



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-00-41-PT

Date: 2 August 2002

Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Amin El Mahdi  
Judge Alphons Orie

**Registrar:** Mr. Hans Holthuis

**Decision of:** 2 August 2002

**THE PROSECUTOR**

**v.**

**PAŠKO LJUBIČIĆ**

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**DECISION ON THE DEFENCE MOTION FOR THE PROVISIONAL RELEASE OF  
THE ACCUSED**

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**The Office of the Prosecutor:**  
Mr. Mark Harmon

**Defence Counsel:**  
Mr. Tomislav Jonjić

**TRIAL CHAMBER I** (the “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 “Tribunal”);

**BEING SEISED OF** the “Defence Motion for the Provisional Release of the Accused,” filed by counsel for the accused Paško Ljubičić (the “Defence” and the “Accused” respectively) on 15 April 2002 (the “Motion”), to which is appended a letter from the Deputy Prime Minister of the Government of the Republic of Croatia, dated 28 March 2002 (the “Guarantee”);

**NOTING** the “Decision on the Prosecution Request for Extension of Time in which to File Response to Application for Provisional Release,” issued on 29 April 2002 and in which the Trial Chamber granted a request by the Prosecution for an extension of time<sup>1</sup> and ordered it to file its response to the Motion by 17 May 2002, with the Defence to file a reply (if any) to the response within seven days of it being filed;

**NOTING** the “Prosecution’s Response to Application for Provisional Release,” filed on 17 May 2002 (the “Prosecution Response”), to which is appended a letter from the Deputy Prime Minister of the Government of the Republic of Croatia, dated 14 May 2002 (the “Letter to the Prosecution”) and an order rendered by the County Court in Zagreb, Croatia, dated 15 November 2001;

**NOTING** the “Defence Reply to Prosecutor’s Response to Application for the Provisional Released,” filed on 24 May 2002 (the “Reply”);

**NOTING** the “Defence Motion Requesting the Hearing of the Representative of the Government of the Republic of Croatia in order to decide on the Motion for Provisional Release,” filed on 29 May 2002;

**NOTING** the letter dated 7 June 2002, filed on behalf of the Government of the Netherlands on 13 June 2002, in which it is stated *inter alia* that, limited to the practical consequences relating

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<sup>1</sup> “Prosecution Request for Extension of Time in which to file Response to Application for Provisional Release,” filed on 26 April 2002.

to provisional release, the Netherlands, as host country, does not object; that it understands that if released, the Accused will leave Dutch territory;

**NOTING** the “Order for Hearing on Motion for Provisional Release,” issued on 21 June 2002 and in which the Trial Chamber: fixed an oral hearing on the Motion for 1 July 2002; requested the presence of the Accused; stated that an authorised representative of the Republic of Croatia may appear before the Trial Chamber and that this representative shall participate in the hearing as and when deemed appropriate by the Trial Chamber;

**NOTING** the arguments of the parties which were heard on 1 July 2002 (the “Oral Hearing”); that a representative from the Republic of Croatia did not attend the hearing; that the Chamber heard from the Prosecution, the Defence and the Accused; that at the conclusion of the hearing, the Chamber requested the Defence and the Prosecution to “submit to [it] the amendment of the Rules of the Criminal Procedures in Croatia as a reference to this effect<sup>2</sup>”;

**NOTING** the “Filing of Amendments to Criminal Procedure Act of Croatia,” filed by the Prosecution on 5 July 2002 and the “Defence Filing of Amendments to Criminal Procedure Act of the Republic of Croatia,” filed on 8 July 2002; that in the latter filing, the Defence also put forward additional arguments on the merits of the Motion; that, in the circumstances of this case, in particular as to the allegation that the Accused evaded arrest for a certain period of time and had a false identity, the Chamber will consider them in reaching its decision;

**NOTING** the “Prosecution’s Response to Defence Filing of Amendments to Criminal Procedure Act of the Republic of Croatia,” filed on 10 July 2002 (the “Prosecution’s Response to the Defence Filing”);

**CONSIDERING** that the Accused requests that he be provisionally released until the beginning of the trial and that the Defence argues *inter alia* that: the Accused voluntarily surrendered; the Accused does not pose any danger to victims, witnesses or other persons; the Accused has not posed such a danger and undertakes that he will not; the Accused could not jeopardise the interests of the procedure and prevent evidence from being presented; the date of the Accused’s trial and consequently duration of pre-trial detention, are uncertain; the Accused is willing “to

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<sup>2</sup> T.45.

accept and unconditionally comply with,<sup>3</sup>” all conditions and orders imposed on him; the Government of the Republic of Croatia has provided guarantees;

**CONSIDERING** that the Prosecution opposes the Motion and submits *inter alia* that: the Accused has failed to demonstrate that if released he will appear for trial and will not pose a risk to any victim, witness or other person; in the Letter to the Prosecution the Government of the Republic of Croatia has modified the Guarantee and has stated that it can no longer guarantee that the Accused would appear for trial if released and it shows that “there is now no assurance from the Croatian authorities that [the Accused] would appear for trial, unless detained in Croatia,” a proposition the Prosecution opposes; the charges against the Accused are very serious;

**CONSIDERING** that the Prosecution further argues *inter alia* that, despite his assertions that he voluntarily surrendered, the Accused was at large for 14 months prior to transfer to the Tribunal (when a national arrest warrant was outstanding) during which time he lived under a false name and had other assistance allowing him to evade arrest; his assertion that he voluntarily surrendered is “entirely misleading<sup>4</sup>”; as recently as November 2001, a Croatian Court found that he continued to pose a risk of flight;

**CONSIDERING** that the Defence does not deny “that the Accused was inaccessible to the authorities of the Republic of Croatia for almost fourteen (14) months and that, for a certain period of time, he was using personal documents” with a different name, but submits *inter alia* that: the purpose of the false identity was not to hide from criminal prosecution but to safeguard his family because of threats; some of the media haunted and slandered him<sup>5</sup>; as soon as the indictment was unsealed he decided to surrender voluntarily; in any event, after revealing his false identity the Accused cannot use such means again while it would be impossible because of his family situation;

**CONSIDERING** that alternatives to release and detention in the United Nations Detention Unit (“UNDU”) were put forward by the Accused (house detention in Croatia) and the Prosecution

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<sup>3</sup> The Motion, para. 10.

<sup>4</sup> The Prosecution Response, para. 10.

<sup>5</sup> During the Oral Hearing, the Accused also stated “ I fled from the Croatian judiciary for somewhat less than 14 months because I was not ready to appear before this Court as I felt—I would have felt helpless before it and I won’t say as just a small nut before it, but I simply thought that I would not be able to prepare myself for this Court and defend myself there because I think there were lots of unfair constructs in the offing.” T. 41.

(detention in detention facilities in Croatia); that during the Oral Hearing, the Prosecution enumerated a number of conditions that should accompany detention in detention facilities in Croatia, although in principle, it emphasised that it opposed any variation to the Accused's current detention situation; that the Prosecution opposes an order for house detention<sup>6</sup>;

**CONSIDERING** Rule 65 of the Rules of Procedure and Evidence of the Tribunal (the "Rules") which provides *inter alia* that: "[r]elease may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and 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<sup>7</sup>"; that the Chamber may impose such conditions on release "as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others<sup>8</sup>";

**CONSIDERING** that applications for provisional release must be decided based on the particular facts of each case;

**CONSIDERING** that the Chamber has duly considered possible alternatives to detention at UNDU; that it has in particular noted the submissions of the parties concerning the amendments to the law in Croatia; that it notes the opposition of the Accused to detention in Croatia, the Accused stating that if the ultimate decision by the Chamber was that he should be detained in a detention centre, the *status quo* should be maintained and he should remain in detention in the Netherlands;

**CONSIDERING** that when further questioned by the Chamber concerning the fact that he was at large for fourteen months evading arrest by the national authorities, the Defence *inter alia*, described the Accused's conduct as "irrational"<sup>9</sup>; that it stated that this behaviour stopped when the Indictment was made public; that the Accused has confidence in the justice system of the Tribunal; that the Accused would return for trial;

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<sup>6</sup> The Prosecution stated during the Oral Hearing that if this was being considered, additional submissions should be made as to the applicability of the new amendments to legislation in Croatia to crimes against humanity together with other restrictions that should apply in those circumstances. T. 35 and 37 – 38.

<sup>7</sup> Rule 65(B) of the Rules.

<sup>8</sup> Rule 65(C) of the Rules.

<sup>9</sup> T. 32.

**CONSIDERING** that, balancing the factors presented by the parties in particular in relation to the issue of whether the Accused will appear for trial, the Chamber notes first, in relation to those factors supporting an assumption that the Accused will so appear, there is no clear information before the Chamber that the Accused's surrender to the Tribunal was not, as asserted, voluntary;

**CONSIDERING** however, that in relation to those factors which weigh against such an assumption, the Chamber notes: the fact that the Accused has shown that he is capable of evading arrest, that he has used a false name and has shown that he has the means and knows how to obtain false documents; the fact that there is a risk that the Accused's behaviour could again turn "irrational"; the fact that the Accused has a dual citizenship which could facilitate his flight and further, mean that it is more likely to be successful;

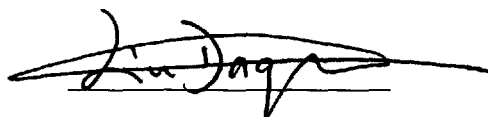
**CONSIDERING** that all of these circumstances support the concern of the Chamber that the Accused will not appear for trial; that it further notes the assessment given by the Croatian Court in respect of the risk of flight of the Accused and the comments made by the Croatian Government in the Letter to the Prosecution regarding their guarantees;

**CONSIDERING** that the Chamber, balancing all the relevant factors, despite the explanations given by both the Accused himself and his counsel, is not satisfied that the Accused, if released, will appear for trial, even with the guarantees provided by the Government of the Republic of Croatia;

**FOR THESE REASONS**

**HEREBY DISMISSES** the Motion.

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

A handwritten signature in black ink, appearing to read 'Liu Daqun', written over a horizontal line.

Judge Liu Daqun,  
Presiding Judge

Dated this second day of August 2002  
At The Hague