



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-01-42-A
Date: 15 April 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Andréia Vaz, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Theodor Meron
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 15 April 2008

PROSECUTOR

v.

PAVLE STRUGAR

PUBLIC REDACTED VERSION

**DECISION ON THE RENEWED DEFENCE REQUEST SEEKING PROVISIONAL
RELEASE ON COMPASSIONATE GROUNDS**

Office of the Prosecutor

Ms. Helen Brady
Ms. Michelle Jarvis
Mr. Xavier Tracol

Counsel for the Accused

Mr. Goran Rodić
Mr. Vladimir Petrović

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1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of the “Renewed Defence Request Seeking Provisional Release on the Grounds of Compassion with Confidential Annexes” (“Renewed Request”), filed confidentially by Pavle Strugar (“Strugar”) on 9 April 2008. The Office of the Prosecutor (“Prosecution”) responded on 11 April 2008.¹ Strugar has not yet filed a reply, but in light of the urgent nature of this decision, as well as the fact that, considering the outcome thereof, Strugar will not suffer any prejudice by being deprived of the opportunity to reply to the Response, the Appeals Chamber will decide on the matter immediately.

I. BACKGROUND

2. On 31 January 2005, Trial Chamber II convicted Strugar pursuant to Article 7(3) of the Tribunal’s Statute (“Statute”) for the crimes of attacks on civilians and of destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science under Article 3 of the Statute.² It sentenced Strugar to eight years’ imprisonment.³ Strugar has now served more than half of the sentence imposed by the Trial Chamber.

3. The Appeals Chamber is currently seized of the appeals against the Trial Judgement filed by both parties.⁴ The Appeals are scheduled to be heard on 23 April 2008 (“Appeals Hearing”).⁵

4. On 2 April 2008, the Appeals Chamber denied a prior request from Strugar for provisional release on compassionate grounds related to the state of health of his siblings.⁶ The Appeals Chamber found that he had not shown the existence of special circumstances within the meaning of Rule 65(I)(iii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), namely because the medical evidence submitted by Strugar “neither demonstrate[d] how the illness and age qualify

¹ Prosecution Response to Renewed Defence Request Seeking Provisional Release on the Grounds of Compassion filed confidentially on 11 April 2008 (“Response”).

² *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Judgement, 31 January 2005 (“Trial Judgement”), para. 478.

³ *Ibid.*, para. 481.

⁴ Defence Notice of Appeal, 2 March 2005 and Defence Appeal Brief, 8 July 2005; Defence Response Brief, 27 June 2005; Defence Brief in Reply, 1 September 2005; Prosecution’s Notice of Appeal, 2 March 2005 and Prosecution Appellant Brief, 17 May 2005; Prosecution Brief in Response, 17 August 2005; Prosecution Brief in Reply, 12 July 2005; Prosecution’s Addendum on Recent Case-Law Pursuant to Order of 23 August 2007, 1 October 2007 (jointly “Appeals”).

⁵ Scheduling Order for Appeals Hearing, 29 January 2008, p. 2.

⁶ Defence Request Seeking Provisional Release on the Grounds of Compassion with Confidential Annexes, filed confidentially on 18 March 2008 (“First Request”); Decision on Defence Request Seeking Provisional Release on the Grounds of Compassion, filed confidentially on 2 April 2008 (with a public redacted version of the same date) (“Decision of 2 April 2008”).

as an acute crisis nor suggest[ed] that Strugar's siblings' respective medical conditions [could] be described as life-threatening".⁷

II. APPLICABLE LAW

5. Pursuant to Rule 65(I) of the Rules, a convicted person may bring an application seeking provisional release for a fixed period. By virtue of Rule 107 of the Rules, the whole of Rule 65 of the Rules applies *mutatis mutandis* to applications brought before the Appeals Chamber under this provision.⁸ Rule 65(I) of the Rules thus provides that the Appeals Chamber may grant provisional release if it is satisfied that (i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person, and; (iii) special circumstances exist warranting such release. These requirements must be considered cumulatively.⁹ The Appeals Chamber recalls that "whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities."¹⁰

III. DISCUSSION

A. Arguments of the Parties

6. In his Renewed Request, Strugar submits that since the Decision of 2 April 2008, the state of health of his sister "has worsened".¹¹ [REDACTED] Strugar further submits that the statement in the Medical Report of 8 April 2008 concerning the unpredictability of his sister's life expectancy can only be interpreted to mean that she is dying.¹² Therefore, he argues that the circumstances at

⁷ Decision of 2 April 2008, para. 13 (footnotes omitted).

⁸ Cf. *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion on Behalf of Haradin Bala for Temporary Provisional Release, 14 February 2008 ("*Limaj Decision*"), para. 4.

⁹ *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision on Motion for Provisional Release, 21 February 2008, para. 3; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Radoslav Brđanin's Motion for Provisional Release, 23 February 2007 ("*Brđanin Decision*"), para. 5; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005 ("*Galić Decision*"), para. 3; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Mario Čerkez's Request for Provisional Release, 12 December 2003 ("*Kordić and Čerkez Decision*"), para. 10.

¹⁰ *Limaj Decision*, para. 5; *Galić Decision*, para. 3; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić Pursuant to Rule 65(I) for Provisional Release for a Fixed Period to Attend Memorial Services for his Father, 21 October 2004 ("*Simić Decision of 21 October 2004*"), para. 14.

¹¹ Renewed Request, para. 5. In paragraph 6 of the Renewed Request, Strugar submits that he has acquired knowledge of the fact that his sister's health "has seriously deteriorated since the filing of the First Request".

¹² *Ibid.*, para. 8.

hand fully qualify as “an acute crisis”, thus fulfilling the “special circumstances” requirements under Rule 65(I)(iii) of the Rules.¹³

7. With respect to the requirements under Rules 65(I)(i) and 65(I)(ii) of the Rules, Strugar reiterates that, during his previous provisional releases, he fully complied with all the conditions imposed by the Tribunal.¹⁴ As Annex 2 to his Renewed Request, he attaches the guarantees from the Republic of Serbia (“State Guarantees”),¹⁵ and specifies the address where he intends to stay during his provisional release, if granted.¹⁶ He further argues that his own age and state of health “render any prospect of his flight highly unlikely” and provide “little reason to fear that he can possibly pose [...] a danger to any victim, witness or other person if released”.¹⁷

8. In light of the foregoing, Strugar requests to be provisionally released for “a period not exceeding ten (10) days starting from the day after a decision hereupon is rendered by the Appeals Chamber, on the same terms and conditions under which he has previously been granted provisional release, and/or under such conditions as the Appeals Chamber deems fit and proper to impose”.¹⁸

9. The Prosecution does not oppose the Renewed Request, but submits that “a period of not more than three days in Serbia, and two days’ travel time (one day for each way), would be appropriate”.¹⁹ The Prosecution further suggests a list of conditions under which the provisional release could be granted.²⁰

B. Analysis

10. As recalled above and in the Decision of 2 April 2008, “[t]he specificity of the appeal stage is reflected by Rule 65(I)(iii) of the Rules, which provides for an additional criterion, *i.e.* that ‘special circumstances exist warranting such release’”.²¹ In situations where an application for provisional release is made pending the appellate proceedings, the Appeals Chamber has concluded that special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant’s medical need or a memorial service for a close family

¹³ *Ibid.*, para. 9 referring to *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Decision on Application for Provisional Release, 12 December 2002 (“*Krnojelac* Decision”).

¹⁴ *Ibid.*, para. 11.

¹⁵ The Appeals Chamber notes that this document is erroneously addressed to a Trial Chamber of the Tribunal.

¹⁶ Renewed Request, para. 13.

¹⁷ *Ibid.*, paras 11-12.

¹⁸ *Ibid.*, para. 15.

¹⁹ Response, para. 2.

²⁰ *Ibid.*, para. 3.

²¹ Decision of 2 April 2008, para. 11 citing *Brđanin* Decision citing *Simić* Decision of 21 October 2004.

member.²² The Appeals Chamber has also granted provisional release for a visit to a close family member in “extremely poor health and whose death is believed to be imminent”.²³

11. While there is no need to speculate as to whether the condition of Strugar's sister is fatal, the Medical Report of 8 April 2008 clearly shows that her health is drastically deteriorating. Therefore, the Appeals Chamber accepts that the specific diagnoses and symptoms described in the Medical Report of 8 April 2008, combined with the advanced age of Strugar's sister, qualify as acute justification for the purposes of determining whether the special circumstances envisaged by Rule 65(I)(iii) of the Rules exist. Accordingly, the Appeals Chamber is satisfied that this particular requirement of Rule 65(I) is met.

12. The Appeals Chamber is further convinced that, if released, Strugar will surrender into detention at the conclusion of the fixed period for which he is provisionally released and appear at the Appeals Hearing scheduled for 23 April 2008. In this regard, the Appeals Chamber notes that Strugar has indeed complied with the conditions imposed on him by previous decisions of the Tribunal, including during the appellate stage of the proceedings.²⁴ Likewise, the Appeals Chamber is satisfied that Strugar will not pose a danger to any victim, witness, or other person. Finally, the Appeals Chamber has received satisfactory State Guarantees and the communication from the host country not opposing the provisional release.²⁵

13. With respect to the duration of the provisional release, the Appeals Chamber finds that the requested period of ten days is unjustified and incompatible with the scheduling of the present appeal proceedings, notably the date of the Appeals Hearing. The Appeals Chamber determines that Strugar should be released for a period of up to six days, including two days of travel time, starting on the day after this decision or as soon thereafter as is practicable, but in any event, no later than 17 April 2008.

²² Decision of 2 April 2008, para. 12 referring to *Brđanin* Decision, para. 6; *Limaj et al.* Decision of 1 September 2006, p. 1; *Simić* Decision of 5 May 2006, p. 3; *Limaj et al.* Decision of 20 April 2006, p. 2; *Galić* Decision, para. 15; *Simić* Decision of 21 October 2004, para. 20; see also, in the present case, Decision on “Defense Motion: Defense Request for Provisional Release for Providing Medical Aid in the Republic of Montenegro”, 16 December 2005, p. 2.

²³ Cf. *Krnojelac* Decision, p. 3; *Kordić and Čerkez* Decision, para. 12.

²⁴ Decision on “Defence Motion: Defence Request for Provisional Release for Providing Medical Aid in the Republic of Montenegro”, 16 December 2005, pp. 3-6.

²⁵ Letter from the Deputy Director of Protocol for the Ministry of Foreign Affairs, 14 April 2008, ref. DKP-2008/187.

IV. DISPOSITION

14. For the foregoing reasons, the Appeals Chamber **GRANTS** the Renewed Request **IN PART** and **ORDERS** that Strugar be provisionally released for the above-mentioned period under the following terms and conditions:

1. Strugar shall be transported to Schiphol airport in The Netherlands by the Dutch authorities on 16 April 2008, or as soon thereafter as is practicable, but in any event, no later than 17 April 2008;
2. At Schiphol airport, Strugar shall be provisionally delivered into the custody of a representative of the Government of the Republic of Serbia, pursuant to paragraph (c) of the State Guarantees;
3. The period of the provisional release shall commence when Strugar is delivered into the custody of the authorised representative of the Government of the Republic of Serbia and shall terminate upon his return to the Dutch authorities, which shall be no later than 21 April 2008;
4. On his return flight, Strugar shall be accompanied by the authorised representatives of the Government of the Republic of Serbia who shall deliver Strugar into the custody of the Dutch authorities at Schiphol airport; the Dutch authorities shall then transport Strugar back to the United Nations Detention Unit in The Hague, The Netherlands ("UNDU");
5. During the period of his provisional release, Strugar shall abide by the following conditions, and the government authorities of the Republic of Serbia shall ensure compliance with such conditions:
 - a. Strugar shall be staying at the address indicated in paragraph 13 of the Renewed Request;
 - b. Strugar shall remain within the boundaries of the territory of the Republic of Serbia and under the surveillance of Belgrade police;
 - c. Strugar shall surrender his passport to the police station of his residence in Belgrade;
 - d. Strugar shall not have any contacts whatsoever or in any way interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - e. Strugar shall not discuss his case with anyone, including the media, other than his counsel and immediate members of his family;

- f. Strugar shall comply with any order of the Appeals Chamber varying the terms of or terminating his provisional release;
- g. Strugar shall comply strictly with any requirements of the authorities of the Republic of Serbia necessary to enable them to comply with their obligations under the present decision;
- h. Strugar shall return to the UNDU on 21 April 2008.

15. The Appeals Chamber further **REQUIRES** the Government of the Republic of Serbia to assume responsibility for:

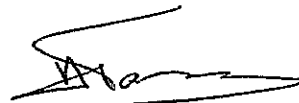
1. All expenses in connection with the transport from Schiphol airport to Belgrade and back;
2. Ensuring Strugar's personal security and safety while on provisional release;
3. Reporting immediately to the Registrar of the Tribunal as to the substance of any threats to Strugar's security, including full reports of investigations related to such threats;
4. Facilitating, at the request of the Appeals Chamber or of the parties, all means of co-operation and communication between the parties and ensuring the confidentiality of any such communication;
5. Detaining Strugar immediately should he attempt to escape from the territory of the Republic of Serbia, or should he in any other way breach the terms and conditions of his provisional release as set out in the present decision and reporting immediately any such breach to the Registry of the Tribunal and the Appeals Chamber; and
6. Respecting the primacy of the Tribunal in relation to any existing or future proceedings in the Republic of Serbia concerning Strugar.

16. Finally, the Appeals Chamber **INSTRUCTS** the Registrar of the Tribunal to:

1. Consult with the Dutch authorities and the authorities of the Republic of Serbia, as to the practical arrangements for Strugar's provisional release;
2. Request the authorities of the State(s) through whose territory Strugar may travel to:
 - a. Hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
 - b. Arrest and detain Strugar pending his return to the UNDU should he attempt to escape during travel.

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

Done this 15th day of April 2008
At The Hague, The Netherlands.



Judge Andrézia Vaz, Presiding

[Seal of the Tribunal]