



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: 21 July 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: 21 July 2008

PROSECUTOR

v.

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

PUBLIC

DECISION ON MILETIĆ'S MOTION FOR PROVISIONAL RELEASE

Office of the Prosecutor

Mr. Peter McCloskey

Government of the Republic of Serbia

Government of The Netherlands

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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 for Humanitarian Reasons During Summer Judicial Recess”, filed confidentially in the original French on 4 July 2008 (“Motion”),¹ and hereby renders its decision thereon.

I. PROCEDURAL BACKGROUND

1. Since his voluntary surrender, Miletić has been granted provisional release several times,² with the last occasion being in May 2008.³
2. In the Motion, Miletić requests provisional release during the forthcoming recess in the proceedings.⁴ On 11 July 2008, the Prosecution filed confidentially the “Prosecution’s Consolidated Response to Accused Gvero, Miletić, Nikolić and Pandurević’s Motions for Provisional Release” (“Response”), and on 14 July, Miletić filed confidentially in the original French “Motion For Leave To Reply and Reply of General Miletić to the Prosecution Response to Motions for Provisional Release” (“Reply”).⁵

II. SUBMISSIONS OF THE PARTIES

A. Motion

3. Miletić requests the Trial Chamber to grant provisional release for the period 2 to 15 August 2008, or until another date designated by the Trial Chamber.⁶
4. In the Motion, Miletić emphasises that he voluntarily surrendered as soon as he became aware of the indictment against him, and has always abided by the conditions placed upon him during previous periods of provisional release.⁷ Miletić seeks provisional release on the

¹ English translation filed on 11 July 2008.

² 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 on Motions for Provisional Release During the Winter Judicial Recess, 7 December 2007.

³ See Decision on Miletić Request for Provisional Release During the Break in the Proceedings, 9 April 2008 (“Decision of 9 April 2008”); Further Decision on Decision on Miletić’s Motion for Provisional Release, 22 May 2008 (“Decision of 22 May 2008”).

⁴ Motion, para. 2.

⁵ English translation filed on 17 July 2008.

⁶ Motion, paras. 2, 18.

⁷ *Ibid.*, para. 5.

humanitarian grounds that he has suffered the loss of three immediate family members since the commencement of the trial (his mother, father and sister) and he wishes to visit his wife, who is seriously ill.⁸

5. Miletić's wife has undergone major surgery and post operative treatment since 2006.⁹ Her condition is such that she is unable to travel.¹⁰ Miletić states that he did not see his wife when granted provisional release in May 2008, as that visit was granted for the purpose of visiting the graves of his sister and father in Republika Srpska, and his wife resides in Belgrade.¹¹

6. Miletić states in the Motion that he will stay in his Belgrade residence and agrees to constant surveillance by officials of the Republic of Serbia if he is granted provisional release.¹² He pledges not to contact any person who might be called to testify in the case, and to continue to abide by the terms of a personal guarantee he made when he applied for provisional release in April 2005.¹³

7. Miletić tenders a guarantee from the Government of the Republic of Serbia.¹⁴ The Trial Chamber also acknowledges receipt of the correspondence from The Netherlands.¹⁵

B. Response

8. The Prosecution opposes the Motion on the grounds that the humanitarian reasons cited are not sufficiently compelling.¹⁶ The Response states that the medical evidence concerning Miletić's wife's inability to travel is insufficient to prove that she was unable to travel to Republika Srpska during Miletić's previous period of release, or that she will be unable to travel to The Hague in the future.¹⁷

9. The Prosecution argues that in light of Miletić's recent period of release to visit the graves of his close relatives, a further period of provisional release is not warranted for this reason.¹⁸ The

⁸ Motion paras. 12–15.

⁹ *Ibid.*, para. 12. *See also* Annex 2.

¹⁰ *Ibid.*

¹¹ *Ibid.*, para. 13.

¹² *Ibid.*, para. 7.

¹³ *Ibid.* paras. 7–8.

¹⁴ *Ibid.*, para. 9. *See also* Annex 1.

¹⁵ Correspondence from Host Country Regarding the Provisional Release of Radivoje Miletić, 8 July 2008 (filed separately by Miletić on 15 July 2008).

¹⁶ Response, para. 11.

¹⁷ *Ibid.*, para. 9.

¹⁸ *Ibid.*, para. 10.

Prosecution argues that even when taken together, Ms. Miletić's health and the passing of three family members do not justify the granting of a further period of provisional release for Miletić.¹⁹

C. Reply

10. Miletić first requests leave to file a reply.²⁰ In the Reply, Miletić reiterates the arguments raised in the Motion in support of his request for provisional release. In particular, he stresses that both conditions pursuant to Rule 65 (B) have been met and that the humanitarian reasons advanced in the Motion are compelling enough to justify the provisional release of the Accused.²¹

III. APPLICABLE LAW

11. 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 if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness or other person, and after giving the host country and the state to which the accused seeks to be released the opportunity to be heard.²² 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”.

12. 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 those relevant factors.²³ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case,²⁴ since “decisions on motions for provisional release are fact intensive,

¹⁹ Response, para. 11.

²⁰ Reply, para. 11.

²¹ *Ibid.*, paras. 4–11.

²² *See, inter alia, Prosecutor v. Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008 (“Appeals Chamber Decision of 15 May 2008”), para. 5; Appeals Chamber Decision of 15 May 2008, para. 6; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal against the Decision on Popović's Motion for Provisional Release, 1 July 2008 (“Appeals Chamber Decision of 1 July 2008”), para. 7.

²³ *See, inter alia.* Appeals Chamber Decision of 15 May 2008, para. 6; Appeals Chamber Decision of 1 July 2008, para. 8.

²⁴ *See, inter alia.* Appeals Chamber Decision of 15 May 2008, para. 6; Appeals Chamber Decision of 1 July 2008, para. 8.

and cases are considered on an individual basis in light of the particular circumstances of the individual accused.”²⁵

13. Furthermore the Appeals Chamber held 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.”²⁶ It further held that “when considering a provisional release motion at the post-98 *bis* stage of the proceedings, even when a Trial Chamber is satisfied that sufficient guarantees exist to offset the flight risk of an accused, it should not exercise its discretion to grant provisional release unless sufficiently compelling humanitarian reasons tip the balance in favour of allowing provisional release.”²⁷ The 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),²⁸ and the Trial Chamber must be satisfied that the conditions of provisional release are sufficient to address any concerns in relation to the requirements of Rule 65(B).²⁹

14. The Appeals Chamber has also held that where provisional release is found to be justified on humanitarian grounds, the duration of provisional release should be proportional to the period of time necessary to carry out the humanitarian purpose of the release.³⁰ Accordingly, “a Trial Chamber must address the proportionality between the nature and weight of the circumstances of a particular case and the duration of provisional release requested”.³¹

IV. DISCUSSION

15. The Trial Chamber notes that Miletić voluntarily surrendered to the Tribunal upon notification of the charges against him and that he has been granted provisional release on a number of occasions.³² Miletić has always been compliant with the conditions imposed upon him during these previous periods of provisional release. The most recent period of provisional release was

²⁵ Appeals Chamber Decision of 15 May 2008, para. 6 (referring to *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Johan Tarčulovski’s Interlocutory Appeal on Provisional Release, 4 October 2005, para. 7).

²⁶ *See, inter alia, Prosecutor v. Prlić, et al.*, 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 Čorić, 11 March 2008 (“*Prlić Appeals Chamber Decision of 11 March 2008*”), paras. 19–20.

²⁷ *See, for example, Appeals Chamber Decision of 15 May 2008, para. 24.*

²⁸ *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, para. 14.

²⁹ *See, for example, Decision on Borovčanin’s Motion for Custodial Visit, 9 April 2008, para. 24.*

³⁰ Appeals Chamber Decision of 15 May 2008, paras. 18, 32.

³¹ Appeals Chamber Decision of 15 May 2008, para. 18.

³² *See supra*, fn. 2. *See also*, Decision of 9 April 2008, para. 29.

granted in May 2008,³³ after the Trial Chamber orally rendered its decision on the accused's submissions pursuant to Rule 98 *bis* ("Rule 98 *bis* Decision"), in which the Trial Chamber declined to enter a judgement of acquittal with reference to any of the accused after the conclusion of the Prosecution case.³⁴

16. The Trial Chamber, when granting Miletić's provisional release in May 2008, conducted a clear assessment of the risk of flight posed by Miletić in light of the Rule 98 *bis* Decision.³⁵ The Trial Chamber considered, *inter alia*, the charges against Miletić, his voluntary surrender and his compliance with the conditions imposed upon him during other periods of provisional release, and concluded that Miletić did not pose a flight risk, nor did he pose a threat to any witness victim or other person associated with the case.³⁶ The Trial Chamber's conclusion that the Rule 98 *bis* Decision did not increase Miletić's risk of flight³⁷ was upheld by the Appeals Chamber.³⁸

17. The Trial Chamber is satisfied that there are no additional circumstances than those already considered since it made this assessment. It is therefore again satisfied that Miletić does not pose an flight risk or a threat to any victim, witness or person associated with this case.

18. The Trial Chamber will now address the humanitarian grounds advanced by the Accused in support of his Motion. Before doing that, the Trial Chamber recalls that in its Decision of 9 April 2008, it granted Miletić provisional release to Belgrade for a period of 14 days, including a three-day visit to the graves of his relatives in Republika Srpska.³⁹ The Appeals Chamber found that "the Trial Chamber did not err in determining that the humanitarian grounds provided by Miletić warranted provisional release to the Republika Srpska for a three-day period [...]", but found that "the Trial Chamber's grant of an additional 11 days to visit his family in Belgrade was unreasonable".⁴⁰ The Appeals Chamber accordingly declared that it would have limited Miletić's provisional release to the period of time necessary for Miletić to visit the graves of his relatives, and

³³ Decision of 22 May 2008.

³⁴ T. 21460-21473 (3 March 2008).

³⁵ Decision of 22 May 2008, paras. 29–35.

³⁶ Decision of 9 April 2008, para. 32, 37.

³⁷ Decision of 22 May 2008, para. 34.

³⁸ *Prosecutor v. Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008 ("Appeals Chamber Decision of 15 May 2008"), para. 29.

³⁹ Decision of 9 April 2008, para. 38.

⁴⁰ Appeals Chamber Decision of 15 May 2008, para. 32.

remanded the decision to the Trial Chamber,⁴¹ which finally granted Miletić provisional release for a period of four days only to Republika Srpska.⁴²

19. In the Motion, Miletić relies on the following humanitarian grounds: (i) the loss of three immediate family members since the commencement of the trial (his mother, father and sister), and (ii) the serious illness of his wife.⁴³

20. The Trial Chamber notes that Miletić's wife's health conditions are very serious. As the documentation attached to the Motion indicates, she suffers from a serious illness, has undergone major surgery and is under post operative therapy since 2006.⁴⁴ She resides in Belgrade and it is submitted that due to her health conditions she is unable to travel. When Miletić was granted provisional release in May 2008 to visit the graves of his sister and father in Republika Srpska, he could not meet his wife.⁴⁵ Last time Miletić visited his wife was during the winter judicial recess in 2007. The Trial Chamber is satisfied in the particular circumstances of the case and of the Accused – who since the beginning of the trial has lost his mother, father and sister and whose wife is seriously ill – the above-mentioned grounds amount to compelling humanitarian reasons that justify the granting of provisional release.

21. Applying the test in Rule 65(B), the Trial Chamber is satisfied with the Guarantee provided by the Government of the Republic of Serbia,⁴⁶ and is in receipt of written confirmation from the host country that it has no objection to release.⁴⁷ Moreover, as set out above, in the particular circumstances pertaining to Miletić, the Trial Chamber is convinced that Miletić will return for the continuation of the trial and will pose no threat to witnesses, victims, or any other person in this case. The Trial Chamber, however, noting the advanced stage of the proceedings and the time required to fulfil the humanitarian grounds upon which the Motion is based, is of the opinion that provisional release is justified only for a limited period of 7 days (excluding travel time) under the conditions specified below.

V. DISPOSITION

22. 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:

⁴¹ Appeals Chamber Decision of 15 May 2008, para. 32, 34.

⁴² Decision of 22 May 2008.

⁴³ Motion, para. 12.

⁴⁴ *Ibid.*, para. 12. *See also* Confidential Annex 2.

⁴⁵ *Ibid.*, para. 13.

⁴⁶ *Ibid.*, para. 9, *see also* Confidential Annex 1.

⁴⁷ Correspondence from Host Country Regarding the Provisional Release of Radivoje Miletić, 15 July 2008.

- (a) **GRANTS** leave to Miletić to file the Reply;
- (b) **GRANTS** the Motion, and **ORDERS** the provisional release of Miletić on the following terms and conditions:
- (i) Miletić shall be provisionally released for a period not exceeding 7 days (excluding travel time); 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;
 - (ii) Miletić shall be transported to Schiphol airport in The Netherlands by the Dutch authorities as soon as practicable;
 - (iii) 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;
 - (iv) 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:
 - 1. 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;
 - 2. to remain within the confines of the municipality of Belgrade;
 - 3. to surrender his passport to the relevant authorities of the Republic of Serbia;
 - 4. 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;
 - 5. 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;
 - 6. not to have any contact with the co-accused in the case;

7. 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;
 8. not to discuss his case with anyone, including the media, other than with his counsel;
 9. 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;
 10. to comply strictly with any further order of the Tribunal varying the terms of or terminating his provisional release;
- (v) Miletić shall return to UNDU no later than 19 August 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) **REQUIRES** the Republic of Serbia to assume responsibility as follows:

- (i) 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;
- (ii) for the personal security and safety of Miletić while on provisional release;
- (iii) for all expenses concerning transport of Miletić from Schiphol airport to Belgrade and back;
- (iv) for all expenses concerning accommodation and security of Miletić while on provisional release;
- (v) 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;

- (vi) to arrest and detain Miletić immediately if he should breach any of the conditions of this Decision; and
- (vii) 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;
- (e) **REQUESTS** the authorities of all states through which Miletić will travel:
 - (i) to hold Miletić in custody for any time he will spend in transit at the airport;
 - (ii) to arrest and detain Miletić pending his return to the UNDU, should he attempt to escape; and
- (f) **ORDERS** that Miletić shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release.

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



Carmel Agius
Presiding

Dated this twenty-first day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]