



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-05-87-T
Date: 18 June 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 18 June 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON LAZAREVIĆ MOTION FOR TEMPORARY PROVISIONAL RELEASE

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 “Vladimir Lazarević’s Motion Requesting Provisional Release on the Grounds of Compassion with Confidential Annex”, filed confidentially on 29 May 2007 (“Motion”),¹ and hereby renders its decision thereon.

1. On 23 April 2007, Lazarević (“Applicant”) filed a motion for provisional release.² In its decision of 22 May 2007, the Trial Chamber denied that motion, reasoning that the Applicant had not satisfied the Trial Chamber that he would return for the continuation of the trial.³ The Trial Chamber stated, however, that its decision was without prejudice to any other motion for provisional release of a more limited duration on compassionate grounds.⁴

2. The Applicant now moves the Trial Chamber for temporary provisional release on compassionate grounds for a period not exceeding fourteen days, starting from the date of this decision, and subject to the same terms and conditions under which he was previously granted provisional release or which the Trial Chamber deems fit to impose pursuant to Rule 65(C).⁵ The grounds upon which the Applicant bases his Motion are the Applicant’s wife’s worsening health condition and the consequent restrictions on her ability to travel.⁶ The Applicant submits that he “has always been in full compliance with the terms and conditions of his provisional release”,⁷ and that the Government of the Republic of Serbia has issued an official conclusion certifying the previously issued guarantees that the Applicant will return from Serbia for trial.⁸

3. The Applicant specifies the location in Niš, Serbia, to which he proposes to travel, should his Motion be granted, as the address detailed in the confidential annex to this Decision.⁹ The Applicant adds that he would not leave the territory of the city of Niš under any circumstances and that “his presence would fulfil the purpose of his provisional release.”¹⁰

¹ See also confidential Vladimir Lazarević’s Motion Requesting Provisional Release on the Grounds of Compassion with Confidential Annex, 8 June 2007.

² Vladimir Lazarević’s Motion for Provisional Release During the Upcoming Court Recess with Annex A and Confidential Annex B, 23 April 2007.

³ Decision on Lazarević Motion for Provisional Release, 22 May 2007 (“22 May Decision”), para. 12.

⁴ 22 May Decision, para. 15.

⁵ Motion, paras 4, 10, on p. 5. The Trial Chamber notes that the paragraphs in the Motion are occasionally incorrectly numbered.

⁶ Motion, paras 5–10, Annex.

⁷ Motion, para. 10, the second on p. 4.

⁸ Motion, para. 11 on p. 5.

⁹ Motion, para. 11 on p. 4.

¹⁰ Motion, para. 11 on p. 4.

4. On 5 June 2007, the Prosecution filed its response to the Motion,¹¹ in which it states its “general opposition” to the provisional release of any of the six Accused in this case at this stage, but recognises the Trial Chamber’s discretion nevertheless to grant provisional release on compassionate grounds.¹² The Prosecution notes that the medical information provided in the confidential annex to the Motion “does not seem to indicate an immediate, urgent life-threatening crisis or condition”,¹³ and submits that, should the Applicant be granted provisional release, the Trial Chamber should consider requiring “electronic monitoring and/or 24-hour security details.”¹⁴

5. The Trial Chamber is in receipt of a letter from the Ministry of Foreign Affairs of The Netherlands, in which The Netherlands – in its capacity as host country – represents that it has no objection to the Applicant’s provisional release.¹⁵ The Trial Chamber is also in receipt of the confidential “Conclusion of the Government of the Republic of Serbia”, dated 22 March 2007, confirming that Serbia will respect all orders made by this Trial Chamber in respect of the provisional release of the Applicant.

6. In its “Decision on Šainović Motion for Temporary Provisional Release”, issued 7 June 2007 (“7 June Šainović Decision”), the Trial Chamber detailed the law in relation to granting provisional release on compassionate grounds. Applying the same legal principles to the Applicant’s Motion, the Trial Chamber considers that it is appropriate, based upon the circumstances relevant to the health of the Applicant’s wife, that the Applicant be granted provisional release for a limited duration on compassionate grounds.

7. The Trial Chamber reiterates that, in cases similar to the instant case where limited provisional release has been granted on compassionate grounds, the period for which an accused has been provisionally released has varied from three to five days.¹⁶ The Trial Chamber therefore considers that granting the Applicant provisional release on compassionate grounds for a period of five days is consistent with the practice of the Tribunal.

¹¹ Confidential Prosecution Response to Vladimir Lazarević’s Motion Requesting Provisional Release on the Grounds of Compassion, 5 June 2007 (“Response”).

¹² Response, para. 4.

¹³ Response, para. 5.

¹⁴ Response, para. 6.

¹⁵ Letter from Mr. J.H.P.A.M. de Roy, Deputy Director of Protocol for the Minister of Foreign Affairs, to Chief CMSS, dated 30 May 2007.

¹⁶ See 7 June Šainović Decision, para. 12.

8. For the foregoing reasons and pursuant to Articles 20, 21, and 29 of the Statute and Rules 54 and 65, the Trial Chamber hereby **GRANTS** the Motion in part and **ORDERS** as follows:

- (a) On Tuesday, 26 June 2007, Vladimir Lazarević (“Applicant”) shall be transported to the appropriate airport in the Netherlands by the Dutch authorities.
- (b) At the appropriate airport, the Applicant shall be provisionally released into the custody of an official of the Government of the Republic of Serbia (“Serbia”) to be designated prior to the Applicant’s release in accordance with operative paragraph (m) hereunder, who shall accompany the Applicant for the remainder of his travel to and from the address detailed in the confidential annex to this Decision.
- (c) On his return, the Applicant shall be accompanied by a designated official of Serbia, who shall deliver the Applicant to the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport the Applicant back to the United Nations Detention Unit in The Hague.
- (d) During the period of his provisional release, the Applicant shall abide by the following conditions:
 - i. the Applicant shall remain at the address detailed in the confidential annex to this Decision;
 - ii. Serbia shall provide 24-hour surveillance of the Applicant throughout his presence in Serbia; and
 - iii. the Applicant shall surrender his passport to the Ministry of Justice of Serbia for the duration of his provisional release.
- (e) Before leaving the United Nations Detention Unit in The Hague, the Applicant shall provide details of his itinerary to the Ministry of Justice of the Netherlands and to the Registrar of the Tribunal.
- (f) The Applicant shall not have any contact with any co-accused in the case.
- (g) The Applicant shall not have any contact whatsoever, or in any way interfere with, any victim or potential witness or otherwise interfere in any way with proceedings before the Tribunal or with the administration of justice.
- (h) The Applicant shall not discuss his case with anyone, including the media, apart from his counsel.

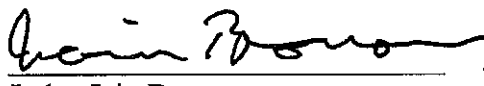
- (i) The Applicant shall continue to cooperate with the Tribunal and comply with any further Orders or Decisions of this Trial Chamber regarding his provisional release.
- (j) The Applicant shall comply strictly with any requirements of the authorities of Serbia, which are necessary for them to comply with their obligations pursuant to this Order.
- (k) The Applicant shall return to the Tribunal on Monday, 2 July 2007.
- (l) The Applicant shall comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.
- (m) The Government of Serbia shall assume the following responsibilities:
 - (i) Designation of an official of Serbia, into whose custody the Applicant shall be provisionally released and who shall accompany the Applicant from the appropriate airport in The Netherlands to the address detailed in the confidential annex to this Decision and notify, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated official.
 - (ii) Provision of 24-hour surveillance of the Applicant throughout his stay in Serbia.
 - (iii) Provision of the personal security and safety of the Applicant while on provisional release.
 - (iv) Responsibility, at the request of the Trial Chamber or the parties, for facilitating all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication(s).
 - (v) Responsibility for informing the Trial Chamber of any failure by the Applicant to comply with the terms of this Order.
 - (vi) Responsibility for arresting and detaining the Applicant immediately should he breach any of the conditions of this Order.
 - (vii) Responsibility, once the Applicant has returned to the United Nations Detention Unit in The Hague, for the submission of a written report to the Trial Chamber as to the compliance of the Applicant with the terms of this Order.

9. The Trial Chamber hereby **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the provisional release of the Applicant, and to continue to detain the Applicant at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the Government of the Republic of Serbia into whose custody the Accused is to be provisionally released.

10. The Trial Chamber hereby **REQUESTS** the authorities of all States through which the Accused will travel:

- (a) to hold the Applicant in custody for any time that he will spend in transit at an airport in their territories; and
- (b) to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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


Judge Iain Bonomy
Presiding

Dated this eighteenth day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]