

**UNITED
NATIONS**



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-05-88-A
Date: 30 January 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 30 January 2013

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON VUJADIN POPOVIĆ'S URGENT MOTION FOR
CUSTODIAL RELEASE ON COMPASSIONATE GROUNDS**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Government of Bosnia and Herzegovina

Government of the Republika Srpska

Government of the Kingdom of The Netherlands

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović

Mr. John Ostojčić for Mr. Ljubiša Beara

Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić

Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić

Mr. Dragan Krgović and Mr. David Josse QC for Mr. Milan Gvero

Mr. Peter Haynes QC and Mr. Simon Davis for Mr. Vinko Pandurević

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 “Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds” filed confidentially with confidential annexes by Vujadin Popović (“Popović”) on 14 January 2013 (“Motion”);

NOTING the “Addendum to Vujadin Popović’s Urgent Motion for Custodial Release” filed confidentially with confidential annex by Popović on 17 January 2013 (“Addendum to the Motion”), which attaches guarantees from the Government of the Republika Srpska in support of the Motion;¹

NOTING the “Prosecution Response to Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds” and the “Addendum to Prosecution Response to Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds” both filed confidentially by the Office of the Prosecutor (“Prosecution”) on 15 January 2013 and 21 January 2013, respectively (“Response” and “Addendum to the Response”, respectively), in which the Prosecution only opposes the Motion “[i]n the absence of guarantees from the Government of Republika Srpska in response to strict conditions”² as set out in the Addendum to the Response;³

NOTING the “Reply to Addendum to Prosecution Response to Vujadin Popović’s Urgent Request for Custodial Release” filed confidentially by Popović on 22 January 2013 (“Reply”), in which Popović indicates that he will accede to most of the additional conditions proposed by the Prosecution in the Addendum to the Response with the exception that he should remain in the confines of a State Prison facility and that his movement should be limited to attending the memorial service;⁴

NOTING that Popović requests that he be granted provisional release in the Republika Srpska for a period of three days, including travel time, from 8 February to 10 February 2013, or such duration as deemed fit by the Appeals Chamber, to attend the memorial service of his mother who passed away on 3 January 2013;⁵

¹ Guarantee of the Government of the Republika Srpska, S/M – 1/13 conf., dated 15 January 2013 (confidential) (“Republika Srpska’s Guarantees”).

² Addendum to the Response, para. 7. See also Response, para. 2; Addendum to the Response, paras 1, 2, 4.

³ See Addendum to the Response, para. 6.

⁴ Reply, paras 4-7.

⁵ Motion, paras 1, 6-8.

NOTING that Popović requests that he be permitted to stay in Šekovići and attend gatherings at the local cemetery and the home of his deceased mother, while he spends his nights in a local police station in Šekovići, Republika Srpska;⁶

NOTING that Popović submits, *inter alia*, that: (i) local prison facilities in Republika Srpska fall under the authority of the Ministry of Interior, which also governs any State prison facility; (ii) there is no evidence that the local prison facility in Šekovići is less capable of guarding him than an unspecified State prison facility; and (iii) a condition which requires him to stay in a State prison facility is excessive in light of the logistics requiring him to travel long distances at night on poorly illuminated and deserted mountainous roads;⁷

NOTING that The Netherlands, in its capacity as Host State, informed the Tribunal by a letter filed confidentially on 16 January 2013 that it did not object to Popović's provisional release;⁸

NOTING that Popović claims to satisfy the criteria of Rule 65(I) of the Tribunal's Rules of Procedure and Evidence ("Rules"), in that: (i) he is not a flight risk and will surrender into detention at the conclusion of the provisional release; (ii) he will not pose a danger to any victim, witness, or other person; and (iii) his mother's memorial service constitutes a special circumstance warranting his provisional release;⁹

NOTING that, in addition, Popović submits a solemn declaration that he will "fully and unconditionally comply with any decision of the Appeals Chamber";¹⁰

NOTING Popović's submission that special circumstances exist which merit his provisional release, as his mother, Ms. Vukosava Popović, passed away on 3 January 2013 and her memorial service is scheduled to take place in Šekovići, Republika Srpska, on 9 February 2013, approximately 40 days after her death in accordance with Orthodox tradition;¹¹

NOTING that Popović appends to the Motion the death certificate of Ms. Vukosava Popović which confirms that she passed away on 3 January 2013;¹²

⁶ Reply, para. 7; Motion paras 4, 6.

⁷ Reply, paras 4-5.

⁸ Correspondence from the Head of the Host Nation Division for the Minister of Foreign Affairs, "Re Custodial release Mr. Vujadin Popović", 16 January 2013 (confidential).

⁹ Motion, paras 2, 4, 6. While Popović refers to Rule 65(B) of the Rules and to "compelling humanitarian grounds", the Appeals Chamber understands that he meant to refer to Rule 65(I) of the Rules and "special circumstances".

¹⁰ Motion, Annex B, para. 2(viii).

¹¹ Motion, para. 6.

¹² Motion, Annex C.

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 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 the requirements under Rule 65(I) of the Rules must be considered cumulatively,¹³ and the discretionary assessment of whether they have been met is made on a case-by-case basis;¹⁴

RECALLING that special circumstances related to humanitarian and compassionate considerations exist where there is an “acute justification”, such as a memorial service for a close family member;¹⁵

CONSIDERING that the memorial service for Popović’s mother constitutes a special circumstance within the meaning of Rule 65(I) of the Rules;

CONSIDERING that Popović’s indication that he “will accede to most of the additional conditions proposed by the Prosecution”¹⁶ in its Addendum to the Response does not replace the need for sufficient guarantees, and that so far the Republika Srpska’s Guarantees do not specifically address all of the stringent conditions set out below;

CONSIDERING that in view of: (i) Popović’s own solemn declaration to return to the United Nations Detention Unit (“UNDU”) and to refrain from contacting any witnesses or victims;¹⁷ and (ii) the Republika Srpska’s Guarantees that it will, *inter alia*, provide 24-hour security for Popović during his stay in the Republika Srpska and escort Popović during all necessary transfers,¹⁸ the imposition of strict conditions, as set out below, will suffice to ensure Popović’s return to the UNDU at the end of his provisional release, and that he will not pose a danger to any victim, witness or other person;

FINDING, therefore, that the requirements of Rule 65(I) of the Rules are satisfied, provided that the Government of the Republika Srpska provides additional guarantees that it will respect and ensure compliance with the specific conditions set out below;

¹³ Public Redacted Version of 11 December 2012 Decision on Vujadin Popović’s Application for Custodial Release on Compassionate Grounds, 16 January 2013 (“Popović Decision of 16 January 2013”), p. 2 and references cited therein.

¹⁴ Popović Decision of 16 January 2013, p. 2 and references cited therein.

¹⁵ Popović Decision of 16 January 2013, p. 3 and references cited therein.

¹⁶ Reply, para. 4.

¹⁷ Motion, Annex B, paras 2(i), (iv).

¹⁸ Republika Srpska’s Guarantees, paras 1, 3-5.

FINDING further that although all the related findings were confidential, the present decision does not contain any information to warrant giving it a confidential status;

FINDING that Popović shall not be provisionally released unless the Republika Srpska provides, no later than 4 February 2013, additional guarantees to the Appeals Chamber that it will respect and ensure compliance with the specific conditions set out in the Orders and Requirements below;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 65(I) of the Rules,

HEREBY GRANTS the Motion and **AUTHORISES** provisional release for Popović for a period of three days from 8 February to 10 February 2013, subject to the conditions below; and

ORDERS as follows:

1. Popović shall be transported to Schiphol airport in The Netherlands by the Dutch authorities on 8 February 2013;
2. At Schiphol airport, Popović shall be provisionally delivered into the custody of the authorised official(s) of the Ministry of Interior of the Republika Srpska and shall be under the supervision and surveillance of such official(s) of the Ministry of Interior of the Republika Srpska who shall accompany him for the remainder of his travel to and from Šekovići, Republika Srpska, Bosnia and Herzegovina;
3. The period of the provisional release shall commence when Popović is delivered into the custody of the authorised official(s) of the Ministry of Interior of the Republika Srpska at Schiphol airport on 8 February 2013 and shall terminate upon his return to the Dutch authorities, which shall be no later than 10 February 2013;
4. On his return flight, Popović shall be accompanied by the authorised official(s) of the Ministry of Interior of the Republika Srpska who shall deliver him into the custody of the Dutch authorities at Schiphol airport, and the Dutch authorities shall then transport Popović back to the UNDU in The Hague; and
5. During the period of his provisional release, Popović shall abide by the following conditions:

- a. before leaving the UNDU, Popović shall provide details of his itinerary to the Ministry of Justice of The Netherlands and to the Registrar of the Tribunal (“Registrar”);
- b. Popović shall remain within the confines of the home of his deceased mother, the local cemetery, and the local prison in Šekovići, Republika Srpska, Bosnia and Herzegovina, apart from his travel to and from these locations and as specifically authorised by the Appeals Chamber;
- c. between 23:00 hours each night and 7:00 hours the next day, Popović shall be confined to the local prison in Šekovići, Republika Srpska, Bosnia and Herzegovina;
- d. Popović shall remain under 24-hour armed surveillance by authorised officials of the Ministry of Interior of the Republika Srpska throughout his presence in Republika Srpska, Bosnia and Herzegovina;
- e. Popović shall surrender all his travel documents to the European Union Police Mission in Sarajevo, or the Office of the Prosecutor in Sarajevo, or the Public Security Station in the Municipality of Šekovići for the entire duration of his provisional release;
- f. Popović shall have no contact whatsoever or in any way interfere with victims or (potential) witnesses, or otherwise interfere in any way with the proceedings of the Tribunal or the administration of justice;
- g. Popović shall not discuss his case with anyone, including the media, other than his Counsel;
- h. Popović shall strictly comply with any requirements of the authorities of Republika Srpska necessary to enable them to comply with their obligations under the present decision;
- i. Popović shall comply with any order of the Appeals Chamber varying the terms of or terminating his provisional release; and
- j. Popović shall return to the UNDU no later than 10 February 2013;

REQUIRES the Government of the Republika Srpska to inform the Appeals Chamber and the Registrar by 4 February 2013 that it will assume responsibility for:

1. Designating the authorised official(s) of the Ministry of Interior of the Republika Srpska into whose custody Popović shall be delivered and who shall accompany Popović from Schiphol airport in The Netherlands to the local prison facility in Šekovići, Republika Srpska, Bosnia and Herzegovina, and back to Schiphol airport;
2. Notifying, as soon as practicable, but no later than 4 February 2013, the Appeals Chamber and the Registrar of the name(s) of these designated official(s);
3. Ensuring Popović's personal security and safety while on provisional release in the Republika Srpska;
4. Providing 24-hour armed surveillance of Popović throughout his stay in the Republika Srpska, including the transfer from the airport in Bosnia and Herzegovina to Šekovići, Republika Srpska, and back;
5. Covering all expenses in connection with Popović's provisional release including, but not limited to, the transport from Schiphol airport to Šekovići, Republika Srpska, Bosnia and Herzegovina, and back to Schiphol airport into the custody of Dutch authorities;
6. 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 communications;
7. Reporting immediately to the Registrar as to the substance of any threats to Popović's security, including full reports of investigations related to such threats;
8. Detaining Popović immediately should he attempt to escape from the territory of the Republika Srpska or the custody of the authorised official(s) of the Ministry of Interior of the Republika Srpska, 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;
9. Respecting the primacy of the Tribunal in relation to any existing or future proceedings in the Republika Srpska concerning Popović;
10. Submitting a daily written report to the Tribunal confirming the presence of Popović in the Republika Srpska and his adherence to the conditions of his provisional release; and
11. Complying strictly with any other or further requirement of the Appeals Chamber concerning this short-term provisional release; and

INSTRUCTS the Registrar to:

1. Consult with the Dutch authorities and the authorities of the Republika Srpska as to the practical arrangements for Popović's provisional release;
2. Request the authorities of the State(s) through whose territory Popović 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 Popović pending his return to the UNDU should he attempt to escape during travel.
3. Continue to detain Popović at the UNDU in The Hague until such time as the Appeals Chamber and the Registrar have been notified of the name of the designated official of the Ministry of Interior of the Republika Srpska into whose custody Popović will be provisionally released, as well as the name of the State Prison facility where Popović will be accommodated as set out above.

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



Judge Patrick Robinson
Presiding

Dated this thirtieth day of January 2013,
At The Hague,
The Netherlands.

[Seal of the Tribunal]