

IT-02-54-T
D44650-D44639
18 JANUARY 2006

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case no. IT-02-54-T

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Date filed: 18 January 2006

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

SECOND ADDENDUM TO ASSIGNED COUNSEL REQUEST
FOR PROVISIONAL RELEASE PURSUANT TO RULE 65
WITH CONFIDENTIAL ATTACHMENTS E AND F AND REPLY TO
PROSECUTION'S INTERIM RESPONSE TO ASSIGNED COUNSEL
REQUEST FOR PROVISIONAL RELEASE WITH CONFIDENTIAL
ATTACHMENTS E AND F

Office of the Prosecutor:

Ms. Carla Del Ponte

Mr. Geoffrey Nice

The Accused

Mr. Slobodan Milošević

Assigned Counsel

Mr. Steven Kay QC

Ms. Gillian Higgins

Amicus Curiae:

Mr. Timothy McCormack

The Government of the Russian Federation

Procedural Background

1. On 20 December 2005, the Assigned Counsel applied for the limited and conditional provisional release of Mr. Milosevic, pursuant to Rule 65 of the Rules of Procedure and Evidence (hereinafter, the "Request").¹
2. On 22 December 2005, the Prosecution filed "*Prosecution's Interim Response to Assigned Counsel Request for Provisional Release*". On 22 December 2005, the Assigned Counsel filed "*First Addendum to Assigned Counsel Request for Provisional Release Pursuant to Rule 65 With Confidential Attachment D*".
3. On 11 January 2006, the Trial Chamber ordered the Defence to submit any further material, including the said guarantees from the Russian Federation, by 18 January 2006.
4. The Assigned Counsel file this Second Addendum in order to (i) provide the Trial Chamber with further materials and (ii) reply to the Prosecution's Interim Response.
 - (i) **Additional Materials in Support of the Application for Provisional Release**
5. In relation to further materials, the Assigned Counsel provide the following: (i) a set of guarantees from the Russian Federation via the Embassy of the Russian Federation in the Kingdom of the Netherlands, dated 17 January 2006, contained within confidential Attachment E and (ii) a series of personal undertakings, signed by Mr. Milosevic, contained within confidential Attachment F.

¹ The Prosecutor v. Slobodan Milosevic, "*Assigned Counsel Request for Provisional Release Pursuant to Rule 65 With Confidential Attachments A, B and C*", 20 December 2005.

(ii) **Reply to Prosecution's Interim Response**

6. The Prosecution opposes the request for provisional release and submits the following:

- (a) the Defence application is incomplete and the Prosecution is unable to deal with the matter;
- (b) the application has been timed to disrupt the proceedings;
- (c) the trial must continue notwithstanding the health of the Accused, even as a trial in absentia;
- (d) the Accused would not return to the Hague if released for medical treatment;
- (e) guarantees provided by the Russian Federation will not provide sufficient assurance that the authorities will arrest the Accused if he violates any of the conditions of his release;
- (f) a personal undertaking from the Accused is "*now not credible*".²

(a) **The Nature of the Application**

7. The Prosecution submits that the Defence application is incomplete and that consequently the Prosecution is unable to deal with the matter.³ In response, the Assigned Counsel submit that the Prosecution has had sufficient information to deal with the Request for provisional release upon the merits. The only matter outstanding at the time of the Request, filed on 20 December 2005, was the provision of guarantees from the Russian Federation, a matter which does not affect the substantive merits of the application. The Assigned Counsel

² See "*The Prosecution's Interim Response to Assigned Counsel Request for Provisional Release*", 22 December 2005 at para.31.

³ The Prosecution has filed a detailed response on this issue, exceeding the standard page limit for the filing of briefs and motions.

submit that the significance of the content of the guarantees and undertakings is a matter for the Trial Chamber, not the Prosecution.

8. Contrary to the assertions of the Prosecution contained within the Interim Response, all relevant medical reports and scans concerning the current medical condition of the Accused have been provided to the Prosecution.

(b) Timing of the Application

9. The Prosecution's allegation that the timing of this application is intended by the Accused to have maximum disruptive effect on these proceedings is factually incorrect.⁴ The application arises as a result of the continuing deterioration in the Accused's health, as shown in recent medical reports. The request for provisional release occurs in order to ensure that the Accused receives necessary and appropriate treatment, and for no other reason. The Assigned Counsel made the application before the Christmas recess in the hope that the Accused could receive treatment during the break.⁵ The Assigned Counsel sought to make the application at a time which would result in minimum inconvenience to the trial and maximum medical benefit to the Accused.

⁴ Repetition of this assertion is contained at paragraphs 7,10,11 and 28 of the Prosecution's Interim Response.

⁵ Time has been required in order to obtain guarantees from the Russian Federation, given the closure of the relevant Embassies over the Christmas period.

(c) **Trial in Absentia**

10. The Assigned Counsel oppose the Prosecution's submission that the trial should continue in the absence of the Accused in the event that his medical treatment necessitates a delay in the proceedings. The Assigned Counsel have consistently submitted that to conduct any part of the trial proceedings in the absence of the Accused would render those proceedings unfair. The Trial Chamber is respectfully referred to previous filings on this particular issue.⁶

(d) **Surrender of the Accused**

11. The application is based solely on the grounds of the health of the Accused and his need for medical treatment. It arises due to the failure of the local doctors to identify and treat his condition. To withhold the medical treatment offered to the Accused and to thereby potentially damage his health while in the custody of the Tribunal, would constitute a breach of his basic human rights. There is no evidence to suggest that the Accused would not return to the ICTY, if provisionally released for such treatment.

(e) **Guarantees from the Russian Federation**

12. The Assigned Counsel reject the Prosecution's assertion that guarantees from the Russian Federation cannot provide sufficient assurance that the authorities will arrest the Accused if he violates any of the conditions of his release. The Prosecution's submissions were formulated before having received and reviewed any guarantees from

⁶ The Prosecutor v. Slobodan Milosevic, "Assigned Counsel Submissions on Trial in Absentia", 22 April 2005; "Supporting materials for Assigned Counsel Submissions on Trial in Absentia", 22 April 2005; "Assigned Counsel Reply to Prosecution Response to Assigned Counsel Submissions on Trial in Absentia", 13 May 2005.

the Russian Federation. In relation to the guarantees provided, the Russian Federation specifically undertakes to abide by the Trial Chamber's orders. The Federation has also undertaken to submit written reports to the Trial Chamber concerning Mr. Slobodan Milosevic's compliance with the conditions set by the Trial Chamber.

13. None of the examples cited by the Prosecution in paragraph 38 of the Interim Response concern individuals who have been provisionally released to the territory of the Russian Federation.⁷ The Prosecution has not presented any evidence to suggest that Russia has refused to assist the Office of the Prosecutor in relation to its co-operation obligations pursuant to Article 29 of the ICTY Statute, as a permanent member of the Security Council.
14. The Assigned Counsel submit that the guarantees of the Russian Federation are unequivocal and demonstrate a firm intention to co-operate with the ICTY. They are comprehensive and cover all matters relating to the transfer, stay and surrender of the Accused.

(f) Personal Undertakings

15. Mr. Milosevic has set out his commitment to comply with the orders of the Trial Chamber in relation to the issue of provisional release to the Bakoulev Center for medical treatment. The Assigned Counsel reject the Prosecution's assertion that "*no such personal guarantees from this Accused could now ever be credible.*" It is submitted that the signed statement evinces a clear intention to abide by all conditions which may be made by the Trial Chamber.

⁷ The examples relied upon by the Prosecution relate to persons at large, present or alleged to be present, within the Russian Federation.

Relief Requested

16. Taking into account (i) the submissions of the Assigned Counsel in relation to the current medical condition of the Accused at paragraphs 12 to 17 of the Request; (ii) the submissions of the Assigned Counsel in respect of other relevant issues pertaining to the application for provisional release at paragraph 18 of the Request; (iii) the availability of a place at the Bakoulev Center, Moscow; (iv) the written undertaking of Dr. Bockeria stating that he is ready to take charge of Mr. Milosevic during his stay at the hospital; (v) the set of guarantees from the Russian Federation and (vi) the personal undertakings from Mr. Slobodan Milosevic, the Assigned Counsel request the provisional release of the Accused for the purposes of his attendance and treatment at the Bakoulev Center, pursuant to conditions as deemed necessary by the Trial Chamber.

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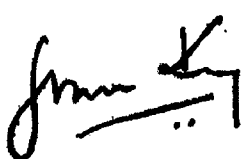
Signed

Steven Kay QC

Gillian Higgins

The Hague

18 January 2006

 QC

