

IT-04-84-R77.5
D131 - D126
23 MAY 2008

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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-04-84-R77.5

Date: 23 May 2008

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine van den Wyngaert
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 23 May 2008

PROSECUTOR

v.

BATON HAXHIU

PUBLIC

DECISION ON PROVISIONAL RELEASE OF BATON HAXHIU

Office of the Prosecutor

Mr David Re
Mr Vincent Lunny

Counsel for the Accused

Mr Christian Kemperdick

I. Procedural background and submissions

1. The Indictment for contempt against Baton Haxhiu (“Accused”) was confirmed on 10 April 2008.¹ The Indictment alleges that the Accused wrote and published an article which revealed the identity of a protected witness in the *Haradinaj et al.* case. According to the Indictment, the Accused thereby knowingly and willingly interfered with the administration of justice in knowing violation of orders by a Trial Chamber of the Tribunal.

2. The Accused was transferred to the seat of the Tribunal on 20 May 2008. His initial appearance was held on the following day and the Accused pleaded not guilty.² During the initial appearance, the Defence made an oral application for the Accused’s provisional release.³ On 22 May 2008, further submissions and supporting material for the application were filed.⁴

3. In its submissions, the Defence argues that there is no evidence suggesting that the Accused will not appear for trial if provisionally released.⁵ It further submits that the Accused’s father suffers from prostate cancer which the Accused believes could be at a terminal stage.⁶ Attached to the Motion are medical documents purportedly setting out the Accused’s father’s condition. The Defence also submits that the Accused has at all times cooperated with the Prosecution, that the Accused’s family is dependent on his income, that the gravity of the charge is not such that it would entice him to flee, and that the Prosecution does not oppose the application.⁷

4. The Prosecution does not oppose the application for the Accused’s provisional release.⁸

5. On 23 May 2008, the United Nations Interim Administration Mission in Kosovo (“UNMIK”) filed a submission in which it undertakes to, amongst other, require the Accused to report to UNMIK Police as often as needed, to report weekly on the provisional release of the Accused, and to ensure the return of the Accused to the custody of security officers of the

¹ Decision on Review of Indictment, 10 April 2008.

² Transcript in *Prosecutor v. Haxhiu* page(s) (“T”) 1-13.

³ T. 9-13.

⁴ Motion on Behalf of Baton Haxhiu for Provisional Release with Confidential Annexes, 22 May 2008 (“Motion”).

⁵ Motion, under II. a.

⁶ Motion, under II. a., T. 10-12.

⁷ Motion, under II. b., d., e., f. and III.

⁸ Response to Application for Provisional Release, 22 May 2008; See also T. 12.

Tribunal at conclusion of the provisional release.⁹ On the same day, the Netherlands, in its capacity as the Host State of the Tribunal, submitted that it has no objections to the provisional release of the Accused.¹⁰

II. Applicable law

6. Rule 65 of the Rules of Procedure and Evidence (“Rules”) sets out the basis upon which a Chamber may order the provisional release of an accused. Rule 65 of the Rules applies during pre-trial, as well as during the trial.¹¹ It reads, in relevant parts:

- (A) Once detained, an accused may not be released except upon an order of a Chamber.
- (B) Release may be ordered by a Trial Chamber 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 accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
- (C) The 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.

7. The conditions listed under Rule 65 (B) are the minimum requirements necessary for granting provisional release. It is for an accused to prove that the conditions of Rule 65 (B) have been met.¹² A Chamber has the discretion not to grant the provisional release of an accused even if it is satisfied that these conditions have been met.¹³

III. Discussion

According to Rule 65 (B) of the Rules, a Trial Chamber cannot grant provisional release unless it is satisfied that an accused, if released, would return for trial. The Accused surrendered voluntarily to the Tribunal. In general, the fact that an accused surrendered voluntarily to the Tribunal is a strong indication that he would not try to escape from justice if

⁹ Submission by the United Nations Interim Administration Mission in Kosovo (UNMIK) to the Trial Chamber in Response to the Request to UNMIK Regarding Defence Motion on Behalf of Baton Haxhiu for Provisional Release, 23 May 2008 (“UNMIK Submission”).

¹⁰ Letter filed by the Netherlands, 23 May 2008.

¹¹ *Prosecutor v. Milutinović et al.*, Decision on Interlocutory Appeal of Denial of Provisional Release during the Winter Recess, Appeals Chamber, 14 December 2006, para. 10.

¹² *Prosecutor v. Limaj et al.*, Decision on Fatmir Limaj’s Request for Provisional Release, 31 October 2003, para. 40; *Prosecutor v. Prlić et al.*, Decision on Motions for Re-Consideration, Clarification, Request for Release and Application for Leave to Appeal, 8 September 2004, para. 28.

¹³ *Prosecutor v. Popović et al.*, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Ljubomir Borovčanin Provisional Release, Appeals Chamber, 1 March 2007, para. 5; *Prosecutor v. Milutinović et al.*, Decision on Milutinović Motion for Provisional Release, Trial Chamber, 22 May 2007, para. 6.

provisionally released. The Prosecution submitted that it does not view the Accused as “a flight risk”.¹⁴

8. UNMIK has provided guarantees that it would ensure the return of the Accused to the custody of security officers of the Tribunal. According to Security Council Resolution 1244 of 10 June 1999, UNMIK is entrusted with ensuring public safety and order in Kosovo/Kosova,¹⁵ and therefore UNMIK is the proper authority to provide such guarantees.¹⁶ On the basis of the UNMIK Submission, the Chamber is satisfied that UNMIK is able to secure the attendance of the Accused before the Tribunal.

9. In light of the above, the Chamber is satisfied that the Accused will appear for the trial.

10. Additionally, provisional release cannot be granted unless the Trial Chamber is satisfied that an accused, if released, would not pose a danger to victims, witnesses or other persons. This assessment cannot be made in abstract – a concrete danger needs to be identified.¹⁷ The Prosecution has indicated that it does not intend to call any witnesses in this case, and that if it does, the only witness it may call is one of its investigators.¹⁸ Under those circumstances, the Chamber is satisfied that the Accused’s provisional release will not pose a danger to any victim, witness or other person.

11. In exercising its discretion under Rule 65 (B) of the Rules, the Chamber has first considered the nature of the charge against the Accused which carries a sentence of imprisonment not exceeding seven years or a fine, or both.¹⁹ The Chamber has further considered the Accused’s father’s illness and finds that this weighs in favour of the granting of the provisional release. However, the medical documents attached to the Motion have not been translated and the Chamber is unable to objectively ascertain the condition of the Accused’s father. The Chamber therefore gives limited weight to this factor. The Chamber finds that the Accused’s position as the income provider for his family, although taken into account, does not carry much weight in its consideration of the application. Finally, the Chamber notes that the Prosecution does not oppose the application.

¹⁴ T. 12.

¹⁵ Security Council Resolution 1244 (1999), UN Doc. S/RES/1244 (1999), para. 11(i).

¹⁶ *Prosecutor v. Haradinaj et al.*, Decision on Ramush Haradinaj’s Motion for Provisional Release, 6 June 2005 (“Haradinaj 6 June Decision”), para. 26.

¹⁷ *Prosecutor v. Stanišić*, Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić’s Provisional Release, 17 October 2005, para. 27.

¹⁸ T. 8.

¹⁹ Rule 77 (G) of the Rules.

IV. Disposition

12. Considering all the foregoing factors, and pursuant to Rule 65 of the Rules, the Chamber hereby **GRANTS** the Application and **ORDERS** the provisional release of Baton Haxhiu on the following terms and conditions:

1. As soon as practicable, Baton Haxhiu shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
2. During his travel from The Hague to Priština/Prishtinë, and on his return trip, the Accused shall be escorted by security officers of the Tribunal;
3. At Priština/Prishtinë airport, the Accused shall be delivered into the custody of UNMIK officials, who shall accompany the Accused to his place of residence as stated at the final page of the Defence's filing of 22 May 2008;
4. For his return, the Accused shall be accompanied to the airport by UNMIK officials, who shall deliver the Accused to the custody of security officers of the Tribunal at Priština/Prishtinë airport;
5. The Accused shall not attempt in any way to interfere with the administration of justice;
6. The Accused shall not discuss his case with anyone, including the media, other than with his counsel;

The Chamber **REQUIRES** the authorities of UNMIK to assume responsibility as follows:

- (i) Designate the UNMIK officials who shall take custody of the Accused at Priština/Prishtinë airport, and notify the Registrar, prior to the Accused's departure from The Hague, of the names of the officials, who shall at all times include at least one non-Albanian UNMIK representative who understands and speaks Albanian;
- (ii) Ensure that the Accused surrenders his passport to the UNMIK authorities upon arrival to Kosovo/Kosova;
- (iii) Ensure further that the Accused reports weekly to the UNMIK police in the place of his residence and that a report on provisional release of the Accused is sent to the Chamber on a weekly basis.

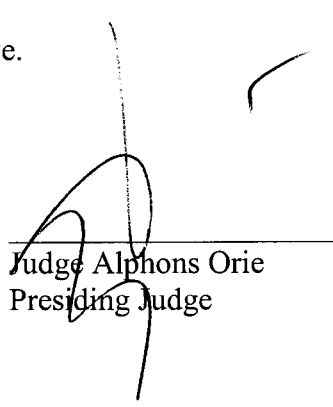
- (iv) Ensure compliance with the conditions of the Accused's provisional release as set out in this Decision, and arrest and detain the Accused immediately and report immediately to the Registrar in case of any breach of the conditions set out herein;

The Chamber **INSTRUCTS** the Registrar to ensure that the Accused is safely escorted from The Hague to Priština/Prishtinë, as well as on the return journey, and to consult with the appropriate authorities as to the arrangements for his provisional release and transport.

It further **REQUESTS** the authorities of all States through whose territory the Accused will travel,

- (i) To hold the Accused in custody for any time that he will spend in transit at the airport;
- (ii) 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 version being authoritative.



Judge Alphons Orie
Presiding Judge

Dated this 23rd day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]