

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 31 May 2016

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge William Hussein Sekule
Judge Vagn Prüsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana**

Registrar:

Mr. John Hocking

Decision of:

31 May 2016

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTIONS FOR PROVISIONAL RELEASE AND
TEMPORARY RELEASE TO ATTEND A MEMORIAL
SERVICE**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Mr. Radovan Karadžić:

Mr. Peter Robinson

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of the “Motion for Provisional Release” filed on 22 April 2016¹ and the “Motion for Temporary Release to Attend Memorial Service” filed confidentially with confidential annexes on 28 April 2016 by Mr. Radovan Karadžić (“Karadžić”).² The Prosecution responded to the Motion for Provisional Release on 2 May 2016,³ and Karadžić did not file a reply. The Prosecution filed a confidential response to the Motion for Temporary Release to Attend Memorial Service on 9 May 2016,⁴ and Karadžić filed a confidential reply on 12 May 2016.⁵

I. BACKGROUND

2. In its Judgement of 24 March 2016, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Karadžić, former President of Republika Srpska and Supreme Commander of its armed forces, of genocide, crimes against humanity, and violations of the laws or customs of war, and sentenced him to 40 years of imprisonment.⁶ Karadžić has indicated his intention to appeal his convictions and sentence.⁷

II. SUBMISSIONS

3. In the Motion for Provisional Release, Karadžić requests that he be provisionally released to Republika Srpska for the duration of his appeal.⁸ He submits that “special circumstances” exist warranting his release, namely: (i) the deterioration of his health over the last eight years he has been detained; (ii) the “high incidence of malignancy and illnesses” suffered by detainees due to the “toxic” environment in the United Nations Detention Unit (“UNDU”); (iii) his “frustrations” over

¹ See also Correspondence from Ministry of Foreign Affairs of the Kingdom of the Netherlands, 18 May 2016 (confidential).

² See also Supplement to Motion for Temporary Release to Attend Memorial Service, 3 May 2016 (confidential with confidential annexes); Guarantee by the Government of the Republic of Serbia dated 6 May 2016, filed on 11 May 2016 (confidential) (“Serbia Guarantee”); Correspondence from Ministry of Foreign Affairs of the Kingdom of the Netherlands, 28 April 2016 (confidential) (“Dutch correspondence of 28 April 2016”).

³ Prosecution Response to Karadžić’s Motion for Provisional Release, 2 May 2016 (“Response to Motion for Provisional Release”).

⁴ Prosecution Response to Karadžić’s Motion for Temporary Release to Attend Memorial Service, 9 May 2016 (confidential) (“Response to Motion for Temporary Release”). See also Prosecution’s Additional Submission Regarding Karadžić’s Motion for Temporary Release to Attend Memorial Service, 27 May 2016 (confidential with confidential annexes).

⁵ Reply Brief: Motion for Temporary Release to Attend Memorial Service, 12 May 2016 (confidential) (“Reply on Motion for Temporary Release”).

⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016 (“Trial Judgement”), paras. 2, 3524, 4937-4939, 5849, 5850, 6001-6010, 6022, 6070-6072.

⁷ See Motion for Extension of Time to File Notice of Appeal, 4 April 2016; Motion for Further Extension of Time to File Notice of Appeal, 20 May 2016. See also Decision on Motion for Extension of Time to File Notice of Appeal, 21 April 2016.

⁸ Motion for Provisional Release, paras. 1, 8.

his mental and physical health caused by “the inadequate computer facilities at the [UNDU], inability to access the internet, and difficulties in being in contact with [his] investigator in Bosnia”, which prevent him from effectively contributing to his defence; (iv) the “infrequent” contact with his family and deprivation of his “cultural needs”.⁹ He further submits that he is not a flight risk and that he will not pose a danger to witnesses, victims, or any other person.¹⁰ He also states that he will respect the terms and conditions of his provisional release.¹¹

4. In the Motion for Temporary Release to Attend Memorial Service, Karadžić requests that he be provisionally released to Serbia to attend the memorial service of his brother, who recently passed away.¹² Karadžić submits that attending the memorial service of a sibling constitutes an “acute justification” warranting provisional release.¹³ He further submits that he will abide by all conditions of release and will not pose a danger to any witness, victim, or other person.¹⁴

5. The Prosecution responds that both motions should be dismissed.¹⁵ The Prosecution submits that Karadžić fails to demonstrate the existence of special circumstances justifying provisional release for the duration of his appeal and that, regardless of whether the memorial of a close relative could constitute a special circumstance for the purposes of provisional release, Karadžić “presents an unprecedented flight risk”.¹⁶ The Prosecution contends that Karadžić did not provide medical evidence to show that his health problems amount to an acute justification either because they are life threatening or cannot be treated in the Netherlands¹⁷ and that the “deprivation of his family and cultural life” does not constitute a special circumstance.¹⁸ The Prosecution also argues that provisional release is not the appropriate remedy to address Karadžić’s complaints regarding the conditions of his detention.¹⁹ Furthermore, the Prosecution submits that Karadžić cannot demonstrate that, if released, he would return to detention as he was a fugitive for 13 years during which he disguised himself and lived under an assumed name.²⁰ The Prosecution adds that the risk of Karadžić’s flight has increased following his conviction, particularly given the considerable

⁹ Motion for Provisional Release, pp. 4, 5.

¹⁰ Motion for Provisional Release, para. 7, p. 4.

¹¹ Motion for Provisional Release, para. 7, p. 4.

¹² Motion for Temporary Release to Attend Memorial Service, paras. 1, 8. *See* Supplement to Motion for Temporary Release to Attend Memorial Service, 3 May 2016 (confidential with confidential annexes), paras. 1-3, Annex A, Annex B. *See also* Reply on Motion for Temporary Release, paras. 1, 20.

¹³ Motion for Temporary Release to Attend Memorial Service, paras. 5, 6.

¹⁴ Motion for Temporary Release to Attend Memorial Service, para. 7, p. 5. *See also* Dutch correspondence of 28 April 2016; Serbia Guarantee.

¹⁵ Response to Motion for Provisional Release, paras. 1, 9; Response to Motion for Temporary Release, paras. 1, 8.

¹⁶ Response to Motion for Provisional Release, paras. 1-6, 9; Response to Motion for Temporary Release, paras. 1, 2.

¹⁷ Response to Motion for Provisional Release, para. 2.

¹⁸ Response to Motion for Provisional Release, para. 4.

¹⁹ Response to Motion for Provisional Release, para. 3.

²⁰ Response to Motion for Provisional Release, paras. 1, 6, 7, 9; Response to Motion for Temporary Release, paras. 1-3, 5, 8.

period of time remaining to be served on his sentence.²¹ The Prosecution contends that neither his personal guarantee nor any state guarantee or imposition of security conditions would be adequate to ensure his return to detention.²²

6. In his reply, Karadžić submits that any concerns regarding the risk of his flight can be addressed by the “strictness of his supervision” and should be weighed against his personal guarantee and the guarantee provided by Serbia.²³

III. DISCUSSION

7. Pursuant to Rule 68(I) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period of time if it 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.²⁴ These requirements must be considered cumulatively and on a case-by-case basis.²⁵ Furthermore, “whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber”.²⁶

8. As to the first requirement under Rule 68(I) of the Rules, the Appeals Chamber considers Karadžić’s personal guarantee that, if released, he will appear in all proceedings as required and return to the UNDU when ordered to do so by the Appeals Chamber.²⁷ The Appeals Chamber also considers Karadžić’s submission that, although he did not surrender to the ICTY voluntarily, he has

²¹ Response to Motion for Provisional Release, para. 6; Response to Motion for Temporary Release, para. 4.

²² Response to Motion for Provisional Release, paras. 6, 7; Response to Motion for Temporary Release, paras. 5, 6.

²³ Reply on Motion for Temporary Release, paras. 6-8, 13-16, referring to, *inter alia*, *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vujadin Popović’s Urgent Motion for Custodial Release on Compassionate Grounds, 30 January 2013; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005. Karadžić submits that the cases relied on by the Prosecution are distinguishable from his case. See Reply, paras. 9-13.

²⁴ *Prosecutor v. Zdravko Tolimir*, Case No. MICT-15-95-ES, Public Redacted Version of the “Decision on Motion for Provisional Release” Filed on 28 January 2016, 23 February 2016 (“*Tolimir Decision*”), para. 8. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Public Redacted Version of the “Decision on Valentin Ćorić’s Motion Seeking Provisional Release” Issued on 12 March 2015, 14 May 2015 (“*Prlić et al. Decision*”), para. 3; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević’s Motion for Provisional Release, 14 March 2014 (“*Popović et al. Decision*”), para. 5; *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Decision on Matthieu Ngirumpatse’s Motion for Provisional Release, 14 December 2012 (“*Karemera and Ngirumpatse Decision*”), para. 4.

²⁵ *Tolimir Decision*, para. 8. See *Prlić et al. Decision*, para. 3; *Popović et al. Decision*, para. 5; *Karemera and Ngirumpatse Decision*, para. 4.

²⁶ *Tolimir Decision*, para. 8. See *Prlić et al. Decision*, para. 3; *Popović et al. Decision*, para. 5; *Karemera and Ngirumpatse Decision*, para. 4.

²⁷ See Motion for Provisional Release, p. 4; Motion for Temporary Release to Attend Memorial Service, p. 5.

fully cooperated with the ICTY following his arrest and that he does not pose a flight risk at present.²⁸ The Appeals Chamber also takes into account the guarantee by the Government of the Republic of Serbia to comply with any order issued by the Mechanism granting Karadžić provisional release on humanitarian grounds and permitting him to stay in the territory of the Republic of Serbia.²⁹

9. The Appeals Chamber notes however that, although Karadžić's stated intention is to live in Republika Srpska should he be granted provisional release for the duration of his appeal,³⁰ no guarantee has been provided by the authorities of Republika Srpska and Bosnia and Herzegovina in support of his request for provisional release.

10. The Appeals Chamber also observes that, in principle, the risk of flight associated with granting a request for provisional release is higher where a conviction is entered and a sentence to a considerable period of imprisonment is imposed than where the applicant is in the phase of trial proceedings.³¹ Karadžić has been convicted and sentenced to 40 years of imprisonment and a considerable portion of his sentence remains to be served, subject to the outcome of any appeal. Such circumstances may create a strong incentive to flee.³² In addition, it is not contested that Karadžić has actively evaded justice for 13 years before he was arrested and transferred to the ICTY.³³

11. In light of the above considerations, the Appeals Chamber is not satisfied that Karadžić has demonstrated that, if provisionally released, he would surrender into the custody of the Mechanism when ordered to do so. Accordingly, the Appeals Chamber finds that, in respect of both his request for provisional release for the duration of his appeal and his request to attend the memorial service of his brother, Karadžić has failed to meet the first requirement under Rule 68(I) of the Rules.

²⁸ See Motion for Provisional Release, p. 4; Motion for Temporary Release to Attend Memorial Service, p. 5.

²⁹ See Serbia Guarantee, RP. 147, 146.

³⁰ See Motion for Provisional Release, p. 1.

³¹ Cf. *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević's Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012, para. 12; *Prosecutor v. Milan Milutinović et al.*, Public Redacted Version of the "Decision on Vladimir Lazarević's Second Motion for Temporary Provisional Release on the Grounds of Compassion" Issued on 21 May 2009, 22 May 2009, para. 13.

³² Cf. *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić's Motion for Provisional Release, 28 August 2009, paras. 9-11; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Mario Čerkez's Request for Provisional Release, 12 December 2003, para. 8.

³³ See Motion for Provisional Release, p. 4; Response to Motion for Provisional Release, para. 6; Response to Motion for Temporary Release, paras. 2, 3; Reply on Motion for Temporary Release, para. 16. See also Trial Judgement, paras. 6120-6123 ("On 25 July 1995, an indictment was confirmed against the Accused [...]. The Accused was arrested on 21 July 2008 in Belgrade and transferred to The Hague on 30 July 2008.").

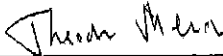
12. Considering that the requirements for provisional release are cumulative, there is no need to assess whether the remaining requirements under Rule 68(I) of the Rules are met.³⁴

IV. DISPOSITION

13. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion for Provisional Release and the Motion for Temporary Release to Attend Memorial Service.

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

Done this 31st day of May 2016,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

³⁴ Nevertheless, the Appeals Chamber wishes to observe that Karadžić has failed to demonstrate that his health and conditions of detention amount to special circumstances within the meaning of Rule 68(I)(iii) of the Rules warranting provisional release. As the Prosecution observed, Karadžić has provided no medical records substantiating his alleged health problems nor has he shown that he cannot receive treatment in the Netherlands. The Appeals Chamber also notes that Karadžić was heard before the President of the Mechanism on the conditions of his detention on 4 April 2016. Following the President's direction, the Registrar filed a submission concerning detention conditions at the UNDU. The Appeals Chamber notes the submission that the International Committee of the Red Cross ("ICRC") inspects the UNDU regularly and that, in addition, the conditions of detention at the UNDU are regularly audited by the authorities of the Host State. *See Registrar's Submission in Relation to Comments Made During the Hearing Held on 6 April 2016; 21 April 2016 ("Registrar's Submission")*, paras. 2-4. The Appeals Chamber further notes the Registrar's submission that the conditions of detention at the UNDU "remain at the level of best practice in international detention management" and that, in addition, the Registrar is seeking guidance from both the ICRC and the UNDU Medical Officer on any further assessments of the conditions of detention that could be undertaken. *See Registrar's Submission*, para. 5.