Chamber. Under 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: (1) the accused will appear for trial, and (2) 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”.

27. The Appeals Chamber’s jurisprudence emphasizes that a decision on a request for provisional release must address all relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision and include a reasoned opinion indicating its view on the relevant factors and the weight given to them. What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case and individual accused, including the present context of the proceedings of the case.<sup>56</sup> In this regard, the Trial Chamber further notes the holding of the Appeals Chamber that a Rule 98 *bis* decision declining to enter a judgement of acquittal after the close of the Prosecution case is “a significant enough change in circumstance to warrant the renewed and explicit consideration by the Trial Chamber of the risk of flight by the Accused.”<sup>57</sup>

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<sup>54</sup> *Ibid.*, para. 8.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Prlić* Appeal Decision, paras. 7, 19; *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.4, Decision on Johan Tarčulovski’s Interlocutory Appeal On Provisional Release, 27 July 2007 (“*Boškoski and Tarčulovski* Appeal Decision”), para. 6.

<sup>57</sup> *Prlić* Appeal Decision, paras. 19–20.



28. Furthermore, the Appeals Chamber held that humanitarian grounds raised by an accused as a basis for provisional release must be assessed in the context of the two requirements of Rule 65(B).<sup>58</sup> In a recent decision the Appeals Chamber overturned decisions of the *Prlić* Trial Chamber granting provisional release, holding that in the circumstances of the *Prlić* case “the various justifications for release offered by the Accused are not sufficiently compelling, particularly in light of the 98 *bis* Ruling, to warrant the exercise of the Trial Chamber’s discretion in favour of granting the Accused provisional release.”<sup>59</sup>

#### IV. DISCUSSION

29. The Trial Chamber notes that Miletić has voluntarily surrendered to this Tribunal. Since then, he was granted provisional release on several occasions.<sup>60</sup> The last occasion in which his request for provisional release was granted was on 7 December 2007.<sup>61</sup> Two months later, on 7 February 2008, the Prosecution closed its case in chief,<sup>62</sup> and most importantly, on 3 March 2008, the Trial Chamber rendered orally its Rule 98 *bis* Decision,<sup>63</sup> in which the Trial Chamber declined to enter a judgement of acquittal with reference to any of the Accused after the close of the Prosecution case.<sup>64</sup>

30. As noted above, the Appeals Chamber has found that a ruling under Rule 98 *bis* constitutes “a significant enough change in circumstance to warrant the renewed and explicit consideration by the Trial Chamber of the risk of flight posed by the Accused [...]”.<sup>65</sup> Therefore the Trial Chamber must consider afresh the question of the provisional release of Miletić with particular emphasis on the effect of its Rule 98 *bis* Decision on the risk of flight of the Accused.

31. The Trial Chamber notes that in his Rule 98 *bis* submissions, Miletić requested to be acquitted of all the charges against him, and presented a detailed analysis of the evidence against him. The Trial Chamber found his submissions to be appropriate for the final stage of the case, and not for the purposes of Rule 98 *bis*.<sup>66</sup> It rejected Miletić’s submissions and held that the counts

<sup>58</sup> *Boškoski and Tarčulovski* Appeal Decision, para. 14.

<sup>59</sup> *Prlić* Appeal Decision, para. 21.

<sup>60</sup> Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005; 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; Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 December 2006; Decision on Motion for Provisional Release from 21 July 2007 Until the Resumption of Trial, 13 July 2007; Decision of 7 December 2007.

<sup>61</sup> Decision of 7 December 2007.

<sup>62</sup> T. 21222 (7 February 2008)

<sup>63</sup> T. 21460–21473 (3 March 2008).

<sup>64</sup> T. 21473 (3 March 2008).

<sup>65</sup> *Prlić* Appeal Decision, paras. 19–20.

<sup>66</sup> T. 21472 (3 March 2008).

against him passed the Rule 98 *bis* test.<sup>67</sup> As a result it is clear that the Prosecution case against Miletic has advanced to a different stage with a finding that, for the purposes of Rule 98 *bis*, there is evidence to support each count in relation to Miletic.<sup>68</sup> At the same time, however, the Trial Chamber notes that the standard applied in its Rule 98 *bis* Decision is much different than that by which the Accused will be judged ultimately. As outlined in the Rule 98 *bis* Decision the test is:

[W]hether there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the particular accused on the count in question. The test is not whether a Trial Chamber would, in fact, convict beyond reasonable doubt but, rather, whether it could do so. [...] A ruling now that there is sufficient evidence to sustain a conviction on a particular count does not mean that the Trial Chamber will, at the end of the case, return a conviction.<sup>69</sup>

Most importantly the determination in the Rule 98 *bis* Decision was reached without assessing the credibility of the evidence adduced or the weight to be given to it.<sup>70</sup> In fact, in this instance, the Trial Chamber specifically dismissed arguments which touched on these matters as being appropriate for a final determination of the case and not at this stage of the proceedings.<sup>71</sup> Finally the Trial Chamber notes that the Rule 98 *bis* Decision contains no findings as to the strength of the case against Miletic.

32. The effect of the Rule 98 *bis* Decision must then be considered with reference to the particular circumstances of Miletic in terms of risk of flight. The Trial Chamber notes that Miletic is indicted for crimes against humanity and war crimes in relation to allegations of murder by way of opportunistic killings, persecution, forcible transfer and deportation.<sup>72</sup> He voluntarily surrendered to the Tribunal when the charges against him became known. He has been released provisionally on several occasions since his surrender, and each time he has abided by all conditions imposed and has returned as and when ordered by the Trial Chamber to do so.<sup>73</sup>

33. Miletic has also raised humanitarian grounds in support of his request for provisional release. On 3 January 2008, while he was on provisional release in the Republic of Serbia his sister died. Miletic could not participate in her funeral or visit her gravesite, since he did not have enough time to obtain the necessary guarantees from the Republika Srpska. Subsequently, early in 2008 his father became gravely ill and while an application for provisional release to visit his father was under consideration he died. In addition, during the trial proceedings Miletic has also lost his

<sup>67</sup> T. 21472–21473 (3 March 2008).

<sup>68</sup> T. 21473 (3 March 2008).

<sup>69</sup> T. 21461 (3 March 2008).

<sup>70</sup> *Ibid.*

<sup>71</sup> T. 21472 (3 March 2008).

<sup>72</sup> Indictment, counts 4–8.

mother. He has now lost three immediate family members within a short duration. As a result he wishes to have an opportunity to visit the gravesites and to spend some time with his family during this difficult period.

34. Weighing all these factors, while it is acknowledged that a Rule 98 *bis* Decision might increase the flight risk of a particular Accused, the Trial Chamber is satisfied that this is not the case with Miletić given his particular circumstances, his behaviour to date and his strong desire to spend time with his family members during this time of loss.

35. Moreover, based again on Miletić's particular circumstances and history of compliance, the Trial Chamber is satisfied that, though the Prosecution has rested its case and Miletić has heard the evidence against him, Miletić, who still enjoys the presumption of innocence pursuant to Article 21 of the Statute of this Tribunal, will not flee and does not pose a threat to witnesses, victims or other persons in the case.

36. The Trial Chamber also finds the humanitarian concerns raised by Miletić to be compelling so as to justify provisional release. As noted above, in terms of assessing those grounds with reference to Rule 65(B) in the case of Miletić, the Trial Chamber is satisfied that those requirements have been met. It further notes that a request to visit the Republika Srpska, during a provisional release to the Republic of Serbia, was already granted to Miletić during the pre-trial phase.<sup>74</sup>

37. Applying the test in Rule 65(B), the Trial Chamber is satisfied with the guarantees provided by the Republic of Serbia and the Republika Srpska,<sup>75</sup> and is in receipt of written confirmation from the host country that it has no objection to release.<sup>76</sup> Moreover, in all the particular circumstances of Miletić, as detailed above, the Trial Chamber is convinced that Miletić will return for the continuation of his trial and that he poses no threat to witnesses, victims or any other person in this case.

38. The Trial Chamber therefore decides to grant Miletić's request to be provisionally released to Republic of Serbia, and authorizes him to visit the graves of his relatives in Republika Srpska, during his provisional release to the Republic of Serbia.

39. The Trial Chamber, however, noting the advanced stage of the proceedings and the length of time granted for preparation of the defence case, is of the opinion that provisional release is justified

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<sup>73</sup> See fn. 60.

<sup>74</sup> Decision of 7 December 2005.

<sup>75</sup> Both Republic of Serbia and Republika Srpska stated in their guarantees that they are willing to comply with any order of the Trial Chamber. First Motion, Annex I; Second Motion, Annex I.

<sup>76</sup> Correspondence from Host Country Regarding the Provisional Release of Radivoje Miletić, 19 February 2008.

only for a limited period of 14 days, which can include a short visit of three days to the graves of Miletić's relatives in Republika Srpska, under the conditions specified below.

## V. DISPOSITION

40. For these reasons, pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules, the Trial Chamber hereby

a) **GRANTS** leave to Miletić to reply to the First and Second Responses;

b) **GRANTS** Miletić's request to be provisionally released to the Republic of Serbia on the following terms and conditions:

1) Miletić shall be provisionally released for a period not exceeding 14 days; the exact dates of his provisional release shall be determined in consultations between the United Nations Detention Unit ("UNDU"), the Registrar and a representative of the Trial Chamber;

2) Miletić shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable;

3) 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;

4) during the period of his provisional release, Miletić 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 he 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 UNDU in The Hague;

ii. to remain within the confines of the municipality of Belgrade;

iii. to surrender his 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 his 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 his case with anyone, including the media, other than with his 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 his provisional release;

5) Miletić shall return to UNDU no later than 16 May 2008, unless otherwise ordered by the Trial Chamber. He shall be accompanied from his place of residence in Belgrade by the designated officials of the Republic of Serbia, 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;

c) **GRANTS** Miletić's request to visit the Republika Srpska during his provisional release to the Republic of Serbia on the following terms and conditions:

1) Miletić is authorized to visit the municipalities of Foča and Modrica, Republika Srpska, BiH, for a period not exceeding three days, during his provisional release to the Republic of Serbia;

2) Miletić shall provide the addresses at which he will be staying in Republika Srpska to a designated official of the Republika Srpska and the Registrar of the Tribunal, before leaving the Republic of Serbia to visit the Republika Srpska;

3) Miletić shall be transported by a designated official of the Republic of Serbia from his place of residence in Belgrade to the border with BiH, Republika Srpska;

- 4) at the border, Miletić shall be transferred into the custody of a designated official of the Republika Srpska, who shall accompany Miletić to his place of residence in either Foča or Modrica in Republika Srpska, at one of the addresses provided by Miletić in the Second Motion;
- 5) a designated official of the Republika Srpska shall escort Miletić during his journey between the municipalities of Foča and Modrica in Republika Srpska;
- 6) during the period of his visit of Republika Srpska, Miletić shall abide by the following conditions, and the authorities of the Republika Srpska, including the local police, shall ensure compliance with such conditions:
  - i. to remain within the confines of the municipalities of Foča and Modrica, Republika Srpska, BiH, apart from his travel between the municipalities and from and to the border with the Republic of Serbia;
  - ii. to surrender his passport to the relevant authorities of the Republika Srpska;
  - iii. to report each day to the police in Foča or Modrica at a local police station to be designated by the authorities of the Republika Srpska;
  - iv. to consent to having the relevant authorities of the Republika Srpska check with the local police about his presence and to the making of occasional, unannounced visits by the same authority or by a person designated by the Registrar of the Tribunal;
  - v. not to have any contact with the co-accused in the case;
  - vi. 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;
  - vii. not to discuss his case with anyone, including the media, other than with his counsel;
  - viii. to 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;
  - ix. to comply strictly with any further order of the Tribunal varying the terms of or terminating his provisional release;

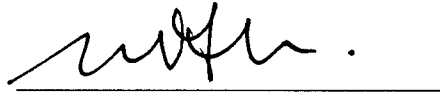
- 7) upon completion of his visit of Republika Srpska, Miletić shall be transported by a designated official of the Republika Srpska from his place of residence in Republika Srpska to the border with the Republic of Serbia;
  - 8) at the border, Miletić shall be transferred into the custody of a designated official of the Republic of Serbia, who shall accompany Miletić directly to his place of residence in Belgrade;
  - 9) the exact dates of Miletić's visit to Republika Srpska as well as the details of his journey to Republika Srpska and the addresses at which he will be staying during the visit, shall be communicated to the Trial Chamber and the Registrar of the Tribunal by the Republic of Serbia and the Republika Srpska at least seven days prior to the first day of the visit to Republika Srpska;
- d) **REQUIRES** the Republic of Serbia to assume responsibility as follows:
- 1) by designating officials of the Republic of Serbia into whose custody Miletić shall be provisionally released and who shall accompany Miletić from Schiphol airport to the Republic of Serbia and to his respective place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated officials;
  - 2) by designating officials of the Republic of Serbia who shall accompany Miletić to the border with the BiH, Republika Srpska and back to his place of residence in Belgrade, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated officials;
  - 3) for the personal security and safety of Miletić while on provisional release to the Republic of Serbia;
  - 4) for all expenses concerning transport of Miletić from Schiphol airport to Belgrade and back as well as from Belgrade to the border with the BiH, Republika Srpska and back;
  - 5) for all expenses concerning accommodation and security of Miletić while on provisional release to the Republic of Serbia;
  - 6) 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;
  - 7) to arrest and detain Miletić immediately if he should breach any of the conditions of this Decision; and

- 8) to report immediately to the Trial Chamber any breach of the conditions set out above;
- e) **REQUIRES** the Republika Srpska to assume responsibility as follows:
- 1) by designating officials of the Republika Srpska into whose custody Miletić shall be transferred and who shall accompany Miletić through his entire stay in Republika Srpska, including from the border with the Republic of Serbia to BiH, Republika Srpska and to his respective place of residence, as well as during his journey between the municipalities of Foča and Modrica in Republika Srpska, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated officials;
  - 2) by ensuring that a designated official of the Republika Srpska accompanies Miletić during his entire stay in Republika Srpska and that, during his stay in Republika Srpska, Miletić stays at the addresses that he will provide to a designated official of the Republika Srpska;
  - 3) for the personal security and safety of Miletić while in Republika Srpska;
  - 4) for all expenses concerning the transport of Miletić from the border with the Republic of Serbia to his place of residence in Republika Srpska and back;
  - 5) for all expenses concerning accommodation and security of Miletić while in Republika Srpska;
  - 6) 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;
  - 7) to arrest and detain Miletić immediately if he should breach any of the conditions of this Decision; and
  - 8) to report immediately to the Trial Chamber any breach of the conditions set out above;
- f) **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;
- g) **REQUESTS** the authorities of all states through which Miletić will travel:
- 1) to hold Miletić in custody for any time he will spend in transit at the airport;
  - 2) to arrest and detain Miletić pending his return to the UNDU, should he attempt to escape;



- h) **ORDERS** that Miletić shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release;
- i) **GRANTS** the Prosecution request and **ORDERS** a stay of the decision pending an appeal.

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



Carmel Agius  
Presiding

Dated this ninth day of April 2008  
At The Hague  
The Netherlands

[Seal of the Tribunal]