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International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-01-42/2-I
Date: 2nd June 2004
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphonsus Orie, Presiding
Judge Amin El Mahdi
Judge Joaquín Martín Canivell

Registrar: Mr. Hans Holthuis

Decision: 2nd June 2004

PROSECUTOR
v.
VLADIMIR KOVAČEVIĆ

DECISION ON PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Philip Weiner

The Government of Serbia & Montenegro:

The Embassy of Serbia and Montenegro,
The Hague
The Netherlands

Counsel for the Accused:

Mr. Howard Morrison
Ms. Tanja Radosavljević

TRIAL CHAMBER I, (“the 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 (“the Tribunal”);

BEING SEIZED of a Request for Provisional Release (“the Request”) of Mr. Vladimir Kovačević (“the Accused”), filed *confidentially* by the Defence on 23rd April 2004, in which the Defence seeks provisional release for the Accused in accordance with the provisions in Rule 65(C) of the Tribunal’s Rules of Procedure and Evidence (“the Rules”) on the condition that he receives adequate treatment in a specialized institution in Serbia and Montenegro, and in which the Defence also moves to set a date for a hearing of the Request;

NOTING that, at the initial appearances of the Accused on 3rd November 2003 and again on 28th November 2003, the Defence raised the question of the ability of the Accused to enter a plea and to stand trial, and that, at both of these occasions, the Chamber was unable to conclude whether the Accused had the mental capacity to enter a plea and therefore did not allow him to do so;

RECALLING that the Chamber thereafter decided to seek a medical examination of the Accused in order to provide a forensic psychiatric basis upon which the Chamber could determine if indeed the Accused is fit to enter a plea and to stand trial;

NOTING the medical report on the mental health of the Accused by the two Medical Experts appointed by the Tribunal filed on 17th December 2003 as well as the report filed on 18th February 2004 by the psychiatrist appointed by the Defence, the conclusions reached by the consulting psychiatrist of the United Nations Detention Unit (“the UNDU”) on 23rd October 2003 and 27th February 2004, and the report filed by the Commanding Officer of the UNDU 27th February 2004 (“the Reports”);

NOTING that the Reports, each based on the particular experience and expertise of the author, strongly support the finding that the Accused, at this point, suffers from a serious mental disorder which presently renders him unfit to enter a plea and to stand trial;

NOTING that in the said Reports, it is also recommended that the Accused be offered treatment urgently in a mental health facility in a BCS-speaking environment, which may potentially improve the condition of the Accused;

FINDING, against this background, that such treatment – apart from providing relief to someone who is in need of and entitled to treatment – is also necessary at this stage of the proceedings in order to ascertain whether the Accused, after receiving adequate treatment, would be capable of standing trial in the future;

CONSIDERING the letter filed on 1st June 2004 by the Council of Ministers of Serbia and Montenegro and the negotiations between the Government and the Tribunal preceding this letter, in which the Council declares that it is ready and willing to accept the Accused for medical treatment in the Military Medical Academy in Belgrade in accordance with the Chamber's conditions;

CONSIDERING that the contents of the letter filed on 1st June 2004 by the Council of Ministers of Serbia and Montenegro, and the negotiations preceding this letter, fulfil the requirements of Rule 65(B) of the Rules to the effect that, in this case, the written approval by the State to which the Accused seeks to be released will be considered *in lieu* of a formal appearance at a hearing before the Tribunal for that State to be given the opportunity to be heard prior to the Chamber's decision;

BEING SATISFIED by the guarantees provided by the Council of Ministers of Serbia and Montenegro in its letter filed on 1st June 2004 *that* the Accused will appear for trial if he is eventually declared fit to stand trial, and *that* he will not pose a danger to any victim, witness or any other person;

BEING REASSURED, thus, that the requirements for provisional release under Rule 65 of the Rules are met in the present case;

RECALLING that the purpose of the provisional release of the Accused in this case is to make available to him the specialized medical treatment he needs, until such time as the Chamber can make a final determination of his fitness to stand trial;

DETERMINED, therefore, to provisionally release the Accused on the conditions set forth below for an initial period of six months, after which the Chamber will evaluate the situation and, depending on the mental health of the Accused at that time, will issue all appropriate decisions;

DETERMINED to remain apprized of the medical condition of the Accused during his provisional release and the initial period of treatment, for which reason the Chamber requires to be provided with *reports every second month* by the treating medical staff at the mental health facility, as well as *a full review* of the Accused's mental condition, to be carried out after six months by medical experts other than the treating medical staff;

PURSUANT to Rules 54, 65(B) and 65(C) of the Rules,

HEREBY SUSPENDS the proceedings against Vladimir Kovačević ("the Accused") before this Chamber for a period of six months from the date of his provisional release; and

ORDERS the provisional release of the Accused to the Republic of Serbia and Montenegro for an initial period of six months, subject to the following terms and conditions:

- (1) the Accused shall submit to treatment in the mental health facility in the Republic of Serbia and Montenegro determined by its Government;
- (2) the Accused shall not leave the premises of the mental health facility, unless this is part of his treatment and only after receiving the consent of the Chamber;
- (3) the Accused shall not have any contact 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;
- (4) the Accused shall not discuss his case with anyone other than the treating psychiatrist or psychologist and his counsel;
- (5) the Accused shall comply strictly with any order of the Chamber varying the terms of or terminating his provisional release;

REQUIRES the Government of Serbia and Montenegro, pursuant to its relevant laws:

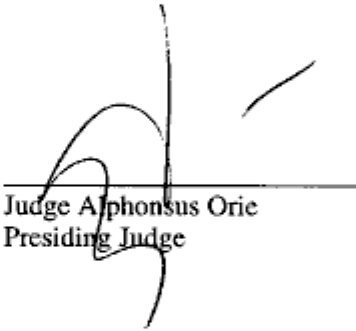
- a)* to provide adequate treatment to the Accused in a mental health facility in Serbia and Montenegro in accordance with the diagnosis and conclusions reached in the Reports mentioned above;
- b)* to allow for medical experts, assigned by the Tribunal, to visit and examine the Accused at any given time at the mental health facility during his treatment;
- c)* to file to the Chamber a report every second month on the medical condition of the Accused, to be made by the medical staff treating the Accused in the mental health facility;
- d)* to ensure that the Accused will appear for trial before this Tribunal;
- e)* to ensure that the Accused will not pose a danger to any victim, witness or other person;
- f)* to ensure that the Accused does not leave the premises of the mental health facility unless this is part of the treatment, and the Chamber has given its consent;
- g)* to comply with any Order of the Chamber varying the terms of or terminating his provisional release;
- h)* to report immediately to the Chamber any breach of conditions set forth above;
- i)* to cover all expenses concerning the treatment of the Accused and his transport from Schiphol Airport to the mental health facility and back again;
- j)* to allow and facilitate all means of co-operation and communication with the Chamber, the Registry the Parties and the medical experts in this matter, and to ensure the confidentiality of any such communication; and

REQUESTS the Registrar:

- i) to assign two medical experts, other than the treating medical staff in Serbia and Montenegro, in accordance with the procedure set out in the Chamber's Order of 17 November 2003 for Assignment of Medical Experts, to review the Accused's health six months after his provisional release;
- ii) to arrange for the Accused to be transported from the UNDU to Schiphol Airport in the Netherlands by the Dutch authorities, and back again in due time; and
- iii) to ensure that the Accused, at Schiphol Airport, is provisionally released into the custody of a designated official of the Government of Serbia and Montenegro, who shall accompany the Accused for the remainder of his travel to a mental health facility within Serbia and Montenegro, and that the Accused is received in Schiphol Airport in the same manner upon his return to the Tribunal.

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

Done this second day of June 2004,
At The Hague,
The Netherlands



Judge Alphonsus Orié
Presiding Judge

[Seal of the Tribunal]