



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-A  
Date: 3 April 2013  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Bakhtiyar Tuzmukhamedov

**Registrar:** Mr. John Hocking

**Decision:** 3 April 2013

**PROSECUTOR**

v.

**NIKOLA ŠAINOVIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

***PUBLIC***

**DECISION ON SRETEN LUKIĆ'S MOTION FOR  
PROVISIONAL RELEASE**

**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**Counsel for the Defence:**

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
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**

**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),

**BEING SEISED OF** “Sreten Lukic’s [*sic*] Request for Provisional Release” filed confidentially and *ex parte* by Counsel for Sreten Lukić (“Lukić”) on 5 March 2013 (“Motion”);

**NOTING** the “Prosecution Response to Sreten Lukić’s Fifth Motion for Provisional Release” filed confidentially and *ex parte* by the Office of the Prosecutor (“Prosecution”) on 7 March 2013 (“Response”);<sup>1</sup>

**NOTING** that Lukić did not file a reply;

**NOTING** that Lukić requests that he be granted provisional release “for a time period of 14 days or in the alternative, for a period of time to be determined by the Chamber”;<sup>2</sup>

**NOTING** that Lukić claims to satisfy the criteria of Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”)<sup>3</sup> and avers that “humanitarian grounds” exist relating to his physical health, which warrant his provisional release;<sup>4</sup>

**NOTING** that, according to Lukić, the “risk factors” associated with detention coupled with his medical history require that he be “checked out in full” at the medical facility in Serbia where he underwent heart surgery in 2004 and 2005 (“Serbian Hospital”);<sup>5</sup>

**NOTING** Lukić’s contention that the “necessary and mandatory tests have not been completed in the Netherlands despite the time that has passed” since his surgery;<sup>6</sup>

**NOTING** that, in support of his request, Lukić appends to his Motion a medical report dated 21 January 2013, which is signed and stamped by Professor Miljko Ristić, a doctor from the

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<sup>1</sup> Although the Motion and the Response were filed confidentially and *ex parte*, the Appeals Chamber recalls that all decisions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential. The Appeals Chamber considers that there are no exceptional reasons for issuing this decision confidentially and therefore files it publicly. See Decision on Sreten Lukić’s Motion for Provisional Release, 30 March 2012 (“Decision of 30 March 2012”), fn. 1, and references cited therein

<sup>2</sup> Motion, p. 7. Lukić asks that he be granted provisional release after the appeal hearing in this case, which was held on 11-15 March 2013. Lukić underscores that the Motion “is not intended to disturb the Appeals Hearing.” See Motion, para. 3. See also Order Amending Scheduling Order and Setting the Timetable for the Appeal Hearing, 31 January 2013.

<sup>3</sup> Motion, paras 9-13, 18. The Appeals Chamber notes that Lukić contends that he is not a flight risk and does not pose a danger to any victim, witness, or other person. See Motion, paras 9-12. See also Motion, paras 1, 5, Annex A.

<sup>4</sup> Motion, paras 3, 18. See also Motion, paras 14-17.

<sup>5</sup> See Motion, paras 14, 18. According to Lukić, the Serbian Hospital “is tasked with ensuring the longevity of his life and successful course of future treatment for his condition.” See Motion, para. 18.

<sup>6</sup> Motion, para. 18. See also Motion, para. 17.

Serbian Hospital, who visited Lukić at the United Nations Detention Unit between 17 and 19 December 2012 and reviewed his medical records;<sup>7</sup>

**NOTING** that the Prosecution opposes the Motion;<sup>8</sup>

**RECALLING** that, pursuant to Rule 65(I) of the Rules, provisional release may be granted if the Appeals Chamber 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:

**RECALLING** that “special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant’s medical need”;<sup>9</sup>

**CONSIDERING** that the Report of Professor Ristić does not indicate any complications or adverse developments related to Lukić’s medical condition, but rather notes that Lukić’s “medical examinations are infrequent and insufficient, and they do not reliably show either his current state of health or the disease prognosis”;<sup>10</sup>

**CONSIDERING** that neither the Report of Professor Ristić nor the Motion explains why the appropriate medical examinations cannot be performed in The Netherlands;<sup>11</sup>

**CONSIDERING** that, as the applicant seeking provisional release, Lukić bears the burden of demonstrating that the appropriate medical care is unavailable in The Netherlands;<sup>12</sup>

**CONSIDERING FURTHER** that Lukić’s desire to have a full medical check-up at the Serbian Hospital where he has undergone operations in the past is insufficient to satisfy the threshold of Rule 65(I)(iii) of the Rules;

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<sup>7</sup> Motion, Annex C (“Report of Professor Ristić”) See also Motion, paras 16-17 Lukić also appends to the Motion a medical report dated 10 February 2012, which is signed and stamped by three Serbian doctors, including Professor Miljko Ristić. See Motion, Annex B Lukić relied on this report in his motion for provisional release of 16 March 2012 See Sreten Lukic’s [*sic*] Request for Provisional Release, 16 March 2012 (confidential and *ex parte*), Annex B. See also Decision of 30 March 2012, p. 2.

<sup>8</sup> Response, paras 1-4.

<sup>9</sup> Decision of 30 March 2012, p. 2. and reference cited therein.

<sup>10</sup> Report of Professor Ristić. See also Motion, para 17.

<sup>11</sup> The Appeals Chamber recalls that while the unavailability of medical treatment is not a requirement explicitly provided for in Rule 65(I) of the Rules, it is a relevant factor in determining, on a case-by-case basis, whether “special circumstances” exist in light of the totality of relevant considerations. See Decision on Nebojša Pavković’s Motion for Temporary Provisional Release on Compassionate Grounds, 22 September 2009 (confidential), para 14

<sup>12</sup> See Decision on Vladimir Lazarević’s Motion for Temporary Provisional Release on Compassionate Grounds, 23 March 2011 (confidential), fn. 61. and reference cited therein

**FINDING**, therefore, that Lukić has failed to demonstrate the existence of special circumstances required by Rule 65(I)(iii) of the Rules;

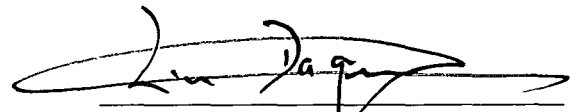
**CONSIDERING** that as the requirements of Rule 65(I) of the Rules are cumulative, there is no need to consider whether the requirements of Rules 65(I)(i) and (ii) are met;<sup>13</sup>

**FOR THE FOREGOING REASONS**

**DISMISSES** the Motion.

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

Dated this 3<sup>rd</sup> day of April 2013,  
At The Hague,  
The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]

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<sup>13</sup> Decision of 30 March 2012, p. 2, and references cited therein.