

Milosevic & Aanklaachten

Map 8B

Meindert Stelling

Van: "branko rakic" <brankorakic@yahoo.com>
Aan: "John Laughland" <jlaughland@aol.com>
CC: "Branko Rakic" <brankorakic@yahoo.com>
Verzonden: zaterdag 22 april 2006 15:58
Bijlage: Fw_IT-02-54-T, D45745-45680, PART 3, PARTLY CONFIDENTIAL.eml
Onderwerp: Fwd: Fw: IT-02-54-T, D45745-45680, PART 3, PARTLY CONFIDENTIAL

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Meindert Stelling

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: "Versluis, Jacco" <jacco.versluis@kro.nl>
CC: "Meindert Stelling" <meindert.stelling@planet.nl>
Verzonden: zondag 11 juni 2006 16:02
Bijlage: Fwd_Fw_IT-02-54-T, D45745-45680, PART 3, PARTLY CONFIDENTIAL.eml
Onderwerp: Fw: Fw: IT-02-54-T, D45745-45680, PART 3, PARTLY CONFIDENTIAL

----- Original Message -----

From: branko rakic
To: Andy Wilcoxson
Cc: Sagittarius
Sent: Friday, June 09, 2006 4:18 AM
Subject: Fwd: Fw: IT-02-54-T, D45745-45680, PART 3, PARTLY CONFIDENTIAL

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Het punt is dat de Ned. ARSENOR MATIN
Slaagde een juiste ding was te
stellen, zoals ze natuurlijke
Gou met een juiste de komst van
konde geven!
→ TRIB. CHANGE VOLGDE
DE NED. ARSENOR
DOOR TERN KUNST (K)
MATIN

→ DANNON OOST
NEDERLAND NAAR MOSKOU!



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Court
Management and
Support Services
Section

Tribunal Pénal
International pour
l'ex-Yougoslavie

Section des
Services
d'administration et
d'appui judiciaire

20

Partly
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D45854

CASE/AFFAIRE NO. IT-02-54-T DATE: 20 March 2006

FROM/DE: RAM DORAISWAMY, COURT OFFICER

<input checked="" type="checkbox"/> President/Président	<input type="checkbox"/> Prosecutor/Procureur	<input checked="" type="checkbox"/> Former Court assigned Counsel/ MR. KAY / MS. HIGGINS
<input type="checkbox"/> Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	
<input checked="" type="checkbox"/> Trial Chamber I/ Chambre de 1ère instance I	<input type="checkbox"/> Chief of Investigations/ Chef des enquêtes	
<input type="checkbox"/> Trial Chamber II/ Chambre de 1ère instance II		<input type="checkbox"/> Legal Associates
<input type="checkbox"/> Trial Chamber III/ Chambre de 1ère instance III		
<input type="checkbox"/> Embassy/Ambassade		
<input checked="" type="checkbox"/> Other/Autre MR. McCORMACK D45853-D45850		
<input checked="" type="checkbox"/> Pro Se Legal Liaison Officers/Juriste chargé de la liaison avec l'accusé MS. E. ANOYA		
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/Greffier/Greffier adjoint MR. A. DE WITT D45853-D45848 & D45656-D45654	<input type="checkbox"/> VWS Coordinator/Coordinateur de la SVT	
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe SLO / ALO	<input type="checkbox"/> UNDU Commanding Officer/Commandant du QPNU	
<input checked="" type="checkbox"/> PTV / MOW D45853-D45850 (4)	<input checked="" type="checkbox"/> OLAD D45853-D45850	

QUESTIONS TO BE ANSWERED BY THE PARTY

Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___

Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___

Motion/Request/Application submitted by Prosecution/Defence Counsel on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le 17/03/2006
COURT ASSISTANT COUNSEL

Response/reply/brief submitted by Prosecution/Defence Counsel on/
Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ___/___/___

Decision of the Registrar on/Décision du Greffier le ___/___/___

Other/Autre

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I. Introduction

1. The Assigned Counsel file this motion to request the immediate lifting of the confidential status of all pleadings and medical reports relating to (i) the request by the Assigned Counsel for provisional release, filed on 20 December 2005, and (ii) the recent litigation concerning Mr. Slobodan Milošević's medical treatment in the United Nations Detention Unit. The relevant pleadings and reports are set out in Confidential Annexes A and B, respectively.

II. Submissions

2. This motion is filed pursuant to the wishes of Mr. Slobodan Milošević, expressed prior to his death to the Assigned Counsel, and the wishes of his son, Marko Milošević, as expressed to Assigned Counsel on Wednesday 15 March 2006.
3. In relation to the disclosure of relevant medical reports contained within confidential Annexes A and B, Rule 34 of the Rules of Detention provides that a detainee's medical records may be consulted or disclosed:
 - (i) for medical reasons only with the consent of the detainee, or
 - (ii) in the interest of justice and the good administration of the trial, by order of a Judge or Chamber of the Tribunal, after consultation with the medical officer.¹

Consent for the disclosure of the materials in confidential Annexes A and B was provided by Mr Milošević to the Assigned Counsel in this regard.

¹ Rules governing the Detention of Persons awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention"), adopted 5 May 1994, IT/38/REV.9

IT-02-54-T
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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case no. IT-02-54-T

IN THE TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge Christine van den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Date filed: 17 March 2006

THE PROSECUTOR
v.
SLOBODAN MILOŠEVIĆ

Partly Confidential

ASSIGNED COUNSEL MOTION TO LIFT THE CONFIDENTIAL
STATUS OF ALL PLEADINGS AND MEDICAL REPORTS
RELATING TO (i) THE ASSIGNED COUNSEL REQUEST FOR
PROVISIONAL RELEASE, and (ii) THE LITIGATION ARISING FROM
THE MEDICAL TREATMENT OF MR. SLOBODAN MILOŠEVIĆ IN THE
UNITED NATIONS DETENTION UNIT
AND CONFIDENTIAL ANNEXES A AND B

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

4. It is established jurisprudence at the ICTY that it is in the interests of justice for proceedings before the Tribunal to be public, provided there are no adverse consequences to victims, witnesses, or any other party.² The Assigned Counsel submit that there are no concerns that would justify the continued confidential status of the documentation in this matter.
5. The Assigned Counsel note the content of the recent "*Order Lifting Confidentiality of Relevant Materials for Investigation Purposes*", filed by Trial Chamber I on 16 March 2005. This Order states that "*relevant materials were treated as confidential often because personal information about Slobodan Milošević is contained in them*". Once an accused person is deceased, however, the "*residual privacy interests*" may be outweighed by extenuating interests.³
6. The Assigned Counsel respectfully submit that the immediate lifting of the confidential status of all documents, filings, medical reports, conclusions, internal memoranda and treatment plans as reflected in confidential Annexes A and B is in the public interest, the interests of justice and the interest of the Tribunal.⁴ Additionally, the specific wishes of the Deceased Mr. Slobodan Milosevic and his son are that the history of Mr. Milosevic's medical condition and his treatment as reflected in the Annexes is released into the public domain in order to ensure that there is a comprehensive and open understanding of the events that transpired before his death. Finally, it is submitted that

² See The Prosecutor v. Paško Ljubičić IT-00-41-PT, *Decision on Prosecution's Motion to Lift Confidentiality of a Filing from the Case of Prosecutor v. Tihomir Blaskić*, 27 October 2004. See The Prosecutor v. Blagojević, IT-02-60-T, *Order to lift Confidentiality*, 17 January 2005.

³ See The Prosecutor v. Slobodan Milošević, IT-02-54-T, *Order Lifting Confidentiality of Relevant Matters for Investigation Purposes*, 16 March 2006. The interests of the Inquest being carried out by the authorities of The Netherlands, and those of the internal Inquiry by His Honour Judge Kevin Parker, outweighed such "residual privacy interests."

⁴ As to the interests of justice, see The Prosecutor v. Čermak and Markač, IT-03-73-PT, *Decision and Order on Prosecution's Motion for Protective Measures for Victims and Witnesses*, 1 April 2004; Articles 20(1), 20(4), 21(2) and 22 of the Statute.

based upon the jurisprudence of the Tribunal, there are no exceptional circumstances that would justify any course other than the immediate revelation and publication of the documentation.⁵ The wishes of Mr. Slobodan Milošević and his son, as expressed to the Assigned Counsel, should be respected.

Conclusion

7. The Assigned Counsel respectfully submit that the relief requested is in accordance with the wishes of the Deceased and his son, the Statute of the ICTY, the Rules of Procedure and Evidence, the Rules of Detention and the interests of justice.

Word Count: 1,669


Signed

Steven Kay QC

Gillian Higgins

The Hague

17 March 2006

 QC Gillian Higgins

⁵ See The Prosecutor v. Beqa Beqaj, IT-03-66-R77, *Decision on Defence's Motion to Lift Confidentiality of Warrant of Arrest and Order for Surrender*, 11 March 2005

CONFIDENTIAL ANNEX A

**PARTLY CONFIDENTIAL MATERIALS ON THE ASSIGNED
COUNSEL MOTION FOR PROVISIONAL RELEASE**

The Prosecutor v. Slobodan Milošević, IT-02-54-T

Tab No.	Date	Title	Confidential	
			Filing	Attachment
1	<i>Recent Medical Reports and Trial Chamber's Orders</i>			
	4 November 2005	Reports by Dr. Shumilina, Dr. Andric, Dr. Leclercq, and Joint Opinion	√	
	11 November 2005	Report from Dr Falke	√	
	11 November 2005	Trial Chamber "Order Concerning Further Medical Report"	√	
	14 November 2005	Report from Dr Falke	√	
	15 November 2005	Trial Chamber "Order for Expert Medical Reports" (Dissenting Opinion 16-11-05)		
	18 November 2005	Report from Dr. van Dijkman	√	
	21 November 2005	Report from Dr. Falke	√	
	21 November 2005	Trial Chamber "Order Adjourning Trial and for a Further Medical Report"		
	21 November 2005	Report from Dr. E.A.A. Spoelstra	√	
	23 November 2005	Report from Dr. van Dijkman	√	
	28 November 2005	Report from Dr. de Laat	√	
	1 December 2005	Trial Chamber "Order for Clarification of Expert Medical Opinion"		
	1 December 2005	Response from Dr. van Dijkman	√	
	6 December 2005	Report from Dr. Aarts on Dr. Shumilina's findings	√	
	14 December 2005	Report from Dr. Shumilina	√	
	19 December 2005	Treatment Plan by Dr. Shumilina	√	
2	12 December 2005	Oral Request of the Accused for Provisional Release		
3	20 December 2005	Assigned Counsel Request for Provisional Release with Confidential Attachments A, B and C		√
4	22 December 2005	Prosecution's Interim Response to Assigned Counsel Request for Provisional Release		
5	22 December 2005	First Addendum to Assigned Counsel Request for Provisional Release Pursuant to Rule 65 with Confidential Attachment D		√
6	11 January 2006	Preliminary Order on Assigned Counsel Request for Provisional Release for the Accused		
7	18 January 2006	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		√
8	19 January 2006	Prosecution's Notice of Intention to File Further Response to Assigned Counsel Request for Provisional Release		
9	20 January 2006	Confidential Prosecution's Further Interim Response to Assigned Counsel Request for Provisional Release	√	√
10	23 February 2006	Decision on Assigned Counsel Request for Provisional Release		
11	2 March 2006	Assigned Counsel Motion for Expedited Appeal against the "Decision on Assigned Counsel Request for Provisional Release", rendered by the Trial Chamber on 23 February 2006 and Confidential Annex A		√

Tab 1

IT-02-54-T
 043202-043184
 15 NOV 2005

Translation

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Preliminary Conclusion

based on the patient's complaints, Doppler ultrasound and magnetic resonance tomography /MRT/ of the patient Slobodan Milošević, age 64

It is my opinion that the patient's cochleovestibular disorders are the result of the following pathological disorders:

1. Hypoplasia of the right vertebral artery (as the result of extravascular compression of the right vertebral artery near the ostium).

Circulation could not be mapped in the distal segment of the right vertebral artery (photos 2, 3 and 4) due to the existence of a zone of stagnation (the point of haemodynamic balance) during reverse flow from the left vertebral artery into the proximal segment of the right vertebral artery. The cochlear artery starts at the distal section of the vertebral artery. The frailty of the cochlear artery is the foremost cause of the patient's cochleovestibular disorders.

The difference in diameters of the vertebral arteries caused the convolution of the basal artery and a secondary disorder of the laminar blood flow in the vertebral-basilar basin.

That the sense of hearing was most affected can be explained by that fact that phylogenetically the hearing apparatus is a much later and consequently less resistant structure than the vestibular apparatus. This, combined with the noise trauma (use of earphones, etc.) serves as the specific cause of the irritation of the hearing apparatus.

2) The patient has a compression syndrome of the neuro-vascular bundle at the thoracic outlet (Thoracic Outlet Compression Syndrome). There is a distinct arterial component of the syndrome of the anterior scalene muscle.

3) On auscultation there was a systolic murmur above the right internal carotid artery, in the proximal segments of the right subclavian artery and right vertebral artery. MRT (photo 5) shows dilation of the right internal carotid artery and a shift of the flow axis (due to turbulence). This picture may be due to a post-stenotic dilation of the artery or stenosis or convolution of the right internal carotid artery with stenosis of the septum. The circulatory disorder in the right internal carotid artery further aggravates the patient's condition because the patient experiences the circulatory turbulence as sound. In addition, considering the anomalous configuration of the vertebral arteries, reduced circulation in the internal carotid artery contributes to the decompensation of collateral circulation in the vertebral-basilar basin.

4) These vascular anomalies are seen as the result of long-term unregulated arterial hypertension (of more than 10 years), and arterial sclerosis is already present (resulting from long-term hypertension of more than five years). The presence of arterial sclerosis significantly decreases the compensatory capability of other cerebral blood vessels.

The loss of compensatory capability of intracranial blood vessels in patient Slobodan MILOŠEVIĆ was confirmed by an orthostatic test (vertigo and staggering accompanied by a 20 mm Hg decline in systolic pressure).

5) From the patient's complaints (in addition to the noise mostly in the right ear and vertigo, there is a feeling of being weighed down, swelling in the head, and pressure on the eyes) it is clear that there is a disorder of the cerebral venous circulation.

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The transverse MRT section of the transverse sinuses shows an increase in signal intensity, especially on the left. The cerebral venous circulatory disorder also impedes normal perfusion of the brain. According to the MRT, the patient has an expansion of the furrows, moderate expansion of the subarachnoid space and cerebral ventricles, and leukoaraiosis.

The presence in patient Slobodan MILOŠEVIĆ of an almost constant noise, over the course of two months, and of vertigo testifies to a decompensation of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and etiopathogenic treatment in a specialised hospital.

Surgical correction of the vascular pathology may be called for after additional testing (especially if drug treatment is ineffective).

Use of peripheral vasodilators and vein tonics is desirable (Midocalm, Vasobral, Detralax).

It will be necessary to reduce the auscultative burden.

The existing cochleovestibular disorder with the above vascular pathology might be the initial signs of more serious cerebral circulatory disorders.

/signed/ M.V. SHUMILINA

Doctor of Medicine
RAMN /Russian Academy of Medical Sciences/ A.N. Bakulev NTsSSKh /Scientific
Centre for Cardio-Vascular Surgery/
Moscow, Russia
4 November 2005
MRIs - enclosed

IT-02-54-T

Translation

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EAR, NOSE AND THROAT SPECIALIST'S REPORT

Slobodan MILOŠEVIĆ, 64 years

History of Current Illness

Over the past three years ringing in the ears, more pronounced in the right ear. The symptoms became very intense during the past month, manifesting themselves as booming and drumming in the right ear with a distinct difference in tone colour, with distortion and severe pain in the right ear, especially when he hears high-pitched sounds. Autophony has been present during the past month accompanied by hearing fatigue during protracted sound stimulation. In addition to the above symptoms, there is enduring mild or more severe vertigo accompanied by queasiness, nausea and a strong tendency to vomit.

Results of Ear, Nose and Throat Specialist's Examination

The result of the physical examination of the ears, nose and throat was normal. The Romberg test and modified Romberg test were negative. Spontaneous nystagmus was not present. The Unterberg test was positive - deviation to the left.

Tympanometry. Normal result on both sides - Type A curve. Stapes response present bilaterally at all frequencies except at 4,000 Hz, where it was absent.

Tone laminar audiometry. Bilateral sensorineural hearing impairment. Right ear hearing threshold for frequencies of 125-1,500 Hz at 30-40 dB. For 2,000 Hz - 50 dB and 4,000 Hz - 90 dB. Left ear hearing threshold for frequencies up to 2,000 Hz at 20 dB. For a frequency of 4,000 Hz - 60 dB and 6,000 Hz - 80 dB.

Speech audiometry. The results corroborated the results of the tone laminar audiometry and indicate bilateral intracochlear impairment, significantly greater on the right side.

NMR (Nuclear Magnetic Resonance) excluded the presence of any intracranial expansive process.

Conclusion

Since NMR excluded the presence of an intracranial expansive process and considering the test results it may be concluded that this is a case of bilateral impairment of the peripheral vestibulocochlear apparatus of primarily vascular origin with a significant physical component in the form of chronic acoustic irritation exacerbated by the use of earphones over a long period of several years. The current condition of the cochlear apparatus is irreversible with an obvious tendency toward deterioration in the future. The pain in the right ear, which becomes particularly severe when listening to high-pitched tones, is the result of the convergence of the hearing threshold with the pain threshold.

Recommendation

Taking into account the subject's current condition, we recommend immediate rest by reducing sound stimulation to minimum in addition to medication for a month, then to be followed by a check-up. Considering the obvious presence of hearing fatigue, in future, the subject must not be exposed to continuous sound stimulation for more than an hour, and will then need to have a break from listening of the same duration.

Treatment

1. Pentoxifilline (Trental 400 dragee or film-coated tabs. 1+1+0) 30 days
2. Cinarizine (Stugeron forte tabs. à 75 mg or Cinarizin tabs. 0+0+1) 30 days

After completing the above course of treatment continue with:

1. Betahistine (Urutual tabs. à 8 mg 3x1) 30 days

During the entire course of these two months:
HIS HEARING MUST BE SPARED

The Hague
4 November 2005

/signed and stamped/
Prof. Vukašin ANDRIĆ
Otorhinolaryngologist

Report on Medical Examination of Mr Milošević
4 November 2005
Professor F. Leclercq
Montpellier
France

SYMPTOMS WARRANTING AN EXPERT OPINION

- Ringing in the ears (tinnitus) and hearing loss mainly in the right ear. Symptoms appeared 4 to 6 months ago, were at first overlooked by the patient but have become very incapacitating over the past 3 months.
- No thoracic pain or dyspnoea. Patient mentions old dorsolumbar osteoarthritic pain treated intermittently with anti-inflammatories.
- Occasional minor vertigo in transition to orthostatism.
- No complaint of asthenia.

CARDIOVASCULAR HISTORY

- Hypertension has been treated for about ten years. The patient's medical treatment prior to detention consisted of 2 medications which he no longer recalls. Hypertension destabilized since detention with hypertensive episodes reaching 220 to 230 for the systolic function. Blood pressure has been stabilized for several months through intensive treatment combining metoprolol 200 mg, amlodipine 20 mg, enalapril 40 mg, hydrochlorothiazide 50 mg. For several months now there have been no hypertensive episodes and the most incapacitating hearing complaints have not been associated with bouts of hypertension.
- No known coronary history and no preliminary symptoms in this connection.

ASSESSMENT OF PATIENT'S OVERALL CARDIOVASCULAR RISK.

- The risk can be assessed as medium to high with:
 - moderate smoking which was heavy in the past (40 pulmonary artery pressure);
 - hypertension with left ventricular hypertrophy;
 - recent treatment of hypercholesterolemia (*Simvastatine* 40 mg) now well under control (biochemistry tests of February 2005);
 - overweight;
 - mother suffered from hypertension;
 - no diabetes (Hb A1C 5.6).

CLINICAL EXAMINATION

Regular heartbeat, no murmur, no tachycardia or gallop rhythm (70/min), pulse fully perceptible, no vascular murmur.
Blood pressure 160/100 reclining, 140/90 sitting and standing (2 successive readings)

RESULTS OF ADDITIONAL CARDIOLOGY TESTS

ECG

very anomalous;
left ventricular and atrial hypertrophy;
T-waves negative in all precordials indicating secondary repolarization disorder rather than ischemia, although the latter cannot be totally ruled out.

ULTRASOUND (not present at examination - access to report only)

left ventricular hypertrophy confirmed, probably post-hypertensive, predominant in the septum, systolic function normal, irregul diastolic function but absence of intraventricular gradient, no significant valve anomaly.

NO ADDITIONAL CARDIOLOGY TESTS AVAILABLE

The patient might have had a coronary scan two years ago. Patient cannot remember. No results available...
Several ambulatory blood pressure readings may have been taken but I have not seen the results.

STANDARD BIOCHEMISTRY (2 MAY)

Kidney and liver functions normal, blood ionogram normal, blood count without anomalies.

CONCLUSION

Mr M.'s hypertension can be described as severe but not malignant as it has no major repercussions on the target organs, in particular the kidneys. However, the hypertension is accompanied by pronounced left ventricular hypertrophy which is asymptomatic.

The patient's blood pressure has been stabilized by intensive but adapted medical treatment, which has been effective and well-tolerated. The blood pressure irregularities during the first months of detention appeared well before the auditory symptoms. These appeared after the blood pressure had been stabilized. A direct link between the current functional symptoms and any hypertensive episodes is therefore highly unlikely.

Mr M. is a patient with a cardiovascular risk and the left ventricular hypertrophy increases this risk. The disorders the patient is now complaining of could have developed from an atherosclerosis of the neck or intracranial vessels as a consequence of the risk factors which have developed over several years. This is suggested both by the MRI scan results (9 May) which show atheroma scars of the right carotid and by the audiometry, indicating possible damage to the inner ear which can, at least partly, be of vascular origin.

PROPOSAL FOR ADDITIONAL TESTS

- Coronary scanner - if not done in the past 12 months - or myocardial perfusion imaging to rule out any coronary problems;
- MAPA (ambulatory blood pressure measurements over 24 hours);
- Microalbuminuria;

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Translation

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- Doppler of neck vessels and renal arteries.

It would be useful to obtain expert opinion of a neuroradiologist to interpret the initial MRI - interpreted as normal - and so rule out an expanding process.

Discuss in light of the results of a cerebral arteriography for direct display of intracranial vessels.

RECOMMENDATIONS FOR TREATMENT

No change to antihypertension treatment and other cardiovascular therapy (*Simvastatine* and aspirine). A moderate and well-tolerated orthostatic hypotension should be monitored. This can be considered as a side effect of antihypertensive medication.

Biochemistry monitoring at least twice a year (ionogram and renal function in particular).

There is no doubt that stress can contribute to blood pressure irregularities and that a period of rest would be advisable.

/signed/
Professor F. Leclercq

~~IT-02-54-7~~

Translation

4315

JOINT OPINION ON THE COMBINED MEDICAL EXAMINATION OF
MR SLOBODAN MILOŠEVIĆ CARRIED OUT
ON 4 NOVEMBER 2005

In view of the results of the medical examinations recorded in the patient's file and those carried out on 4 November 2005, it can be concluded that the patient's state of health has not stabilized and that complications are possible. Further tests are required in order to identify the origin(s) of the current disorders.

Accordingly, the patient should be prescribed a period of rest, i.e. the suspension of all physical and mental activities a minimum period of 6 weeks, which will probably reduce – or at least stabilize - the symptoms. It will then be possible to carry out the essential diagnostic procedures to adjust the treatment in the best possible way.

The final and detailed report of each expert will be prepared and submitted subsequently.

PHYSICIANS IN CONSULTATION

Margarita Shumilina, Ph.D., Angiologist /signed/

Professor Florence Leclercq, Ph.D., Cardiologist /signed/

Professor Vukašin Andrić, Ph.D., Otorhinolaryngologist /signed/

Предварительное заключение

по данным субъективных жалоб, ультразвуковой доплерографии и магнитно-резонансной томографии пациента С. Милошанца 64 лет.

Наличие у пациента комбистабулярных нарушений обусловлено, на мой взгляд, следующей патологией:

1) Гипоплазией правой позвоночной артерии /a. vertebralis dextra/ (за счет экстравазальной компрессии a. vertebralis dextra в области устья).

В дистальном отделе a. vertebralis dextra кровоток не картируется (фото 2,3,4) из-за наличия зоны стагнации (так называемая точка гемодинамического равновесия) при ретроградном кровотоке из левой позвоночной артерии в проксимальный сегмент правой позвоночной артерии. A. cochlearis берет начало от дистального отдела позвоночной артерии. Несостоятельность a. cochlearis, обуславливая, в первую очередь, комбистабулярные нарушения у пациента.

Несоответствие диаметров позвоночных артерий вызвало развитие извитости a. basilaris и вторичные нарушения ламинарности кровотока в вертебробазиллярном бассейне.

Преимущественное поражение слуховой функции объясняется тем, что филогенетически слуховой аппарат является более поздней, следовательно, менее резистентной формацией, чем вестибулярный аппарат, к тому же шумовая травма (использование наушников и т.д.) служит специфическим раздражителем именно слухового аппарата.

2) У пациента имеется синдром компрессии сосудисто-нервного пучка при выходе из грудной клетки /Thoracic Outlet Compression Syndrom/. Слева выражен артериальный компонент синдрома передней лестничной мышцы /a. scalenus/.

3) У пациента при аускультации выслушивается систолический шум по правой внутренней сонной артерии /a. carotis interna dextra/, в проксимальных сегментах правых подключичной и позвоночной артерий. При магнитно-резонансной томографии (Фото 5) определяется расширение a. carotis interna dextra и смещение осевого потока (за счет турбуленции). Данная картина может быть обусловлена постстенотическим расширением артерии после стеноза или извитости a. carotis interna dextra с сегментарным стенозом. Нарушение кровотока по a. carotis interna dextra дополнительно отягощает состояние пациента, так как турбуленция кровотока часто воспринимается больными в виде шума. Кроме того, сужение кровотока по внутренней сонной артерии способствует декомпенсации коллатеральной кровоснабжения в вертебробазиллярном бассейне при аномальном строении позвоночных артерий.

4) Данные сосудистые аномалии наблюдаются на фоне длительно некорректированной артериальной гипертензии (более 10 лет), когда имеет уже наличие артериосклероза (который формируется при длительном течении гипертензии более 5 лет). Наличие артериосклероза резко снижает компенсаторные возможности других сосудов мозга.

Нарушение компенсаторных возможностей интракраниальных сосудов пациента С. Милошенича подтверждено при ортостатической пробе (головокружение и пошатывание при снижении систолического давления на 20 мм рт. столба).

5) Исходя из жалоб пациента (кроме шума преимущественно в правом ухе и головокружения, дополнительно отмечаются чувство тяжести, распирания в голове, давления на глаза), имеются нарушения и церебрального венозного оттока. На МРТ при поперечном срезе поперечных синусов определяется повышение плотности сигнала, особенно слева. Нарушения церебрального венозного оттока также затрудняют нормальную перфузию мозга. По МРТ у пациента имеется расширение борозд, умеренное расширение субаракноидального пространства и желудочков мозга, лейкоареоз.

Наличие у пациента С. Милошенича практически постоянного шума в течение 2 месяцев, головокружения свидетельствует о некомпенсации мозгового кровообращения, неадекватности терапии, необходимости дообследования (рентгенография шейного отдела позвоночника с функциональными пробами, оценка реологии крови, триплексное сканирование брахиоцефальных артерий и вен, транскраниальная доплерография и, возможно, ангиография) и этнопатогенетического лечения в специализированном стационаре.

После дообследования возможна и хирургическая коррекция сосудистой патологии (особенно при неэффективности консервативной терапии).

Желательно применение периферических вазодилататоров и веноτονиков (Мидокалм, вазобрал, детражекс).

Необходимо ограничение акустической нагрузки.

Имеющиеся кохлеовестибулярные нарушения могут быть, при наличии указанной сосудистой патологии, первыми явлениями более серьезных нарушений мозгового кровообращения.

Доктор медицинских наук
 НИЦСХ им. А.Н. Бакулева РАМН
 Москва, Россия
 4.11.2005
 Фото МРТ прилагаются

Шумилина М.В.

Шумилина М.В.

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Prevod s ruskog

PRELIMINARNI ZAKLJUCAK (strucno misljenje)
na osnovu subjektivnih zahteva, ultrazvucne doplerografije i magnetno-rezonansne tomografije pacijenta S. Milosevica, 64 godine

1. Prisutnost kod pacijenta kohlcovestibularnih poremećaja posledica su, po mom misljenju, sledećih patoloskih promena:

1) Hipoplazije a. vertebralis dextra [za račun ekstravazalne kompresije a. vertebralis dextra u oblasti usca].
U distalnom delu a. vertebralis dextra krvotok se ne uocava (foto 2,3,4) zbog postojanja zone stagnacije (takozvana tacka hemodinamicka ravnoteza) pri obratnom toku iz a. vertebralis sinistra u pocetni segment a. vertebralis dextra. Arterija cochlearis pocinje od distalnog dela vertebralne arterije. Slabost a. cochlearis uslovljava, u prvom redu, kohlcovestibularne poremećaje kod pacijenta.

Razlicitost precalka vertebralnih arterija izazvala je razvoj izvijuganosti a. basilaris i sekundarni poremećaj laminarnosti krvotoka u vertebrobasilarnom bazenu.

Pretežno vise pogodjena funkcija sluha objasnjava se time sto je filogenetski slusni aparat znatno kasnija i, konsekvencno, manje rezistentna formacija nego vestibularni aparat, i isto trauma. Usled buke (koriscenje slusalice i t.d.) služi kao specifikan uzrok nadrazivanja upravo organa sluha.

2) Pacijent ima sindrom kompresije vaskularno-nervnog snopa na izlazu iz grudnog kosa (Thoracic Outlet Compression Syndrome). Slava je izrazana arterijalna komponenta sindroma scalenus.

3) Pri auskultaciji pacijenta cuje se sistolni sum nad arterijom carotis interna dextra, u proksimalnim segmentima a. subclavia dextra i a. vertebralis dextra. Pri magnetno-rezonansnoj tomografiji (foto 5) definise se prosirenje arterije carotis interna dextra i pomeranje ose toka (zbog turbulencije). Takva slika moze biti izazvana poststenotickim rasirenjem arterije posle stenoze ili izvijuganosti a. carotis interna dextra sa septalnom stenozom. Poremećaj krvotoka po a. carotis interna dextra dodatno otezava stanje pacijenta, jer turbulenciju krvotoka pacijent oseca kao sumove. Pored toga, snizenje

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krvotoka po a. carotis interna doprinosi dekompenzaciji kolateralnog krvotoka u vertebrobazilarnom bazenu pri anomalnoj strukturi vertebralnih arterija.

- 4) Data promene na krvnim sudovima zapazaju se kao posledica dugotrajnog neregulisanog visokog krvnog pritiska, kada je prisutna arterioskleroza (usled trajanja hipertenzije vise od 5. godina). Postojanje arterioskleroze znacajno smanjuje kompenzionu sposobnost drugih mozdanih krvnih sudova.

Poremećaj kompenzatorskih mogućnosti intrakranijalnih sudova pacijenta S. Milosevica potvrđen je ortostatikom probom (vrtoglavica i teturanje uz sniženje sistolnog pritiska za 20 mm zivnog stuba).

- 5) Na osnovu žalbi pacijenta (osim sume pretežno u desnom uhu i vrtoglavice, dodatno se zapaza osećanje težine, nadimanje u glavi, pritisak na oči) vidi se da postoji poremećaj i cerebralnog venskog protoka. Na MRT na poprecnom preseku poprecnih sinusa definiše se povišenje gustoca signala, narocito sleva. Poremećaj cerebralnog venskog protoka takodje otezava normalnu perfuziju mozga. Prema MRT pacijent ima proširenje brazda, umereno proširenje subarahnoidalnog prostora i ventrikula mozga, i leukoarcizu.

Prisutnost kod pacijenta S. Milosevica prakticno stalnog sume svedoci o dekompenzaciji mozdanog krvotoka, neadekvatnosti terapija i neophodnosti dodatnog ispitivanja (rentgenografija vratnog dela kicmenog stuba s funkcionalnim probama, ocena reologije krvi, tripleksno skeniranje brahiocefalnih arterija i vena, transkranijalna doplerografija i, mozda, angiografija) i etiopatogenetskog lecenja u specijalizovanom stacionaru.

Posle dodatnog ispitivanja mogucna je hirurska korekcija vaskularne patologije (narocito ako konzervativna terapija ne bi bila efikasna).

Pozeljno je koriscenje perifernih vazodilatatora i venotonika (midokalm, vazobral, detraleks).

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Neophodno je ograničenje askultativnog opterećenja.

Postojeća kohleovestibularne promena, uz prisutnost navedene patologije krvnih sudova, mogu biti prve pojave težih poremećaja mozdanog krvotoka.

Dr med sci M. V. Sumlina s.r.
NCKVH "A.N. Bakuljev" RAMN
Moskva, Rusija

04.11.2005.

Foto MRI – u prilogu

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OTORINOLARINGOLOSKI IZVEŠTAJ

Milošević Stjepan 64. god.

Anamnestički podaci o sadašnjoj bolesti

U posljednja 3 godišna razdoblja u usima, izražena je u desnom uvu. Simptomatologija se jako intenzivirala u posljednjih mjesec dana, što se manifestuje "uzvijanjem" "bubnjanjem" u desnom uvu sa jasnom nazikom u boji tona, koja je defonizirana u desnom uvu i jakim bolovima u istom uvu, posebno pri percipaciji visokih tonova. U posljednjih mjesec dana je prisutna i autofonija kao i evidentan zamor procesa slušanja tokom produkcije zvukom. Uz pomešanu simptomatologiju, stalno je prisutna i vrlo teška slabija ili jača intenzivna, prazna multon, gadljenjem i neugodnom na povraćanje.

Rezultati otorinolaringološkog pregleda

Fizikalni otorinolaringološki nalaz je uredan. Test po Rombergu kao i po senzibilisanom Rombergu je negativan. Spontani nistagmus nije prisutan. Test po Unterbergu je pozitivno skretanje u levo.

Timpanometrija. Obostrano uredan nalaz - kriva tipa "A". Stepes odgovor prisutan obostrano na svim frekvencijama, osim na 4000 Hz, gde izostaje.

Tonska liminarna audiometrija. Obostrano oštećenje sluha senzorneuralnog tipa. Prag sluha na desnom uvu na frekvencijama od 125-1500 Hz u nivou 30-40 dB, a na 4000 Hz 90 dB. Prag sluha na levom uvu na frekvencijama do 2000 Hz je u nivou 20 dB. Na frekvenciji od 4000 Hz 60 dB, a na 8000 Hz 80 dB.

Govorna audiometrija. Dobijeni rezultati potvrđuju nalaz tonske liminarne audiometrije i govora za obostrano intrakohlearno oštećenje, znatno jačeg stepena desno.

NMR (NUKLEARNA MAGNETNA REZONANCA) je isključeno postojanje intrakranijalnog ekspanzivnog procesa.

Zaključak

Obzirom da je NMR isključeno postojanje intrakranijalnog ekspanzivnog procesa, na osnovu urađenih pretraga može se zaključiti da se radi o obostranom oštećenju perifernog vestibulokohlearnog aparata, primarno vestibularne geneze, uz veoma značajan udeo fizike komponente, manifestovane kroz brončni akustički nadzvoj, intenziviran kortecijem stusultca, kroz duži vremenski period od nekoliko godina. Trenutno stanje na kohlearnom aparatu je ireverzibilno sa evidentnom tendencijom pogoršanja u narednom periodu. Prisutni bol u desnom uvu, koji se posebno pojačava pri slušanju visokih tonova je posledica približenja praga sluha pragu bola.

Predica mera

Obzirom na trenutno zdravstveno stanje pregledanog, predlaže se neodlozan odmor u smislu uvodjenja stimulacije zvukom na najmanju moguću mernu, uz neophodnu adekvatnu medikamentoznu terapiju u trajanju od jednog meseca nakon čega bi se učinio kontrolni laskarski pregled. Obzirom na evidentno prisutan izrazan situatni zamor pregledani se ubuduće ne sme izlagati kontinuiranoj zvučnoj stimulaciji duže od jednog sata, pri čemu ce biti potrebna situatni odmor u istom trajanju.

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Terapija

- 1. Pentoksifilin (Trental 400 drag ili film tbl. 1+1+0) u trajanju od 30 dana
- 2. Cinarizin (Tbl. Saigeron forte a 75 mg. ili Cinarizin tbl. 0+0+1) u trajanju od 30 dana

Po završetku ove terapije odmah nastaviti sa:

- 1. Betahistin (Unital tbl. u Bmg 3x1) u trajanju od 30 dana

U celom ovom periodu od 2 meseca:

NEIZOSTAVNA POSTEDA SLUHA

Den Haag
04.11.2005. god.

[Signature]
 Prof. dr. sc. med. Vukasin Andric,
 otorinolaringolog

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4-31-05 01

Compte rendu de la visite aupres de monsieur Milosevic
04/11/05

Professeur F LECLERCQ
Montpellier
FRANCE

SYMPTOMES MOTIVANT L'EXPERTISE

- Bourdonnements d'oreilles (accouphènes) et diminution de l'acuité auditive prédominant à droite, apparues depuis 4 à 8 mois, au début négligées par le patient puis devenues très invalidantes depuis 3 mois.
- Aucune douleur thoracique ou dyspnée. Signale des douleurs d'arthrose dorsolombaire anciennes traitées par anti-inflammatoires de façon intermittente
- Parfois petits vertiges lors du passage en orthostatisme
- Ne décrit pas d'asthénie

HISTOIRE CARDIOVASCULAIRE

- Hypertension artérielle connue et traitée depuis une dizaine d'années. Il suivait un traitement médical avant l'incarcération composé de 2 médicaments dont il ne sait plus le nom. L'hypertension a été déstabilisée depuis l'incarcération avec des poussées tensionnelles atteignant parfois 220 ou 230 pour la systolique. Une stabilisation a pu être obtenue depuis quelques mois au prix d'un traitement lourd associant metoprolol 200 mg, amlodipine 20 mg, enalapril 40 mg, hydrochlorothiazide 50 mg. Il n'y a plus de poussées de pression artérielle depuis plusieurs mois et les manifestations auditives les plus invalidantes n'ont jamais été associées à des montées tensionnelles.
- pas d'antécédent coronarien connu et aucun symptôme d'apnée dans ce domaine

EVALUATION DU RISQUE CARDIOVASCULAIRE GLOBAL DU PATIENT

- Risque pouvant être estimé comme moyen à élevé avec tabagisme actuellement modéré mais qui a été important (40PA)
HTA avec hypertrophie ventriculaire gauche
hypercholestérolémie traitée depuis peu (Simvastatine 40 mg) et bien contrôlée (bilan biologique de février 2005)
surpoids
mère hypertendue
pas de diabète (Hb A1C 5,6)

EXAMEN CLINIQUE

bruits du cœur réguliers sans souffle, pas de tachycardie ou de galop (70/min), pouls tous perçus, pas de souffle vasculaire
PA 160/100 couché, 140/90 assis et debout (2 contrôles successifs)

RESULTATS DES EXAMENS COMPLEMENTAIRES CARDIOLOGIQUES

ECG

très anormal
hypertrophie ventriculaire et auriculaire gauche

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ondes T négatives dans toutes les précordiales évoquant des troubles de repolarisation secondaires plus qu'une ischémie, cette dernière ne pouvant cependant pas être totalement éliminée.

ECHOGRAPHIE (pas d'accès direct à l'examen, uniquement compte rendu) hypertrophie ventriculaire gauche confirmée, probablement post hypertensive, prédominant au septum, fonction systolique normale, trouble de fonction diastolique mais sans gradient intraventriculaire, pas d'anomalie valvulaire significative

AUCUN AUTRE EXAMEN COMPLEMENTAIRE CARDIOLOGIQUE N'EST DISPONIBLE le patient aurait eu un scanner coronaire il y a 2 ans, il n'en a pas souvenir et pas de résultat disponible
Il aurait eu plusieurs MAPA dont je n'ai pas vu les résultats

BIOLOGIE STANDARD (02/05)

Fonctions rénale et hépatique normale, ionogramme sanguin normal, NFS sans anomalie

CONCLUSION

Monsieur M. a une HTA que l'on peut qualifier de sévère mais non maligne car sans retentissement majeur sur les organes cibles en particulier le rein; cette HTA s'accompagne cependant d'une forte hypertrophie ventriculaire gauche qui est asymptomatique la pression a pu être stabilisée par un traitement médical lourd mais adapté, efficace et bien toléré. Le déséquilibre de la pression artérielle dans les premiers mois de l'incarcération était donc survenu bien avant les manifestations auditives qui sont apparues alors que la pression était stabilisée. La relation directe entre les manifestations fonctionnelles actuelles et d'éventuelles poussées de tension artérielle est donc très improbable

Monsieur M est un patient à risque cardiovasculaire et l'hypertrophie ventriculaire gauche augmente ce risque. Les troubles dont il se plaint actuellement ont pu être favorisés par le développement d'une athérosclérose des vaisseaux du cou ou des vaisseaux intracrâniens sous l'effet de ces facteurs de risque évoluant depuis des années. Ceci est suggéré par les résultats de l'IRM (09/05) qui retrouve des stigmates d'athérome de la carotide droite mais également par l'audiométrie en faveur d'une atteinte de l'oreille interne dont l'origine peut être, au moins en partie, vasculaire

PROPOSITIONS D'EXPLORATIONS COMPLEMENTAIRES

- scanner coronaire si pas fait récemment (moins de 1 an) ou scintigraphie myocardique pour s'affranchir de tout problème coronarien
- MAPA (mesure ambulatoire sur 24 heures de la pression artérielle)
- microalbuminurie
- Doppler des vaisseaux du cou et des artères rénales

Intéressant de demander un avis spécialisé à un neuroradiologue pour interpréter l'IRM faite au départ pour éliminer un processus expansif et interpréter comme normale

Discuter en fonction des résultats d'une artériographie cérébrale pour visualisation directe des vaisseaux intracrâniens

PROPOSITIONS THERAPEUTIQUES

Pas de modification du traitement antihypertenseur et des autres thérapeutiques à visée cardiovasculaire (Simvastatine et aspirine). Il y a une hypotension orthostatique modérée et bien tolérée à respecter et à surveiller qui peut être considérée comme un effet secondaire des médicaments anti hypertenseurs

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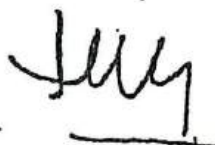
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surveillance biologique au moins 2 fois par an (ionogramme et fonction renale en particulier)
Il est certain que le stress peut contribuer au déséquilibre de l'HTA et qu'une période de repos
serait souhaitable



Professeur F LECLERCQ

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**CONCLUSION COLLECTIVE DE L'EXAMINATION MEDICALE CONSILIAIRE
DE MONSIEUR SLOBODAN MILOSEVIC, EFFECTUEE LE 04.11.2003**

Compte tenu des résultats des examens médicaux consultés dans le dossier et réalisés lors de la visite du 4 novembre 03 on peut conclure que l'état de santé du patient n'est pas stabilisé et que des complications sont possibles. Cet état nécessite de poursuivre les explorations avec pour objectifs de préciser la ou les origines des troubles présentés.

Il est ainsi nécessaire de proposer au patient une période de repos, c'est à dire la cessation de toutes les activités physiques et psychiques au cours d'une période de 6 semaines au minimum, ce qui permettra probablement de diminuer les troubles ou tout au moins de les stabiliser, puis autorisera la réalisation des procédures diagnostiques supplémentaires nécessaires pour adapter au mieux la thérapeutique.

Le rapport définitif et détaillé de chaque expert sera rédigé et soumis ultérieurement.

CONSILIUM DES DOCTEURS

Margarita Simulina, Ph.D, angiologue

Professeur Florence Leclercq, Ph.D, cardiologue

Professeur Vukasin Andric, Ph.D, otorinolaringologiste

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Monsieur le Procureur II Arrondissement
Tribunal de Commerce de Paris

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IT-02-54-T
11 NOVEMBER 2005

D 43140
4F

To: Mr. Hans Holthuis, Registrar
From: Mr. Paulus Falke, Medical Officer
DD: 11.11.2005

Concerning: of Mr. Slobodan Milosevic

Dear Sir,

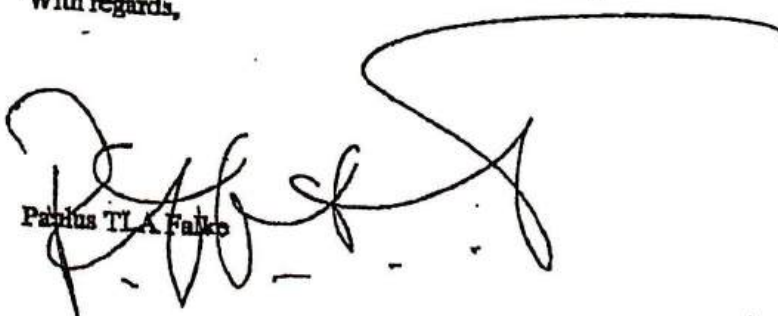
I have examined Mr S Milosevic this morning. He appears very tired and I consider that he is unfit to attend court. He complains about the noises he experiences in his ears. He attributes his tiredness to this condition. It is accepted that this condition induces tiredness, however I believe that there is a combination of factors as we have seen in the past.

He stated that should there be no improvement in his condition over the weekend, he will not be prepared to attend court next week.

I will re-evaluate his condition on Monday and inform you of any developments.

Additionally, I have read the reports of the visiting doctors who saw Mr Milosevic last Friday, the 4th November, and will discuss their conclusions and recommendations with the treating specialists.

With regards,


Paulus T.L.A. Falke

UNITED
NATIONS

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043153/043151
11 November 2005

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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-02-54-T
Date: 11 November 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 11 November 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

CONFIDENTIAL

ORDER CONCERNING FURTHER MEDICAL REPORT

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Geoffrey Nice
Mr. Dermot Groome
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Slobodan Milošević

Amici Curiae

Mr. Steven Kay, QC
Prof. Timothy L.H. McCormack

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 ("the International Tribunal"),

NOTING the medical report from Dr. Falke, dated 11 November 2005, stating that the Accused "appears very tired and I consider that he is unfit to attend court",

NOTING that the Report refers to the Accused attributing his tiredness to "noises he experiences in his ears",

NOTING FURTHER that the Report indicates the Accused as stating that "should there be no improvement in his condition over the weekend, he will not be prepared to attend court next week", and stating that Dr. Falke will "re-evaluate [the Accused's] condition on Monday and inform [the Registrar] of any developments",

CONSIDERING that the report is unsatisfactory and that any further report should:


- (i) provide a diagnosis of the condition of the Accused that renders him unfit to attend court; and
- (ii) distinguish between the degree of fitness necessary to attend court as an Accused person, and that required to additionally conduct one's own case,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal

HEREBY ORDERS THAT the further report to be provided by Dr. Falke on Monday, 14 November 2005, contain the following information:

- (i) In the event that Dr. Falke finds the Accused to be unfit to attend court on 15 November 2005 (simply as an accused person, or as an accused person additionally conducting his own case), he is to specify the diagnosis of the condition which renders him so unfit and substantiate his findings thereon; and
- (ii) What is the area of specialisation relevant to the Accused's diagnosed condition.

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



Judge Robinson
Presiding

Dated this eleventh day of November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

IT-02-54-T
 043162-043161
 14 November 2005

43162
 YK

To: Mr. Hans Holthuis, Registrar
 From: Mr. Paulus Falke, Medical Officer
 DD: 14.11.2005

Report: Concerning Mr. Slobodan Milosëvić

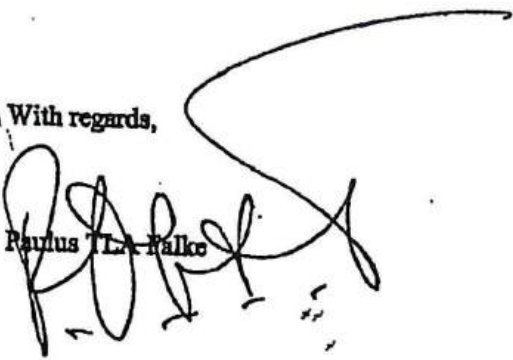
1. Further to my report of 11.11.2005, Mr. Milosëvić has the following medical conditions: cardiovascular problems, he also complains of hearing problems in his right ear. I concluded that Mr. Milosëvić was unfit to attend Friday's hearing due to exhaustion. This type of exhaustion has been experienced in the past due to a variety of different reasons which I have brought to your attention in previous reports, the recent development of the hearing problem is not the main issue.
2. On the 04.11.2005 Mr. Milosëvić was examined by three doctors ("Visiting Doctors") selected by him at his own request pursuant to Rule 30 of the Rules of Detention. These doctors submitted a report to the Commanding Officer of the Detention Unit for the information of the Medical Officer. Amongst other things, the translation of the report contained a joint conclusion stating:

"It is therefore necessary to propose to the patient a period of rest, i.e. the suspension of all physical and psychological activities for a period of a minimum 6 weeks which would probably help diminish the symptoms or at least stabilize them and then approve additional indispensable diagnostic procedures in order to prescribe a more appropriate therapy".
3. On 11.11.2005, the Trial Chamber requested a further report to answer the questions whether or not Mr Milosevic is fit to attend court and to defend himself and what is the area of specialisation relevant to the accused's diagnosed condition.
4. I have read the reports of the Visiting Doctors (paragraph 2 above refers) and discussed the same with the Dutch treating ear, nose and throat specialist at Bronovo Hospital. This specialist has been treating Mr. Milosëvić for a period of two months. He states that following thorough diagnostics (MRI and audiograms) there are no pathological findings which could explain the complaints of the patient. Mr. Milosëvić has hearing loss commensurate with someone of his age. Contrary to the joint conclusion of the Visiting Doctors, the treating specialist concludes that it is unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of. The treating specialist states that a period of rest will have no positive effect upon his symptoms. Indeed, he has had short rest periods in the recent past and they have not reduced the symptoms complained of. For these reasons, I believe that it is unlikely that a diagnosis will be reached. I appreciate that this is not satisfactory for any of the parties, however it is the only diagnosis which is achievable at this moment in time.
5. In accordance with the recommendations of the treating ENT specialist, Mr. Milosevic will continue to undergo a normal regime of check-ups relating to his

complaints but there is presently nothing further that can be done relating to his condition.

6. Mr. Milosević himself states that he is fit to stand trial and to defend himself and I have no objections to this from a medical point of view. He also states that the condition in his ear does bother him a lot. He further opines that it could be related to the temporary change of headphones in the courtroom.
7. I hope this is helpful in further clarifying matters for the Trial Chamber.

With regards,


Radoslaw Falke

UNITED
NATIONS

IT-02-54-T
D43206-D43204
15 November 2005

43206
✓



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-02-54-T
Date: 15 November 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 15 November 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

ORDER FOR EXPERT MEDICAL REPORTS

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

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 ("the International Tribunal"),

CONSIDERING the tendering of three medical reports by the Accused in court this morning and the statement that his intention in presenting these reports was "Nothing other than asking the Trial Chamber not to ignore what it says in the doctors' report, and that means that they said quite specifically suspension of all physical and mental activities for a minimum period of six weeks",

NOTING the content of the medical reports from the three doctors: Dr. Shumilina (an Angiologist); Professor Vukašin Andrić (an Otorhinoralygologist), and Professor F. Leclercq (a Cardiologist),

NOTING the "Joint Opinion on the Combined Medical Examination...", appended to the medical reports, which concludes, in part, that "the patient should be prescribed a period of rest, *i.e.* the suspension of all physical and mental activities [sic] a minimum of 6 weeks, which will probably reduce – or at least stabilize – the symptoms",

NOTING the Report of Dr. Falke, the treating doctor of the United Nations Detention Unit ("UNDU") of 11 November 2005, advising that the Accused was unfit to attend court on that day due to exhaustion, and stating that the Accused attributed his tiredness to "noises he experiences in his ears",

NOTING FURTHER the Report of Dr. Falke of 14 November 2005,

- (i) in which, after referring to his earlier report of 11 November, he concluded that the Accused's "hearing problem is not the main issue";
- (ii) stating that the ear, nose and throat specialist treating the Accused had conducted thorough diagnostics and that "there are no pathological findings which could explain the complaints of the patient" and that "[c]ontrary to the joint conclusion of the Visiting Doctors, the treating specialist concludes that it is unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of. The treating specialist states that a period of rest will have no positive effect upon his symptoms. Indeed, he has had short rest periods in the recent past and they have not reduced the symptoms complained of";

43204

- (iii) stating that, in accordance with the recommendations of the treating ear, nose and throat specialist, the Accused will continue to undergo a normal regime of check-ups; and
- (iv) stating that "Mr. Milošević himself states that he is fit to stand trial and to defend himself and I have no objections to this from a medical point of view",


CONSIDERING that, since this is a matter which relates to the health of the Accused, the expert medical opinion of the Accused's treating specialists is required as a matter of urgency,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal

HEREBY ORDERS BY MAJORITY (Judge Bonomy dissenting) THE REGISTRAR to arrange an examination, if necessary, and to obtain the expert medical reports of the treating cardiologist, Dr. van Dijkman and the treating Ear, Nose and Throat specialist of the Accused, by Monday, 21 November 2005, on the content and recommendations of the reports of the three visiting doctors, including but not limited to:

- (i) The reference by Dr. Shumilina to "inadequate treatment and the necessity of additional tests" set out on page 2 of his report; and
- (ii) The "Joint Opinion on the Combined Medical Examination...", appended to the medical reports, in particular that "the patient should be prescribed a period of rest, i.e. the suspension of all physical and mental activities [sic] a minimum of 6 weeks, which will probably reduce – or at least stabilize – the symptoms".

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



Judge Robinson
Presiding

Judge Bonomy will file a Dissenting Opinion in due course.

Dated this fifteenth day of November 2005
At The Hague
The Netherlands
Case No. IT-02-54-T

[Seal of the Tribunal]

15 November 2005

UNITED
NATIONS

Dr. 02-54-T
040273 / 040270
17 November 2005

43275
AT



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-02-54-T
Date: 16 November 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuys

Decision of: 16 November 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

DISSENTING OPINION OF JUDGE IAIN BONOMOY IN RELATION TO THE
ORDER OF THE TRIAL CHAMBER FOR EXPERT MEDICAL REPORTS

Office of the Prosecutor:
Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:
Mr. Slobodan Milošević

Court Assigned Counsel:
Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:
Prof. Timothy McCormack

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1. I should explain my reasons for dissenting from the Order¹ made on 15 November by a majority of the Trial Chamber for the Registrar to arrange medical examinations of, and obtain medical reports from, doctors providing treatment to the Accused for his cardiovascular and ear, nose and throat problems. I consider that there is no Motion properly formulated within the terms of Rules 73(A) or 74bis of the Rules of Procedure and Evidence of the Tribunal currently before the Chamber for consideration. I further consider that, even if what has been submitted by the Accused could be considered to be a Motion, a fundamental part of the supporting material comes from an inappropriate source.

2. On Friday, 11 November 2005, the Accused was absent from court through illness for the first time since April. At that stage there was no explanation of the condition that might have caused him to be unfit to be in court. Concerned about this unsatisfactory state of affairs, the Trial Chamber made an Order that the Medical Officer at the Detention Unit should report on Monday, 14 November, on the fitness of the Accused to attend court on the next court day, viz. Tuesday, 15 November and, in the event of his being unfit, should specify his diagnosis and the area of specialisation relevant to his diagnosed condition.²

3. In the event, the Medical Officer reported on 14 November that the Accused had stated that he was fit to stand trial and to defend himself and that the Medical Officer had no objection to that.³ On Tuesday, 15 November, the Accused was present in court.

4. At the outset of proceedings he addressed the Chamber on medical reports which had been prepared following examination of him by three experts on 4 November.⁴ Although these reports had been available to the Accused since 4 November, at that stage the Trial Chamber had not had sight of them. They were then tendered. When advised by the Presiding Judge that he "must make it clear to the Chamber what you wish the Chamber to do arising from this report", the Accused said simply: "Nothing other than asking the Trial Chamber not to ignore what it says in the doctors' report, and that means that they said quite specifically suspension of all physical and mental activities for a period of six weeks".⁵

¹ *Prosecutor v. Milošević*, "Order for Expert Medical Reports", 15 November 2005.

² *Prosecutor v. Milošević*, "Order to Registrar for a Further Medical Report", 11 November 2005.

³ *Prosecutor v. Milošević*, "Report Concerning Mr. Slobodan Milošević" by Mr. Paulus Falke, Medical Officer. T. 46482-46485.

⁴ The joint view of the three experts was that "the patient should be prescribed a period of rest, i.e. the suspension of all physical and mental activities a minimum period of 6 weeks, which will probably reduce – or at least stabilise – the symptoms. It will then be possible to carry out the essential diagnostic procedures to adjust the treatment in the best possible way".

He did not invite the Trial Chamber to take any specific steps or grant any particular form of relief.⁶

5. While it is possible to envisage a number of courses of action that the Accused might have had in mind, such as adjourning the trial or causing further medical examination to be made, in this adversarial process it is not for the Trial Chamber to divine his wishes from his cryptic statements. It is for him, as the person conducting and in charge of his case, tendering material which is the result of investigations he has caused to be made, to say what course of action he wishes the Trial Chamber to take. All he has suggested is "taking account of" the reports. To what end? That is for him to specify. Indeed, in the context of this case, which has been bedevilled by problems associated with the Accused's unfortunate illness, it is, in my opinion, appropriate that any Motion seeking action by the Trial Chamber in relation to the Accused's health should be presented in writing, and should identify clearly the issues to be addressed by the Trial Chamber and the relief sought, to ensure that the interests of the Accused, the interests of justice and the public interest in a fair and expeditious trial are not in any way prejudiced by confusion, misunderstanding or uncertainty. In view of the absence of a clearly stated Motion by the Accused inviting the Trial Chamber to take a particular course of action, I do not consider that it is appropriate for the Trial Chamber to make any order.

6. There is a further reason why no order should be made. The material presented to the court consists of reports by three medical experts. The condition, which they identify as a cause for concern, is described as "the patient's cochleovestibular disorders", principally causing difficulties in hearing and balance, which are linked to a number of cardio-vascular problems. An important element in their overall assessment of the Accused's current state of health is the diagnosis of the existence of genuine problems with his hearing. That diagnosis has been made by an Otorhinolaryngologist, Professor Vukašin Andrić. The report of Dr. Shumilina, Angiologist, links the hearing difficulties to the Accused's cardio-vascular problems.

7. Professor Andrić has already appeared before us as a witness of fact for the defence in the case.⁷ Indeed he can be fairly described at this stage as an important witness about a number of matters in Kosovo over an extended period of time, including the period of the indictment. It is already plain, from a comparison of the reports of Professor Andrić and Dr. Shumilina with the report by the Medical Officer at the Detention Unit of his discussion

⁶ This can also be seen from the absence of any reference to such a Motion in the Order of the Trial Chamber for expert medical reports.

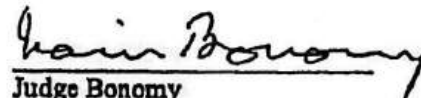
⁷ Prof. Vukašin Andrić, 23, 24 and 28 February 2005, T. 36515-36796.
Case No. IT-02-54-T

43270

with the Ear, Nose and Throat Specialist treating the Accused, that there is scope for controversy about the nature of any hearing problem that the Accused may have and its relationship to his cardio-vascular problems. Against that background it is, in my opinion, inappropriate for the Trial Chamber to be asked to take account of the views of Professor Andrić. The Trial Chamber's first and foremost consideration must always be to ensure a fair trial of the Accused. It should not countenance the risk that a situation could develop in which its impartiality, and hence the fairness of the trial, might be put in question. The Trial Chamber should not be placed in the position where it may have to assess the reliability of a witness in a context unrelated to his evidence in the case prior to having to evaluate that evidence. Issues relating to the management of the trial process should be dealt with through the assistance of experts who are not involved as witnesses of fact in the case.

8. For these various reasons I consider that the Accused should be advised that, if he wishes the Trial Chamber to take any form of action in light of the medical reports he has tendered, he should present a Motion to the Trial Chamber in writing, setting out the relief he seeks, and should support that with opinions from relevant experts in the appropriate medical fields who are not involved as witnesses in the case, and who should thus not include Dr. Andrić. Whenever issues of health and fitness arise in a court process it is vital that the right decision is made at the end of a thorough and scrupulously objective assessment of the issues on the basis of the opinions of experts who are not involved in the trial. These issues require to be focused by the Accused in an appropriate way.

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


Judge Bonomy

Dated this sixteenth day of November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

X-02-54-T
043287-043285
21 November 2005

43287
JK

Translation

/s/ Bronovo

Bronovo Hospital
Cardiologic Department
Tel. 070-3124375
Fax 070-3124387

Dr P.R.M. van Dijkman
H.J.J. Kerckamp
Dr Meredith L. Sedney
S.T. Somer
Cardiologists

The Hague, 18 November 2005

Subject:

Mr. S. MILOŠEVIĆ

PO Box 87810 Vn
2508 DE The Hague

Date of birth: 20 August 1941

Patient number: 9.459.112

Reference: pl

Mr. P. Falke, medical officer

P.I. Haaglanden UN-unit

PO Box 87810

2508 DE The Hague

Dear colleague,

I have received a request from Judge P. Robinson to provide an assessment of the medical examination of Mr. S. MILOŠEVIĆ carried out by Prof. F. Leclercq from France.

I have read this carefully and reached the conclusion that Prof. Leclercq has not added much to what was already known about the patient.

He points out that the patient was known to suffer from hypertension with left ventricle hypertrophy, and that an acceptable blood pressure had been achieved with the medication currently used, as far as this was possible in the present conditions of detention of the patient.

IT-02-54-T

4286

Translation

His remark that he has no new suggestions regarding adjustment of the medicinal treatment is of interest. In addition, he points out that it may be advisable to ascertain once again whether there is a coronary insufficiency.

This last point seems to be somewhat exaggerated in view of the data on Mr. MILOŠEVIĆ already available. A heart catheterisation in the past showed no indication whatsoever of coronary atherosclerosis. There have been no anginal complaints to date. On the other hand, there are not many reasons not to carry out an ischemic test, although in that case the patient should stop taking beta-blockers for a few days in order to obtain as complete an assessment as possible.

An adenosine stress MRI of the heart with perfusion may be considered. In addition, the calcium score of the coronaries may be determined by means of a CT scan.

I suggest carrying out this examination in a relatively quiet period for the patient. I am not in favour of reducing anti-hypertension medication during stress of the trial.

Personally, I think that it would be interesting to carry out a 24-hour blood pressure measurement during the trial. In terms of organisation, all this could be arranged next week.

At present, I see no grounds to change the current course of action, and in my opinion, there are no reasons from the cardiologic point of view to alter the current trial regime.

Yours sincerely,

/signature/

Dr P.R.M. Dijkman

18/11 '05 FRI 17:29 FAX 0031 70 358 5375

UN Detention Unit

IT-02-54-AR65-1 p.142

1000 [18982 ON XH/XL] ZI:8Y IEM 80. II/8Y



Ziekenhuis Bronovo

Secretariaat Cardiologie
Tel. 070-3124375
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Dr P.R.M. van Dijkman
H.J.J. Korkkamp
Dr Maradith I. Sedney
S.T. Somer
Cardiologen

MILS
4285
Ely to
Ell, 12/1

Den Haag, 18 november 2005

Betreft:
dhr. S. Milosevic
Postbus 87810 Vn
2508 DR Den Haag
geb. 20-08-1941
pat. nr. : 9.459.112
Kenmerk: pl

De Heer P. Falke, medical officer
P.I. Haaglanden VN-unit
Postbus 87810
2508 DR DEN HAAG

Geachte collega,

Van Judge P. Robinson ontving ik het verzoek een oordeel te geven over het medisch onderzoek van Dhr. S. Milosevic uitgevoerd door Prof. F. Laclercq uit Frankrijk.

Ik heb dit stuk met aandacht gelezen en ik kom tot de conclusie dat Prof. Laclercq niet veel nieuws toevoegt aan datgene wat al bekend is over betrokkene. Hij geeft aan dat patiënt bekend is met hypertensie met linker ventrikul hypertrofie waarbij met de huidige medicatie een acceptabele bloeddruk is bereikt voor zover dat mogelijk is in de huidige detentiesituatie.

Van belang is de opmerking dat hij geen nieuwe suggesties heeft de medicamenteuze therapie aan te passen. Hij geeft tevens aan dat het misschien verstandig is nog eens een keer te beoordelen of er sprake is van coronaire insufficiëntie.

Dit laatste lijkt wat overdreven gezien de gegevens die reeds beschikbaar zijn over Dhr. S. Milosevic. Een hartcatheterisatie in het verleden toonde geen enkele aanwijzing voor coronaire atherosclerose. Tot op heden zijn er geen anginauze klachten geweest. Aan de andere kant is er ook niet veel op tegen een ischemietest uit te voeren hoewel hij dan de betablokker enige dagen moet laten staan om een zo compleet mogelijk oordeel te krijgen. Gedacht kan worden aan een adenosine stress MRI van het hart met perfusie. Tevens kan d.m.v. een CT scan de calciumscore van de coronairen worden bepaald.

Ik stel voor dit onderzoek uit te voeren in een periode dat het relatief rustig is voor patiënt. Tijdens de stressvolle rechtszaak ben ik tegen het afbouwen van antihypertensieve medicatie.

Ik denk zelfs dat het interessant is een 24-uurs bloeddruk meting te verrichten ten tijde van de rechtszaak. Volgende week zal het e.e.a. organisatorisch kunnen worden geregeld.

Vooralsnog zie ik geen reden het huidige beleid te wijzigen en zijn er m.i. ook geen redenen vanuit cardiale optiek het huidige courtregime te wijzigen.

Met vriendelijke groeten,

Dr P.R.M. van Dijkman

Postbus 96900 2509 JH Den Haag - Bronovelaan 5 2597 AX Den Haag • tel. 070-312 41 41

Het Ziekenhuis Bronovo maakt deel uit van de Stichting Bronovo-Nieuw.

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1/11 2005 15117 FAX

21/11 '05 MON 11:34 FAX 0031 70 388 5373

UN Detention Unit

IT-02-54-AR65.1-p.141

001

D43237

X-02-54-T
21 November 2005



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia
Detention Unit
Tribunal Pénal
International pour
ex-Yougoslavie
Quartier
Préventif

To : Mr. Hans Holthuis, Registrar ICTY
From: Mr. Paulus Falke, Medical Officer UNDU
DD : 21 - 11 - 2005

Concerning: Mr. Slobodan Milosevic

Dear sir,

This morning I examined Mr. S. Milosevic. His blood pressure is beyond the acceptable parameters. Therefore, he is not fit to attend court. Taking in account that his blood pressure was unacceptably high last week, it will take sometime to stabilize the situation, therefore I recommend that he does not attend court for the rest of this week.

Sincerely yours,

Paulus Falke,
Medical Officer
UNDU

UNITED
NATIONS

IT-02-54-T
043273/043271
21 November 2005

43273
JK



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-02-54-T
Date: 21 November 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuys

Decision of: 21 November 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

ORDER ADJOURNING TRIAL AND FOR A FURTHER MEDICAL REPORT

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

43292

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 ("the International Tribunal"),

NOTING the absence of the Accused in court this morning on account of his ill health,

NOTING that, until 11 November 2005, the chronic cardiovascular problems experienced by the Accused have not, for over one year, caused any interruption to the three day per week trial schedule,¹

CONSIDERING the medical report received today from the Medical Officer of the United Nations Detention Unit, Dr. Falke, in which he states:

"[The Accused's] blood pressure is beyond the acceptable parameters...he is not fit to attend court...Taking into account that his blood pressure was unacceptably high last week, it will take some time to stabilize the situation, therefore I recommend that he does not attend court for the rest of this week",

CONSIDERING the Trial Chamber's "Order for Expert Medical Reports", issued on 15 November 2005, in which it ordered as follows:

...**THE REGISTRAR** to arrange an examination, if necessary, and to obtain the expert medical reports of the treating cardiologist, Dr. van Dijkman and the treating Ear, Nose and Throat specialist of the Accused, by Monday, 21 November 2005, on the content and recommendations of the reports of the three visiting doctors, including but not limited to:

- (i) The reference by Dr. Shumilina to "inadequate treatment and the necessity of additional tests" set out on page 2 of his report; and
- (ii) The "Joint Opinion on the Combined Medical Examination...", appended to the medical reports, in particular that "the patient should be prescribed a period of rest, *i.e.* the suspension of all physical and mental activities [*sic*] a minimum of 6 weeks, which will probably reduce – or at least stabilize – the symptoms".

NOTING that in the report from Dr. van Dijkman in response to the Chamber's Order, dated 18 November 2005, it does not appear that he has addressed the reference in Order (i) of the 15 November 2005 Order relating to Dr. Shumilina's report,

CONSIDERING that


- (1) It would be beneficial to the Chamber to have the matter related to Dr. Shumilina's report dealt with; and
- (2) In light of the Accused's current medical condition and the report of Dr. Falke today, for Dr. van Dijkman to carry out an examination of the Accused and report on whether, as previously indicated (for example, in his Report of 2 July 2004), he believes the Accused's current condition will recur.

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal

HEREBY

- (1) **ADJOURNS THE TRIAL** until Tuesday 29 November 2005, at 9am;
- (2) **ORDERS THE REGISTRAR**, by 25 November 2005, to
 - (a) Obtain from Dr. van Dijkman a report addressing the reference in Order (i) of the Trial Chamber's Order of 15 November relating to Dr. Shumilina's report; and
 - (b) Arrange an examination of the Accused by Dr. van Dijkman, and obtain a report from him on the Accused's current medical condition and on whether he believes that this medical condition will recur.

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



Judge Robinson
Presiding

Dated this twenty-first day of November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ This sitting schedule was itself established in response to expert advice related to the medical condition of the Accused, in September 2003.
Case No. IT-02-54-T

21 November 2005

IT-02-54-T
043307-043308
22 November 2005

43367
/s/

Translation

Logo/ Bronovo

Bronovo Hospital
Outpatients ENT Department
Bronovo
Tel. 070-3124420/3124408
Fax: 070-3124567
Wassenaar tel. 070-5119220

Otolaryngologists
Dr. B.E. Glazenburg
H.A.A. Spoelstra
K. Wiggers

Subject:
Mr. S. MILOŠEVIĆ
PO-Box 87810 Vn
2508 DE The Hague
Date of birth: 20 August 1941
Patient number: 9.459.112

Mr/Mrs
X.X. /illegible/
PO Box 87810
2508 DE The Hague

21 November 2005

Dear colleague,

In response to your recent queries about the new viewpoints regarding hearing problems experienced by the above-mentioned patient, I would like to inform you as follows:

As a general peripheral ENT physician, I could solve the problem of the patient with a hearing aid, possibly two. Bearing in mind that I suppose that he uses headphones during the trial, it seems to me that it would be better to proceed without a hearing aid, but rather with properly adjusted volume in the headphones.

As regards the other psychosocial complaints mentioned, also pointed out by the three foreign colleagues, I do not have an opinion, since I do not think that I am enough of an expert in that field. For this reason, I suggest you contact an audiologist, namely Mr. De Laar, employed at the LUMC /Leiden University Medical Centre/. I may be able to arrange for the patient to be received there next week.

Awaiting your reply,

Yours sincerely,
E.A.A. Spoelstra, ENT physician
/signature/

21/11 '05 MON 18:58 FAX 0031 70 358 5375
21/11/2005 18:52 FAX 07031248d7

UN Detention Unit
BRONOVO KNO

IT-02-54-AR65:1 p.136
001
01



Ziekenhuis Bronovo
polikliniek k.n.o.
Bronovo tel: 070-312 44 20/312 44 08
fax: 070-312 45 67
Wassenaar tel.: 070-311 92 20

2-02-74-7

43223

Keel-, neus- en oorzaken
Dr. B.E. Glazenburg
H.A.A. Spoelstra
K. Wiggers

betreft:
dhr. S. Milosevic
Postbus 87810 Vn
2508 DE Den Haag
geb. 20-08-1941
pat. nr.: 9.459.112

De heer/Mevrouw
X.X. Penitzakbeharts
Postbus 87810
2508 DE DEN HAAG

21 november 2005

Geachte collega,

In antwoord op uw recente vragen omtrent nieuwe gezichtspunten over de beleving van het audiologisch probleem van bovengenoemde patiënt, kan ik u het volgende mededelen.

Als algemeen perifeer KNO-arts zouden wij het probleem van patiënt kunnen oplossen met een hoortoestel, eventueel twee. Gelet op de situatie waarin ik vermoed dat hij tijdens het verhoor een hoofdtelefoon draagt, lijkt hij mijns inziens beter af zonder hoortoestel maar met een adequate versterking via het hoofdtelefoon. Over de verdere geopenbare psychosociale klachten, reeds benadrukt door de 3 buitenlandse collega's, heb ik eigenlijk geen mening daar ik mijzelf daar niet voldoende tersake kundig vind. Derhalve adviseer ik u te rade te gaan bij een audioloog, te weten de heer de Laat, verbonden aan het LDMC. Wellicht kan ik bemiddelen zodat patiënt reeds volgende week gezien kan worden.

In afwachting op uw antwoord, verblijf ik.

Met collegiale hoogachting,

H.A.A. Spoelstra, KNO-arts

IT-02-54-T
043387-043382
25 November 2005

43385
/

CONFIDENTIAL

Dr. P.R.M. van Dijkman
H.J.J. Kerckamp
Dr. Meredith I. Sedney
S.T. Somer
Cardiologists

The Hague, 23 November 2005

Mr. P.T.L.A. Falke
Medical officer, UN Detention Unit
PO Box 87810
2508 DE The Hague

Subject: Mr. S. Milošević
Date of birth: 20 August 1941
PO Box 87810
The Hague
Reg. No. 9459112/WM

Dear Colleague,

Judge Robinson has requested an examination of the above-named patient. The judge has also requested an assessment of the report by Dr. Shumilina. I talked to the patient and examined him on 22 November.

As regards Dr. Shumilina's report, I must say that I do not consider myself sufficiently expert to give an opinion. I suggest seeking the opinion of a neuro-radiologist with expertise in cerebral vasculature.

Judge Robinson requested an assessment of the present condition of the patient. The patient has no cardiac complaints whatsoever, in particular no chest pain or shortness of breath. He complains of tinnitus in a noisy environment, but no complaints in his room, where it is quiet. Blood pressure varies – when he is in his own environment, the blood pressure can be considered acceptable, and during the trial it increases to 190/100 mmHg, together with a somewhat higher heart rate. In the meantime, colleague Falke and I have agreed to have the concentration of metoprolol checked once again by the clinical pharmacologist.

It is important to note that the patient states that he does not feel any difference from before in his cardiac situation.

Physical examination: blood pressure 160/90, pulse, 96/min.

Heart: normal tones, no murmurs.

Lungs: normal vesicular breathing, no crepitation, no indication of *decompensatio cordis*.

ECG: sinus rhythm, 96/min, PQ 0.14, QRS 0.10. Neg.T in V2 up to and including V6. De Neg. T's are somewhat less pronounced than was the case in the past.

Conclusion: In cardiovascular terms, the condition is unchanged. In general, the blood pressure is acceptable, and even the strain in the ECG is somewhat less pronounced. Clearly, the trial sessions are so stressful that the blood pressure increases, together with the heart rate. I have agreed with my colleague Dr Falke to carry out another 24-hours blood pressure measurement, particularly during the court sessions. In view of the current work schedule, it is understandable that the patient feels fatigued. He has three court sessions per week, and spends the rest of the time preparing for them, including interviewing witnesses. There is not much time for rest. It is predictable that the blood pressure will increase again during stressful trial sessions.

As in the past, I strongly advise provision for sufficient rest. On the other hand, it seems to me that a six-week rest period is somewhat too much.

Once again, I shall not make any statements regarding the assessments of the ENT physician and the angiologist, since this is outside the scope of a cardiologist.

Yours sincerely,
/signature/
Dr. P.R.M. van Dijkman

24/11 '05 THU 11:08 FAX 0031 70 358 5375
 24/11 2005 09:19 FAX

UN Detention Unit

IT-02-54-AR65.1-p.133

001

Protocol
 CONFIDENTIAL

45783

Dr. P.R.M. van Dijkman,
 H.J.J. Kerkkamp
 Dr. Meredith I. Sadney
 S.T. Somar
 Cardiologen

Den Haag, 23 november 2006

de Wedelgaleerde Heer
 P.T.L.A. Falke
 Medical Officer VN Detention Unit
 Postbus 87810
 2508 DE Den Haag

Betreft: de heer S. Milosevic
 Geboren: 20-8-1941
 Postbus 87810
 Den Haag
 Reg. Nr.: 9459112/WM

Zeer geachte collega,

Judge Robinson verzocht een onderzoek van bovengenoemde patiënt. Tevens verzocht de rechter ook een oordeel over het rapport van dokter Shumlina. Ik heb betrokkene op 22 november gesproken en onderzocht.

Ten aanzien van het rapport van dokter Shumlina deel ik u mede dat ik mij niet voldoende deskundig acht een oordeel te geven over dit rapport. Ik stel voor dit rapport te laten beoordelen door een neuro-radioloog die expertise zal bezitten betreffende de vasculatuur van het brain.

Judge Robinson verzocht een oordeel omtrent zijn huidige toestand. Patiënt heeft geen enkele cardiale klacht. In het bijzonder geen pijn op de borst en geen kortademigheid. In een omgeving met geluid heeft hij last van corsuzen, geen krachten als hij in zijn kamer zit waar het stil is. De bloeddruk varieert, als hij in zijn eigen omgeving is de bloeddruk acceptabel te noemen, tijdens de zitting loopt de bloeddruk op tot 180/100 mmHg waarbij zijn hartfrequentie wat hoger is. Inmiddels hebben collega Falke en ik afgesproken nog eens een metoprololspiegel te laten bepalen door de klinisch farmacoloog.

Nadrukkelijk geeft betrokkene aan zich niet anders te voelen op cardiaal gebied dan in het verleden.

Lichamenlijk onderzoek: bloeddruk 160/90. Pols reg., 98/min.

Hart: normale tonen, geen geruisen.

Longen: normaal vesiculair ademgeruis. Geen crepittales, geen kenmerken van decompensatio cordis.

ECG: sinusritme, 98/min. PQ 0,14, QRS 0,10. Neg. T in V2 t/m V6. De neg. T's zijn iets minder uitgesproken dan hij in het verleden heeft laten zien.

Bespreking: cardiovasculair gezien is de toestand ongewijzigd. Over het algemeen acceptabele bloeddruk waarbij zelfs de strain op het ECG wat minder uitgesproken is. Kennelijk zijn de zittingen dusdanig ontspannend dat daarbij de bloeddruk omhoog gaat en ook zijn hartfrequentie. Ik heb met collega Falke afgesproken de bloeddruk gedurende 24-uur nog eens te meten, met name aandacht tijdens de zittingen. Gezien het huidige werkschema is het invoelbaar dat patiënt zich vermoeid voelt. Hij heeft 3 zittingdagen per week, de overige tijd besteedt hij aan het voorbereiden van de zittingen waarbij hij gebulgen ondervraagt. Veel momenten van rust zijn er niet. Het is voorspelbaar dat bij ontspannende zittingen de bloeddruk opnieuw zal stijgen.

24/11 '05 THU 11:09 FAX 0031 70 358 5375
24/11 '05 THU 09:20 FAX

UN Detention Unit

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002

IT-02-54-T

45802

Net als in het verleden raad ik ten sterkste aan voldoende rustmomenten in te bouwen. Aan de andere kant denk ik dat een rustperiode van 6 weken mij wel veel lijkt.

Nogmaals, uitspraken betreffende het oordeel van de KNO-arts en de angioloog zal ik niet doen, aangezien dit niet op het terrein van de cardioloog ligt.

Met de beste hoogachting,


Dr. P.R.M. van Dijkman.

IT-02-54-T
 043436-043447
 29 November 2005

43456
 2/2

LUMC
 LEIDEN UNIVERSITY MEDICAL CENTRE

Department Audiological Centre (KNO/Ear Nose and Throat Diseases/)
 Zone H-02-Q
 Dr J.A.P.M. de Laar
 Telephone 071 526 2440/ 071 526 9111
 Fax 071 522 8201
 Reference ILA/JAPMdL/MB/002

United Nations Medical Service
 Attn Dr P. Falke, physician
 P.O. Box 87810
 2508 DE DEN HAAG

Date	28 November 2005	Date of birth	20 August 1941
Subject	S. Milošević	Prison number	0.551.673
Address	P.O. Box 87810 vn	Place of residence	2508 DE Den Haag

Dear Colleague,

I am writing to inform you about the examination of Mr S. Milošević, born on 20 August 1941, residing in the Penitentiary Institution Haaglanden, Den Haag. Mr Milošević has been diagnosed with a hearing disability, including a noise /exposure/ anamnesis.

We saw Mr Milošević on 23 November 2005. While conducting audiometric tests we observed perceptive hearing loss on both sides, more so on the right side, please see the copy of the audiometric status of 23 November 2005. The high Fletcher Index is over 55 dB for the right /ear/ and over 40 dB for the left. The speech audiometric test more or less conforms to the tone audiometry. The speech audiometric test was carried out using lists of English language words which led to a somewhat lesser result than expected.

In addition we also carried out an objective audiometric test, please see the copy of the results form of the BERA /Brainstem Electric Response Audiometry/-test of 23 November 2005. Based on this test, we can conclude that there are hardly any indications of retro-Cochlear deviations (P.M. moderate peak III on the right); which is in line with the results of the earlier MRI /Magnetic Resonance Imaging/-test: there are no indications of /disease/ processes to the internal auditory meatus on the right side. The objective hearing threshold in the BERA /test/ on both sides conforms to the subjective hearing threshold in the tone audiometric test: the BERA threshold correspond to the "best" subjective tone thresholds.

To some degree, the cause of the hearing loss must be sought in the noise exposure anamnesis, but it is probable that the cardiovascular situation is also connected to the hearing loss. We cannot be sure of this. We have the following revalidation in mind: given the fact that the patient has complained of pressure on the right ear as well as a hearing deviation on the right, we think it would be extremely sensible to refrain from using the headphones. In order to ensure that the patient will have a good understanding of what is said, for example through an interpreter, we would choose a hearing aid /prosthesis/ which will spare the right ear while prothesizing the left. The first solution would be a *Widex Senso Diva Elan* hearing aid, which causes almost no irritation to the acoustic channel and which connects the hearing aid via a sling around the neck to the audio equipment in the room. Alternatively, we could opt for the

~~IT-02-54-T~~

Translation

43455

Phonak I-link, which only connects to the audio-equipment via a wireless FM connection and which also spares the acoustic channel. The latter option does not come with a microphone in the hearing aid, so that only for communication via the FM-link is available. In order to take care of the technical side of things, we propose to ask Mr W. Beek of *AB-hoortechneek/ hearing technology/* in The Hague to make these technical arrangements. If necessary, when the technical arrangements have been completed, I would be more than willing to be present when the equipment is used for the first time at the Tribunal, to persuade the patient that in my view, this arrangement will be adequate for him to have a good understanding of what is being said.

During the diagnostic examination last Wednesday (23 November 2005), our contact with the patient was good. If the technical arrangements could be set up soon, it would be important to make use of this fact in order to ensure that the patient will agree to this arrangement in the interests of smooth communication.

This concludes our report.

Yours faithfully, /signed/

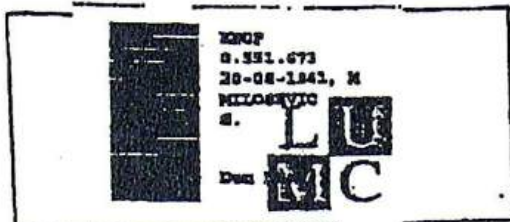
Dr J.A.P.M. de Laat, physicist-audiologist

Attachments: copy of audiogram of 23 November 2005 and BERA form of 23 November 2005

IT-02-54-T

Translation

40434

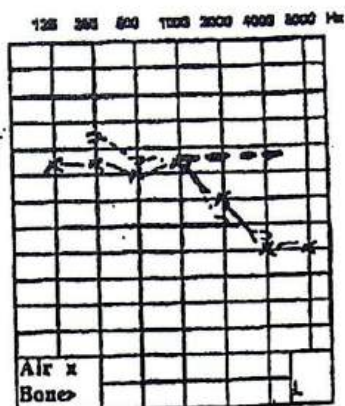
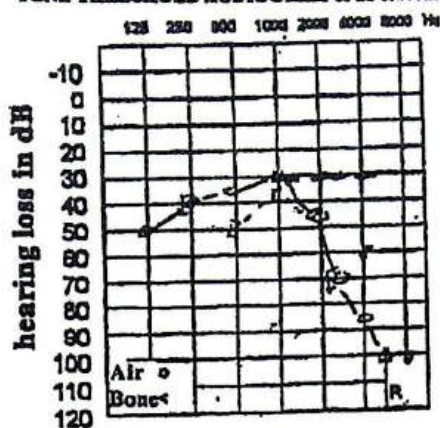


CLICK-BRAINSTEM AUDIOMETRY

Audiologisch Centrum GGOG
Lido Universitair Medisch Centrum

datum: 23-11-08
nummer: BERA 2821
onderzoeker: dr. Laas (rvdm)

TONE THRESHOLD AUDIOGRAM of 23 November 2008



LATENCIES

	norm: 70 dBnSL	I-II	IV	V _{AS} -V _{AD}	
		2.08 ± 0.23 ms	3.68 ± 0.36 ms	11 ± 0.2 ms	
AD	80	2.1	4.9	6.3	8.0
AS	80	2.2	4.3	6.3	
	stim. level				

→ this is the norm after calculation of latency deviation wave I AS/AD

WAVE-V THRESHOLDS

AD	= 30 dBnSL
AS	= 20 dBnSL



Anamnesis: feeling of pressure, noise exposure anamnesis, presbycusis, AD /Ossicular Discontinuity/ hearing distortion

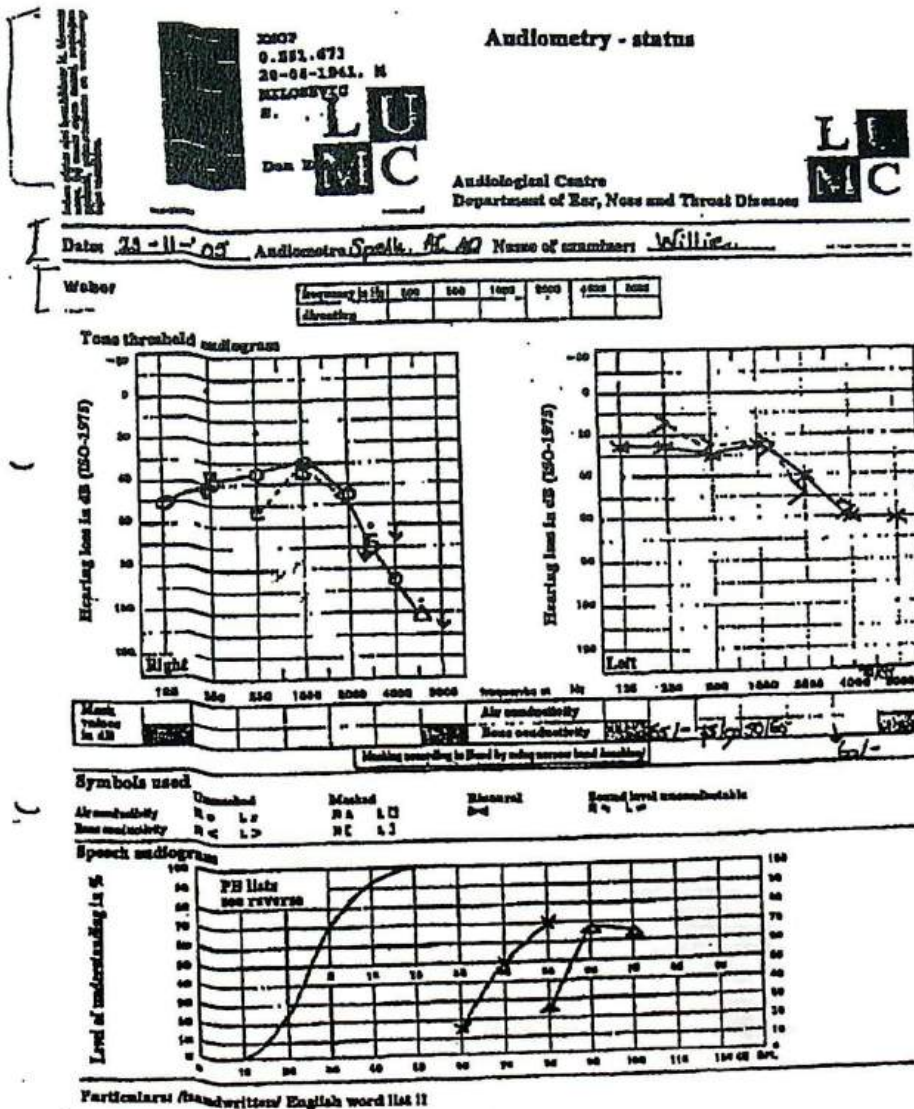
Explanation: BERA (ADS/expansion unknown/): Response curves are moderate to reasonable at the highest stimulation level, with normal inter-peak latencies, AD peak III is moderately reproducible; V peak can be followed until 30 dBnSL (AD) to 20 dBnSL (AS) respectively.

Conclusion: There are hardly any indications of retro-Cochlear deviations (PM moderate peak III AD); the objective hearing threshold in the BERA /test/ conforms to the subjective hearing thresholds in the tone audiometric /test/.

IT-02-54-4

Translation

YJ453



28-NOV-2005 16:41

IT-02-54-AR65.1 p.127
P.01

N-02-54-T

49452

LEIDS UNIVERSITAIR MEDISCH CENTRUM

afd. Audiologisch Centrum (XNO)
 sons H-02-Q
 Dr. Ir. J.A.P.M. de Laat
 tel. 071 526 2440/071 526 9111
 fax 071 522 8201
 ref. JLA/JAPMIL/MB/002

Medische Dienst Verenigde Naties
 t.a.v. Dr. P. Falke, arts
 Postbus 87810
 2508 DE DEN HAAG

dat. 28 november 2005
 ond. S. Milosevic
 adr. Postbus 87810 vn

geb. 20-08-1941
 pnr. 0.551.673
 wpl. 2508 DE Den Haag

Zeer geachte collega,

Hierbij bericht ik u over het onderzoek bij de heer S. Milosevic, geboren 20.08.1941, verblijvende in de Penitentiaire Inrichting Haaglanden, Den Haag.

De heer Milosevic is bekend met slechthorendheid, waarbij lawaaiannamense.

Wij zagen de heer Milosevic op 23 november 2005. Bij audiometrie zien we beiderzijds perceptieve gehoorverliezen, rechts meer dan links, zie copie audiometriestatus van 23 november 2005. Rechts bedraagt de hoge Fletcher index ruim 89 dB en links ruim 40 dB. De spraakaudiometrie is min of meer conform de toonaudiometrie. De spraakaudiometrie is afgenomen met Engelse spraakwoordenlijsten die tot een iets minder resultaat dan verwacht aanleiding gegeven hebben.

Bovendien hebben we objectieve audiometrie verricht, zie copie uitslagformulier BERA-onderzoek van 23 november 2005. Op grond van dit onderzoek kan geconcludeerd worden dat er hoegenaamd geen aanwijzingen zijn voor retrocochleaire afwijkingen (P.M. matige top III rechts); e.a.a. conform uitspraak op het eerder verrichte MRI-onderzoek; geen aanwijzingen voor een brughoekproces rechts. De objectieve gehoordrempel met BERA is beiderzijds conform de subjectieve gehoordrempels bij toonaudiometrie; de BERA drempels komen overeen met de "beste" subjectieve toondrempels.

De oorzaak van het gehoorverlies moet voor een deel gezocht worden in de lawaaiannamense, maar wellicht heeft ook de cardiovasculaire status enig verband met het gehoorverlies. Dit valt niet met zekerheid aan te geven. Qua revalidatie stellen we ons het volgende voor: gezien de door patiënt aangegeven druk op het oor rechts en bovendien vervoerd gehoor rechts lijkt het ons buitengewoon verstandig om geen hoofdtelefoon meer toe te passen. Om er voor te zorgen dat patiënt toch het gesproken woord, b.v. door middel van een tolk, goed kan verstaan lijkt ons de volgende hoortoestelprothese aangewezen, waarbij het rechter oor ontzien moet worden en het linker oor geprothetiseerd kan worden. De eerste oplossing is een Widex Senso Diva Elan hoortoestel, waarbij er nauwelijks sprake is van irritatie van de gehoorgang en waarbij het hoortoestel d.m.v. een



Albinusdreef 2, Postbus 9800, 2300 RC Lelidn

28/11 '05 MON 16:30 [TI/RI NO 7924] 001

28-NOV-2005 16:41

IT-02-54-AR65-1-126
P.02

IT-02-54-T

49451

LEIDS UNIVERSITAIR MEDISCH CENTRUM

afd. Audiologisch Centrum (XNO)
ref. JLA/JAPMGL/MB/002
dat. 28 november 2005

ond. S. Milosevic
pnr. 0.551.673
pag. 2

halslus gekoppeld kan worden aan de in de ruimte aanwezige audioapparatuur. Als alternatief zou gekozen kunnen worden voor een I-link van Phonak, waarbij er alleen sprake is van een koppeling met de audio-apparatuur, in dit geval een draadloze FM koppeling, en waarbij ook de gehoorgang gespaard kan worden. In dit laatste geval is er geen microfoon bij het hoortoestel zodat er alleen communicatie mogelijk is via de FM-koppeling. Om e.e.a. technisch te regelen stellen we ons voor dat de heer W. Beek van AB-hoortechneek in Den Haag gevraagd wordt om deze technische voorzieningen te treffen. Indien nodig ben ik allerszins bereid om, zodra de technische voorzieningen gerealiseerd zijn bij het eerste gebruik in het Tribunaal aanwezig te zijn om patiënt ervan te overtuigen dat dit een mijns inziens adequate voorziening is om het gesproken woord goed te kunnen verstaan.

Tijdens het diagnostisch onderzoek van afgelopen woensdag (23 november 2005) was er sprake van een goed contact met patiënt over en weer. Als op korte termijn de technische voorzieningen gerealiseerd kunnen worden dan is het wellicht van belang om dat goede contact te gebruiken om er van overtuigd te zijn dat patiënt deze voorziening zal accepteren t.a.v. het communicatief functioneren.

Tot zover onze berichtgeving!

Met vriendelijke groet, *de Laat*

Dr. Ir. J.A.F.M. de Laat, fysicus-audioloog

bijl.: copie audiogram d.d. 23.11.2005 en BERA formulier d.d. 23.11.2005



Albinusdreef 2, Postbus 9600, 2300 RC Leiden

TOTAL P.02

28/11 '05 MON 16:30 [TX/RX NO 7924] 002

28-NOV-2005 16:43

IT-02-54-AR65.1 p.125
P.01

KNOP
0.551.673
20-08-1941, M
MILOSEVIC
S.

LU
MC

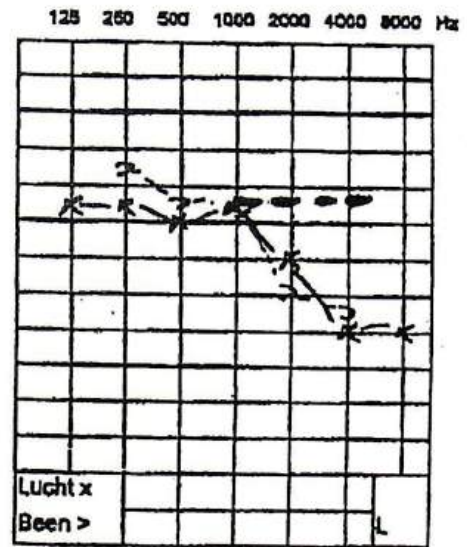
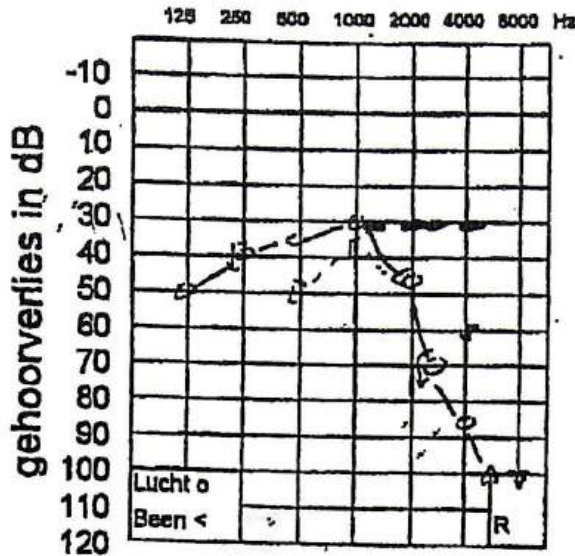
Den

~~IT-02-54-T~~
CLICK-BRAINSTEM AUDIOMETRIE 4345-D

Audiologisch Centrum (KNO)
Leids Universitair Medisch Centrum

datum: 23-11-05
nummer: BERA 2021
onderzoeker: de Laat (nvdm)

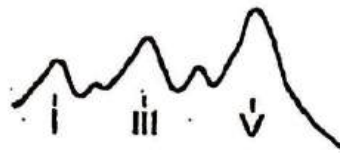
TOONDREMPEL AUDIOGRAM d.d. 23-11-2005



LATENTIES		I-III	I-V	V _{AD} -V _{AS}	
norm: 70 dBnSL		2.09 ± 0.25 ms	3.98 ± 0.36 ms	11 ± 0.2+ ms	
AD	80	2.1	4.0	6.2	0.0
AS	80	2.2	4.3	6.2	
	stim. level				

+ deze norm geldt na verrekening
van latentieverschil golf I AS/AD

DREMPELS WAVE V	
AD	≈ 30 dBnSL
AS	≈ 20 dBnSL



Anamnese: drukgevoel, lawaai-anamnese, presbycusis, vervormd gehoor AD

Toelichting: BERA (ADS): op hoogste stimuleringsniveau matig tot redelijke responsecurven, met normale Intartop latenties, top III AD matig reproduceerbaar; top V te volgen tot 30 dBnSL (AD) resp. 20 dBnSL (AS).

Conclusie: hoegenaamd geen aanwijzingen voor retro-cochleaire afwijkingen (PM. matige top III AD); objectieve gehoordrempel met BERA conform subjectieve gehoordrempels met toonaudiometrie.

28-NOV-2005 16:44

IT-02-54-AR65.1 p.124 P.02

Indien s'ficher niet beschikbaar is, hiermee
 nazien, bij vrouw e.g. as naam, volledige
 geslacht, geboortedatum en verzekerings
 wijze vermelden.



KNOP
 0.551.673
 20-08-1941, M
 MILOSEVIC
 S.

IT-02-54-T
Audiometrie-status

43447



Den Haag

Audiologisch Centrum
Afdeling keel-, neus- en oorheelkunde

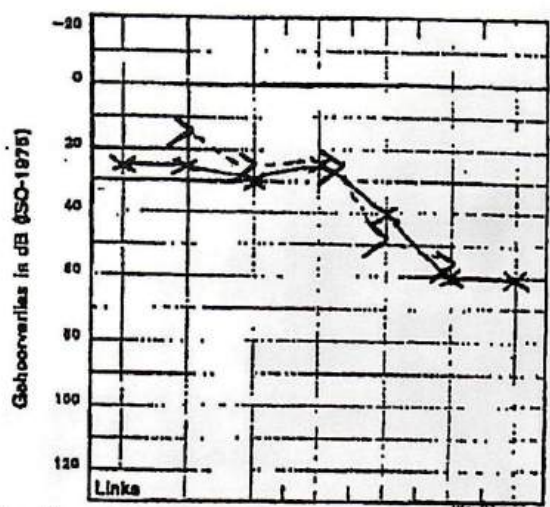
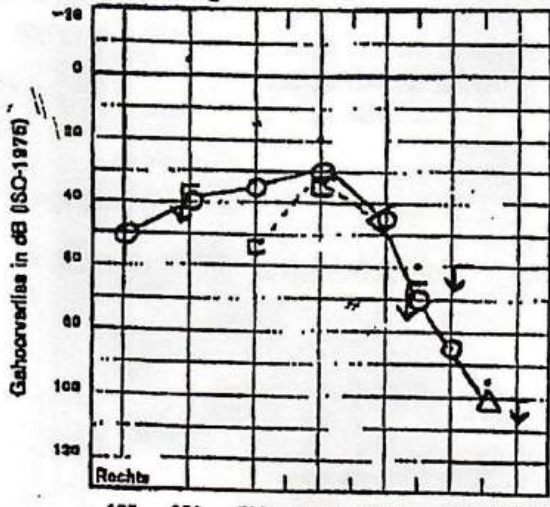


Datum 23-11-'05 Audiometer Spelt. AC 40 Naam onderzoek(er) Willie

Weber

frequentie in Hz	250	500	1000	2000	4000	8000
richting						

Toondrempel audiogram



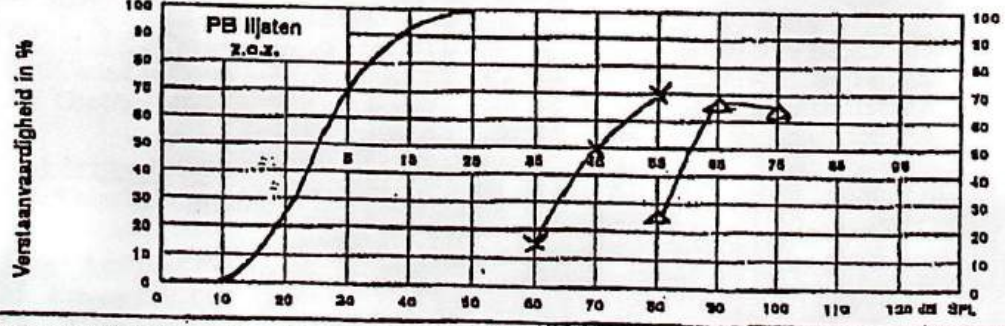
Maskeerwaarden in dB																			

Maskeering volgens Hoed met smalle bandruis

Gebruikte symbolen

	Ongemaskerd	Gemaskerd	Binauraal	Onsaagname luidheid
Luchtgeleiding	R o L s	RA L □	▷▷	R s L p
Beengeleiding	R < L >	R [L]		

Spraak audiogram



Bijzonderheden: Engelse woordenlijst !!

UNITED
NATIONS

IT-02-54-T
D43457-043458
01 DECEMBER 2005

43457
SK



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-02-54-T
Date: 1 December 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 1 December 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

ORDER FOR CLARIFICATION OF EXPERT MEDICAL OPINION

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

43458

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 ("the International Tribunal"),


NOTING the medical report of Dr. van Dijkman of 23 November 2005, in which he states, "As in the past, I strongly advise provision for sufficient rest. On the other hand, it seems to me that a six week rest period is somewhat too much",

CONSIDERING that, in light of this statement by Dr. van Dijkman, it is appropriate for the Trial Chamber to inquire whether he is referring to the rest periods already provided as part of the three-days per week sitting regime, or whether he envisages an extraordinary rest period,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal

HEREBY ORDERS THE REGISTRAR to urgently obtain from Dr. van Dijkman written clarification as to whether his proposal for sufficient rest is a reference to a period of rest outside the normal sitting regime and, if so, to clarify when and for how long that proposed period of rest should be.

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



Judge Robinson
Presiding

Dated this first day of December 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

IT-02-54-T
D 43462 / 043461
02 DECEMBER 2005

Translation

43462
JK

Dr P.R.M. van Dijkman
H.J.J. Kerckamp
Dr Meredith I. Sedney
S.T. Somer
Cardiologists

The Hague, 1 December 2005

P.T.L.A Falke Esq.
Medical Officer
UN Detention Unit
2508 DE The Hague

Re: Mr S. Milošević
D.o.b.: 20 August 1941
P.O. Box 87810
The Hague
Registration number: 9459112/WM

Dear colleague,

In addition to my letters of 18 November and 23 November 2005, I can say the following:

There is some lack of clarity concerning my advice to allow for enough periods of rest in the weekly schedule of the above-mentioned patient. In my letter of 18 November 2005, I noted that I saw no reason to change the current policy and that from a cardiological point of view there were no reasons to change the current court regime either. In my letter of 23 November 2005 I strongly advised introducing enough periods of rest. The three physicians who examined Mr Milošević recommended that a rest period of 6 weeks must be built in immediately. This is an arbitrarily chosen period, for which, in my view, no firm reasons are given. Furthermore, no vision is expressed containing any longer-term recommendations.

The current regime of three days of court visits a week was set up following lengthy deliberations. The four remaining days of the week should be used to prepare for the sessions, but also in order to take sufficient rest. What I mean is that the four days should include two days of rest, when the person should not work on his case. This is analogous to an average working week of five days for working persons, with two days of rest at the weekend. Soon the Christmas recess will start. Mr Milošević will be able to get some rest also in this period, which comes very close to the period of rest of six weeks as recommended by the three physicians.

I hope this opinion will be clearer to you and apologize for the apparent lack of clarity in my previous two letters.

Yours sincerely,

/signed/

Dr P.R.M. van Dijkman

Translation

IT-02-54-T
D43507-D43505
07 DECEMBER 2005

43507
RK

Radiologists:
N.J.M. Aarts, F.W. H. Brouwer
O. Henneman, Dr T.J.A. Kuijpers
Dr S.A. Rebergen
Radiology Partnership Bronovo Hospital

Bronovolaan 5
2597 AX The Hague
Telephone: 070 312 41 20

Radiology Department
E-mail:radbronovo@knmg.nl

P.T.L.A. Falke
UN-physician
Scheveningen Complex

The Hague, 6 December 2005

Dear colleague,

With regard to your request for a response to the conclusions of colleague Shumilina I inform you about the following:

1. The inner ear is supplied with blood through the labyrinthine artery, which forms the end of the posterior inferior cerebral artery. This is the final lateral branch originating from the vertebral artery just in front of the basilar artery. The appearance of a smaller vertebral on the right side, as opposed to the left, has been known to occur and is by no means an indication of compression at the level of the origin. This is supported by the fact that we can see a normal flow-void also in the coronary direction inside the vessel which points to good blood circulation. It is also known that in MRI /Magnetic Resonance Imaging/ the actual lumen is underrated.
2. The MRI does not show the neck; therefore we cannot establish a thoracic outlet compression syndrome on the basis of the MRI.
3. The MRI shows no signs of a carotid stenosis. Signalling in the lumen may occur when the preparatory pulse of the MRI sequences runs parallel to the blood stream. This way, erythrocytes can become "charged" and as a result emit a signal. This is a well-known phenomenon in radiology.
4. The atherosclerosis is normal in view of the patient's age.
5. The high signal in the transversal sinus is also a result of the phenomenon which I described under number 3. This does not point to a pathological condition.
6. The MRI shows an image of both cerebral hemispheres which is normal for this age. There is no pathological atrophy. Leukoaralosis is a term in CT /Computed Tomography/. There are no striking deviations in white matter.

As I noted in my report, there is a "vascular loop" in the right medial opening of the internal auditory canal. In professional literature, this has been connected to a perceptive loss of hearing, not with tinnitus or vertigo.
Hoping to have informed you sufficiently,

Yours sincerely,

N.J.M. Aarts
Neurological radiologist
/signed/

~~IT-02-54-T~~

48506

Radiologen :
 N.J.M.Aaris, F.W.H.Brouwer
 O. Henneman, dr T.J.A.Kuijpers
 Dr. S.A. Robergen
 Maatschap Radiologie Ziekenhuis Bronovo

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 2597 AX Den Haag
 Tel : 070 312 41 20

Afdeling Radiologie
 Email : radbrono@kams.nl

P.T.L.A. Falke
 VN-arts
 Complex Scheveningen

Den Haag, 6 december 2005

Zeer geachte collega,

Naar aanleiding van uw verzoek tot beantwoording van de conclusies van collega Shumilina bericht ik u het volgende:

1. Het binnenoor wordt van bloed voorzien door de arteria labarynthi wat een eindtak is van de art. cerebelli inf. post. Deze ontspringt als laatste zijtak uit de art. vertebralis juist voor de vorming van de art. basilaris. Het zien van een kleinere rechter vertebralis t.o.v. links is een bekende variant en wijst zeker niet op een compressie t.h.v. de origo. Dit laatste wordt nog versterkt dat ook in coronale richting er een normale flow-void in het vat wordt gezien wijzend op goede bloedstroom. Tevens is bekend dat het ware lumen op MRI wordt onderschat.
2. Op de MRI is de hals niet afgebeeld; een thoracic outlet compressie syndroom kan op grond van de MRI dan ook niet worden vastgesteld.
3. Op de MRI zijn er geen tekenen van een carotisstenose. Signaal in het lumen is mogelijk wanneer de preparatierichting van de MRI-sequentie in het vlak loopt van de bloedstroom. Hierdoor kunnen erythrocyten "aanslaan" en dientengevolge signaal afgeven. Dit is in de radiologie een bekend fenomeen.

IT-02-54-T

43505

4. Atherosclerose is een normale bevinding op de leeftijd van patiënt.
5. Ook het hoge signaal in de sinus transversus is een gevolg van het fenomeen zoals ik heb beschreven onder nummer 3. Dit duidt niet op pathologie.
6. De MRI toont een voor de leeftijd normaal aspect van beide cerebrale hemisferen. Er is geen sprake van pathologische atrofie. Leukoarosis is een CT-begrip. Er zijn geen opvallende witte stofafwijkingen

Zoals ik in mijn verslag heb gemeld is er sprake van een "vasculair loop" in de rechter porus acusticus internus. In de literatuur is er een relatie gelegd met perceptief gehoorsverlies. Niet met tinnitus of vertigo.

In de hoop u hiermede voldoende te hebben geïnformeerd teken ik,

Met collegiale Hoogachting

N.J.M. Aarts
neuroradioloog

MARGARITA SHUMILINA
Bakoulev Scientific Center For Cardiovascular Surgery RAMS
Moscow, Russia

14 December 2005

Dear colleagues,

After reading your letter I am commenting upon the following remarks:

- 1) In most cases vertebral artery hypoplasia is caused by arterial compression in ostium region as our practice shows. Absence of right vertebral artery visualization in distal part caused by blood stagnation (due to blood flow from left dominant vertebral artery) and basilaris artery tortuosity are pathophysiological laws.
- 2) Thoracic outlet compression syndrome was diagnosed clinically with the use of ultrasonic dopplerography.
- 3) Studying hemodynamics, I consider that assymetrical displacement of ostium flow and further right carotid artery dilatation indicate its pathology (of tortuosity with septal stenosis or stenosis). To circumstantiate the pathologic character a contrast investigation of brachiocephalic arteries is necessary.
- 4) Normally, the age of 64 is not identified with evident arteriosclerosis development. Arteriosclerosis is a natural development of long existing non-corrective arterial hypertension.
- 5) The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion.
- 6) The irregular sulci dilatation can't help indicating the moderate cerebral atrophy. Leucoareosis is diagnosed under MRI.

This vascular pathology is clinically evident as a rule in patients complaints of head and ear noise, vertigo and headache, e.t.c. Therefore, vascular factor of disease development in patient S. Milosevich can't be underestimated.

Yours faithfully,

M.V. Shumilina, Doctor of Medicine



leoan <leoan@online.ru>

To GHiggins@lcty.org

12/19/2005 08:48 AM

cc

Please respond to
leoan <leoan@online.ru>

bcc

Subject from Shumilina M.V. (Moscow, Bakoulev Center)

History
This message has been scanned and indexed.

Dear Ms Higgins,
First of all Mr. S. Miloshevich needs additional and careful investigation, including:

I. 1) complex ultrasonic of the vascular pathology, especially brachiocephal arteries and veins (extra-, intracranial parts) with functional tests;

2) echocardiographia, stress- echocardiographia, Holter-monitoring;

3) Daily monitoring of the blood pressure.

4) Estimation of the homeostasis.

II. 1) investigation of the brachiocephal and coronary vessels with contrast media

2) PET (positron-emission imaging) of the brain and of the heart.

We will select hypotensive therapy with correction of the cerebral hemodinamics including complex magnetotherapy.

Endovascular or surgical decompression of the right vertebral artery, the stenting of brachiocephal or carotid arteries, carotid endarterectomy or even bypass surgery might be necessary to perform.

Bakoulev Scientific Center is one of the biggest hospitals for cardiovascular interventional and surgical activities.

Yours faithfully,

M.V. Shumilina, Doctor of Medicine

Bakoulev Scientific Center For Cardiovascular Surgery RAMS, Moscow

mailto:leoan@online.ru

Tab 2

Procedural Matters (Open Session)

Not Official; Not Corrected

Page 47258

1 Monday, 12 December 2005

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 9.02 a.m.

5 JUDGE ROBINSON: Mr. Milosevic, I understand you wish to address
6 the Chamber.

7 THE ACCUSED: [Interpretation] Mr. Robinson, very briefly. Since
8 the winter recess is about to begin, as you know full well, I wanted to
9 ask you to make it possible for me to take advantage of this recess so
10 that I could go to Moscow to the Bakulev Scientific Institute of
11 academician Professor Bockeria for health reasons. See far I've been
12 examined by two experts from that institute, and I have full trust in this
13 institute. It is the top-notch medical institution in Russia. It would
14 not affect your programme in any way, because I would be back here again
15 before this is resumed in accordance with your programme, so I'm asking
16 you to make this possible for me for health reasons. I don't see any
17 hindrance in the way of this because it really would not disturb your
18 programme in any way.

19 So that would be it in the briefest possible terms.

20 JUDGE ROBINSON: Mr. Milosevic, I've been fairly flexible in
21 relation to the presentation of motions by you orally because the Rules
22 allow for it and there is an advantage to be gained by an oral submission
23 in certain circumstances, but this is, in effect, an application for
24 provisional release, which should be made in writing, and you -- I think
25 you very well know that.

Tab 3

IT-02-54-T p.43903-07
D43905-D43971
20 DECEMBER 2005

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: 20 December 2005

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

ASSIGNED COUNSEL REQUEST FOR PROVISIONAL RELEASE
PURSUANT TO RULE 65 WITH CONFIDENTIAL
ATTACHMENTS A, B and C

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

The Prosecutor v. Slobodan Milosevic IT-02-54-T

Introduction

1. The Assigned Counsel request the conditional and limited provisional release of the Accused pursuant to Rule 65 of the Rules of Procedure and Evidence.¹ This application is made during the course of the Accused's trial, which commenced on 12 February 2002 and is due to continue until at least the middle of 2006.²
2. The reason for this application is to enable the Accused to be admitted for medical treatment for a defined period at the specialist Bakoulev Scientific Center for Cardiovascular Surgery in Moscow, a hospital of international renown. The Accused's long-standing history of ill-health and recent cochleovestibular complications make it necessary for him to receive treatment at this specialist hospital.³ Mr. Milosevic would be a patient of Dr. L. A. Bockeria who is the Head and Chairman of the Bakoulev Center and an academician of the Russian Academy of Medical Sciences.

In support of this application for provisional release, the Assigned Counsel file three confidential attachments. Confidential Attachment A contains (i) two recent supporting medical reports from Dr. Bockeria and Dr. Shumilina (angiologist), both specialists at the Bakoulev Center and (ii) the treatment advised by Dr. Shumilina.⁴ Confidential Attachment B sets out relevant extracts from the collection of medical reports submitted since November

¹ In December 2005, Mr. Milosevic asked the Trial Chamber to allow him to go to Moscow to the Bakoulev Scientific Institute for health reasons. HHJ Robinson informed the Accused that he was in effect being granted provisional release and that such an application must be made in writing.

² Prosecutor v. Milosevic, "Decision in Relation to Severance, Extension of Time and Rest", 12 December 2005, at para.25.

³ The medical details set out in this public filing do not go beyond those authorised for disclosure by Mr. [redacted], the Legal Associate of the Accused.

⁴ The Accused's curriculum vitae has also been included in Attachment A. This document is currently in Russian language and has been submitted for translation. A courtesy translation into English has been provided in order to assist the Trial Chamber. The official translation will be provided to the Chamber in [redacted].

The Prosecutor v. Slobodan Milosevic IT-02-54-T

2005. Confidential Attachment C contains the points of disagreement between Dr. Shumilina and Dr. Aarts, a Registry-approved neurological radiologist.

The Law

4. Rules 65(A) and (B) of the Rules of Procedure and Evidence set out the basis upon which a Trial Chamber may order the provisional release of an accused:
 - (A) Once detained, an accused may not be released except upon an order of a Chamber
 - (B) Release may be ordered by a Trial Chamber only after hearing the Host Country to which the accused seeks to be released and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
5. The Rule 65 conditions are cumulative.⁵ The burden of proof rests upon the accused and is discharged on the standard of the balance of probabilities.⁶

⁵ The Prosecutor v. Prlic et al., IT-04-74-PT, 30 July 2004, "Order on Provisional Release of Jadranko Prlic", at para.14, citing The Prosecutor v. Rahim Ademi, "Order on Motion for Provisional Release", IT-01-46-PT, 20 February 2002, para.21.

⁶ Ibid. However, see also the Dissenting Opinion of Judge Patrick Robinson in Prosecutor v. Krajisnik and Plavsic, IT-00-39 &40-PT, "Decision on Momcilo Krajisnik's Notice of Motion for Provisional Release", 8 October 2001. In relation to the standard of proof, see para.30 therein.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

6. Pursuant to the established jurisprudence of the Tribunal, provisional release may be granted to an accused who may remain temporarily outside of The Netherlands for the purpose of receiving medical treatment, provided that the prerequisites of Rule 65 of the Rules are fulfilled.⁷
7. Interpretation of Rule 65 requires that the general principle of proportionality be applied. In *The Prosecutor v. Jokic*, the Trial Chamber stated that "A measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use a more lenient measure, it must be applied."⁸
8. In considering an application for provisional release, the Trial Chamber is required to take into account Article 21(3) of the Statute which provides that an accused shall be presumed innocent until proved guilty,⁹ Article 20(1) which provides for a fair and expeditious trial and Article 21(1) which requires the equal treatment of all persons before the Tribunal.

⁷ The Prosecutor v. Pavle Strugar, "Decision on Defence Motion: Defence Request for Provisional Release for Providing Medical Aid in the Republic of Montenegro", 16 December 2005; The Prosecutor v. Ojdanic, IT-99-37-PT, "Confidential Order on General Ojdanic's Urgent Motion for Modification of Conditions of Provisional Release", 30 June 2005; The Prosecutor v. Kovacevic, IT-01-42/2-I, "Decision on Provisional Release", 2 June 2004.

⁸ The Prosecutor v. Dragan Jokic, IT-02-53-PT, "Decision on Request for Provisional Release of Accused Jokic", 28 March 2002, para.18.

⁹ This provision reflects international standards as enshrined *inter alia* in Article 14(2) of the ICCPR and Article 6(2) of the ECHR.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

9. The granting of provisional release is not precluded by the fact that an accused is charged with serious offences and is the subject of a major trial. The Trial Chamber "must focus on the concrete situation of the individual applicant, and consequently the provision must not be applied in abstracto, but with regard to the factual basis of the particular case."¹⁰
10. In considering the application for provisional release in *The Prosecutor v. Sainovic and Ojdanic*¹¹, the Appeals Chamber listed the relevant factors that a reasonable Trial Chamber would have been expected to consider. These factors are non-exhaustive and include the following:
- the fact that the applicants are charged with serious criminal offences;
 - the fact that, if convicted, they are likely to face long prison terms;
 - the circumstances in which they surrendered;
 - the degree of co-operation given by the authorities of the FRY and Serbia;
 - the fact that the government of the FRY and the government of the Republic of Serbia gave guarantees that they would ensure the presence of the accused for trial and guaranteed the observance of the conditions set by the Trial Chamber upon their provisional release;
 - the fact that both accused held very senior positions, so far as it is relevant to the weight of governmental guarantees;
 - the fact that the FRY recently passed a Law on Co-operation with the International Tribunal;

¹⁰ The Prosecutor v. Hadzihasanovic et al., Case No. IT-01-47-PT, "Decision Granting Provisional Release to Amir Kubura", 19 December 2001, para. 7.

¹¹ The Prosecutor v. Nikola Sainovic and Dragoljub Ojdanic, IT-99-37-AR65, "Decision on Provisional Release", 30 October 2002.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

- the fact that the Applicants gave personal guarantees in which they undertook to abide by the conditions set by the Trial Chamber should they be released; the likelihood that, in light of the circumstances prevailing at the time of the decision and, as far as foreseeable, the circumstances as they may turn out to be at the time when the accused will be expected to return for trial, the relevant authorities will re-arrest the accused should he decline to surrender; and
- the fact that the accused provisionally accepted to be interviewed by the Office of the Prosecutor, thereby showing some degree of cooperation with the Prosecution.¹²

11. In relation to the provision of guarantees from the country to which the accused is to be released, the jurisprudence at the Tribunal reflects the position that they are not a "requirement for a grant of provisional release".¹³ However, guarantees may provide further assurance to the Trial Chamber and are regarded as being "advisable" by the Appeals Chamber.¹⁴ The reliability of a government guarantee must be determined in relation to the circumstances arising in the particular case.¹⁵ Even though reliability must not be exclusively determined by reference to any assessment of the level of cooperation by the authority providing it, the general level of cooperation by that authority with the International Tribunal does have some relevance in determining whether it would arrest the accused in question.¹⁶

¹² Ibid.

¹³ Prosecutor v. Priso et al., IT-04-74-PT, 30 July 2004, "Order on Provisional Release for Slobodan Praljak" at para.31, citing The Prosecutor v. Blagojevic et al. "Decision on Application by Dragan Jokic for Leave to Appeal", IT-02-53-AR65, 18 April 2002, paras.7-8.

¹⁴ Ibid.

¹⁵ Prosecutor v. Mile Mirksic, IT-95-13/1-AR65, "Decision on Appeal Against Refusal to Grant Provisional Release", 8 October 2002, para.9.

¹⁶ Ibid. at para.11.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

Submissions

(i) Medical Grounds for Provisional Release

12. This application for provisional release is based upon the genuine and proven medical condition of the Accused. The Assigned Counsel request conditional and limited provisional release of the Accused upon the express terms that he is transferred to the Bakoulev Scientific Center to enable the restoration of his health and to receive appropriate medical treatment.
13. The Assigned Counsel submit that it is clear from a review of the recent medical reports that the Accused's current condition was neither originally discovered, nor treated appropriately, by the Registry-approved doctors and consultants:
- (a) On 4 November 2005, the Accused was examined by a group of independent visiting specialists.¹⁷ The specialists made joint recommendations in respect of further tests to be conducted and determined that the Accused's treatment was inadequate. They recommended a minimum period of six weeks rest.
 - (b) On 11 November 2005, Dr. Falke filed a brief report in which he neither addressed nor diagnosed the problems complained of by the Accused, noted by the team of visiting specialists.

¹⁷ The team of visiting specialists consisted of Professor Andric, Dr. Shumilina and Dr. Leclercq.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

- (c) On 11 November 2005, the Trial Chamber ordered a further report from Dr. Falke as his original report was "unsatisfactory".¹⁸
- (d) On 14 November 2005, Dr. Falke filed a report in which he gave a more detailed outline of the condition of the Accused. Dr. Falke relied on observations by the Registry-assigned Ear, Nose and Throat specialist who had at that stage been treating Mr. Milosevic for two months. The specialist stated that there are no findings that could explain the complaints of the patient and that a period of rest would have no positive effect on his symptoms. The treating specialist concluded that it is "unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of."¹⁹
- (e) On 15 November 2005, the Trial Chamber ordered expert medical reports from the treating cardiologist, Dr. van Dijkman and the treating Ear, Nose and Throat specialist on the content and recommendations of the reports of the three visiting doctors, including, but not limited to, Dr. Shumilina's reference to inadequate treatment, the necessity of additional tests and advice concerning the length of rest period required.²⁰
- (f) On 18 November 2005, Dr. van Dijkman filed a report in which he stated that Professor Leclercq, one of the visiting doctors, had "not added to what was already known about the patient". Dr. van Dijkman, recommended not altering the current trial regime. He did not

¹⁸ The Prosecutor v. Slobodan Milosevic, "Order Concerning Further Medical Report" dated 11 November 2005.

¹⁹ See confidential Attachment B.

²⁰ The Prosecutor v. Slobodan Milosevic, "Order for Expert Medical Reports", 15.11.2005.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

expressly deal with any of the issues raised by Dr. Shumilina but did recommend further tests.

- (g) On 21 November 2005, Dr. Falke filed a further medical report to the Trial Chamber in which he recommended that due to his ill-health, Mr. Milosevic was not fit to attend court for the rest of the week.²¹
- (h) On 21 November 2005, the Trial Chamber ordered a further report from Dr. Dijkman dealing with the Accused's current medical condition and, in particular, the matters raised by Dr. Shumilina, as expressly requested in the previous Order of the Trial Chamber, dated 15 November 2005.²²
- (i) On 23 November 2005, Dr. van Dijkman filed a further report in which he stated: "*I do not consider myself sufficiently expert to give an opinion*" as regards Dr. Shumilina's report.²³ He recommended that the opinion of a neuro-radiologist with expertise in cerebral vasculature be obtained.
- (j) On 28 November 2005, Dr. de Laat, a physicist-audiologist, produced the results of tests which "*observed perceptive hearing loss on both sides*".²⁴ His view was that it was probable that the two current medical conditions of the Accused were "*connected*", but he could not be sure.

²¹ See confidential Attachment B.

²² The Prosecutor v. Slobodan Milosevic, "Order Adjourning Trial and for a Further Medical Report" dated 21 November 2005.

²³ See confidential Attachment B.

²⁴ See confidential Attachment B.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

- (k) On 1 December 2005, Dr. van Dijkman responded to a further order of the Trial Chamber concerning the sitting regime of the trial²⁵ and stated that the 6 week rest period recommended by the visiting specialists was an "arbitrarily chosen period, for which in my view, no firm reasons were given. Furthermore, no vision is expressed containing any longer-term recommendations." However, he stated that the Christmas rest period would come close to the 6 weeks recommended by the visiting specialists.
- (l) On 6. December 2005, Dr. Aarts, a neurological radiologist, provided a brief report to the Trial Chamber on Dr. Shumilina's findings and recommendations. The points of disagreement between the two specialists are contained within confidential Attachment C.
14. The Accused has been medically examined by two independent doctors from the Bakoulev Center: Professor Golukhova on 5 November 2003 and 16 January 2004, and Dr. Shumilina on 4 November 2005. Dr. Shumilina is a specialist in matters of venous cerebral blood circulation.
15. In her recent report, Dr. Shumilina opines that Mr. Milosevic's cochleovestibular disorders are the result of named pathological disorders. The doctor concludes *inter alia* that the Accused is suffering from a cerebral venous circulation disorder and that the current complications have developed, in part, due to uncorrected hypertension. Dr. Shumilina identifies inadequate treatment to date and recommends additional tests with a period of "ethiopathogenic" treatment in a specialised hospital. On 19 December 2005, Dr. Shumilina provided

²⁵ 3 days per week to enable 4 consecutive rest days for the Accused

The Prosecutor v. Slobodan Milosevic IT-02-54-T

further written details of the treatment plan recommended for Mr. Milosevic at the Bakoulev Center.²⁶ Dr. Shumilina's findings and recommendations have been endorsed by Dr. Bockeria who has recently provided a report, addressed to the President of the Tribunal.²⁷ He identifies the requisite period of treatment as "not less than 1.5 - 2 months." Dr. Shumilina justifies her conclusions in a second report dated 14 December 2005²⁸ making particular reference to points raised by Dr. Aarts.²⁹

16. The Assigned Counsel submit that the Accused's anxiety about Dr. Shumilina's diagnosis and recommendations is both rational and well-founded, particularly in view of the fact that this doctor diagnosed his current condition. A request for the recommended treatment to be carried out at the specialised hospital in Moscow is neither exceptional nor disproportionate in circumstances where the Accused has previously benefited from medical examination and diagnosis by doctors from the Bakoulev Center. It is not unreasonable for the Accused to express his wish as to where he should be treated and by whom, given his declared trust in the medical specialists at the Center.³⁰

²⁶ See confidential Attachment A.

²⁷ Ibid.

²⁸ See confidential Attachment A and confidential Attachment C for a breakdown of the main differences in opinion between Dr. Shumiliana and Dr. Aarts.

²⁹ See confidential Attachment B for extracts from Dr. Aarts' letter dated 6 December 2005.

³⁰ Trial Transcript 12/12/05.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

17. It is acknowledged that expert medical opinion differs, particularly between Dr. Shumilina and Dr. Aarts, as to the state of the Accused's health and treatment.³¹ The present application for provisional release is based upon the recent conclusions of Dr Shumilina and Dr. Bockeria from the Bakoulev Center that there is a link between the current complications and uncorrected hypertension. In the event that the Trial Chamber is not in a position to accept these medical opinions and recommendations,³² it is submitted that the proper course of action would be for the Chamber to hear evidence from the relevant specialists. The Assigned Counsel submit that it would be damaging to the institutional authority of the Tribunal if the Trial Chamber were to disregard the medical diagnosis of the Accused's condition by Dr. Shumilina.

18. In relation to other relevant issues pertaining to this application for provisional release, the Assigned Counsel provide the following submissions:

Absconding

The Accused is instantly recognisable and well-known. He is 64 years of age and suffering from ill-health. The likelihood of him "going on the run" is an unrealistic proposition.

³¹ In relation to the opinion of Professor Leclercq (cardiologist) although he states in his report that it is "highly unlikely" that there is a direct link between the current symptoms and any "hypertensive activity", he does concede that the current disorders could have developed from "atherosclerosis", a finding in line with that of Dr. Shumilina. Similarly, Professor Leclercq recommended the carrying out of additional tests.

³² In the "Decision in Relation to Severance, Extension of Time and Rest" dated 12 December 2005, the Trial Chamber found that the "medical opinion received indicated that the Accused does have a hearing disorder, but does not establish a conclusive link between that condition and the Accused's cardiovascular condition."

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Interference with Justice

The trial is now in the latter stages of the defence case.³³ While there may be a short rebuttal case, it is highly unlikely that the Accused would be in any position or circumstance to interfere with the Prosecution's interests while having treatment in hospital in Russia.

Potential Regional Conflict

The geographical location of the Accused would be remote from the territories of the former Yugoslavia and there would be no risk of conflict arising in the host country, nor interaction with alleged victims.

Return to the Jurisdiction

The Russian Federation, as a permanent member of the UN Security Council, will be mindful of its obligations under Article 29 of the ICTY Statute to cooperate with the ICTY in its dealings with the Accused.³⁴ Guarantees from the Russian government are in the process of being obtained in relation to the Accused's entry, stay and surrender from the Russian Federation to the ICTY for the purpose of prescribed medical treatment.

Interests of the Trial

It is in the interests of justice and the smooth running of the trial that the Accused receives appropriate treatment for his current condition without undue delay.

³³ To date, the Accused has used 75% of time allocated to him in the presentation of his defence: "Decision in Relation to Severance, Extension of Time and Rest", dated 12 December 2005.

³⁴ In relation to Russian co-operation with the ICTY, the Accused called a former Prime Minister of the Russian Federation, Yevgeny Primakov, to give evidence at his trial. Mr. Primakov testified on 30 November 2004.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

Principle of Equality of Treatment

The Accused is entitled to equal treatment before the Tribunal and is presumed to be innocent. The fact that he is in poor health and requires immediate medical treatment must be given appropriate consideration. Mr. Milosevic must not be discriminated against in his current position as an accused person on trial.

The Period of Time the Accused has Been on Trial

The Accused is entitled to a fair and expeditious trial. It is submitted that given the Accused's age, ill-health and length of the trial to date, it is appropriate for a relatively short period of time to be devoted to the restoration of his health in a specialised hospital, namely the Bakoulev Center.

Conditions of Provisional Release

19. A place at the Bakoulev Center is available for Mr. Milosevic. Dr. Bockeria has provided a written undertaking stating that he is ready to take charge of Mr. Milosevic during his stay at the hospital.³⁵ Guarantees from the Russian Federation are in the process of being obtained and will be provided to the Trial Chamber as soon as they become available. The Assigned Counsel submit that conditions of (i) residence and (ii) treatment at the Bakoulev Medical Centre would provide sufficient safeguards to ensure that the Accused will appear for trial and will not pose a danger to any victim, witness or other person, in accordance with Rule 65(B).

³⁵ See confidential Attachment A.

The Prosecutor v. Slobodan Milosevic IT-02-54-T

Relief requested

- (i) The Assigned Counsel request the provisional release of the Accused for the purposes of his attendance and treatment at the Bakoulev Medical Centre pursuant to conditions as deemed necessary by the Trial Chamber.
- (ii) In the alternative, in the event that the Trial Chamber is not satisfied as to the current medical condition of the Accused, the Assigned Counsel request the Trial Chamber to hear evidence from the relevant specialists in order to determine (a) the nature of the Accused's condition and (b) the most appropriate method of treatment.

Word count: 2835

Signed

Steven Kay QC

Gillian Higgins

The Hague

20 December 2005

Steven Kay QC

Gillian Higgins

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The Prosecutor v. Slobodan Milosevic IT-02-54-T

Confidential Attachment A

OT: BORISLAV MILOSEVIC

HOMEF TENEPOHA: +128 46 29

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**BAKOULEV SCIENTIFIC
CENTER FOR
CARDIOVASCULAR SURGERY
RUSSIAN ACADEMY OF MEDICAL
SCIENCES**

**President of the International Criminal Tribunal
for the Former Yugoslavia
Mr. Fausto Pocar**

13B, Roublyakovo шоссе, 121552 Moscow, Russia
Tel. (7-095) 414-75-71, (7-0950) 414-73-51
Fax (7-095) 414-72-87
E-mail: Lecan @ online.ru

Dear Mr. Pocar,

In accordance with the invitation of the International Criminal Tribunal for the Former Yugoslavia two physicians of our Center investigated Slobodan Miloshevič as a patient: two years ago cardiologist, Corresponding Member of Russian Academy of Medical Sciences, Professor Doctor of Medical Sciences E.Z. Golukhova and angiologist, Doctor of Medical Sciences M.V. Shumilina, November 4, 2005.

Both physicians are the leading specialists of our Center.

I also had the personal conversation with doctor Zdravko Mijailovich in charge with Slobodan Miloshevič when he visited us in 2003.

After thorough analysis of given information for the condition and development of the disease of this patient, including audiogram data and magnetic resonance tomography of September 14, 2005 it should be stated that Miloshevič is in a critical condition.

Persistence of the constant noise during the last three months, dizziness and other cerebral events are the signs of decompensation of cerebral circulation because of long time stress charges against the pathology of brachiocephalic arteries (aa. vertebralis et carotis interna dextra) and arteriosclerosis, developed evidently due to uncorrected arterial hypertension for the decade.

There is a high risk for the developing swear disorders of brain or coronary circulation because of clear negative dynamics of the disease and present cardiovascular pathology.

Having in mind the condition of decompensation of cerebral hemodynamics, long stress condition of inquisition and old-aged patient, I consider that it is my physician's and human being duty to insist on immediate interruption lawsuit for the ministraton to Slobodan Miloshevič high quality diagnostic and long time, not less than 1.5 - 2 months aethiopathogenic curative treatment in a specialized cardiovascular profile hospital.

Bakoulev Scientific Center for Cardiovascular Surgery is one of the leading and biggest hospitals in the world for diagnostic and treatment of cardiovascular

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diseases where more than five thousand cases for heart and vascular diseases performed and more than three thousand endovascular procedures are done as well.

The Center is very well equipped by ultrasound machines, angiography. Electrophysiology, computer, magnetic resonance and positron emission tomographs are in serve as well as laboratory diagnosticums.

Bakoulev Scientific Center and personally I are ready to take charge of inviting Slobodan Milosheovich and to do everything maximally possible for preventing him from cardiovascular catastrophe.

Sincerely,

Head and Chairman
Bakoulev Center for CVS
Academician RAMS



L.A. Bockeria

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HOME TELEPHONE: +128 46 29

IT-02-54-12 2005-11-13 СТР4

РОССИЙСКАЯ АКАДЕМИЯ
МЕДИЦИНСКИХ НАУКНАУЧНЫЙ ЦЕНТР
СЕРДЕЧНО-СОСУДИСТОЙ
ХИРУРГИИ им. А. Н. Бакулева
РАМН

121552 Москва, Рублевское шоссе, 135

Тел. 616-7371

Тел./Факс 616-7145

№ _____

700

Президенту Международного Уголовного Трибунала
по бывшей Югославии
Господину Fausto Rosar

Уважаемый господин!

По приглашению Международного Уголовного Трибунала по бывшей Югославии двое ведущих сотрудников нашего центра обследовали пациента Слободана Милошевича: два года назад - кардиолог, член-корреспондент РАМН, профессор доктор медицинских наук Е.З. Голухова и 4 ноября 2005 года - ангиолог, доктор медицинских наук М.В. Шумякина. Оба врача являются ведущими специалистами нашего центра.

В 2003 году я лично беседовал с лечащим врачом С. Милошевича доктором З. Мийаловичем (Dr. Zdravko Mijalovich).

После тщательного анализа предоставленной информации по состоянию и динамике болезни пациента, включая данные аудиограммы и магнитно-резонансной томографии от 14.09.2005 года, необходимо констатировать, что С. Милошевич находится в критическом состоянии.

Наличие у пациента постоянного шума в течение последних 3 месяцев, головокружения и других общемозговых симптомов свидетельствует о декомпенсации мозгового кровообращения, обусловленной длительными стрессовыми нагрузками на фоне патологии брахиоцефальных артерий (aa. vertebralis et carotis interna dextra) и артерioskлерозом, развившимся вследствие десятилетней некорректированной артериальной гипертензии.

На основании выраженной отрицательной динамики заболевания и имеющейся сердечно-сосудистой патологии у пациента слишком вероятен риск развития серьезных нарушений мозгового и/или коронарного кровообращения.

Учитывая состояние декомпенсации церебральной гемодинамики, длительные стрессовые условия следствия и пожилой возраст пациента, считаем своим врачебным и человеческим долгом настаивать на немедленном прерывании судебного делопроизводства для оказания С. Милошевичу высококвалифицированной диагностической и длительной, не менее 1,5 - 2 месяцев, этиопатогенетической лечебной помощи в специализированном сердечно-сосудистом учреждении.

НЦ ССХ им А.Н. Бакулева является одним из крупнейших и ведущих учреждений в мире по диагностике и лечению сердечно-сосудистых

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НОМЕР ТЕЛЕФОНА: +128 46 29

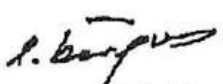
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заболеваний человека, где ежегодно проводится более пяти тысяч операций на сердце и сосудах и более трех тысяч эндоваскулярных вмешательств. Центр оснащен по мировым стандартам ультразвуковой, электрофизиологической, лабораторно-диагностической аппаратурой, компьютерными, магнитно-резонансным и позитронно-эмиссионным томографами.

НЦ ССХ им А.Н. Бакулева РАМН и я, лично, готовы принять Слободана Милошевича и сделать все максимально возможное для предотвращения у него сердечно-сосудистой катастрофы.

С уважением,

Директор НЦ ССХ им А.Н. Бакулева
Академик РАМН, заслуженный деятель науки
Главный кардиохирург МЗ РФ


Л.А. Боксерия

MARGARITA SHUMILINA
Bakoulev Scientific Center For Cardiovascular Surgery RAMS
Moscow, Russia

14 December 2005

Dear colleagues,

After reading your letter I am commenting upon the following remarks:

- 1) In most cases vertebral artery hypoplasia is caused by arterial compression in ostium region as our practice shows. Absence of right vertebral artery visualization in distal part caused by blood stagnation (due to blood flow from left dominant vertebral artery) and basilaris artery tortuosity are pathophysiological laws.
- 2) Thoracic outlet compression syndrome was diagnosed clinically with the use of ultrasonic dopplerography.
- 3) Studying hemodynamics, I consider that assymetrical displacement of ostium flow and further right carotid artery dilatation indicate its pathology (of tortuosity with septal stenosis or stenosis). To circumstantiate the pathologic character a contrast investigation of brachiocephalic arteries is necessary.
- 4) Normally, the age of 64 is not identified with evident arteriosclerosis development. Arteriosclerosis is a natural development of long existing non-corrective arterial hypertension.
- 5) The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion.
- 6) The irregular sulci dilatation can't help indicating the moderate cerebral atrophy. Leucoareosis is diagnosed under MRI.

This vascular pathology is clinically evident as a rule in patients complaints of head and ear noise, vertigo and headache, e.t.c. Therefore, vascular factor of disease development in patient S. Milosevich can't be underestimated.

Yours faithfully,
M.V. Shumilina, Doctor of Medicine

CURRICULUM VITAE OF DR. SHUMILINA

Шумилина Маргарита Владимировна, родилась 12 марта 1960 года в Москве, русская. Закончила I Московский Медицинский Институт им. И.М. Сеченова. С 1989 года работает в Научном Центре Сердечно-Сосудистой Хирургии им. А.Н. Бакулева РАМН. Доктор медицинских наук. Занимает должность старшего научного сотрудника клинико-диагностического отделения института коронарной хирургии и сосудистой патологии НИЦССХ им. А.Н. Бакулева.

Кандидатская диссертация «Возможности ультразвуковой доплерографии и дуплексного сканирования в диагностике стенозирующих поражений сонных артерий» защищена в 1997 году.

Докторская диссертация «Нарушения венозного церебрального кровообращения у больных с сердечно-сосудистой патологией» защищена в 2002 году. Автор 115 публикаций. Темы работ: патология периферических артерий и вен, изучение гемодинамики и патофизиологии головного мозга, диагностика и методы лечения.

Courtesy Translation¹

Margarita Vladimirovna Shumilina was born on 12th March 1960 in Moscow, Russia. She completed her training at the Moscow Medical Institute, I.M. Setchenov. Since 1989 she has worked in the Bakoulev Scientific Center for Cardiovascular Surgery Russian Academy of Medical Science. She is a doctor of medical sciences and holds the post of senior scientific employee of the clinico-diagnostic branch of the institute of coronary surgery and vascular pathology [НИЦССХ] in the Bacoulev institute. She completed her masters thesis in 1997, the title of which is "Opportunities/?Possibilities of ultrasonic dopplerografi and duplex scanning in diagnostics of the stenosing defeats of carotid arteries". Further, she completed her doctoral thesis in 2002, entitled "Infringements/?Disturbances of venous cerebral blood circulation in patients with a cardiovascular pathology". She is the author of 115 publications. The themes of these works include; pathology of peripheral arteries and veins, the study of hemodynamics and pathophysiology of brain, diagnostics and methods of treatment.

¹ Translation obtained from www.freetranslation.com and <http://babelfish.altavista.com>



lecan <lecan@online.ru>

To GHiggins@icty.org

12/19/2005 08:48 AM

cc

Please respond to
lecan <lecan@online.ru>

bcc

Subject from Shumilina M.V. (Moscow, Bakoulev Center)

This message has been replicated and forwarded.

Dear Ms Higgins,
First of all Mr. S. Miloshevich needs additional and careful investigation, including:

I. 1) complex ultrasonic of the vascular pathology, especially brachiocephal arteries and veins (extra-, intracranial parts) with functional tests;

2) echocardiographia, stress- echocardiographia;

3) Holter-monitoring;

4) Daily monitoring of the blood pressure.

II. Estimation of the homeostasis.

III. 1) investigation of the brachiocephal and coronary vessels with contrast media

2) PEI (positron-emission imaging) of the brain and of the heart.

We will select hypotensive therapy with correction of the cerebral hemodinamics including complex magnetotherapy.

Endovascular or surgical decompression of the right vertebral artery, the stenting of brachiocephal or cardiac arteries, carotid endarterectomy or even bypass surgery might be necessary to perform.

Bakoulev Scientific Center is one of the biggest hospitals for cardiovascular interventional and surgical activities.

Yours faithfully,

M.V. Shumilina, Doctor of Medicine

Bakoulev Scientific Center For Cardiovascular Surgery RAMS, Moscow

mailto:lecan@online.ru

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Confidential Attachment B

Relevant Extracts from the Medical Reports and Orders of the Trial Chamber

Author	Date	Relevant Extracts and Conclusions
Andric, Shamulina, Leclercq	4.11.05	<p data-bbox="604 597 1185 661">Professor Andric: Ear Nose and Throat Specialist's Report</p> <p data-bbox="604 668 867 709"><u>History of Current Illness</u></p> <p data-bbox="604 668 1409 923">"Over the past three years ringing in the ears, more pronounced in the right ear. The symptoms became very intense during the past month, manifesting themselves as booming and drumming in the right ear with a distinct difference in tone colour, with distortion and severe pain in the right ear, especially when he hears high-pitched sounds. Autophony has been present during the past month accompanied by hearing fatigue during protracted sound stimulation. In addition to the above symptoms, there is enduring mild or more severe vertigo accompanied by queasiness, nausea and a strong tendency to vomit."</p> <p data-bbox="604 947 736 978"><u>Conclusion</u></p> <p data-bbox="604 947 1426 1209">"Since NMR excluded the presence of an intracranial expansive process and considering the test results it may be concluded that this is a case of bilateral impairment of the peripheral vestibulocochlear apparatus of primarily vascular origin with a significant physical component in the form of chronic acoustic irritation exacerbated by the use of earphones over a long period of several years. The current condition of the cochlear apparatus is irreversible with an obvious tendency toward deterioration in the future. The pain in the right ear, which becomes particularly severe when listening to high-pitched tones, is the result of the convergence of the hearing threshold with the pain threshold."</p> <p data-bbox="604 1232 816 1263"><u>Recommendation</u></p> <p data-bbox="604 1232 1436 1399">"Taking into account the subject's current condition, we recommend immediate rest by reducing sound stimulation to minimum in addition to medication for a month, then to be followed up by a check-up. Considering the obvious presence of hearing fatigue, in future, the subject must not be exposed to continuous sound stimulation for more than an hour, and will then need to have a break from listening of the same duration."</p> <p data-bbox="604 1382 1431 1447">"During the entire course of these two months, HIS HEARING MUST BE SPARED."</p> <p data-bbox="604 1494 970 1525"><u>Professor Leclercq: cardiologist</u></p> <p data-bbox="604 1542 1072 1573"><u>Symptoms Warranting an Expert Opinion</u></p> <p data-bbox="604 1542 1426 1644">"Ringing in the ears (tinnitus) and hearing loss mainly in the right ear. Symptoms appeared 4 to 6 months ago, were at first overlooked by the patient but have become very incapacitating over the past 3 months."</p> <p data-bbox="604 1637 1163 1668">"Occasional minor vertigo in transition to orthostatism"</p> <p data-bbox="604 1692 901 1723"><u>Cardiovascular History</u></p> <p data-bbox="604 1692 1448 1763">"Hypertension has been treated for about ten years. Blood pressure has been stabilized for several months through intensive treatment."</p> <p data-bbox="604 1756 1402 1851">"For several months now there have been no hypertensive episodes and the most incapacitating hearing complaints have not been associated with bouts of hypertension."</p> <p data-bbox="604 1875 1180 1906"><u>Assessment of Patient's Overall Cardiovascular Risk</u></p> <p data-bbox="604 1899 1158 1930">"The risk can be [sic] assessed as medium to high"</p>

	<p>Conclusion</p> <p>"Mr M.'s hypertension can be described as severe but not malignant as it has no major repercussions on the target organs, in particular the kidneys. However, the hypertension is accompanied by pronounced left ventricular hypertrophy which is asymptomatic."</p> <p>"The patient's blood pressure has been stabilized by intensive but adapted medical treatment, which has been effective and well-tolerated. The blood pressure irregularities during the first months of detention appeared well before the auditory symptoms. These appeared after the blood pressure had been stabilized. A direct link between the current functional symptoms and any hypertensive episodes is therefore highly unlikely."</p> <p>"Mr M is a patient with a cardiovascular risk and the left ventricular hypertrophy increases the risk. The disorders the patient is now complaining of could have developed from an atherosclerosis of the neck or intracranial vessels as a consequence of the risk factors which have developed over several years. This is suggested both by the MRI scan results (9 May) which show atheroma scars of the right carotid and by the audiometry, indicating possible damage to the inner ear which can, at least partly, be of vascular origin."</p> <p>Proposal for Additional Tests</p> <p>"-cbronyary scanner..."</p> <p>"MAPA (ambulatory blood pressure measurements over 24 hours);</p> <p>"Microalbuminuria;"</p> <p>"Doppler of neck vessels and renal arteries."</p> <p>"It would be useful to obtain expert opinion of a neuroradiologist to interpret the initial MRI - interpreted as normal - and so rule out an expanding process."</p> <p>Recommendations for Treatment</p> <p>"No change to antihypertension treatment and other cardiovascular therapy."</p> <p>"Biochemistry monitoring at least twice a year."</p> <p>"There is no doubt that stress can contribute to blood pressure irregularities and that a period of rest would be advisable."</p> <p><u>Doctor M.V.Shumlina: Angiologist (Russian Academy of Medical Sciences/A.N. Bakulev NT:SSKh/Scientific Centre for Cardio-Vascular Surgery/Moscow, Russia)</u></p> <p>Preliminary Conclusion based on the patient's complaints, Doppler ultrasound and magnetic resonance tomography/MRT/of the patient Slobodan Milosevic, age 64</p> <p>"It is my opinion that the patient's cochleovestibular disorders are the result of the following pathological disorders: (1) Hypoplasia of the right vertebral artery (as the result of extravascular compression of the right vertebral artery near the ostium).</p> <p>"(2) The patient has a compression syndrome of the neuro-vascular bundle at the thoracic outlet (Thoracic Outlet Compression Syndrome)"</p> <p>"(3) On auscultation there was a systolic murmur above the right internal carotid artery, in the proximal segments of the right subclavian artery and right vertebral artery."</p> <p>"(4) These vascular anomalies are seen as the result of long-term unregulated arterial hypertension (of more than 10 years), and arterial sclerosis is already present (resulting from long-term hypertension of more than five years)." "...The loss of compensatory capability in intracranial blood vessels in patient Slobodan Milosevic was confirmed by an orthostatic test (vertigo and staggering accompanied by a 20mm Hg decline in systolic pressure).</p>
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		<p>"(5) From the patient's complaints (in addition to the noise mostly in the right ear and vertigo, there is a feeling of being weighed down, swelling in the head, and pressure on the eyes) it is clear that there is a disorder of the cerebral venous circulation."</p> <p>"The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompression of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and etiopathogenic treatment in a specialised hospital."</p> <p>"Surgical correction of the vascular pathology may be called for after additional testing (especially if drug treatment is ineffective)."</p> <p>"The existing cochleovestibular disorder with the above vascular pathology might be the initial signs of more serious cerebral circulatory disorders."</p> <p><u>Joint Opinion on the Combined Medical Examination of Mr Slobodan Milosevic Carried Out on 4 November 2005</u></p> <p>"Bearing in mind the results of the medical examinations in consultation submitted in this file and carried out on 4 November 2005, it can be concluded that the state of health of the patient is not stable and that complications are possible. Such a state of health requires further tests with the aim of identifying the origin or origins of the current difficulties."</p> <p>"It is therefore necessary to propose to the patient a period of rest, i.e. the suspension of all physical and psychological activities for a period of a minimum of 6 weeks which would probably help diminish the symptoms or at least to stabilize them and then approve additional indispensable diagnostic procedures in order to prescribe a more appropriate therapy."</p>
Falke	11.11.05	<p>"He appears very tired and I consider that he is unfit to attend court. He complains about the noises he experiences in his ears. He attributes his tiredness to this condition. It is accepted that this condition induces tiredness, however, I believe that there is a combination of factors as we have seen in the past."</p>
Trial Chamber Order	11.11.05	<p><i>Order Concerning Further Medical Report</i></p> <p><i>"the report is unsatisfactory"</i></p> <p><i>"Order that the further report to be provided by Dr. Falke on Monday 14 November 2005, contain the following information:</i></p> <p><i>(i) In the event that Dr. Falke finds the Accused to be unfit to attend court on 15 November 2005 (simply as an accused person, or as an accused person additionally conducting his own case), he is to specify the diagnosis of the condition which renders him so unfit and substantiate his findings thereon; and</i></p> <p><i>(ii) What is the area of specialisation relevant to the Accused's diagnosed condition.</i></p>
Falke	14.11.05	<p>"Mr Milosevic has the following medical conditions: cardiovascular problems, he also complains of hearing problems in his right ear. I concluded that Mr. Milosevic was unfit to attend Friday's hearing due to exhaustion."</p> <p>"On the 4.11.05, Mr Milosevic was examined by three doctors ("Visiting Doctors")."</p> <p>"I have read the reports of the Visiting Doctors...and discussed the same with the Dutch treating ear, nose and throat specialist at Bronovo Hospital. This specialist has been treating Mr. Milosevic for a period of two months. He states that following</p>

		<p>thorough diagnostics (MRI and audiograms) there are no pathological findings which could explain the complaints of the patient. Mr Milosevic has hearing loss commensurate with someone of his age. Contrary to the joint conclusion of the Visiting Doctors, the treating specialist concludes that it is unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of. The treating specialist states that a period of rest will have no positive effect upon his symptoms."</p> <p>"In accordance with the recommendations of the treating ENT specialist, Mr Milosevic will continue to undergo a normal regime of check-ups relating to his complaints but there is presently nothing further that can be done relating to his condition."</p>
Trial Chamber Order	15.11.05	<p>Order for Expert Medical Reports</p> <p>"Hereby orders by majority (Judge Bonomy dissenting) The Registrar to arrange an examination, if necessary, and to obtain the expert medical reports of the treating cardiologist, Dr. van Dijkman and the treating Ear, Nose and Throat specialist of the Accused, by Monday, 21 November 2005, on the content and recommendations of the reports of the three visiting doctors, including but not limited to:</p> <p>(i) The reference by Dr. Shumlina to "inadequate treatment and the necessity of additional tests" set out on page 2 of his report; and</p> <p>(ii) The "Joint Opinion on the Combined Medical Examination...", appended to the medical reports, in particular that "the patient should be prescribed a period of rest, i.e. the suspension of all physical and mental activities [sic] a minimum of 6 weeks, which will probably reduce—or at least stabilize—the symptoms."</p>
Dr. Dijkman Bronovo Hospital, Cardiologic Department	18.11.05	<p>"I have received a request from Judge P Robinson to provide an assessment of the medical examination of Mr. S Milosevic carried out by Prof. F. Leclercq from France."</p> <p>"I have read this carefully and reached the conclusion that Prof. Leclercq has not added much to what was already known about the patient."</p> <p>"His remark that he has no new suggestions regarding adjustment of the medicinal treatment is of interest. In addition, he points out that it may be advisable to ascertain once again whether there is a coronary insufficiency. This last point seems to be somewhat exaggerated in view of the data on Mr. Milosevic already available. A heart catheterisation in the past showed no indication whatsoever of coronary atherosclerosis. There have been no anginal complaints to date. On the other hand, there are not many reasons not to carry out an ischemic test, although in that case the patient should stop taking beta-blockers for a few days in order to obtain as complete an assessment as possible."</p> <p>"An adenosine stress MRI of the heart with perfusion may be considered. In addition, the calcium score of the coronaries may be determined by means of a CT scan."</p> <p>"I suggest carrying out this examination in a relatively quiet period for the patient. I am not in favour of reducing anti-hypertension medication during stress of the trial. Personally, I think that it would be interesting to carry out a 24 hour blood pressure measurement during the trial. In terms of organisation, all this could be arranged next week."</p> <p>"At present, I see no grounds to change the current course of action, and in my opinion, there are no reasons from the cardiologic point of view to alter the current trial regime."</p>
Falke	21.11.05	<p>"This morning I examined Mr. S. Milosevic. His blood pressure is beyond the acceptable parameters. Therefore, he is not fit to attend court. Taking into account that his blood pressure was unacceptably high last week, it will take sometime to stabilize the situation, therefore I recommend that he does not attend court for the rest of the week."</p>

Trial Chamber Order	21.11.05	<p><i>Order Adjourning Trial and for a Further Medical Report</i></p> <p><i>"Considering that</i></p> <p><i>(1) It would be beneficial to the Chamber to have the matter related to Dr Shumilina's report dealt with; and</i></p> <p><i>(2) In light of the Accused's current medical condition and the report of Dr. Falke today, for Dr. van Dijkman to carry out an examination of the Accused and report on whether, as previously indicated (for example, in his Report of 2 July 2004), he believes the Accused's current condition will recur."</i></p> <p><i>"Hereby</i></p> <p><i>(1) Adjourns the Trial until Tuesday 29 November 2005, at 9am;</i></p> <p><i>(2) Orders the Registrar, by 25 November 2005, to</i></p> <p><i>(a) Obtain from Dr. van Dijkman a report addressing the reference in Order (1) of the Trial Chamber's Order of 15 November relating to Dr. Shumilina's report; and</i></p> <p><i>(b) Arrange an examination of the Accused by Dr. van Dijkman, and obtain a report from him on the Accused's current medical condition and on whether he believes that this medical condition will recur."</i></p>
B.A.A. Spoelstra, ENT physician	21.11.05	<p><i>"As a general peripheral ENT physician, I could solve the problem of the patient with a hearing aid, possibly two. Bearing in mind that I suppose he uses headphones during the trial, it seems to me that it would be better to proceed without a hearing aid, but rather with properly adjusted volume in the headphones."</i></p> <p><i>"As regards the other psychosocial complaints mentioned, also pointed out by the three foreign colleagues, I do not have an opinion, since I do not think that I am enough of an expert in that field. For this reason, I suggest you contact an audiologist, namely Mr. De Laar, employed at the LUMC/Leiden University Medical Centre. I may be able to arrange for the patient to be received there next week."</i></p>
Dr. van Dijkman	23.11.05	<p><i>"Judge Robinson has requested an examination of the above-named patient. The judge has also requested an assessment of the report by Dr. Shumilina. I talked to the patient and examined him on 22 November"</i></p> <p><i>"As regards Dr. Shumilina's report, I must say that I do not consider myself sufficiently expert to give an opinion. I suggest seeking the opinion of a neuro-radiologist with expertise in cerebral vasculature."</i></p> <p><i>"Judge Robinson requested an assessment of the present condition of the patient. The patient has no cardiac complaints whatsoever, in particular no chest pains or shortness of breath. He complains of tinnitus in a noisy environment, but no complaints in his room, where it is quiet. Blood pressure varies - when he is in his own environment, the blood pressure can be considered acceptable, and during the trial it increases to 190/100mmHg, together with a somewhat higher heart rate. In the meantime, colleague Falke and I have agreed to have the concentration of metoprolol checked once again by the clinical pharmacologist. It is important to note that the patient states that he does not feel any difference from before in his cardiac situation."</i></p> <p><i>"Conclusion: In cardiovascular terms, the condition is unchanged. In general, the blood pressure is acceptable, and even the strain in the ECG is somewhat less pronounced. Clearly, the trial sessions are so stressful that the blood pressure increases, together with the heart rate. I have agreed with my colleague Dr Falke to</i></p>

		<p>carry out another 24 hours blood pressure measurement, particularly during the court sessions. In view of the current work schedule, it is understandable that the patient feels fatigued. He has three court sessions per week, and spends the rest of the time preparing for them, including interviewing witnesses. There is not much time for rest. It is predictable that the blood pressure will increase again during stressful trial sessions."</p> <p>"As in the past, I strongly advise provision for sufficient rest. On the other hand, it seems to me that a six week rest period is somewhat too much."</p> <p>"Once again, I shall not make any statements regarding the assessments of the ENT physician and the angiologist, since this is outside the scope of a cardiologist."</p>
28.11.05	Dr. J.A.P.M. de Laat, physician-audiologist	<p>"We saw Mr Milosevic on 23 November 2005. While conducting audiometric tests we observed perceptive hearing loss on both sides, more so on the right side..."</p> <p>"In addition, we also carried out an objective audiometric test...we can conclude that there are hardly any indications of retro-Cochlear deviations...which is in line with the results of the earlier MRI test: there are no indications of disease/processes to the internal auditory means on the right side. The objective hearing threshold in the BERA/test/ on both sides conforms to the subjective hearing threshold in the tone audiometric test: the BERA threshold correspond to the "best" subjective tone thresholds."</p> <p>"To some degree, the cause of the hearing loss must be sought in the noise exposure anamnesis, but it is probable that the cardiovascular situation is also connected to the hearing loss. We cannot be sure of this."</p> <p>"we would choose a hearing aid/prosthesis/ which will spare the right ear while prothesizing the left."</p> <p>"In order to take care of the technical side of things, we propose to ask Mr W Beek of AB-hoortechneek/hearing technology/in The Hague to make these technical arrangements. If necessary, when the technical arrangements have been completed, I would be more than willing to be present when the equipment is used for the first time at the Tribunal, to persuade the patient that in my view, this arrangement will be adequate for him to have a good understanding of what is being said."</p>
1.12.05	Trial Chamber Order	<p>"Noting the medical report of Dr. van Dijkman of 23 November 2005, in which he states, "As in the past, I strongly advise provision for sufficient rest. On the other hand, it seems to me that a six week rest period is somewhat too much."</p> <p>"Hereby orders the Registrar to urgently obtain from Dr. van Dijkman written clarification as to whether his proposal for sufficient rest is a reference to a period of rest outside the normal sitting regime and, if so, to clarify when and for how long that proposed period of rest should be."</p>
1.12.05	Dr van Dijkman	<p>"The three physicians who examined Mr Milosevic recommended that a rest period of 6 weeks must be built in immediately. This is an arbitrarily chosen period, for which, in my view, no firm reasons are given. Furthermore, no vision is expressed containing any longer-term recommendations."</p> <p>"The current regime of three days of court visits a week was set up following lengthy deliberations. The four remaining days of the week should be used to prepare for the sessions, but also in order to take sufficient rest. What I mean is that the four days should include two days of rest, when the person should not work on his case. This is analogous to an average working week of five days for working persons, with two days of rest at the weekend. Soon the Christmas recess will start. Mr Milosevic will be able to get some rest also in this period, which comes very close to the period of rest of six weeks as recommended by the three physicians."</p>

6.12.05	NJM Aarts (Neurological radiologist)	<p>"With regard to your request for a response to the conclusions of colleague Shumilina I inform you about the following:</p> <ol style="list-style-type: none"> 1. The inner ear is supplied with blood through the labyrinthine artery, which forms the end of the posterior inferior cerebral artery. This is the final lateral branch originating from the vertebral artery just in front of the basilar artery. The appearance of a smaller vertebral on the right side, as opposed to the left, has been known to occur and is by no means an indication of compression at the level of the origin. This is supported by the fact that we can see a normal flow-void also in the coronary direction inside the vessel which points to good blood circulation. It is also known that in MRI the actual lumen is underrated. 2. The MRI does not show the neck; therefore we cannot establish a thoracic outlet compression syndrome on the basis of the MRI. 3. The MRI shows no signs of a carotid stenosis. Signalling in the lumen may occur when the preparatory pulse of the MRI sequences runs parallel to the blood stream. This way, erythrocytes can become "charged" and as a result emit a signal. This is a well-known phenomenon in radiology. 4. The atherosclerosis is normal in view of the patient's age. 5. The high signal in the transversal sinus is also a result of the phenomenon which I described under number 3. This does not point to a pathological condition. 6. The MRI shows an image of both cerebral hemispheres which is normal for his age. There is no pathological atrophy. Leukoaraiosis is a term in CT/Computed Tomography/. There are no striking deviations in white matter. <p>As I noted in my report, there is a "vascular loop" in the right medial opening of the internal auditory canal. In professional literature, this has been connected to a perceptive loss of hearing, not with tinnitus or vertigo."</p>

IT-02-54-T p:45751

~~IT-02-54-AR65.1 p.79~~

~~IT-02-54-T p.43874
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The Prosecutor v. Slobodan Milosevic IT-02-54-T

Confidential Attachment C

Points of Disagreement Between Margarita Shumilina and NJM Aarts

Issue	Dr. Shumilina Report: 4.11.05 (Angiologist) ¹	Dr. Aarts Report: 6.12.05 (Neurological Radiologist) ²	Dr. Shumilina Report: 14.12.05 (Angiologist)
Pathological disorder	Dr. Shumilina finds that the patient's "cochleovestibular disorders are the result of... pathological disorders"	Dr. Aarts states that the findings do not point to a pathological condition.	
Thoracic outlet compression syndrome ³	"The patient has a compression syndrome of the neuro-vascular bundle at the thoracic outlet"	"The MRI does not show the neck; therefore we cannot establish a thoracic outlet compression syndrome on the basis of the MRI."	"Thoracic outlet compression syndrome was diagnosed clinically with the use of ultrasonic dopplerography"
Arterial sclerosis ⁴	"These vascular anomalies are seen as the result of long-term unregulated arterial hypertension (of more than 10 years), and arterial sclerosis is already present (resulting from long-term hypertension of more than five years)"	"The atherosclerosis is normal in view of the patient's age."	"Normally, the age of 64 is not identified with evident atherosclerosis development. Arteriosclerosis is a natural development of long existing non-corrective arterial hypertension."

¹ Angiologist: Specialist in the study of the anatomy of blood and lymph vascular systems.

² Neurological Radiologist: A neurologist is a medical doctor or osteopath who has trained in the diagnosis and treatment of nervous system disorders, including diseases of the brain, spinal cord, nerves, and muscles. Neurologists perform neurological examinations of the nerves of the head and neck; muscle strength and movement; balance, ambulation, and reflexes; and sensation, memory, speech, language, and other cognitive abilities.

³ Thoracic Outlet Syndrome (TOS) is a group of distinct disorders producing signs and symptoms attributed to compression of nerves and blood vessels in the thoracic outlet region. Clinical signs and symptoms of TOS usually include pain in the neck and shoulder area and numbness and weakness in the arm/hand.

⁴ Arterial sclerosis - the thickening and loss of elasticity of arterial walls/Sclerosis of the arterial walls (<http://www.ninds.nih.gov/disorders/thoracic/thoracic.htm>)

Sclerosis - any pathological hardening or thickening of tissue. Synonyms: arteriosclerosis, coronary-artery disease, hardening of the arteries.

<p>Cerebral venous circulation and vertigo⁵</p>	<p>"(5) From the patient's complaints (in addition to the noise mostly in the right ear and vertigo, there is a feeling of being weighted down, swelling in the head, and pressure on the eyes) it is clear that there is a disorder of the cerebral venous circulation."</p> <p>"The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompression of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and etiopathogenic treatment in a specialised hospital."</p> <p>"The existing cochleovestibular disorder with the above vascular pathology might be the initial signs of more serious cerebral circulatory disorders."</p>	<p>"6. The MRI shows an image of both cerebral hemispheres which is normal for his age. There is no pathological atrophy. Leukoaraiosis is a term in CT/Computed Tomography. There are no striking deviations in white matter.</p> <p>As I noted in my report, there is a "vascular loop" in the right medial opening of the internal auditory canal. In professional literature, this has been connected to a perceptible loss of hearing, not with tinnitus or vertigo."</p>	<p>"5) The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion."</p> <p>"6) The irregular sulci dilatation can't help indicating the moderate cerebral atrophy. Leukoaraiosis is diagnosed under MRI."</p> <p>"This vascular pathology is clinically evidence as a rule in patients complaints of head and ear noise, vertigo and headache, etc. Therefore, vascular factor of disease development in patient S. Milosevic can't be underestimated."</p>
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⁵ Cerebral circulation refers to the blood vessels, arteries and veins, carrying blood to and away from the brain, respectively. Vertigo: An illusion of movement, either of the external world revolving around the individual or of the individual revolving in space. Vertigo may be associated with disorders of the inner ear, vestibular nerve, brainstem, and cerebral cortex. (From Adams et al., Principles of Neurology, 6th ed, pp300-1)

<p>Recommendations</p>	<p>"The presence in patient Slobodan Milošević of an almost constant noise, over the course of two months, and of vertigo testifies to a decompression of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and ethiopathogenic treatment in a specialised hospital."</p>	<p>No recommendations for treatment are made.</p>	
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Tab 4

IT-02-54-T
D43975-D 43963
22 DECEMBER 2005

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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 Lipton Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Date Filed: 22 December 2005

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**PROSECUTION'S INTERIM RESPONSE TO ASSIGNED COUNSEL
REQUEST FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Assigned Counsel:

Mr. Steven Kay
Ms. Gillian Higgins

The Accused:

Mr. Slobodan Milošević

Amicus Curiae:

Mr. Timothy McCormack

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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

Case No. IT-02-54-T

**PROSECUTION'S INTERIM RESPONSE TO ASSIGNED COUNSEL
REQUEST FOR PROVISIONAL RELEASE**

I. Introduction

1. This is an interim Response to Assigned Counsel's application for conditional and limited provisional release of the Accused.
2. The application is opposed.
3. The Prosecution seeks authorization to exceed the page limit contained in the Practice Direction on the Length of Briefs and Motions¹ on the grounds that, exceptionally, this interim Response has addressed urgent matters of approach and procedure requiring a broader filing than would otherwise have been provided.

Interim Response

4. This Response is not final because the Defence application is incomplete, and because the Prosecution requires an indication from the Trial Chamber as to how it is to proceed in dealing with the application.

¹ Dated 5 March 2002.

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5. Assigned Counsel make two broad submissions in support of their application for provisional release: (1) The Accused suffers a "genuine and proven" medical condition which requires medical treatment specifically at the Bakoulev Scientific Centre for Cardiovascular Surgery in Moscow, so that he may be restored to health.² (2) Guarantees "are in the process of being obtained" from the Russian Federation and "will be provided to the trial Chamber as soon as they become available".³
6. The Prosecution is unable to provide a fully formulated Response to this application. First, it is incomplete and appears to be premature: guarantees have yet to be provided by the Russian Federation. This aspect of the Response will require consideration once any proposed guarantees have been filed. Second, the Prosecutor's locus is unclear: the Accused's medical condition has been a matter which the Trial Chamber has managed on the evidence of doctors who have been its interlocutors. This application makes submissions on medical evidence now filed on behalf of the Defence. The Prosecutor's role was originally set as one without a right to see medical records or have the Accused examined. Now that the Accused - one party - has filed his own medical evidence, arguably, the Prosecution should have an equal right to have the Accused examined and to have access to his medical records. The Trial Chamber will require to decide whether it agrees that such steps should be taken and appropriate orders made.

II. Timing of application

7. Even without obtaining its own medical evidence, the Prosecution cannot fail to observe that this application appears to be timed so as to have maximum disruptive effect on these proceedings. The application was made orally by the Accused on the last day of the session⁴ and reduced to writing and filed just before the recess with the inevitable delays that this will bring to the issue being brought to a conclusion. The trial is due to recommence on 23 January 2006. The priority must be to ensure that it does. The Chamber should recognize that the timing of this application is consistent with an underlying purpose to delay or defeat the conclusion of this trial.

² Paragraphs 13 and 14 of the Defence Application.

³ Paragraph 19 of the Defence Application.

⁴ On 12 December 2005.

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- 8. On 4 November 2005⁵ the Accused was examined by a group of specialists instructed by him, who made unsolicited recommendations as to the future conduct of the trial in a joint report filed subsequently with the Chamber.⁶ One of these specialists, Professor Andrić, has in any event appeared before the Trial Chamber as a witness of fact for the Accused.⁷
- 9. On 11 November 2005, the Accused failed to attend court and proceedings were adjourned to 15 November.⁸ There followed a series of orders from the Trial Chamber regarding the provision of medical reports, and a series of reports prepared by treating and other specialists approved by the Registry.⁹ It is notable that prior to 11 November medical problems had not caused any interruption to the three day per week trial schedule for over a year.¹⁰ On 21 November, the Trial Chamber issued an order adjourning proceedings until 29 November 2005. On 12 December 2005, the Trial Chamber issued its Decision in relation to Severance, Extension of Time and Rest, refusing the Accused's application to extend the allotted time for presentation of his Defence and adjourning trial to 23 January 2006.
- 10. The timing of this application demonstrates, in the Prosecution's submission, a strategy, moving now with greater momentum in light of the Trial Chamber's Order of 12 December, aimed at preventing this trial from being brought to a timely conclusion. Recognition of the Accused's right to a fair trial, of the presumption of innocence, and of the standard and burden of proof, do not

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⁵ Assigned Counsel have correctly set out a chronology relating to the medical reports filed since the beginning of November 2005 at paragraph 13 of the Defence Application.

⁶ "Joint Opinion on the Combined Medical Examination of Mr. Slobodan Milosevic carried out on 4 November 2005." Registry filing reference 43195. Two days earlier cross-examination of the Accused's witness Vlatko Vuković concluded. Extension questioning on Vuković's war diary led to revealing evidence concerning the conduct of VJ units in Kosovo in the period 25-28 March 1999. Trial Transcript 26, 27, 31 October 2005, and 1, 2, 9 November 2005. In absence of evidence of earlier deterioration in health, the possibility exists of orchestration of this application in response to this adverse evidence.

⁷ Trial Transcript 23, 24 and 28 February 2005.

⁸ Trial Transcript, 11 November 2005.

⁹ Orders by the Trial Chamber on 11 November 2005, on 15 November 2005 and on 21 November 2005. Medical reports have been filed by Registry-approved specialists Dr. Falke (UNDU treating medical officer) on 11 November, 14 November and 21 November; by Dr. van Dijkman (treating cardiologist) on 18 November, 23 November and 1 December; by H.A.A. Spoelstra (ENT physician) on 21 November; by Dr. de Laat (a physicist-audiologist) on 28 November; and by N.J.M. Aarts (neurological radiologist) on 6 December 2005.

¹⁰ Noted by the Trial Chamber in its Order Adjourning Trial and For a Further Medical Report, 21 November 2005, p.2.

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exclude a finding at this stage that the Accused has a settled intention to obstruct this trial and prevent it from being brought to a conclusion.

11. The Prosecution submits that control of these proceedings needs to be taken on the basis that this underlying strategy may or does lie behind every application of a procedural nature. The Prosecution would therefore commend to the Trial Chamber a twin track approach:

1) The Trial Chamber must find out what the true medical position is. A series of incomplete reports filed by treating doctors and other specialists is an insufficient basis on which to address this issue. There have been no definitive findings as to the Accused's true medical condition, what treatment he requires and what the outcome of any treatment may be.

2) The Trial Chamber should proceed on the basis that this trial must go ahead as scheduled on 23 January with or without the Accused present in court. It should now have in mind the possibility of proceeding in January in the absence of the Accused.

12. The Accused must provide immediately a witness list so that the Prosecution may prepare for commencement on 23 January, and so that Assigned Counsel may prepare to call witnesses, if judged necessary and appropriate, in the Accused's absence. If the Accused fails to provide a witness list, he will effectively block the Trial Chamber's ability to use Assigned Counsel to proceed, if necessary, in his absence. Failure to provide the witness list would delay the restart of the trial and would be tantamount to an obstruction of the court, and should be subject, in advance, of a warning that "down time" will be counted against his allocation of time.

III. Medical Evidence

13. The Chamber is required by Assigned Counsel's application to make findings on the Accused's medical condition. There is a logical range of possible conclusions, as to which the Prosecution is unable, presently, to express a view:

1) That the medical condition is and has been to an extent a "fraud".

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- 2) That it is partly "fraudulent", recently devised.
- 3) That the Accused's condition is partly brought about by his own conduct.
- 4) That the Accused suffers from a genuine medical condition and requires treatment.¹¹

14. There seems to be no basis for the Chamber finding that the Accused is unfit to stand trial, and this is not a proposition that is advanced in the application.¹²

15. Each of these possibilities require informed opinion on medical evidence. Thus far, the Trial Chamber has shouldered the responsibility for dealing with the medical issue. The Prosecution has been given no opportunity to rely upon its own medical evidence,¹³ and the Chamber has relied exclusively upon reports from the "court's doctors"¹⁴ in dealing with the Accused's medical condition. The Accused has now sought to rely upon his own medical experts, who have second-guessed the court's appointed specialists and provided reports of their own.

16. The Accused has attempted to take this matter out of the Chamber's hands. His medical condition is now being presented as an adversarial issue. The Prosecution, if it is to become fully engaged in the issue, will require, at a minimum:

- 1) Full access to medical records, including medical records held by the UNDU.
- 2) Facilities to allow examination of the Accused by the Prosecution's own medical experts.

17. The Prosecution may then be in a position to address the medical issue as raised in the Defence application. The Prosecution has no objection to an oral hearing on this issue.

¹¹ It should be borne in mind that none of these possibilities necessarily exclude continuation of this trial in the absence of the Accused.

¹² Very specific criteria upon which a finding of unfitness might be made have been set out by the Trial Chamber in *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision re the Defence Motion to Terminate Proceedings, 26 May 2004.

¹³ Transcript of Motion Hearing, 30 September 2003, T27033-27037.

¹⁴ *Ibid.*, T27033, lines 21-22.

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18. Orders in the *Strugar* and *Kovačević* cases both provide authority for the proposition that the Prosecution is entitled to have an Accused examined by medical experts of its own choosing, and to have access to medical records in the event that the medical condition of the Accused becomes a matter in issue.¹⁵
19. Medical experts instructed by both sides have been called on applications for provisional release.¹⁶
20. On any view, the medical evidence currently before the Chamber is incomplete. There is no analysis of medical records, or history; there are no clear conclusions reached, prognoses given, or recommendations made. The Prosecution notes and respectfully adopts the following observation made recently by His Honour Judge Bonomy:

"Whenever issues of health and fitness arise in a court process it is vital that the right decision is made at the end of a thorough and scrupulously objective assessment of the issues (on the basis of the opinions of experts who are not involved in the trial)." (Parenthesis added.)¹⁷

DISSENTING
OPINION!

21. There is no evidence upon which findings may be made as to what the Accused's medical problem is, what treatment it requires, why this treatment may not be provided in the Netherlands as opposed to Moscow, and what its outcome might be. There is no evidence to support a finding that the Accused requires medical treatment that cannot be provided in The Hague. If he wishes to be treated by specialists from Russia, then there may be no good reason why they may not treat him, alongside Dutch specialists, in The Hague.

¹⁵ In the *Strugar* case, experts retained by the Prosecution examined the Accused for the purposes of an application to terminate proceedings on the grounds of unfitness. See *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision re the Defence Motion to Terminate Proceedings, 26 May 2004. In the *Kovačević* case, the Trial Chamber granted an order on the Prosecution's application allowing access to the Accused for medical examination by the Prosecution's experts to examine him for the purposes of assessing his fitness to stand trial; and granted an order allowing these experts access to all relevant medical records: *Prosecutor v. Kovačević*, Case No. IT-01-42/2-1, Decision to Grant the Prosecution Motion for Medical Examination and Release of Medical Reports, 10 November 2005.

¹⁶ In the *Stanišić and Simatović* case, medical experts were called by both Prosecution and Defence on an application for provisional release in respect of the Accused Stanišić. *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. 03-69-PT, Motion hearing on 10-11 and 25-16 May 2004.

¹⁷ Dissenting Opinion of Judge Iain Bonomy in Relation to the Order of the Trial Chamber for Expert Medical Reports, 16 November 2005.

Disputed

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IV. Argument

22. The Prosecution is not in a position to address the merits of the Accused's application in any detail, and will file a full Response once the application is complete, and once the Trial Chamber has clarified the extent to which the Prosecution may be involved in the medical issue. The initial stance of the Prosecution can however be outlined as follows.

23. Rule 65 of the Rules of Procedure and Evidence provides relevantly:

- (A) Once detained, an accused may not be released except upon an order of a Chamber.
- (B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and the State to which the accused seeks to be released the opportunity to be heard and **only if it is satisfied that the accused will appear for trial, and, if released, will not pose a danger to any victim, witness or other person.** (Emphasis added.)

24. The jurisprudence of the Tribunal recognises that the Accused has a burden of proof to satisfy the Trial Chamber that the two pre-requisites in Rule 65(B) have been met.¹⁸ The Prosecution bears no evidentiary burden to "demonstrate that provisional release is inappropriate".¹⁹

Whether the accused will appear for trial

25. There are a number of possible outcomes in the event that the Accused is given provisional release:

- 1) He goes to Moscow, is treated, and returns.

¹⁸ *Prosecutor v Krajišnik*, Case IT-00-39 & 40 -PT, Decision on Momčilo Krajišnik's Notice of Motion for Provisional Release, 8 October 2001, para. 9, and further decisions cited in its footnote 20; *Prosecutor v Ademi*, Case IT-01-46-PT, Order on Motion for Provisional Release, 20 February 2002, para. 19; see also *Prosecutor v Ademi*, Case IT-01-46-PT, Order on Motion for Provisional Release, 20 February 2002, para. 21.

¹⁹ *Prosecutor v Limaj, Bala and Musliu*, Case No IT-03-66-AR65, Decision on Fatimar Limaj's Request for Provisional Release, 31 October 2003, para. 40.

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- 2) He goes to Moscow, and remains there in limbo, his medical condition unclear and unverifiable.
- 3) He goes to Moscow, and absconds.
26. In the event that the Accused is released and goes to Moscow, the Tribunal's purpose will have been thwarted. There is no reason to believe that once in Russia, the Accused might not then be found unfit to travel for the purposes of return. The Prosecution opposes this application because there is no evidence to suggest that this Accused would return to The Hague in the event that he is released.
27. The Appeals Chamber has enumerated some factors that a Trial Chamber should consider in coming to a reasoned determination on provisional release.²⁰ They are set out correctly at paragraph 10 of the Defence application.
28. The Accused has done all he can to thwart the proper functioning of this trial. He does not recognise or respect this court in any legal or substantive way. He has repeatedly refused to recognise the legitimacy of this Tribunal. So much was made clear at the Accused's initial appearance.²¹
29. A further example of the Accused's general attitude may be seen at the Rule 15 *bis* hearing in March 2004 before President Meron to determine whether the Accused consented to the continuation of the trial with a new Judge, a question to which the Accused responded as follows:

"you know full well, I believe - I hope - that I consider this Tribunal of yours to be illegal because it is not based on the Charter of the United Nations. Of course I have no intention of declaring my views on your administrative issues. . . As a matter of fact, I consider this so-called Tribunal to be a means of war against my country, which is still going on."²²

²⁰ *Prosecutor v Šainović and Ojdanić* Decision on Provisional Release, Case No IT-99-37-AR65, 30 October 2002, para. 6. ("Ojdanić and others Appeals Chamber Decision.")

²¹ Trial Transcript, 3 July 2001.

²² Trial Transcript, 25 March 2004, T32078.

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30. The Accused's attitude has stretched, not infrequently, to offensiveness to officials in the courtroom, well evinced by his referring to the Trial Chamber as part of a joint criminal enterprise during his opening address, as pointed out by His Honour Judge Bonomy:

"(Judge Bonomy): Mr. Kay, I think there are certain limits to how far certain references can be tolerated, and as you must have observed yesterday, I think on two occasions Mr. Milosevic referred to this Trial Chamber as part of a joint criminal enterprise and acting against him. Now that is offensive. And my only reason for not intervening on either occasion was the circumstances that he was making an opening statement, which in my opinion he's entitled to make without interruption, but that was the only reason, I assure you, for not interrupting what I thought was a flagrant insult to the Court."²³

31. No application for provisional release should even be entertained by the Trial Chamber unless the Accused first provides a personal guarantee recognizing the legality and legitimacy of the Tribunal, agreeing to submit to its jurisdiction, and undertaking to return.²⁴ No such personal guarantee from this Accused could now ever be credible.

32. The Chamber will recall that the circumstances in which the Accused was brought to the Tribunal were quite the opposite of a voluntary surrender.

Guarantees

33. The Prosecution is not in a position to address the Chamber fully on the guarantees until they have been filed, and will file a detailed Response on this issue in the event that guarantees from the Russian Federation are forthcoming.

34. For guarantees to mean anything on an application for provisional release they must be such as to ensure the presence of the Accused for trial.

²³ Trial Transcript, 1 September 2004, T32337.

²⁴ Note that a personal guarantee was one of the factors considered in the Ojdanić and others Appeals Chamber Decision, para. 6.

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35. The Trial Chamber in the *Ojdanić* case has held :

"The Trial Chamber is bound to evaluate the guarantees in light of the circumstances of this particular case as a whole and the personal circumstances of the Accused."²⁵

36. The position of this Accused may be contrasted with, for example, Accused Ojdanić who was released under guarantees provided by the authorities of Serbia and Serbia and Montenegro. Ojdanić, it will be recalled, surrendered voluntarily to the Tribunal's jurisdiction.²⁶ This Accused has refused to engage in many aspects of the proceedings, most notably the filing of written submissions. In this respect, his conduct may be contrasted with the Accused Ojdanić.²⁷

37. In the event that guarantees are provided by the Russian Federation, the Prosecution will argue that they do not provide sufficient assurance to the Trial Chamber that the authorities of the Russian Federation will arrest the Accused if he violates any of the conditions of his release.

38. The Prosecution makes the following provisional observations in support of this submission:²⁸

- 1) Vlastimir Djordjević, indicted for crimes committed against Kosovo Albanians in 1999, is, so the OTP believes, currently living in Russia. The Office of the Prosecutor has provided information as to his whereabouts to the authorities, but he has not been arrested.

²⁵ *Prosecutor v. Ojdanić*, Case No. IT-99-36-PT, Decision on General Ojdanić's Fourth Application for Provisional Release, 14 April 2005 ("Ojdanić Fourth Trial Chamber Decision"), para.14.

²⁶ *Ibid.*, para. 12.

²⁷ The Trial Chamber has held that Ojdanić has shown a generally cooperative disposition towards the Tribunal (for example, in his approach to the use of Rule 92 bis testimonies at trial and in not opposing the Prosecution's request that his trial be joined with that of four other Generals in *Prosecutor v. Pavković* and others, Case No. IT-03-70-PT), although this was not of such a degree as to merit the Trial Chamber attaching more than modest weight to it in its determination on the Accused's application for provisional release. (Ojdanić Fourth Trial Chamber Decision, para. 9).

²⁸ The matters which follow have broadly been the subject of a report to the Security Council: Prosecutor's Report to the Security Council dated 15 December 2005, set out in full in ICTY Press Release dated 15 December 2005.

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- 2) Djordjević is not the only accused who fled to Russia. Other Accused, including Gojko Janković, Vujadin Popović, and, most recently, on 13 September, Sređoje Lukić, were brought to The Hague from Russia but only with the assistance of the Serb and Bosnian Serb authorities. The OTP had alerted the Russian authorities to the presence of fugitives from the Tribunal's jurisdiction on their territory, and provided some details as to their whereabouts. Although the Russian authorities had informed the OTP that all checks on the whereabouts of named fugitives on their territory had produced negative results, the Accused persons were all located in Russia and approached by Serbian or RS authorities with a view to surrendering voluntarily. They were subsequently brought from Moscow to Belgrade, and from there to The Hague. The OTP also had clear information in regard to one of these Accused that he was taken care of or accompanied by someone from the Russian service FSB. The Russian authorities never confirmed any involvement in this.
- 3) Dragan Zelenović was another accused at large in Russia. The OTP had clear intelligence information about his location and wrote to the Russian authorities several times. The authorities always denied the presence of this Accused on their territory or were unable to locate him at the addresses provided by the OTP. The OTP had provided personal details, telephone numbers, false passport details, addresses in Khanty-Mansiysk and even finger prints for this Accused. Finally, on 22 August, the authorities arrested this Accused after a local district prosecutor acted upon an international arrest warrant. He has yet to be transferred to The Hague.
39. Zelenović is not as high level an accused as Slobodan Milošević. Given the difficulties in securing his arrest and transfer to The Hague, the Chamber cannot possibly be assured that the Russian authorities will be able, if willing, to arrest or transfer this Accused back to The Hague in the event that he breaches the conditions of his provisional release.
40. The Chamber will also be aware that the Accused's wife, brother and son are all reportedly now resident in the Russian Federation. The Accused's brother

works as a business person in Moscow, constantly appearing in the media in support of the Accused and being very critical of the Tribunal. His wife and son, according to reports from the authorities in Belgrade, are also resident in Russia. This has never been officially confirmed by authorities in the Russian Federation, and the Accused's brother has always refused to provide information on this issue.

Whether the accused will not pose a danger to any victim, witness or any other person

41. The Prosecution makes no submissions on this aspect of the application at this time.

V. Relief Sought

42. For the reasons outlined, the Prosecution requests that the Chamber, before considering the Defence application, orders:

- 1) that the Prosecution be given facilities for examination of the Accused by medical experts of its choosing together with appropriate access to all medical records held by UNDU;
- 2) that the Accused provide an updated witness list for the coming session forthwith;
- 3) that the Prosecution be given time to file a full Response to the Defence application once guarantees or further information in relation to this application are filed, or provided;²⁹
- 4) that any order for provisional release be stayed pending appeal.


 pp. Geoffrey Nice
 Principal Trial Attorney

Dated This 22nd Day of December 2005
 In The Hague
 The Netherlands

²⁹ Given the timing of the Defence application, and the rapid turnaround of this Response, the Prosecution reserves the right to provide further argument by way of a supplemental filing, if necessary.

Tab 5

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IN THE TRIAL CHAMBER

Case no. IT-02-54-T

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

Registrar: Mr. Hans Holthuis

Date filed: 22 December 2005

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**FIRST ADDENDUM TO ASSIGNED COUNSEL REQUEST
FOR PROVISIONAL RELEASE PURSUANT TO RULE 65
WITH CONFIDENTIAL ATTACHMENT D**

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

Introduction

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.¹
2. The Assigned Counsel file this Addendum in order to put the following supporting documentation before the Trial Chamber:
 - (i) An official translation of Dr. Shumiliana's curriculum vitae;²
 - (ii) An updated version of the table showing points of disagreement between Margarita Shumilina and NJM Aarts, accompanied by photographs 1-9, supplied by Dr. Shumilina.
3. This documentation is contained within confidential Attachment D.

Word Count: 1,293


Signed

Steven Kay QC

Gillian Higgins

The Hague

22 December 2005

 QC



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.

² An unofficial translation of Dr. Shumiliana's curriculum vitae is contained within Attachment A to the original application.

IT-02-54-T p.45730
IT-02-54-T 43997
D43997-D43981

CONFIDENTIAL ATTACHMENT D

IT-02-54-T p.45730
IT-02-54-T 43997
D43997-D43981

CONFIDENTIAL ATTACHMENT D

Official Translation of the Curriculum Vitae of Dr. Margarita Shumilina

Margarita Vladimirovna SHUMILINA, born 12 March 1960 in Moscow, of Russian nationality. Graduated from the *I.M. Sechenov* 1st Moscow Medical Institute. In 1989 began working at the *A.N. Bakulev* RAMN /Russian Academy of Medical Science/ Cardiovascular Surgical Research Centre. Doctor of medical science. Holds the position of Senior Research Fellow at the Clinical Diagnostic Department of the Institute of Coronary Surgery and Vascular Pathology at the *A.N. Bakulev* NTSSKh /Cardiovascular Surgical Research Centre/.

In 1997 she defended her qualifying thesis, "The Potential of Doppler Ultrasound and Duplex Scanning in the Diagnosis of Carotid Stenosis".

In 2002, she defended her doctoral thesis, "Disorders of the Cerebral Venous Circulation in Patients with Cardiovascular Pathology". She is the author of 115 publications. The subjects of her studies are the pathology of peripheral arteries and veins, research into the haemodynamics and pathologic physiology of the cerebrum, diagnostics and treatment methods.

Updated Table Showing Points of Disagreement Between Margarita Shumilina and NJM Aarts as of 22 December 2005

NB: Photographs 1-9 provided by Dr. Shumilina serve to illustrate her medical diagnosis. These photographs are appended to this updated table and were produced during the examination of the Accused on 4.11.05.

Issue	Dr. Shumilina Report : 4.11.05 (Angiologist) ³	Dr. Aarts Report: 6.12.05 (Neurological Radiologist) ⁴	Dr. Shumilina Report: 14.12.05 (Angiologist)	Dr. Shumilina (Explanation of treatment, dated 19.12.05)
Pathological disorder	Dr. Shumilina finds that the patient's cochleovestibular disorders are the result of "hypoplasia of the right vertebral artery (as the result of extravascular compression of the right vertebral artery near the ostium)" and the result of "stenosis or convoluition of the right internal carotid artery with stenosis of the septum." (See photographs 1-9). These are pathological disorders.	Dr. Aarts states that the findings do not point to a pathological condition.		

³ Angiologist: Specialist in the study of the anatomy of blood and lymph vascular systems, hemodynamics, diagnosis of the vascular pathology and treatment of the vascular pathology.

⁴ Neurological Radiologist: A neurologist is a medical doctor or osteopath who has trained in the diagnosis and treatment of nervous system disorders, including diseases of the brain, spinal cord, nerves, and muscles. Neurologists perform neurological examinations of the nerves of the head and neck; muscle strength and movement; balance, ambulation, and reflexes; and sensation, memory, speech, language, and other cognitive abilities.
A radiologist reads or interprets an image to pinpoint an injury, determine how serious the injury is or help detect abnormalities such as tumors.

Thoracic outlet compression syndrome ⁵	"The patient has a compression syndrome of the neuro-vascular bundle at the thoracic outlet"	"The MRI does not show the neck; therefore we cannot establish a thoracic outlet compression syndrome on the basis of the MRI."	"Thoracic outlet compression syndrome was diagnosed clinically with the use of ultrasonic dopplerography"	
Arterial sclerosis ⁶ - arteriosclerosis	"These vascular anomalies are seen as the result of long-term unregulated arterial hypertension (of more than 10 years), and arterial sclerosis is already present (resulting from long-term hypertension of more than five years)"	"The atherosclerosis is normal in view of the patient's age."	"Normally, the age of 64 is not identified with evident arteriosclerosis development. Arteriosclerosis is a natural development of long existing non-corrective arterial hypertension."	
Cerebral venous circulation and vertigo ⁷	"(5) From the patient's complaints (in addition to the noise mostly in the right ear and vertigo, there is a feeling of being weighed down, swelling in the head, and pressure on the eyes) it is clear that there is a disorder of the cerebral venous circulation."	"6. The MRI shows an image of both cerebral hemispheres which is normal for his age. There is no pathological atrophy. Leukoaraiosis is a term in CT/Computed Tomography/. There are no striking deviations in white matter."	"5) The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion."	

⁵ Thoracic Outlet Syndrome (TOS) is a group of distinct disorders producing signs and symptoms attributed to compression of nerves and blood vessels in the thoracic outlet region. Clinical signs and symptoms of TOS usually include pain in the neck and shoulder area and numbness and weakness in the arm/hand. (National Institute of Neurological Disorders and Stroke <http://www.ninds.nih.gov/disorders/thoracic/thoracic.htm>)

⁶ Arterial sclerosis - the thickening and loss of elasticity of arterial walls/Sclerosis of the arterial walls (Webster Medical Dictionary). Sclerosis - any pathological hardening or thickening of tissue. Synonyms: arteriosclerosis, coronary-artery disease, hardening of the arteries.

⁷ Arteriosclerosis -sclerosis intracranial arteries.

⁷ Cerebral circulation refers to the blood vessels, arteries and veins, carrying blood to and away from the brain, respectively.

Vertigo: An illusion of movement, either of the external world revolving around the individual or of the individual revolving in space. Vertigo may be associated with disorders of the inner ear, vestibular nerve, brainstem, and cerebral cortex. (From Adams et al., Principles of Neurology, 6th ed, pp300-1)

<p>Recommendations</p>	<p>"The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompensation of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and ethiopathogenic treatment in a specialised hospital."</p> <p>"The existing cochleovestibular disorder with the above vascular pathology might be the initial signs of more serious cerebral circulatory disorders."</p> <p>"The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompensation of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and ethiopathogenic treatment in a specialised hospital."</p>	<p>As I noted in my report, there is a "vascular loop" in the right medial opening of the internal auditory canal. In professional literature, this has been connected to a perceptible loss of hearing, not with tinnitus or vertigo."</p>	<p>"6) The irregular sulci dilation can't help indicating the moderate cerebral atrophy. Leucoarosis is diagnosed under MRI."</p> <p>"This vascular pathology is clinically evidence as a rule in patients complaints of head and ear noise, vertigo and headache, etc. Therefore, vascular factor of disease development in patient S. Milosevic can't be underestimated."</p>	<p>"First of all Mr. S. Milosevic needs additional and careful investigation, including: 1) complex ultrasonic of the vascular pathology, especially brachiocephal arteries and veins (extra-, intracranial parts) with functional tests; 2) echocardiography, stress- echocardiography; Holter-monitoring; Daily monitoring of the blood pressure.</p>
<p>Recommendations</p>	<p>"The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompensation of cerebral circulation, inadequate treatment and the necessity of additional tests (X-rays of the cervical spine with functional tests, assessment of blood rheology, triplex scan of the brachiocephalic arteries and veins, transcranial Doppler ultrasound and possibly angiography) and ethiopathogenic treatment in a specialised hospital."</p>	<p>No recommendations for treatment are made.</p>		

				<p>3) Estimation of the homeostasis. 4) investigation of the brachiocephal and coronary vessels with contrast media. 5) PEI (positron-emission imaging) of the brain and of the heart. We will select hypotensive therapy with correction of the cerebral hemodynamics including complex magnetotherapy. Endovascular or surgical decompression of the right vertebral artery, the stenting of brachiocephal or carotid arteries, carotid endarterectomy or even bypass surgery might be necessary to perform."</p>
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Photographs 1 - 9 Provided by Dr. Shumilina

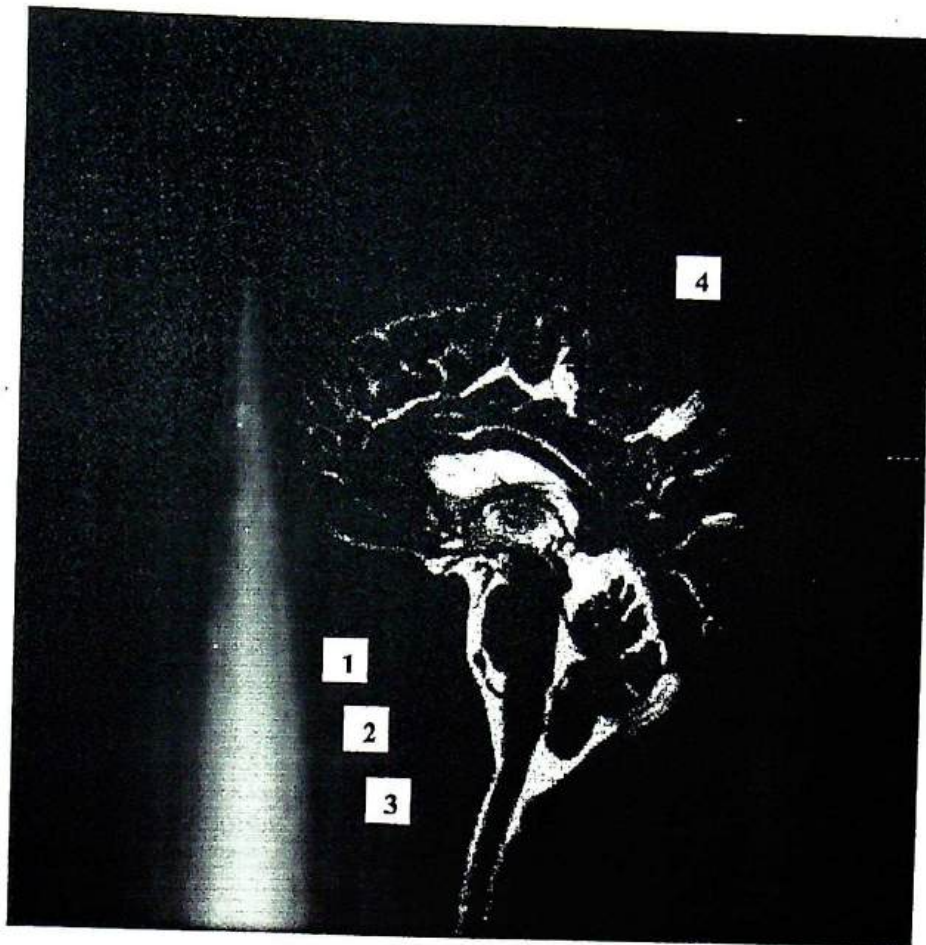


Photo 1. 1 - left vertebral artery, 2 - zone of stagnation, 3 - hypoplasia of the right vertebral artery, 4 - expansion of the furrows.

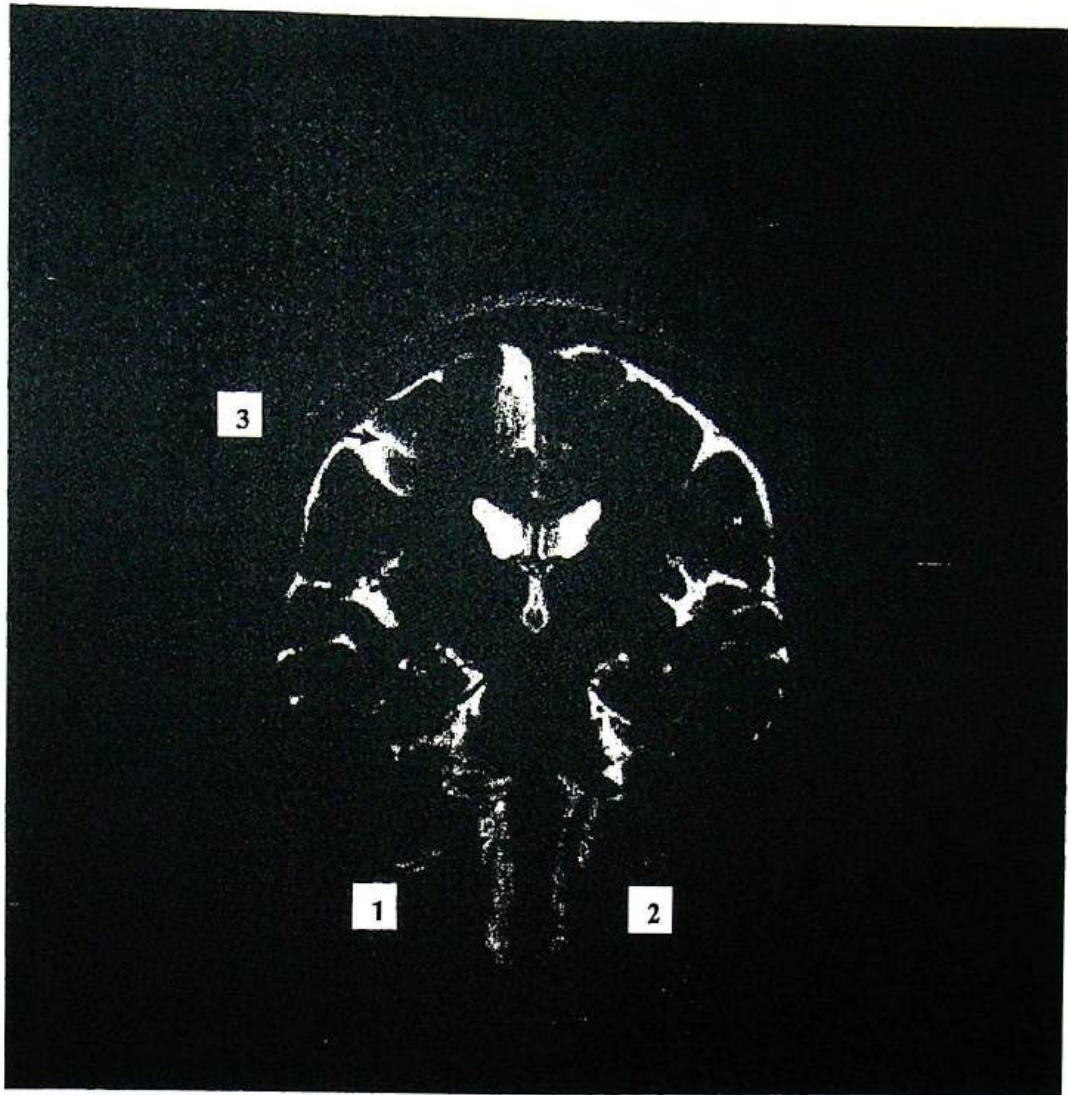


Photo 2. 1 - hypoplasia of the right vertebral artery, 2 - left vertebral artery,
3 - expansion of the furrows.

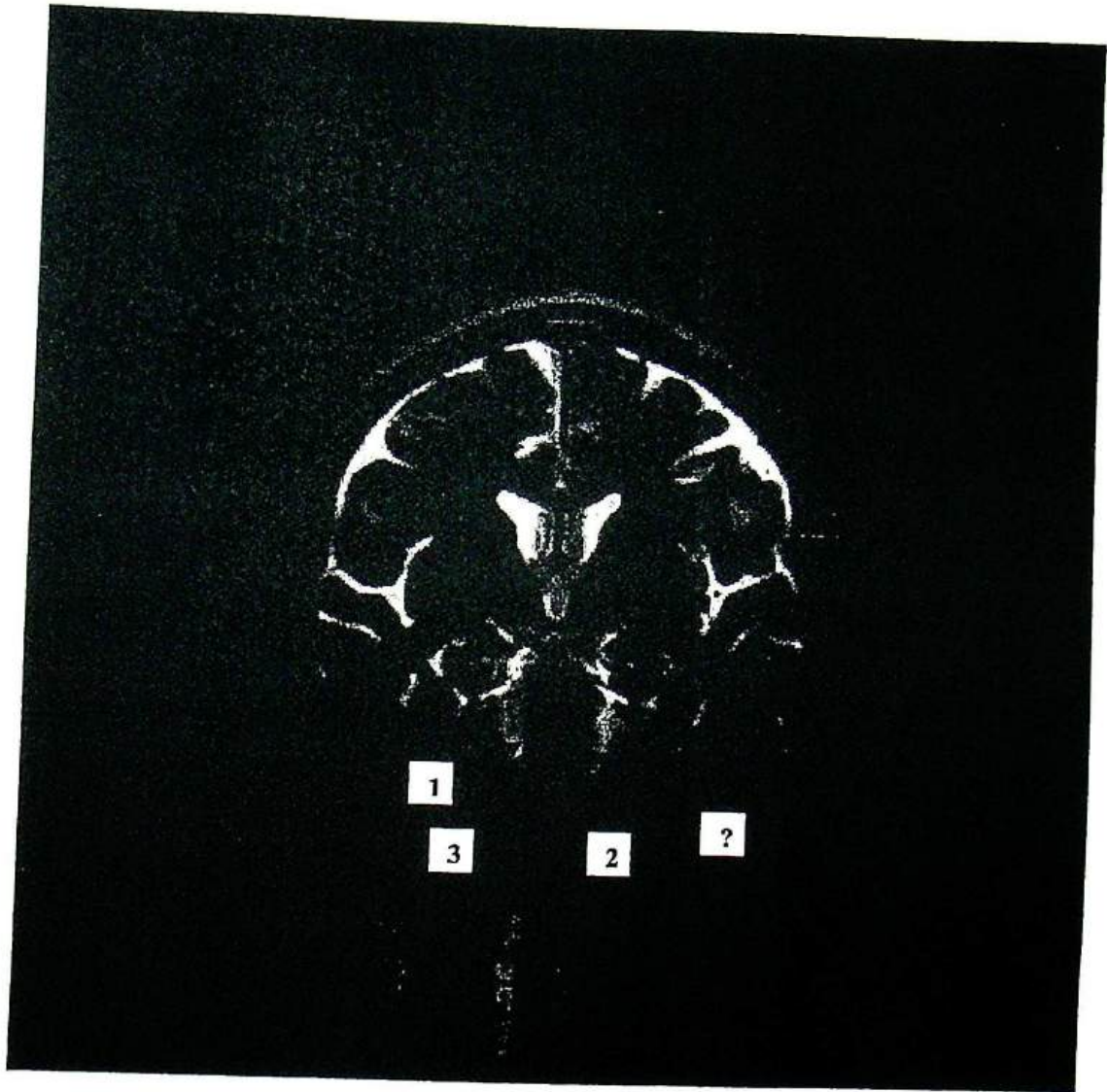


Photo 3. 1 - crook of a. Basilaris, 2 - left vertebral artery, 3 - zone of stagnation.

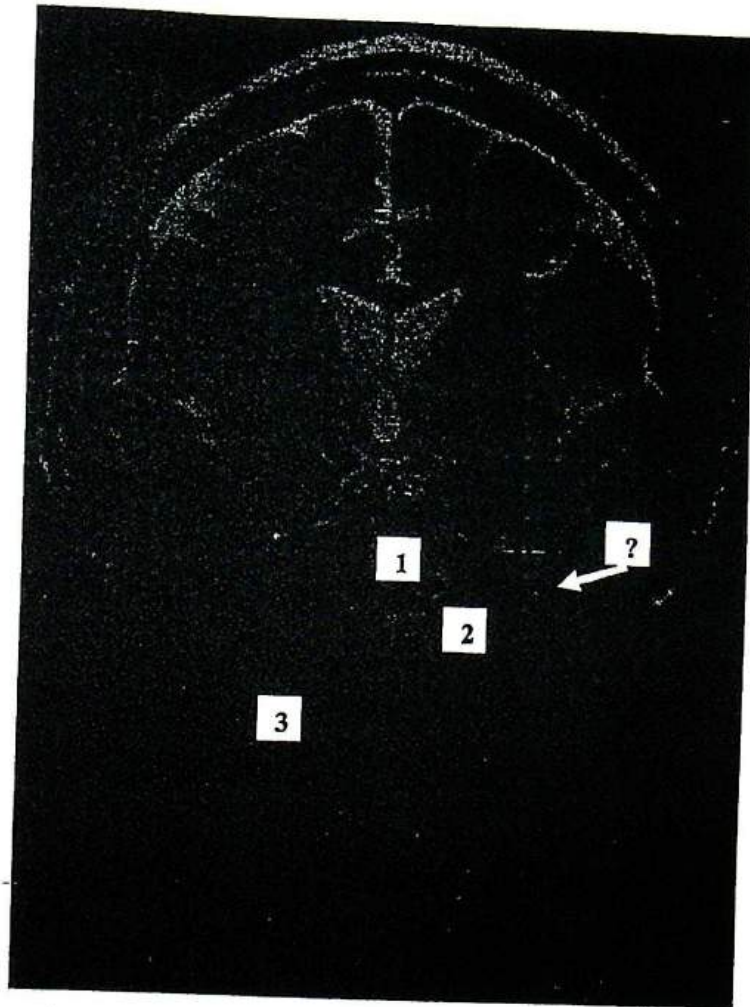


Photo 4. 1 - circulus a. Basilaris, 2 - left vertebral artery, 3 - zone of stagnatio.



Photo 5. 1 – hypoplasia of the right vertebral artery, 2 - left vertebral artery.

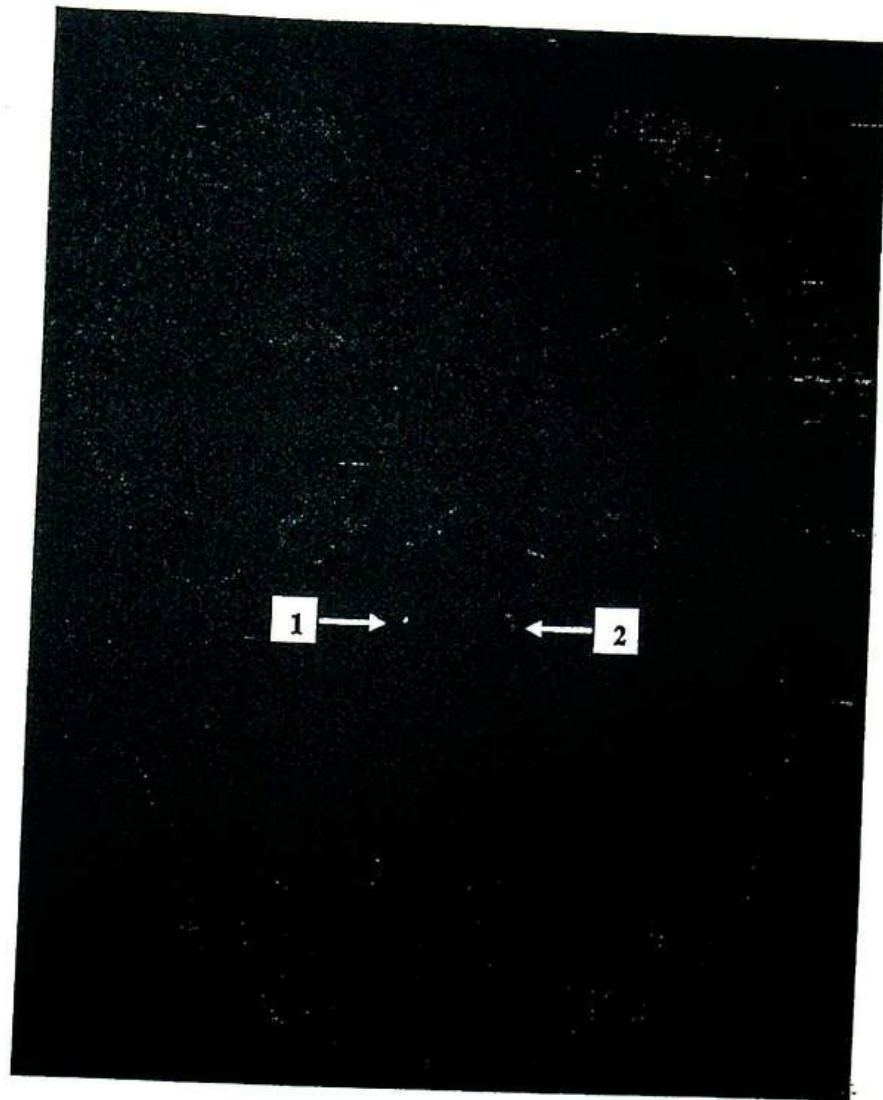


Photo 6. 1 - hypoplasia of the right vertebral artery, 2 - left vertebral artery.

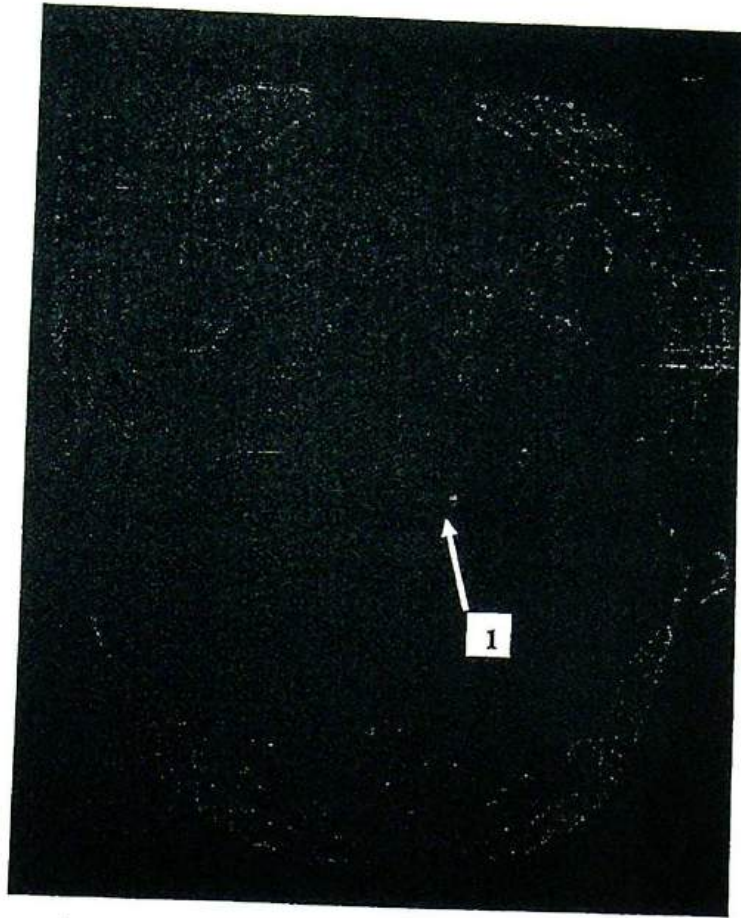


Photo 7. 1 – left vertebral artery (only).

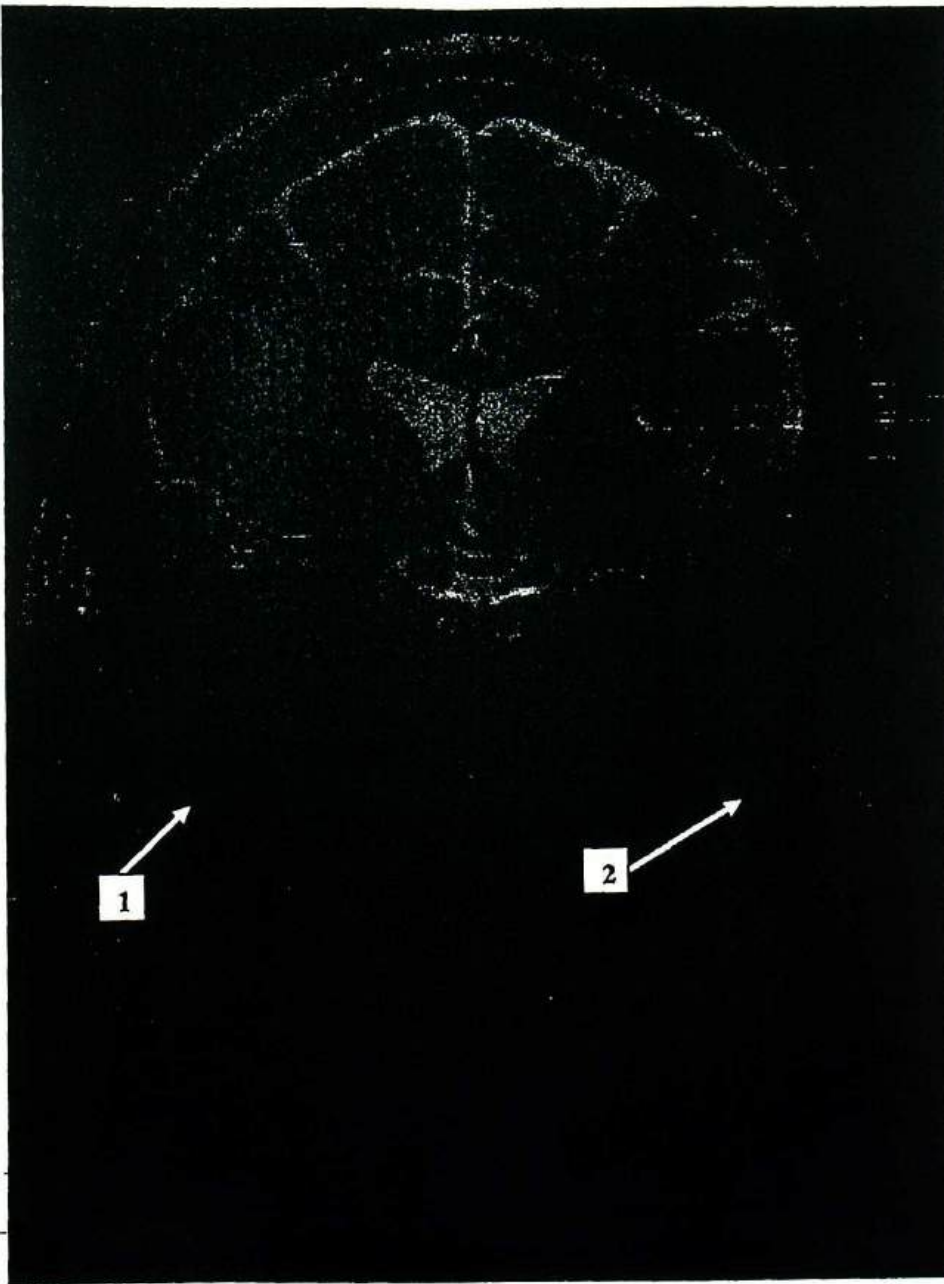


Photo 8.1. The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion.

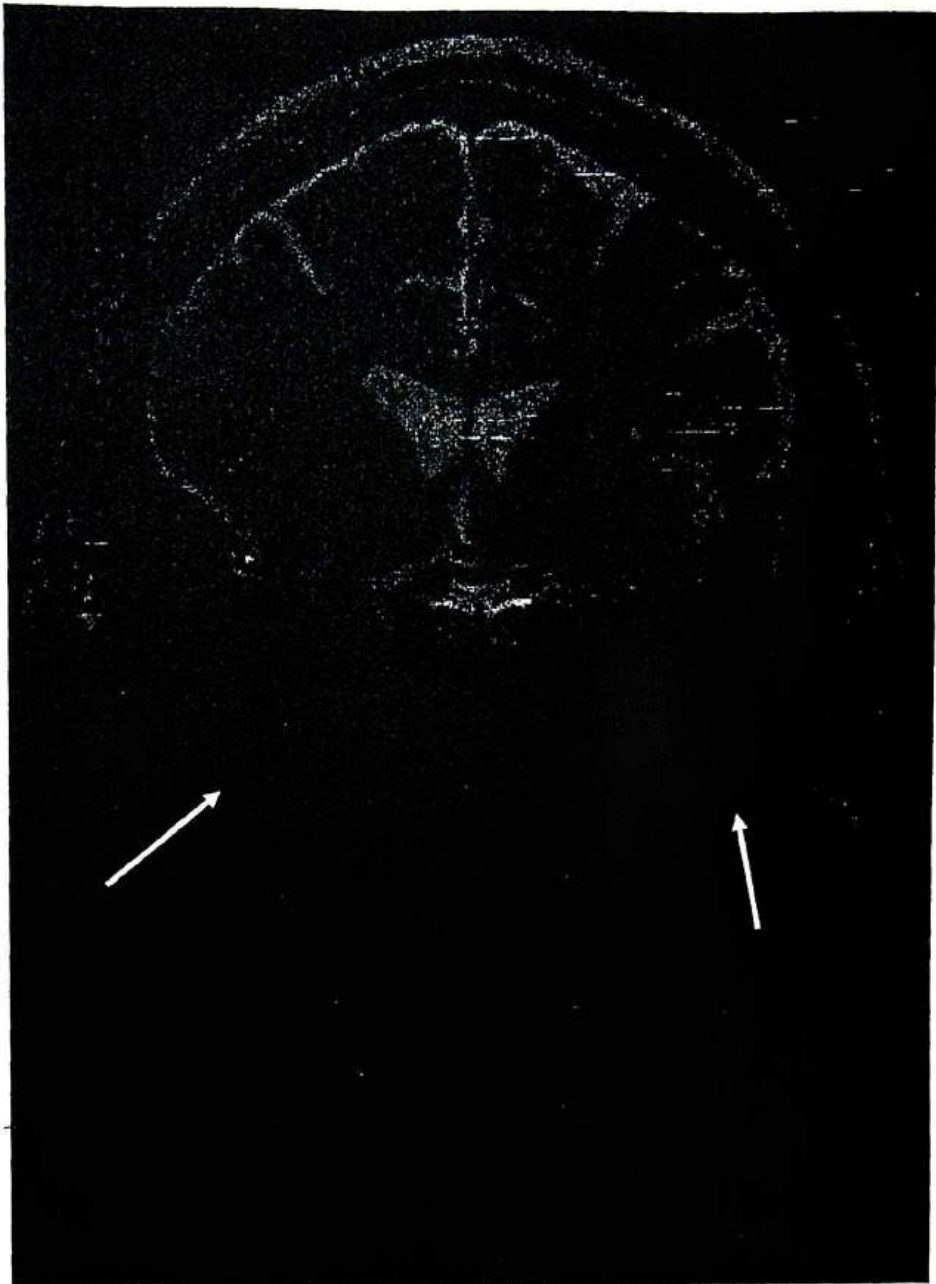


Photo 8.2. The reduction of MRI density in transverse sinus indicates the venous blood flow rate reduction that shows the existence of venous congestion.

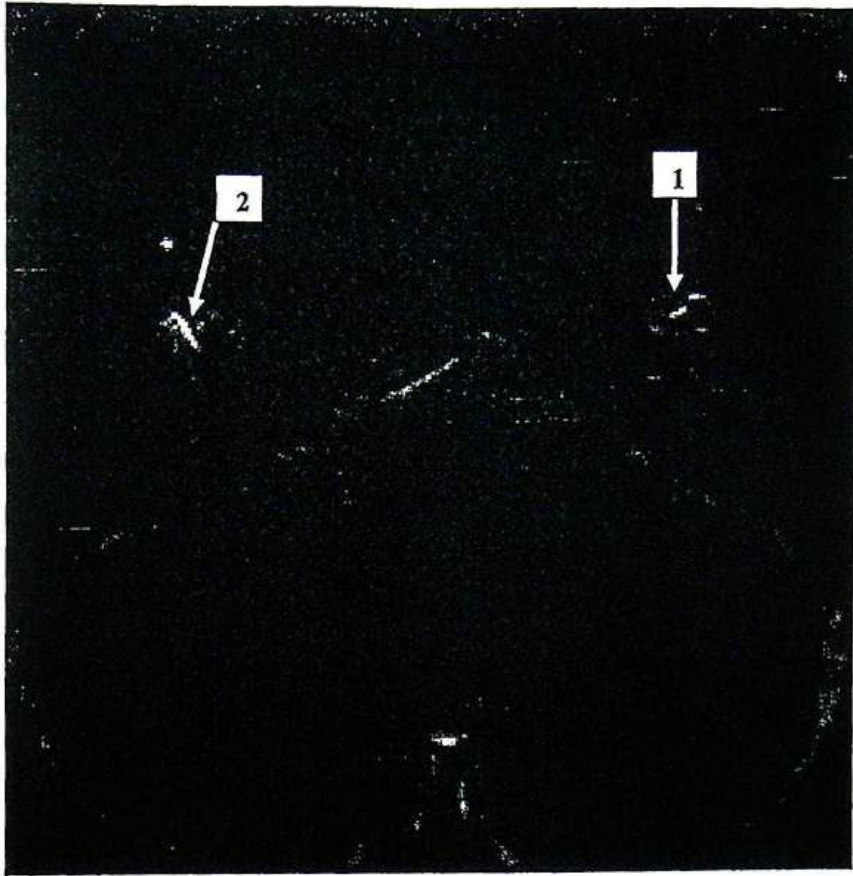


Photo 9. 1 -left internal carotid artery, 2- right internal carotid artery with stenosis (a post-stenotic dilation and a shift of the flow axis (due to turbulence)).

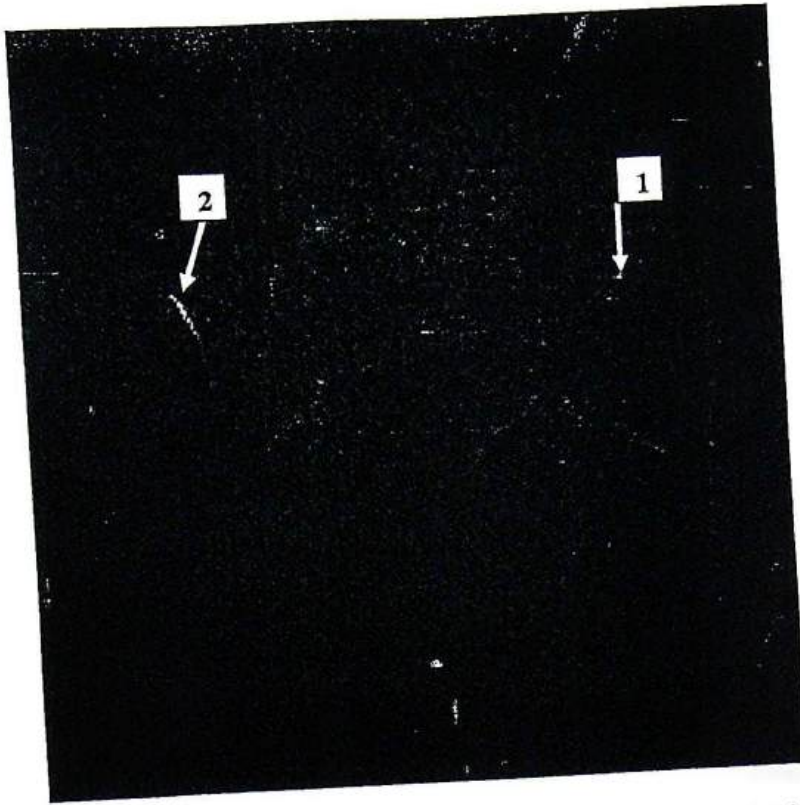


Photo 9.2. 1 -left internal carotid artery, 2- right internal carotid artery with stenosis.

Tab 6

UNITED
NATIONS

IT-02-54-T
044117/044115
11 January 2006

44117
SF



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-02-54-T
Date: 11 January 2006
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 11 January 2006

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

PRELIMINARY ORDER ON ASSIGNED COUNSEL REQUEST
FOR PROVISIONAL RELEASE FOR THE ACCUSED

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

44116

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 ("the International Tribunal"),

BEING SEIZED OF a "Assigned Counsel Request for Provisional Release Pursuant to Rule 65 With Confidential Attachments A, B and C", filed on 20 December 2005 ("Motion"), in which Assigned Counsel seek the provisional release of the Accused for medical treatment at a medical centre in the Russian Federation

NOTING the "First Addendum to Assigned Counsel Request for Provisional Release Pursuant to Rule 65 With Confidential Attachment D", filed by Assigned Counsel on 22 December 2005, and "Prosecution's Interim Response to Assigned Counsel Request for Provisional Release", filed by the Prosecution on 22 December 2005,

NOTING that in paragraph 19 of the Request, Assigned Counsel state that "Guarantees from the Russian Federation are in the process of being obtained and will be provided to the Trial Chamber as soon as they become available",

NOTING that no such guarantees have yet been received by the Trial Chamber,

CONSIDERING the importance of these guarantees to the determination of the Motion,

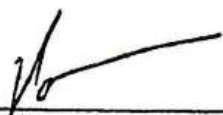
CONSIDERING that an application for provisional release should be determined as expeditiously as possible,

PURSUANT TO Rules 65 and 54 of the Rules of Procedure and Evidence of the International Tribunal

4415

HEREBY ORDERS the Defence to submit any further material, including the said guarantees, by 18 January 2006, whereafter it will proceed to a determination of the Motion.

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



Judge Robinson
Presiding

Dated this eleventh day of January 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

Tab 7

IT-02-54-AR65-1-p.37
IT-02-54-T
D44650-044679
18 JANUARY 2006
44650
JK

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.

*Second Addendum
will be
guarantees*
- (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.

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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 cooperate 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.

Word Count: 1327

Signed
Steven Kay QC
Gillian Higgins
The Hague
18 January 2006

Steven Kay QC

Gillian Higgins

IT-02-54-T
D44648-D44649

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CONFIDENTIAL ATTACHMENT E

~~IT-02-54-T~~~~IT-02-54-AR65.1 p.29~~

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No 4

The Embassy of the Russian Federation in the Kingdom of the Netherlands presents its compliments to the International Criminal Tribunal for the former Yugoslavia and has the honour to convey the following.

Taking into account the "Assigned Counsel Request for Provisional Release Pursuant to Rule 65 with Confidential Attachments A, B and C" filed on 20 December 2005; the written request of Mr. Branko Rakic (Legal Associate to Mr. Slobodan Milosevic) to the Ministry of Foreign Affairs of the Russian Federation on 21 December 2005; the "First Addendum to Assigned Counsel Request for Provisional Release Pursuant to Rule 65 With Confidential Attachment D" filed on 22 December 2005 and the "Prosecution's Interim Response to Assigned Counsel Request for Provisional Release" filed on 22 December 2005.

Noting the "Preliminary Order on Assigned Counsel Request for Provisional Release for the Accused" dated 11 January 2006.

Noting the provisions of Rule 65(A) and (B) of the Rules of Procedure and Evidence of the International Criminal Tribunal.

The Russian Federation provides the following guarantees:

- (i) To admit Mr. Slobodan Milosevic into the Russian Federation for the purpose of receiving medical treatment at the "Bakoulev Center" in Moscow, for the duration of such treatment and in accordance with the orders of the Trial Chamber.

**THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR THE FORMER YUGOSLAVIA**

The Hague

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(ii) To provide security for Mr. Slobodan Milosevic during his temporary stay in the Russian Federation at the "Bakoulev Center" in Moscow.

(iii) To abide by all conditions set by the Trial Chamber for the provisional release of Mr. Slobodan Milosevic in respect of his transit, arrival and stay in the Russian Federation for the purpose of medical treatment.

(iv) To abide by any order of the Trial Chamber varying the terms of provisional release.

(v) If required, to regularly submit written reports to the Trial Chamber concerning Mr. Slobodan Milosevic's compliance with the conditions set by the Trial Chamber.

(vi) To return Mr. Slobodan Milosevic to the custody of the International Tribunal at such time and on such date as ordered by the Trial Chamber.

The Russian Federation undertakes to facilitate all necessary communications with the ICTY and the Kingdom of the Netherlands in order to finalise all technical and financial issues relating to the transportation and medical treatment of Mr. Slobodan Milosevic.

The Embassy avails itself of this opportunity to renew to the International Criminal Tribunal for the former Yugoslavia the assurances of its highest consideration.

The Hague, "17" January 2006



CONFIDENTIAL ATTACHMENT F

~~IT-02-54-T~~

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PERSONAL UNDERTAKING


20 December 2005

I, Slobodan Milosevic undertake to abide by any conditions set by the ICTY in the event that I am provisionally released for treatment at the Bakoulev Center in Moscow.

I make this undertaking of my own free will and I understand the consequences of not abiding by an order of the Trial Chamber which have been explained to me by my Legal Associate, Mr. Branko Rakic.

If released, I undertake to return to the ICTY at such time and on such date as the Trial Chamber may order and to comply strictly with any further order of the Trial Chamber that may vary the terms of, or terminate, my provisional release. Further, if released, I undertake to reside within the confines of the Bakoulev Center at all times.

I will not discuss my case with anyone apart from my Legal Associates.


Slobodan Milosevic

Tab 8

IT-02-54-T
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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 Lipton Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Date Filed: 19 January 2006

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**PROSECUTION'S NOTICE OF INTENTION TO FILE
FURTHER RESPONSE TO ASSIGNED COUNSEL REQUEST FOR
PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Assigned Counsel:

Mr. Steven Kay
Ms. Gillian Higgins

The Accused:

Mr. Slobodan Milošević

Amicus Curiae:

Mr. Timothy McCormack

**The Government of the Russian
Federation**

44653

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

Case No. IT-02-54-T

**PROSECUTION'S NOTICE OF INTENTION TO FILE
FURTHER RESPONSE TO ASSIGNED COUNSEL REQUEST FOR
PROVISIONAL RELEASE**

1. On 20 December 2005, Assigned Counsel applied for provisional release of the Accused pursuant to Rule 65 of the Rules of Procedure and Evidence.¹
2. On 22 December 2005, the Prosecution filed the "Prosecution's Interim Response to Assigned Counsel Request for Provisional Release". On 22 December 2005, Assigned Counsel filed their "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 any guarantees from the Russian Federation by 18 January 2006.
4. On 18 January 2006, Assigned Counsel filed their "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


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¹ Assigned Counsel's Request for Provisional Release Pursuant to Rule 65 with Confidential Attachments A, B and C, 20 December 2005.

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Response to Assigned Counsel Request for Provisional Release with Confidential Attachments E and F².

5. The Prosecution now regards Assigned Counsel's application as complete and will file a further Response by close of business on 20 January 2006 dealing, as fully as the Prosecution is able, with the matters raised in the Response. The Prosecution notes that it will be unable in this limited time frame to assess and express any opinion about the sufficiency of the guarantees from the Russian Federation². The Prosecution further notes that its locus on this application remains unclear. It remains the position that the Prosecution has not obtained its own medical evidence to respond to the issues raised on behalf of the Accused on this application and is therefore not in a position fully and finally to address the medical issue as raised by Assigned Counsel.


Geoffrey Nice
Principal Trial Attorney

Dated This 19th Day of January 2006.
In The Hague
The Netherlands

² Sufficiency of a state guarantee is a matter for consideration by the Prosecutor herself rather than just by those conducting a trial, who do not have regular contact with states and their representatives. The Prosecutor's timetable and other commitments mean that she will not be available to consider these guarantees until tomorrow Friday 20th January at the earliest.

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Tab 9

IT-02-54-T
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20 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 Lipton Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Date Filed: 20 January 2006

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

CONFIDENTIAL
**PROSECUTION'S FURTHER INTERIM RESPONSE TO
ASSIGNED COUNSEL REQUEST FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Assigned Counsel:

Mr. Steven Kay
Ms. Gillian Higgins

The Accused:

Mr. Slobodan Milošević

Amicus Curiae

Mr. Timothy McCormack

**The Government of the Russian
Federation**

44682

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

Case No. IT-02-54-T

CONFIDENTIAL

**PROSECUTION'S FURTHER INTERIM RESPONSE TO
ASSIGNED COUNSEL REQUEST FOR PROVISIONAL RELEASE**

I. Introduction

1. On 20 December 2005, Assigned Counsel applied for provisional release of the Accused pursuant to Rule 65 of the Rules of Procedure and Evidence.¹
2. On 22 December 2005, the Prosecution filed the "Prosecution's Interim Response to Assigned Counsel Request for Provisional Release".² On 22 December 2005, Assigned Counsel filed their "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 any guarantees from the Russian Federation by 18 January 2006.
4. On 18 January 2006, Assigned Counsel filed their "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

¹ Assigned Counsel's Request for Provisional Release Pursuant to Rule 65 with Confidential Attachments A, B and C, 20 December 2005.

² "Interim Response dated 22 December 2005".

4467

Response to Assigned Counsel Request for Provisional Release with Confidential Attachments E and F'.

5. As indicated in its Notice of Intention to File Further Response filed yesterday, the Prosecution now regards Assigned Counsel's application as complete and makes this further filing in response to it, necessarily interim because it is in no position to deal with the medical issues at this stage. The Prosecution makes this further filing now in anticipation of the Trial Chamber making an early order on this application.
6. By their Addenda, Assigned Counsel have made available the following material which was not included in the original application for provisional release:
 - 1) At Confidential Attachment D, an official translation of Dr. Shumilina's curriculum vitae.
 - 2) Also at Confidential Attachment D, an updated version of the table annexed to the original motion at Confidential Annex C showing points of disagreement between Margarita Shumilina and NJM Aarts, incorporating recommendations made in Dr. Shumilina's fax to Assigned Counsel dated 19 December 2005 (attached to original application at Confidential Annex A) and photographs provided by Dr. Shumilina.
 - 3) At Confidential Attachment E, a set of guarantees from the Russian Federation dated 17 January 2006.
 - 4) At Confidential Attachment F, a personal undertaking signed by the Accused.
7. The Prosecution will set out some of the detail of the Accused's medical condition in the body of this filing, and therefore this Further Response is filed confidentially.
8. Further, the Prosecution submits that, in the event that the Trial Chamber may grant Assigned Counsel's application for provisional release of the Accused, an oral hearing is required so that the Russian Federation may have the

opportunity to be heard on this application.³ In this event, the Prosecution would seek to cross-examine any representative of the Federation called by the Accused so that the reliability and sufficiency of guarantees offered may be fully explored.

9. The Prosecution maintains its prior position on the medical issue, namely, that: (i) its locus is unclear; and (ii) further medical evidence is required now that the medical issue has become an adversarial one. Whilst the Prosecution may have received all (or most) medical reports which have been obtained in relation to the Accused's medical position, it remains the case that it has not had sight of all medical records held, for example, by UNDU or elsewhere.
10. The Prosecution remains of the position that, if it is to be in a position to address the medical issue properly, it will require facilities to allow examination of the Accused by its own medical experts and to obtain expert opinion on the medical evidence already before the court.⁴ Even so, out of an abundance of caution, the Prosecution makes such submissions as it is able in this further Response on the medical evidence currently before the Chamber.

II. Medical condition

11. The Prosecution repeats the matters raised in paragraphs 13 and following of the Interim Response.
12. Assigned Counsel rely principally in their application upon reports provided by medical practitioner Dr. Shumilina of the Bakoulev Scientific Centre for Cardiovascular Surgery in Moscow and upon a letter from the Head and Chairman of the Centre, L.A. Bockeria. Dr. Shumilina examined the Accused on 4 November 2005 and has provided conclusions/opinion/recommendations in two reports (Joint Opinion dated 4 November, Preliminary Conclusion dated 4 November), a letter dated 14 December 2005 and an email dated 19 December 2005. Dr. Bockeria relies upon reports from Dr. Shumilina and a

³ Further submissions on this issue are made in the paragraphs below.

⁴ The Prosecution has effectively been barred by the Chamber from relying upon its own medical evidence: See Transcript of Motion Hearing, 30 September 2003, T270330-27037, *inter alia*: "Judge May: We cannot have a party second guessing the Court's doctors. It's quite out of - quite out of all proportion and propriety.... Given that you have to accept it, is there any argument you would wish to put forward as to why the Court should follow that recommendation from a legal point of view and administrative point of view?" See Interim Response dated 22 December 2005, para. 15 and footnotes thereto.

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Professor Golukovha, who examined the Accused on 5 November 2003.⁵ Dr. Bockeria has not examined the Accused. As such, his letter, insofar as it purports to be a medical opinion on the Accused's condition, is of minimal, if any, evidential weight. Assigned Counsel submit, in summary, that the Accused reasonably requires treatment in Moscow because: (i) Doctors in The Netherlands have failed to diagnose and treat his present medical condition; (ii) The Accused trusts the medical specialists at the Bakoulev Scientific Centre (iii) one of whom, Dr. Shumilina, has diagnosed his current condition.

13. Dr. Shumilina now makes recommendations, set out in her email dated 19 December 2005 (at Confidential Annex A), that the Accused:

- 1) The Accused needs additional investigations, as set out in her email.
- 2) It "might be necessary" to perform certain specified treatment.

14. The Prosecution makes the following submissions in relation to Dr. Shumilina's evidence:

- 1) Dr. Shumilina makes recommendations as to diagnostic treatment.
- 2) She is not able to say with any degree of certainty what treatment may be required following diagnosis. At best, she opines that certain treatments may be necessary.
- 3) Dr. Shumilina has examined the Accused once -- on 4 November 2005. She felt able, after this examination, to recommend in a "Joint Opinion" that the Accused "should be prescribed a period of rest ... (for a) minimum period of 6 weeks"; and further that then it will be "possible to carry out the essential diagnostic procedures to adjust the treatment in the best possible way". (Parenthesis added)⁶
- 4) The recommendations contained in the Joint Opinion of which Dr. Shumilina was a signatory have been noted by the Trial Chamber, and medical evidence taken into account in the Trial Chamber's Order of

⁵ The Prosecution has not had sight of Professor Golukovha's report.

⁶ Joint Opinion on the Combined Medical Examination of Mr. Slobodan Milošević carried out on 4 November 2005, at Registry Filing Ref. 43195.

12 December 2005, whereby an adjournment was ordered to 23 January 2006.⁷

- 5) Dr. Shumilina does not anywhere state that the Accused is only able to undergo the diagnostic treatments recommended, or any other treatment, in the Bakoulev Scientific Centre. She merely says: "Bakoulev Scientific Center is one of the biggest hospitals for cardiovascular interventional and surgical activities."⁸
15. Dr. Bockeria's letter, it is submitted, loses the appearance of objectivity in its emotive style⁹ and is of minimal evidential value for the reasons stated above. He opines that the Bakoulev Scientific Center is "one of the leading and biggest hospitals in the world for diagnostic and treatment of cardiovascular diseases", but does not state that the centre is the only location at which the Accused can receive the diagnostic or other treatment that he apparently requires.
16. Furthermore, there is no indication on the material provided by Assigned Counsel that the Bakoulev Scientific Centre is in a position to provide any security to the Accused to prevent his absconding. Dr. Bockeria does not deal with the issue of security, and the Russian Federation has guaranteed only that it will "provide security for Mr. Slobodan Milosevic during his temporary stay in the Russian Federation at the "Bakoulev Center" in Moscow". It does not offer any guarantees as to what security may be provided at the centre. There is nothing in the materials filed by Assigned Counsel to suggest that the Accused will be held in a secure unit, or that the centre has facilities for holding detainees. In the event that the Trial Chamber were inclined to grant provisional release, the Prosecution would invite the Trial Chamber to require Dr. Bockeria's attendance in The Hague for cross-examination on the security measures available at the Bakoulev Centre.

⁷ Decision in Relation to Severance, Extension of Time and Rest, 12 December 2005 ("Decision dated 12 December 2005"), in particular paras. 4, 5, and 6. The Trial Chamber also considered on this application the medical report of Dr. Aarts dated 6 December 2005 and other court appointed specialists.

⁸ Email dated 19 December 2005, at Confidential Annex A.

⁹ For example, seventh paragraph: "... I consider that it is my physician's and human being duty to insist on immediate interruption lawsuit for the ministration to Slobodan Miloshevich (sic) high quality diagnostic..."; last paragraph: "Bakoulev Scientific Center and personally I are ready to take charge of inviting Slobodan Miloshevich (sic) and to do everything maximally possible for preventing him from cardiovascular catastrophe".

17. The application is made for provisional release on the grounds that the Accused's medical condition is deteriorating. On the cardiovascular condition, the Prosecution notes the following (unchallenged) matters:

- 1) The Accused himself "states that he does not feel any difference from before in his cardiac situation"⁽¹⁰⁾
- 2) The Accused "has no cardiac complaints whatsoever, in particular no chest pain or shortness of breath".¹¹

18. The Prosecution accepts that there is a difference in medical opinion, in particular between the Registry appointed neurological radiologist, Dr. Aarts,¹² whom the Chamber has relied upon¹³, and Dr. Shumilina. This is a matter at the moment for the Trial Chamber to consider. In the absence of its own evidence, the Prosecution is unable to fully address issues of difference in medical opinion.

19. In any event, there is no evidence on this application to support a conclusive finding as to:

- 1) What alternative treatment may be required, if any, for the cardiovascular or any other condition.
- 2) Any link between the Accused's hearing disorder and cardiovascular condition.
- 3) Any deterioration in the Accused's cardiovascular condition.
- 4) Any other pathology causing or having caused a deterioration in the Accused's health.

¹⁰ Noted in the report of Dr. van Dijkman dated 23 November 2005, at Registry Filing Ref. 43385-43382.

¹¹ Ibid. See also Accused's expert Leclercq in his report dated 4 November 2005 under heading "Cardiovascular history": "For several months now there have been no hypertensive episodes and the most incapacitating hearing complaints have not been associated with bouts of hypertension". (p. 1 of Report; at Registry Filing Ref. 43198-43196 (in English)).

¹² See his letter dated 6 December 2005, at Registry Filing Ref. 43507.

¹³ See Decision dated 12 December 2005, para. 4.

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III. Proportionality of relief sought

20. Interpretation of Rule 65 requires that the general principle of proportionality be taken into account.¹⁴ A measure in public international law is proportional only when it is (1) suitable, (2) necessary and when (3) its degree and scope remain in a reasonable relationship to the envisaged target.¹⁵
21. On this application, the relief sought (release to a medical centre in Moscow) is manifestly disproportionate to its target (an amelioration in the Accused's medical condition). There is no evidence to support a finding that treatment in Moscow as opposed to The Hague is necessary. There is no evidence to support a finding that the recommended diagnostic treatment, at the very least, may not be provided in The Hague, and that diagnoses may not be made, by the Accused's own medical experts if necessary, with the Accused in detention in The Hague. The application is manifestly unreasonable and made on insufficient evidence. There is, in particular, insufficient evidence to support a conclusion that the Accused's present treatment is anything other than appropriate.
22. Further, the Prosecution makes the following observation: The Accused has, in the past, been known not to avail himself of the treatment prescribed in respect of his cardiovascular condition. Were he to be released to Moscow, neither the Prosecution nor the Chamber, through its Registry appointed specialists, would be in a position to monitor the Accused such as to ensure that he was availing himself of the treatment prescribed, and not declining treatment to the point where he cannot return.¹⁶

IV. Oral Hearing on Guarantees

23. Rule 65 (B) provides that the host country must have the opportunity to be heard before a Trial Chamber grants provisional release.

¹⁴ *Prosecutor v. Fatmir Limaj and others*, Case No. IT-03-66-AR65, Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003, para. 13; and Assigned Counsel Request for Provisional Release, para.7.

¹⁵ *Ibid.*

¹⁶ Example: See Report of Dr. van Dijkman dated 18 August 2004, Registry Filing Ref. 37642-43 at p.37641: "... there must be serious doubt over the patient's adherence to his therapy."

24. It is submitted that whilst the Trial Chamber may *deny* provisional release without consulting the Russian Federation, it must have heard from the Russian Federation in the event that it grants provisional release on this application.¹⁷
25. If the Chamber is not satisfied that the Accused has satisfied the burden of proving that the preconditions for release under Rule 65 are met, or further that provisional release to Moscow is proportionate in the circumstances, then, the Prosecution submits, there is no rule that requires the Trial Chamber to hold a hearing on this application.
26. In the event that the Trial Chamber may seek to rely upon guarantees provided by the Russian Federation in granting provisional release, then the Prosecution submits that an oral hearing is required. The Prosecution will seek to cross-examine such representative of the Russian Federation as Assigned Counsel may call to support the application, and further will seek to secure the attendance of Dr. Bockeria for cross-examination on the security measures in place at the Bakoulev Scientific Centre.

V. Reliability of guarantees

27. The Prosecution has previously made submissions on the reliability of the guarantees offered by the Russian Federation.¹⁸ It repeats and relies upon these matters, adding the following:

- 1) Press coverage since the filing of guarantees by the Russian Federation supports a view that in the event that the Accused is released to the Federation he will not return to The Hague.¹⁹

¹⁷ Authority for this proposition may be found in the following: *Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-AR65.1, App. Ch., Decision of Interlocutory Appeal from Trial Chamber Decision Denying Savo Todović's Application for Provisional Release, 7 October 2005, para. 26; *Prosecutor v. Nsengimana*, Case No. ICTR-01-69-AR65, App. Ch., Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release, 23 August 2005, p. 4; *Prosecutor v. Popović*, Case No. IT-02-57-AR65.1, App. Ch., Decision on Interlocutory Appeal from Trial Chamber Decision Denying Vujadin Popović's Application for Provisional Release, 28 October 2005, para. 11; *Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-AR65.1, App. Ch., Decision of Interlocutory Appeal from Trial Chamber Decision Denying Savo Todović's Application for Provisional Release, 7 October 2005, para. 29.

¹⁸ Interim Response dated 22 December 2005, paras. 33 and following.

¹⁹ See article on English website for Russian daily newspaper Kommersant, wherein it is stated, in particular: "But it seems that the former ruler of the Balkans may stay in Moscow forever... there is a strong lobby that pushes for granting "a medical shelter" to the former president of former Yugoslavia.

2) In any event, the Russian Federation is unable to, and does not provide guarantees as to the security systems in place at the centre to which Assigned Counsel seek release of the Accused.

28. The Prosecution repeats its submission that the guarantees provided by the Russian Federation do not provide sufficient assurance to the Trial Chamber that the authorities of the Russian Federation will arrest the Accused if he violates any of the conditions of his release.²⁰


29. The Prosecution notes that the Accused now offers a personal guarantee. It is submitted that a guarantee from an Accused who does not recognise the legitimacy of this Tribunal cannot possibly be found by the Chamber to be credible.²¹ Defiance of the Tribunal may be seen by some in Serbia and in the Russian Federation to be an heroic act. That is the environment in which this specious undertaking is given.

VI. Relief Sought

30. In all the circumstances, the Prosecution repeats its request for the relief sought in the Interim Response, and in particular an Order that:

Any order for provisional release be stayed by the Trial Chamber pursuant to Rule 65(E) of the Rules of Procedure and Evidence on the basis that the Prosecutor intends to appeal any decision granting provisional release.

Word Count: 2,365


Carla Del Ponte
The Prosecutor



Dated This 20th Day of January 2006.
In The Hague
The Netherlands

This lobby is said to have inspired the State Duma to pass December 9 a special resolution on Milosevic and the Hague tribunal, which calls for the mercy to the seriously ill man. So the question is not in rendering some medical help to the former president. Once Milosevic arrives in Russia, he will hardly leave the country, as his health may become worse or he may categorically deny going back to prejudiced judges." Extract from www.kommersant.com attached at Annex A hereto.

²⁰ See, in particular, paras. 37 and 38 of the Interim Response dated 22 December 2005, and footnote 28.

²¹ Further see submissions in Interim Response dated 22 December 2005, paras. 28-32.

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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**




THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

Case No. IT-02-54-T

CONFIDENTIAL
ANNEX A TO
PROSECUTION'S FURTHER INTERIM RESPONSE TO
ASSIGNED COUNSEL REQUEST FOR PROVISIONAL RELEASE

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The Hague Patient

January 18, 2008 could become a vital day for former Yugoslav president Slobodan Milosevic, as exactly today the Hague tribunal is expected to decide on giving the go-ahead for his Moscow tour. The tribunal is likely to permit Milosevic to enter a cardiovascular hospital in Moscow provided Russia guarantees his return to the Hague. But it seems the former ruler of the Balkans may stay in Moscow forever.

In the Kremlin, they are not unanimous when it comes to inviting Milosevic, who is charged with genocide and other war crimes in the Balkans. Any and all medical background notwithstanding, this decision is rather political and implies the far-reaching consequences, said sources close to the Kremlin community.

Still, there is a strong lobby that pushes for granting "a medical shelter" to the former president of former Yugoslavia. This lobby is said to have inspired the State Duma to pass December 9 a special resolution on Milosevic and the Hague tribunal, which calls for the mercy to the seriously ill man.

So, the question is not in rendering some medical help to the former president. Once Milosevic arrives in Russia, he will hardly leave the country, as his health may become worse or he may categorically deny going back to prejudiced judges.

by www.kommersant.com

All the Article in Russian as of Jan. 18, 2008