

IT-95-14/2-T
09651-09645
14 SEPTEMBER 1999

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UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-95-14/2-T
Date: 14 September 1999
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of: 14 September 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

CONFIDENTIAL

**ORDER ON MOTION OF THE ACCUSED
MARIO ČERKEZ FOR PROVISIONAL RELEASE**

The Office of the Prosecutor

Mr. Geoffrey Nice
Ms. Susan Somers
Mr. Patrick Lopez-Terres
Mr. Kenneth Scott

Counsel for the Accused

Mr. Mitko Naumovski, Mr. Turner Smith Jr., Mr. Ksenija Turković, Mr. Rober A. Stein,
Mr. Stephen M. Sayers, Mr. David F. Geneson, and Mr. Leo Andreis, for Dario Kordić
Mr. Božadir Kovačić and Mr. Goran Mikuličić for Mario Čerkez

TRIAL CHAMBER III of the International Criminal Tribunal for the former Yugoslavia (“International Tribunal”),

BEING SEIZED of the motion of the accused Mario Čerkez, filed 2 September 1999 (“the Motion”), requesting temporary provisional release from detention to visit his father who is in a critical condition in a hospital in Split, Croatia,

NOTING that the Clinical Hospital Split has issued a certificate on 2 September 1999 confirming that the condition of his father is life-threatening and the prognosis is uncertain,

HAVING INFORMED the representative of the Kingdom of the Netherlands and having obtained their consent,

NOTING the response of the Prosecution filed 6 September 1999, in which the Prosecution argues that the accused has not shown exceptional circumstances within the meaning of Rule 65 of the Rules of Procedure and Evidence,

NOTING that in a letter to the Registrar dated 6 September 1999, the Embassy of the Republic of Croatia in the Kingdom of the Netherlands guarantees on behalf of Croatia that the accused Mario Cerkez, “if he is granted provisional release by the Trial Chamber, shall be held under the control of the relevant authorities of the Republic of Croatia and shall be immediately detained should he attempt to escape from the locality where he shall reside or should he in any other way breach the terms and conditions of his provisional release as set out by the Trial Chamber”; the Republic of Croatia in paragraph 5 of said letter has agreed to any conditions which the Trial Chamber may impose,

NOTING FURTHER that on 14 September 1999, the Republic of Croatia has agreed to guarantee compliance with the conditions for the provisional release of the accused listed in Annex A,

NOTING that, in the Motion, Defence counsel for the accused gives his “assurances that, if released, Mr. Čerkez will return to detention within a time that the Trial Chamber may deem appropriate”,

NOTING that on 14 September 1999 the accused Mario Čerkez has undertaken and agreed to comply fully with the conditions for his provisional release listed in Annex B,

NOTING the arguments of the parties and the representative for the Republic of Croatia heard on 13 September 1999,

CONSIDERING that the accused Mario Čerkez voluntarily surrendered to the International Tribunal on 10 October 1997,

CONSIDERING that the combination of the aforementioned grounds and their cumulative effect, in the particular circumstances of this case, are capable of amounting to exceptional circumstances warranting provisional release for at least a limited period of time, and that humanitarian aspects weigh in favour of granting this Motion,

CONSIDERING further that in the light of the undertaking provided by Mario Čerkez the Trial Chamber is satisfied that he will keep his word and re-appear for trial,

CONSIDERING ALSO that the Trial Chamber considers that the accused is not likely to pose a danger to any victim, witness or other person; as far as the Trial Chamber is aware none of the Prosecution witnesses live in Split,

FOR THE FOREGOING REASONS GRANTS THE MOTION AND ORDERS:

1. Prior to his provisional release, the accused shall be taken to Schiphol airport on Friday, 17 September 1999, by the Dutch authorities who are hereby requested to transport him to and from Schiphol airport.
2. The accused shall be provisionally released into the custody of a designated Croatian official at Schiphol airport and accompanied by that official for the duration of the flight.
3. The period of provisional release shall commence when the accused is released into the custody of the designated Croatian official on Friday, 17 September 1999 and shall terminate upon his return to the Dutch authorities which shall be no later than Monday, 20 September 1999 at 2 p.m. subject only to flight delays.
4. On his return flight the accused shall again be accompanied by a designated Croatian official who shall hand the accused over to the Dutch authorities at Schiphol airport, who shall then transport

him to the UN Detention Unit.

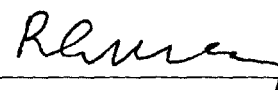
5. The accused shall abide by, and the Croatian authorities shall guarantee compliance with the following conditions:

- a) The accused shall remain within the confines of the municipality of Split;
- b) The accused shall be under the constant, 24-hour, surveillance of the Croatian police;
- c) The accused shall surrender his passport to the Croatian police in Split;
- d) The accused shall report once a day to the local police who will maintain a log and file a written report with the International Tribunal confirming his presence each day;
- e) The accused shall not have any contact whatsoever nor in any way interfere with any persons who have testified or who may testify at his trial;
- f) The accused shall not have any contact in any manner whatsoever with persons other than his relatives and close friends;
- g) The accused shall not discuss the case with anyone;
- h) The accused consents to the trial continuing in his absence;
- i) The accused shall assume responsibility for all expenses regarding transport from The Hague to Split and back;
- j) The accused shall be immediately detained should he attempt to escape from the locality where he shall reside, or should he in any other way breach the terms and conditions of his provisional release as set out by the Trial Chamber.

6. The Trial Chamber requests the authorities of all States through whose territory the accused may travel:

- a) to hold him in custody for any time he will spend in transit at the airport; and
- b) to arrest him and detain him pending his return to the UN Detention Unit, should he attempt to escape.

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



Richard May
Presiding Judge

Dated this fourteenth day of September 1999
At The Hague
The Netherlands

[Seal of the Tribunal]

IT-95-14/2-T

9667

ANNEX A

Embassy of the Republic of Croatia in the Netherlands
Amaliastraat 16, NL-2514 JC Den Haag
 tel (int+3170) 362-3638, fax 362-3195

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NV 99/0/05-JM

The Embassy of the Republic of Croatia presents its compliments to the Registrar of the International Criminal Tribunal for the Former Yugoslavia and has the honour to inform the Registrar that the Republic of Croatia formally guarantees the observance of relevant conditions relating to the provisional release of Mr. Mario Čerkez, as listed in the letter that has been forwarded to the Embassy by Mrs. Yvonne M.O. Featherstone, Senior Legal Officer on 13 September 1999. The copy of the above mentioned letter is attached to this note.

The Embassy of the Republic of Croatia avails itself of the opportunity to express to the Registrar of the International Criminal Tribunal for the Former Yugoslavia the assurances of its highest consideration.

The Hague, 13 September 1999



Mrs. Dorothee de Sampayo Garrido-Nijgh
 Registrar
 International Criminal Tribunal for Former Yugoslavia
 The Hague

President/Chambers	
Prosecutor/DTP	
Registrar	✓
Deputy Registrar	
Chief Investigations	
CAO	
Legal Support	
JSS/Defence Counsel	
JSS/Defention	
JSS/VWU	
Budget & Finance	
ESSC	
GS/BMS/Proc./Travel	
Language Section	
Personnel	
Press & Information	
Security	

**CONDITIONS TO BE FULFILLED BY THE RELEVANT AUTHORITIES OF THE
REPUBLIC OF CROATIA RELATING TO THE PROVISIONAL RELEASE OF THE
ACCUSED MARIO ČERKEZ**

The relevant authorities of the Republic of Croatia guarantee that the accused Mario Čerkez shall be held under their control and hereby guarantee compliance with the following conditions:

- a) The accused shall remain within the confines of the municipality of Split,
- b) The accused shall be under the constant, 24-hour surveillance of the Croatian police,
- c) The accused shall surrender his passport to the Croatian police in Split,
- d) The accused shall report once a day to the local police who will maintain a log and file a written report with the International Tribunal confirming his presence each day,
- e) The accused shall not have any contact whatsoever nor in any way interfere with any persons who have testified or who may testify at his trial,
- f) The accused shall not have any contact in any manner whatsoever with persons other than his relatives and close friends,
- g) The accused shall not discuss the case with anyone,
- h) The accused consents to the trial continuing in his absence,
- i) The accused shall assume responsibility for all expenses regarding transport from The Hague to Split and back,
- j) The accused shall be immediately detained should he attempt to escape from the locality where he shall reside, or should he in any other way breach the terms and conditions of his provisional release as set out by the Trial Chamber.

ANNEX B IT-95-14/2-T

9645

**CONDITIONS TO BE FULFILLED BY THE ACCUSED MARIO ČERKEZ
RELATING TO HIS PROVISIONAL RELEASE**

The accused Mario Čerkez hereby undertakes and agrees to comply fully with the following conditions:

- a) The accused shall remain within the confines of the municipality of Split;
- b) The accused shall be under the constant, 24-hour surveillance of the Croatian police;
- c) The accused shall surrender his passport to the Croatian police in Split;
- d) The accused shall report once a day to the local police who will maintain a log and file a written report with the International Tribunal confirming his presence each day;
- e) The accused shall not have any contact whatsoever nor in any way interfere with any persons who have testified or who may testify at his trial;
- f) The accused shall not have any contact in any manner whatsoever with persons other than his relatives and close friends;
- g) The accused shall not discuss the case with anyone;
- h) The accused consents to the trial continuing in his absence;
- i) The accused shall assume responsibility for all expenses regarding transport from The Hague to Split and back;
- j) The accused shall be immediately detained should he attempt to escape from the locality where he shall reside, or should he in any other way breach the terms and conditions of his provisional release as set out by the Trial Chamber;
- k) The accused shall return to the United Nations Detention Unit no later than Monday, 20 September 1999 at _____.

11¹⁰ 14.9.99.

Mario Čerkez