

UNITED
NATIONS

IT-02-53-AR65
A5-1/110 bis
28 MAY 2002

5/110 bis
bj



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: IT-02-53-AR65

Date: 28 May 2002

Original: French

IN THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding
Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Theodor Meron

Registrar: Mr Hans Holthuis

Decision of: 28 May 2002

PROSECUTOR

v

Vidoje BLAGOJEVIĆ
Dragan OBRENOVIĆ
Dragan JOKIĆ

**DECISION ON APPLICATION BY DRAGAN JOKIĆ
FOR PROVISIONAL RELEASE**

Counsel for the Prosecutor:

Mr Norman Farrell
Mr Peter McCloskey

Counsel for the Applicant:

Mr Miodrag Stojanović and Ms Cynthia Sinatra for Dragan Jokić

THE APPEALS 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,

NOTING the “Decision on Application by Dragan Jokić for Leave to Appeal”, dated 18 April 2002 (“Leave Decision”), whereby a Bench of the Appeals Chamber granted leave to appeal the “Decision on Request for Provisional Release of Accused Jokić”, dated 28 March 2002, which rejected the Applicant’s motion for provisional release;

NOTING the “Dragan Jokić’s Appeal of Trial Chambers [*sic*] Denial of Request for Provisional Release”, dated 3 May 2002;

NOTING the “Prosecution Response to Interlocutory Appeal by Dragan Jokić”, filed on 13 May 2002, whereby the Prosecution argues (i) that the Trial Chamber did not find a guarantee by a state to be a prerequisite for provisional release, (ii) that its finding that the Republika Srpska is not a state was not legally erroneous, and (iii) that the Trial Chamber’s consideration of the non-state character of the Republika Srpska in relation to the sufficiency of the guarantee given may have constituted an abuse of discretion to the extent that the decision can be interpreted as deciding the application solely on the basis of this factor;

NOTING the reasons upon which leave was granted by the Bench;¹

CONSIDERING in particular that the Bench held that pursuant to Rule 65(C) of the Rules of Procedure and Evidence (“Rules”) the production of a guarantee from the relevant governmental body is advisable but not a prerequisite for provisional release, and that a guarantee provided by the Republika Srpska is valid although not necessarily sufficient in every case;

CONSIDERING that the Appeals Chamber concurs with and re-iterates what the Bench has stated in the Leave Decision;

REJECTING the Prosecution’s arguments: (i) that the Trial Chamber did not find a guarantee by a state to be a prerequisite for provisional release and (ii) that the definition of “state” in Rule 2 of the Rules, so far as it concerns Republika Srpska, is no longer applicable;

¹ Leave Decision, pars 2-10.

FINDING that, for the reasons given in the Leave Decision, the Trial Chamber erred in law when refusing the application for provisional release thereby rendering its decision invalid;

CONSIDERING that the conditions which are required for the release of the accused pursuant to Rule 65(C) have been met in the present case;

NOTING that counsel for the Appellant requested the opportunity to put oral arguments before the Appeals Chamber;

CONSIDERING that, as the appeal is to be allowed on the basis of the written briefs, no good cause for further oral arguments from the Appellant has been established;

HEREBY GRANTS the appeal and **ORDERS** that the Appellant be provisionally released under the following terms and conditions:

1. The accused shall be transported to Schiphol airport in the Netherlands by the Dutch authorities.
2. At Schiphol airport, the accused shall be provisionally released into the custody of the designated officials of the of the Government of Bosnia and Herzegovina ("BiH") (whose names shall be provided in advance to the Trial Chamber and Registry) and who shall accompany the Accused for the remainder of their travel to BiH and to his respective place of residence.
3. On his return flight, the accused shall be accompanied by a designated official of BiH (or by such other designated officials as the Trial Chamber may order or accept) who shall deliver the accused into the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by the Trial Chamber; the Dutch authorities shall then transport the accused back to the United Nations Detention Unit;
4. During the period of his provisional release, the accused shall abide by the following conditions, and the authorities of the Republika Srpska shall ensure compliance with such conditions:
 - a) Within 3 days of his arrival, to report the address where the accused will be staying to the Registrar of the Tribunal and to indicate any change of address to the Registrar within 3 days of such change;

- b) To surrender his passport to the International Police Task Force (IPTF) in Sarajevo or to the Office of the Prosecutor in Sarajevo;
- c) To reside within the area of Zvornik and not to leave this area without notifying the IPTF in advance;
- d) To report every week to the local police of Zvornik;
- e) To consent to having the IPTF check with local police about his presence and to the making of occasional, un-announced visits by the IPTF to the accused;
- f) Not to have any contacts with any other co-accused in the case;
- g) Not to have any direct contacts or in anyway interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
- h) Not to seek direct access to documents or archives;
- i) Not to discuss his case with anyone, including the media, other than his counsel and immediate members of his family;
- j) Not to occupy any official position;
- k) To report to the Registrar of the Tribunal, within 3 days of the start of employment, the position occupied, as well as the name and address of the employer;
- l) To comply strictly with any requirements of the authorities of the BiH and Republika Srpska necessary to enable them to comply with their obligations under the present decision for provisional release;
- m) To return to the Tribunal at such time and on such date as the Trial Chamber may order;
- n) To comply strictly with any order of the Trial Chamber varying the terms of, or terminating, the provisional release of the accused;
- o) To assume responsibility for all expenses concerning transport from Schiphol to Zvornik and back.

REQUIRES the Government of the Republika Srpska to assume responsibility for:

- a) The personal security and safety of the accused while on provisional release;

- b) Reporting immediately to the Registrar of the Tribunal the substance of any threats to the security of the accused, including full reports of investigations related to such threats;
- c) Facilitating, at the request of the Trial Chamber or of the parties, all means of co-operation and communication between the parties and ensuring the confidentiality of any such communication;
- d) Submitting a written report to the Registrar of the Tribunal every month as to the presence of the accused and his compliance with the terms of the present decision;
- e) Immediately detaining the accused should he breach any of the terms and conditions of his provisional release and reporting immediately any such breach to the Registry and the Trial Chamber;
- f) Respecting the primacy of the Tribunal in relation to any existing or future proceedings in BiH or Republika Srpska concerning the accused;

INSTRUCTS the Registrar of the Tribunal to consult with the Dutch authorities, and the authorities of BiH and Republika Srpska as to the practical arrangements for the provisional release of the accused.

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

Dated this 28th day of May 2002,
At The Hague,
The Netherlands.

[signed]

Judge Claude Jorda
Presiding Judge

[Seal of the Tribunal]