

IT-01-47-PT
D4257-D4254
25 July 2002

4257 KB

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-01-47-PT

Date: 25 July 2002

Original: English

IN TRIAL CHAMBER II

**Before: Judge Wolfgang Schomburg, Presiding
Judge Florence Ndpele Mwachande Mumba
Judge Carmel Agius**

Registrar: Mr. Hans Holthuis

Decision of: 25 July 2002

PROSECUTOR

v

**ENVER HADŽIHASANOVIĆ
MEHMED ALAGIĆ
AMIR KUBURA**

**DECISION ON MOTION FOR CHANGE
OF PROVISIONAL RELEASE CONDITIONS**

The Office of the Prosecutor:

Mr. Ekkehard Withopf

Counsel for accused:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Ms. Vasvija Vidović and Mr. John Jones for Mehmed Alagić
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura

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 (“Tribunal”),

BEING SEISED of the “Motion for Change of Provisional Release Conditions” (“Motion”) filed confidentially in-part, on 16 July 2002, in which Enver Hadžihasanović (“Accused”) seeks a change in the terms and conditions of his provisional release, as detailed in the Decision Granting Provisional Release to Enver Hadžihasanović, 19 December 2001 (“Provisional Release Decision”) at paragraph 4,

NOTING that at the Status Conference held on 18 July 2002, the Office of the Prosecutor (“Prosecution”) stated that it did not object to this Motion,

NOTING that the Motion seeks that paragraph 4(c) of the Provisional Release Decision, which requires that the accused “remain within the confines of Sarajevo”, be varied in order for the Accused to travel to the towns of Tuzla and Kakanj to visit family members, and to Zenica to assist his counsel in the preparation of his case by showing various areas mentioned in the Amended Indictment where violations are alleged to have occurred to his counsel,

NOTING that the Accused detailed the personal circumstances, including medical circumstances, for various relatives living in Tuzla and Kakanj that make it difficult or impossible for these persons to visit him in Sarajevo, as well as the fact that his mother is buried in Tuzla and that he would like to be able to visit her grave-site,

NOTING that the Motion indicates that the purpose of his presence in Zenica would be to “help with the interpretation and explanation of the situation as it unfolded in 1993”,

NOTING FURTHER that the Statement by the Accused attached as “Enclosure I” to the Motion discusses only that part of the Motion dealing with a variation of the terms and conditions of provisional release in order to visit family members,

NOTING that the Defence proposed the following terms and conditions for the variation of the terms of provisional release: (a) notify the Prosecution three days prior to the commencement of any trip away from Sarajevo (except in exceptional circumstances when due to an emergency the notification shall be one day), and to inform the Prosecution of the destination, duration and general purpose of each trip; (b) family visits will be subject to a maximum of two trips per month to

Kakanj, and two trips per month to Tuzla, with a maximum of 72 hours per trip, including travel time; (c) trips devoted to the preparation of the defence case will be subject to a maximum of 120 hours (5 days) per month, including travel time, for which the Accused shall be accompanied by Defence Counsel throughout; (d) all other conditions to remain as set out in the [Provisional Release] Decision; and (e) the Accused would abide by any other conditions imposed by the Trial Chamber, including *inter alia* reporting to the police while away from Sarajevo,

NOTING that the Defence submit that the Accused is “only” charged pursuant to Article 7(3) of the Statute of the Tribunal under the doctrine of command responsibility and that the “Accused does not know the victims and the victims don’t know him”,

NOTING the “Decision on Request for Pre-Trial Provisional Release” issued by Trial Chamber III on 13 December 2001, in the case of *Prosecutor v. Sefer Halilović* in which the accused in that case was granted provisional release conditional upon his remaining “within the confines of the Federation of Bosnia and Herzegovina”,

RECALLING that the Trial Chamber may impose such conditions of provisional release “as it may deem appropriate” on a case by case basis, under Rule 65 of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

CONSIDERING the variation of terms and conditions proposed by the Defence, and that the Prosecution had discussed the terms and conditions for the variation of protective measures with the Defence prior to the filing of the Motion and raised no objections to the Motion,

CONSIDERING that the Accused has complied with all terms and conditions of his provisional release, as evinced by the reports filed by the Government of Bosnia and Herzegovina each month with the Trial Chamber,

CONSIDERING FURTHER that the Accused has stated his intention to continue to comply with all terms and conditions for provisional release imposed by the Trial Chamber, including *inter alia* to return to the Tribunal at such time and on such date as the Trial Chamber may order, not to have any contacts whatsoever or in anyway interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice, not to discuss his case with anyone including the media, other than his counsel and immediate members of his family, and to comply strictly with any requirements of the authorities of Bosnia and Herzegovina to enable them to comply with their obligations under the order for provisional release and their guarantees,

CONSIDERING HOWEVER that the request by the Accused to conduct site-visits “in the interests of trial preparation” for purposes including “to help with the interpretation” could lead to a violation of Order 4(i) of the Provisional Release Decision, which states that the Accused is “[n]ot to discuss his case with anyone, including the media, other than his counsel and immediate members of his family”,

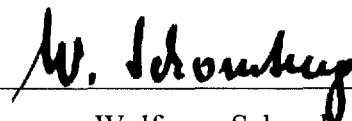
RECOGNISING that all accused enjoy the right “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” under Article 21(4)(b) of the Statute of the Tribunal and that the Accused enjoys such a right under the current terms of his provisional release,

CONSIDERING that the Trial Chamber determined the present terms and conditions for provisional release after having heard the parties and balancing the Accused’s right to respect for his family life with the need to safeguard the integrity of the proceedings, and does not consider that the circumstances cited herein warrant a variation of such terms and conditions,

PURSUANT TO Rule 54 and Rule 65 of the Rules,

HEREBY DENIES the Motion.

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



Wolfgang Schomburg
Presiding Judge

Dated this twenty-fifth day of July 2002,
At The Hague
The Netherlands

[Seal of the Tribunal]