

IT-01-47-PT
D4263-D4259
25 July 2002

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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-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 OF AMIR KUBURA TO VARY
THE CONDITIONS OF HIS PROVISIONAL RELEASE**

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 of Amir Kubura to Vary the Conditions of his Provisional Release” (“Motion”) filed confidentially in-part, on 16 July 2002, in which Amir Kubura (“Accused”) seeks a change in the terms and conditions of his provisional release, as detailed in the Decision Granting Provisional Release to Amir Kubura, 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 Kakanj to visit his mother, and to “other Cantons of the Federation of Bosnia and Herzegovina” 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 health condition of his mother living in Kakanj that makes it impossible for her to visit him in Sarajevo, and attached an affidavit from his mother and a medical report of her doctor to the Motion to that effect,

NOTING that the Motion indicates that the purpose of the Accused’s presence in other Cantons in the Federation of Bosnia and Herzegovina would be “for the proper preparation of his case” and would “entail site visits, familiarising Counsel with the terrain and locations that form the subject matter of the indictment and introducing counsel to persons who may assist in the Accused’s defence”,

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, 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,

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 that the request to extend the area over which the Accused can travel in order to visit his mother, living currently under health conditions specified above, can be characterised as a request on humanitarian grounds not violating the terms and conditions of the Provisional Release Decision, and specifically Order 4(g), due to the concrete and exceptional circumstances of the request,

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 to carry out “investigative work” including “introducing counsel to persons who may assist in the Accused’s defence” 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, other than those to visit his mother, warrant a variation of such terms and conditions,

PURSUANT TO Rule 54 and Rule 65 of the Rules,

HEREBY GRANTS the Motion **IN PART**, and

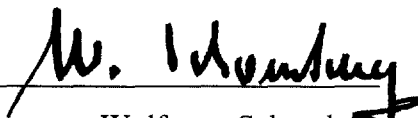
ORDERS that the continued provisional release of Amir Kubura be conditional upon his continued compliance with the terms and conditions of the Provisional Release Decision, which remain in effect with the exception of 4(c), which is hereby varied to read:

“To remain within the confines of Sarajevo, or travel to the town of Kakanj to visit his mother, pursuant to the following terms and conditions:

- (a) the Accused, after consultation with the Prosecution, shall notify the Registrar three days prior to the commencement of any trip to Kakanj; and

(b) Such family visits shall be subject to a maximum of one trip per month, for a maximum of one day, with the Accused returning to Sarajevo the same day.

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]