

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-04-82-A
Date: 23 December 2009
Original: English

BEFORE THE DUTY JUDGE

Before: Judge Guy Delvoie, Duty Judge
Registrar: Mr. John Hocking
Decision of: 23 December 2009

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI
PUBLIC

**DECISION ON TARČULOVSKI'S MOTION FOR
PROVISIONAL RELEASE OF 17 DECEMBER 2009**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ljube Boškosi:

Ms. Edina Rešidović
Mr. Guénaél Mettraux

Counsel for Johan Tarčulovski:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz
Mr. Antonio Apostolski
Mr. Jordan Apostolski

I, **Guy DELVOIE**, Judge 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”), acting in my current capacity as Duty Judge in accordance with Rule 28 of the Rules of Procedure and Evidence (“Rules”);

BEING SEIZED OF the “Tarčulovski Motion for Provisional Release to Meet his Legal Obligations with Annexes 1 and 2”, filed on 17 December 2009 (“Motion”) by Johan Tarčulovski (“Tarčulovski”);

NOTING the “Prosecution Response Opposing Tarčulovski’s Motion for Provisional Release with Annex”, filed on 21 December 2009 (“Response”), in which the Prosecution opposes the Motion;¹

NOTING that the Motion was filed only one week prior to the start of the period for which provisional release is sought;

NOTING FURTHER that the Motion was filed only one day before the commencement of the court recess, and was thus presented to Me, as the Duty Judge, pursuant to Rules 28(D)(ii) and 107 of the Rules;

NOTING that pursuant to Rules 28(D)(ii) and 107 of the Rules, where an application is made within the normal Registry hours and the Appeals Chamber is unavailable, it shall be dealt with by the Duty Judge if he is satisfied as to its urgency or that it is otherwise appropriate to do so in the absence of the Appeals Chamber;

CONSIDERING that in the Motion, Tarčulovski requests the Appeals Chamber to grant him provisional release to go to the Former Yugoslav Republic of Macedonia (“FYROM”) for the period from 25 December 2009 to 2 January 2010,² in order for him to meet his legal obligations to obtain his new FYROM ID card and passport;³

CONSIDERING that Tarčulovski argues that pursuant to Article 14 of the FYROM “Law for amending the Law on Personal National ID Card”,⁴ his old ID card will be valid only until 27 February 2010, and that the failure to acquire a new ID card will lead to penalties;⁵

¹ In view of the requested period of provisional release, I consider that it is in the interests of justice to render this Decision before the expiration of the time-limit for Tarčulovski’s reply.

² Motion, para. 16.

³ Motion, para. 6.

⁴ Official Gazette of Republic of Macedonia No. 19/07.

CONSIDERING FURTHER that Tarčulovski submits that a request for a “new ID card has to be submitted in person in the Administrative offices in the Ministry of Interior, according to the residence of the citizen”,⁶

CONSIDERING that Tarčulovski has not produced any evidence to substantiate his request for provisional release for the specific period from 25 December 2009 to 2 January 2010, albeit his submission that his ID card will be valid until 27 February 2010 according to the legislation of the FYROM;⁷

CONSIDERING that although the legislation of the FYROM in question concerning ID cards has been in force since the end of February 2007 and allows for the renewal of ID cards until the end of February 2010,⁸ Tarčulovski has failed to provide any explanation or specific reason why the Motion was filed only one week prior to the start of the period for which provisional release is sought and one day before the commencement of the court recess, and could not be filed at an earlier stage;

CONSIDERING FURTHER that even if the Motion had to be filed that late, Tarčulovski has failed to provide any reason why his request for provisional release cannot be made for a later period, in January or February 2010 so as to allow the Appeals Chamber seized of the present case to deal with the request;

CONSIDERING that in reviewing an application for provisional release, it is incumbent of the court to balance the legitimate interest of the applicant to enjoy his personal freedom with criteria that may militate in favour of his detention on remand, such as the seriousness of the crimes with which he was charged, the risk of interference with witnesses or victims, or the chances that he will appear before the Tribunal;⁹

CONSIDERING that, as a rule, such careful examination of an application for provisional release should be performed by the Appeals Chamber seized of the case;¹⁰

⁵ Motion, paras 7-8, 11.

⁶ Motion, paras 10-11, referring to Annex 2, Letter from the Ministry of Interior.

⁷ I also note that the supporting documentation provided by the Prosecution shows that the deadline for renewing ID cards may be extended to April 2012, *see* Response, para. 5 and Annex A.

⁸ Motion, para. 8.

⁹ *Prosecutor v. Rahim Ademi*, Case No. IT-01-46-PT, Decision on the Defence Motion for Provisional Release, 21 December 2001 (“*Ademi Decision*”), p. 3.

¹⁰ *Ibid.*

CONSIDERING, however, that exceptional circumstances may create a degree of urgency which justifies that a decision be taken by a Duty Judge, *inter alia* circumstances beyond the applicant's control;¹¹

CONSIDERING that it would be an improper use of Rule 28(D) if it were to allow the applicant to engage in forum shopping, *i.e.* to avoid a ruling by the Chamber to which the case is assigned;

CONSIDERING that Tarčulovski has not shown any circumstance which would create a degree of urgency that would require the exercise of my power as a Duty Judge to decide upon the merits of the Motion;

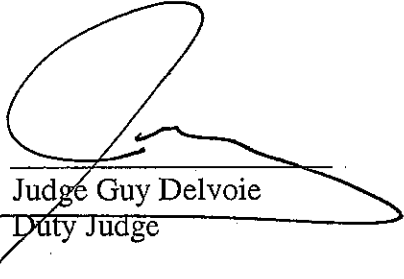
FINDING therefore that I, as a Duty Judge, am not satisfied as to the urgency of the Motion or that it is otherwise appropriate to deal with it in the absence of the Appeals Chamber;

FOR THE FOREGOING REASONS

DECLINE to deal with the Motion.

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

Dated this twenty-third day of December 2009
At The Hague,
The Netherlands



Judge Guy Delvoie
Duty Judge

[Seal of the Tribunal]

¹¹ *Ibid.*