



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: 25 July 2000

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:** 25 July 2000

**PROSECUTOR**

v.

**DARIO KORDIĆ  
MARIO ČERKEZ**

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**ORDER RELEASING CONFIDENTIAL DECISION  
OF THE TRIAL CHAMBER**

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**The Office of the Prosecutor:**

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

**Defence Counsel:**

Mr. Mitko Naumovski and Mr. Stephen M. Sayers, for Dario Kordić  
Mr. Božidar Kovačić and Mr. Goran Mikuličić, for Mario Čerkez

**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** its confidential “Order on Application by Dario Kordić for Provisional Release Pursuant to Rule 65” issued by the Trial Chamber on 17 December 1999 (“the Order”), in which the Trial Chamber denied a motion seeking provisional release filed by the accused, Dario Kordić, on 6 December 1999 (“the Motion”),

**NOTING** that the Order was issued, and the Motion preceding it was filed, on a confidential basis at the request of the Defence for Dario Kordić, due to the personal nature of the matters set out in the Motion,

**CONSIDERING** that there is no reason for the Order to remain confidential,

**PURSUANT TO** Rule 81 of the Rules of Procedure and Evidence of the International Tribunal,

**HEREBY LIFTS** the confidential status of the Order, a copy of which is attached hereto.

The Motion shall remain confidential.

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



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Richard May  
Presiding

Dated this twenty-fifth day of July 2000  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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: 17 December 1999  
Original: English

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~~17 DECEMBER 1999~~

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Order of:** 17 December 1999

**PROSECUTOR**

v.

**DARIO KORDIĆ  
MARIO ČERKEZ**

***CONFIDENTIAL***

**ORDER ON APPLICATION BY DARIO KORDIĆ FOR  
PROVISIONAL RELEASE PURSUANT TO RULE 65**

**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. Robert 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

**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

**BEING SEISED** of the “Application for Provisional Release Pursuant to Rule 65”, filed on behalf of the accused Dario Kordić (“the accused”) on 6 December 1999 (“the Application”), requesting provisional release from detention subject to certain conditions as set out in the Application,

**NOTING** the “Prosecutor’s Skeleton Argument in Response to Kordić and Čerkez’s Applications for Provisional Release Pursuant to Rule 65 of 6 and 7 December 1999, Respectively”, filed by the Office of the Prosecutor (“Prosecution”) on 9 December 1999,

**HAVING HEARD** the oral arguments of the parties on 9 December 1999,

**NOTING** the arguments of the accused, *inter alia*, that

- (i) The recent amendment to Sub-rule 65(B) of the Rules of Procedure and Evidence of the International Tribunal (the “Rules”), which removes the requirement that the accused demonstrate exceptional circumstances before provisional release may be ordered by a Trial Chamber, represents an acknowledgement by the International Tribunal that release should be the norm, and detention the exception;
- (ii) The accused voluntarily surrendered himself to the custody of the International Tribunal, that since his surrender, he has been co-operative and that he has never caused disciplinary or other problems whilst in detention at the United Nations Detention Unit in The Hague;
- (iii) He has now been in custody for twenty-six months, and his trial, which commenced in April 1999, is not likely to conclude before the summer of the year 2000;
- (iv) He is entitled to be released until he is proved guilty beyond a reasonable doubt;
- (v) His release will endanger no one and he can give assurances to the Trial Chamber for his reappearance;
- (vi) If his provisional release is granted:
  - (a) when the court is not in session, he will undertake to reside either in Zagreb, Croatia, where he will report to the Zagreb police daily, or he will remain at his liberty in The Hague. He will undertake not to enter the Republic of Bosnia and Herzegovina at any time;

- (b) when the court is in session, he will return for trial, but he will remain at his liberty in The Hague;
- (vii) Alternatively, the accused seeks conditional release at all times when the court is not in session, excluding weekends;
- (viii) If for any reason the accused fails to appear for trial, he consents to the trial continuing in his absence;
- (ix) The Trial Chamber should grant the accused's application for provisional release under the terms and conditions it deems appropriate,

**NOTING** the arguments of the Prosecution, *inter alia*, that

- (i) The recent amendment to Sub-rule 65(B) of the Rules, which removes the requirement of "exceptional circumstances", does not affect the remaining requirements under that provision, namely that before granting an application for provisional release, the Trial Chamber must be satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. These requirements should be strictly interpreted in view of the unique circumstances in which the International Tribunal operates (including the gravity of the offences over which the International Tribunal has jurisdiction and the lack of an effective enforcement authority);
- (ii) In a previous joint motion for provisional release,<sup>1</sup> the accused failed to provide sufficient guarantees that he would appear for trial and that he would not interfere with witnesses or victims, and he has not offered any new arguments to satisfy these requirements;
- (iii) The accused did not surrender voluntarily, but in response to international pressure brought to bear against the Croatian state, indeed the accused was living at liberty in Croatia for over two years after the initial indictment was confirmed and publicised;
- (iv) As the presentation of the Prosecution's evidence in the case against the accused is nearly completed, the accused is well aware of the nature and breadth of the charges against him. The gravity of the offences and the severity of the sentences that may be imposed if the accused is convicted, may well provide him with an incentive not to return to meet the charges;
- (v) The fact that the accused has received detailed information about witnesses who have testified and those who have yet to testify in this case, increases the risk of potential interference with those witnesses, and provisional release of the accused might discourage further witnesses from testifying at trial;

<sup>1</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-PT, "Joint Defence Motion for Release", 9 Feb. 1999.

- (vi) If the accused was released on a provisional basis to Croatia there is no substantial guarantee he would return to the International Tribunal, nor any proof that the government of Croatia would implement the conditions proposed by the accused, as the case has a bearing on high-ranking Croatian officials who may have an interest in preventing the continuation of the trial, or in interfering with potential victims or witnesses;
- (vii) As the accused has failed to establish any of the conditions for provisional release under Sub-rule 65(B), the Application should be rejected,

**HAVING CONSIDERED** all of the arguments of the parties,

**NOTING** the recent amendment to Sub-rule 65(B)<sup>2</sup> removing the requirement that exceptional circumstances be shown before an order for provisional release may be made,

**CONSIDERING** that, while Sub-rule 65(B), as amended, no longer requires an accused to demonstrate exceptional circumstances before release may be ordered, this amendment does not affect the remaining requirements under that provision, namely that a Trial Chamber may order release “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,”

**CONSIDERING** therefore that the effect of the amendment is not to establish release as the norm and detention as the exception, and that a determination as to whether release is to be granted must be made in the light of the particular circumstances of each case, and only if the Trial Chamber is satisfied that the accused “will appear for trial and, if released, will not pose a danger to any victim, witness or other person,”

**CONSIDERING** that the application for provisional release has been made during the course of the trial, the Prosecution has not yet closed its case, and that generally it would be inappropriate to grant provisional release during trial because, *inter alia*, release could disrupt the remaining course of the trial,

**CONSIDERING** that the accused is charged with the gravest offences under international humanitarian law,

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<sup>2</sup> This amendment entered into force on 7 December 1999, pursuant to IT/161, “Amendment to the Rules of Procedure and Evidence”, 30 November 1999.

**CONSIDERING** that the Trial Chamber is not satisfied on the basis of the Application that the accused, if released, will continue to appear for trial,

**CONSIDERING** that the Trial Chamber is not satisfied that the accused, if released, will not pose a danger to any victim, witness or other person,

**CONSIDERING** that there is some dispute as to the circumstances under which the accused surrendered voluntarily, but that in any event, voluntary surrender is only one of several factors of which account should be taken in the determination of an application for provisional release,

**HEREBY DENIES THE APPLICATION.**

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

*Richard May*

Richard May  
Presiding Judge

Dated this seventeenth day of December 1999  
At The Hague  
The Netherlands

[Seal of the Tribunal]