

Case No.: IT-04-81-PT

IN THE TRIAL CHAMBER

Before:

Judge Patrick Robinson, Presiding

Judge O-Gon Kwon

Judge Iain Bonomy

Registrar:

Mr. Hans Holthuis

Decision of:

9 June 2005

PROSECUTOR

v.

MOMCILO PERISIC

DECISION ON MOMCILO PERISIC'S MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor

Mr. Chester Stamp

Mr. Karim Agha

Counsel for the Accused

Mr. James Castle

THIS TRIAL 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 ("International Tribunal"),

BEING SEISED OF the "Momcilo Perisic's Motion for Provisional Release", filed by the Defence of Momcilo Perisic ("the Accused") on 11 May 2005 ("Motion"), in which the Accused submits that an examination of the individual circumstances of his case in light of the practice of the Tribunal¹ supports a grant of provisional release,

CONSIDERING that Rule 65(B) ("Provisional Release") of the Rules of Procedure and Evidence of the International Tribunal ("Rules") requires an applicant for provisional release to satisfy the Trial

Chamber of two matters: (1) that he will appear for trial, and (2) that, if released, he will not pose a danger to any victim, witness or other person,²

NOTING the “Prosecution’s Response to Defence Motion for Provisional Release”, filed on 25 May 2005 (“Response”), in which the Prosecution requests that the Motion be denied on the basis that (a) the gravity of the charges against the Accused and his senior position are likely to result in a significant sentence following conviction, (b) the authorities of the Republic of Serbia and the Republic of Serbia and Montenegro providing guarantees³ for the Accused have yet to arrest and transfer “an accused” to the Tribunal, and (c) while acknowledging that the time before trial may be unavoidably long, the Prosecution seeks that the pre-trial trial process be expedited and that the case be scheduled for trial on an expedited basis,

CONSIDERING that a Trial Chamber must identify all the factors that it has taken into account in reaching its decision, with particular attention paid to the circumstances of the case before it,⁴

CONSIDERING the following list of factors previously identified as relevant to the provisional release inquiry:⁵

- a. the Accused is charged with serious criminal offences;
- b. if convicted, he is likely to face a long prison term;
- c. circumstances of the Accused’s surrender;
- d. degree of co-operation given by the authorities of the State to which the Accused seeks to be released;
- e. guarantees offered by those authorities, and any personal guarantees offered by the Accused; in particular, the weight given to the governmental guarantees must be assessed in light of the position held by the Accused;
- f. likelihood that, in case of breach of the conditions of provisional release, the relevant authorities will re-arrest the Accused if he declines to surrender; and
- g. the Accused’s degree of co-operation with the Prosecution;
- h. any suggestion that the Accused has interfered with the administration of justice since the confirmation of the indictment against him;

CONSIDERING that the burden of proof on the balance of probabilities is placed upon the Accused with respect to both prongs of the provisional release inquiry,⁶

CONSIDERING that although the Accused is charged with serious criminal offences and faces a lengthy prison sentence if convicted, this Trial Chamber has previously emphasised that “the gravity of the charges cannot by itself serve to justify long periods of detention on remand”,⁷ an approach which has been upheld by the Appeals Chamber,⁸

CONSIDERING that the Accused surrendered to the Tribunal on 7 March 2005, three days after being formally notified of the indictment,

CONSIDERING the increased co-operation given by the authorities of Serbia and Montenegro and the Republic of Serbia to the International Tribunal in recent months,⁹

CONSIDERING that these authorities have undertaken to “[...] comply with all the requests of the Chambers to ensure the appearance of Momcilo Perisic before the International Criminal Tribunal at any time on the request of the Tribunal”, and, in particular, have acknowledged their obligation to arrest the

Accused should he violate any condition of his provisional release,¹⁰

CONSIDERING that while the Accused held a senior position, the Trial Chamber recently granted provisional release to other accused of similar status on the strength attributed to the guarantees of Serbia and Montenegro and the Republic of Serbia,¹¹

CONSIDERING that the Accused has co-operated with the Prosecution by participating in an interview with the Prosecution and providing lengthy statements that are contained on 35 compact discs,¹²

CONSIDERING the Personal Guarantee attached to the Motion in which the Accused undertakes, if released, to obey all the conditions of release imposed by the Trial Chamber and, in particular, not to have any contact with victims or witnesses in his case and not to interfere in any way with the administration of justice,¹³

CONSIDERING FURTHER that there is no indication that the Accused has interfered with the administration of justice since the confirmation of the indictment against him, and there is no evidence that he may pose a danger to others if released,

CONSIDERING that while the failure to arrest any fugitive is a matter of concern, the weight to be attributed to government guarantees must be assessed in light of the personal circumstances of the Accused;¹⁴ in the circumstances of this case, the Trial Chamber considers it appropriate to take account of the guarantees offered by the authorities of the Republic of Serbia and Serbia and Montenegro,

CONSIDERING that it is the duty of the Trial Chamber to ensure that the pre-trial procedure is conducted without undue delay, and this case will be scheduled for trial consistent with the right of all accused to a trial within a reasonable time,¹⁵ and that the Prosecution has indicated neither the basis on which the Trial Chamber would have jurisdiction to schedule the trial on an expedited basis nor any legal basis on which a decision could be made to give precedence to this case over others,

CONSIDERING that the Registry provided a certified copy of the Motion to the relevant authorities in the Netherlands along with an invitation to present the host country's comments on the motion, if any, that no response has been received in the four weeks since the Motion's filing, and that Rule 65(B)'s requirement that the host country be offered an opportunity to be heard has therefore been fulfilled,

CONSIDERING that the guarantees provided by the Council of Ministers of Serbia and Montenegro and the Government of the Republic of Serbia¹⁶ indicate that "the State to which the accused seeks to be released" has been given an opportunity to be heard,

CONSIDERING that the Accused has satisfied the Chamber that, if released, he will return for trial and will not pose a danger to anyone,

CONSIDERING that Rule 65(C) provides that "[t]he 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",

CONSIDERING that, pursuant to Rule 65(E), the Prosecution requests a stay of any decision granting provisional release pending appeal,

PURSUANT TO Rule 65 of the Rules,

HEREBY GRANTS the Motion and **GRANTS** the Prosecution application for a stay and

(1) **ORDERS** the provisional release of Momcilo Perisic subject to the following terms and conditions:

- a. the Accused shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- b. at Schiphol airport, the Accused shall be provisionally released into the custody of an official of the government of Serbia and Montenegro to be designated prior to release in accordance with operative paragraph 2(a) hereof, who shall accompany the Accused for the remainder of his travel to Serbia and Montenegro and to his place of residence;
- c. on his return, the Accused shall be accompanied by the same designated official of the government of Serbia and Montenegro, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by Order of the Trial Chamber, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague;
- d. during the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the governments of Serbia and Montenegro and the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
 - i. to provide the address at which he will be staying in Belgrade to the Ministry of Justice and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague;
 - ii. to remain within the confines of the municipality of Belgrade;
 - iii. to surrender his passport to the Ministry of Justice;
 - iv. to report each day to the police in Belgrade at a local police station to be designated by the Ministry of Justice;
 - v. to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar of the International Tribunal;
 - vi. not to have any contact with the co-accused in the case;
 - vii. not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
 - viii. not to discuss his case with anyone, including the media, other than with his counsel ;
 - ix. to continue to cooperate with the International Tribunal;
 - x. to comply strictly with any requirements of the authorities of Serbia and Montenegro and the Republic of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
 - xi. to return to the International Tribunal at such time and on such date as the Trial Chamber may order; and
 - xii. to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release;

(2) **REQUIRES** the governments of the Serbia and Montenegro and the Republic of Serbia to assume responsibility as follows:

- a. by designating an official of the government of Serbia and Montenegro into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and Montenegro and to his place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the International Tribunal of the name of the designated official;

- b. for the personal security and safety of the Accused while on provisional release ;
- c. for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- d. for all expenses concerning accommodation and security of the Accused while on provisional release;
- e. at the request of the Trial Chamber or the parties to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;
- f. to submit a written report to the Trial Chamber every month as to the compliance of the Accused with the terms of this Order;
- g. to arrest and detain the Accused immediately if he should breach any of the conditions of this Order; and
- h. to report immediately to the Trial Chamber any breach of the conditions set out above;

(3) **INSTRUCTS** the Registrar of the International Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for his release and to continue to detain the Accused at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the government of Serbia and Montenegro into whose custody the Accused is to be provisionally released;

(4) **REQUESTS** the authorities of all States through whose territory the Accused will travel,

- a. to hold the Accused in custody for any time that he will spend in transit at the airport;
- b. to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape; and

(5) **STAYS** the provisional release of Momcilo Perisic pending an appeal by the Prosecution pursuant to Rule 65(D), (E), (F) and (G) of the Rules.

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

Judge Patrick Robinson
Presiding

Dated this ninth day of June 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

1 - *Prosecutor v. Sainovic and Ojdanic*, Case No. IT-99-37-AR65, "Decision on Provisional Release", 30 October 2002 ("Sainovic Appeals Chamber Decision").

2 - *Prosecutor v. Sainovic & Ojdanic*, Case No. IT-99-37-PT, "Decision on Application of Nikola Sainovic and Dragoljub Ojdanic for Provisional Release," 26 June 2002, para. 11, citing *Prosecutor v. Blagojevic et al.*, Case No. IT-02-53-AR65, "Decision on Application by Dragan Jokic for Leave to Appeal," 18 April 2002, para. 7.

3 - *See* Guarantee Given by the Council of Ministers of Serbia and Montenegro pursuant to a Decision of 3 March 2005 ("Serbia and Montenegro's Guarantees"); and Resolution of the Government of the Republic of Serbia of 3 March 2005 ("Republic of Serbia's Guarantees").

4 - *Prosecutor v. Lazarevic*, Case No. IT-03-70-PT, "Decision on Defence Request for Provisional Release", 14 April 2004 ("Lazarevic Decision"), p. 2, citing *Prosecutor v. Stanisic*, Case No. IT-03-69-PT, "Decision on Provisional Release", 28

July 2004 ("*Stanisic* Trial Chamber Decision"), at para. 10.

5 - *Ibid.*, p. 2; *Sainovic* Appeals Chamber Decision, *supra* note 1, at para. 6.

6 - *Lazarevic* Decision, *supra* note 4, pp. 2-3 citing *Stanisic* Trial Chamber Decision, *supra* note 4, at para. 14.

7 - *Stanisic* Trial Chamber Decision, *supra* note 4, at para. 22.

8 - *Lazarevic* Decision, *supra* note 4, pp. 2-3; *Prosecutor v. Stanisic*, Case No. IT-03-69-AR65.1, "Decision on Prosecution's Appeal Against Decision Granting Provisional Release", 3 December 2004, at para. 27; *Prosecutor v. Simatovic*, Case No. IT-03-69-AR65.2, "Decision on Prosecution's Appeal Against Decision on Provisional Release", 3 December 2004, at para. 15. *Prosecutor v. Ivan Cermak and Mladen Markac*, Case No. IT-03-73-AR 65.1, "Decision on Interlocutory Appeal against Trial Chamber's Decision Denying Provisional Release", 2 December 2004 ("*Cermak* Appeals Chamber Decision"), para. 26.

9 - *Prosecutor v. Milutinovic*, Case No. IT-99-37-PT, "Decision on Second Application for Provisional Release", 14 April 2005, at para. 21.

10 - *See* Serbia and Montenegro's Guarantees, and Republic of Serbia's Guarantees, *supra* note 3.

11 - *Prosecutor v. Milutinovic*, Case No. IT-99-37-PT, "Decision on Second Application for Provisional Release", 14 April 2005; *Prosecutor v. Ojdanic*, Case No. IT-99-37-PT, "Decision on General Ojdanic's Fourth Application for Provisional Release", 14 April 2005; *Prosecutor v. Sainovic*, Case No. IT-99-37-PT, "Decision on Third Defence Request for Provisional Release", 14 April 2005.

12 - Motion, para. 21.

13 - Personal Guarantee of Momcilo Perisic, Motion, Annex C.

14 - *Sainovic* Appeals Chamber Decision, *supra* note 1, at para. 7; *Cermak* Appeals Chamber Decision, *supra* note 8, para. 33.

15 - Article 21 (4) (c) of the Statute.

16 - *See* Serbia and Montenegro's Guarantees, and Republic of Serbia's Guarantees, *supra* note 3.