



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-95-13/1-AR65
Date: 26 August 2002
Original: English

BEFORE A BENCH OF THE THREE JUDGES OF THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Asoka de Z. Gunawardana

Registrar: Mr. Hans Holthuis

Decision of: 26 August 2002

PROSECUTOR

v.

MILE MRKŠIĆ

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:
Mr. Hildegard Uertz-Retzlaff
Mr. Mark J. McKeon

Counsel for the Defence:
Mr. Miroslav Vasić

THIS BENCH of 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 (the “Bench” and the “International Tribunal” respectively),

BEING SEIZED of “Defence Request for Leave to File an Interlocutory Appeal” filed by counsel for Mile Mrkšić (the “Applicant”) on 30 July 2002 ” (the “Application”);

NOTING the “Decision on Mile Mrkšić’s Application for Provisional Release” issued by Trial Chamber II on 24 July 2002 (the “Impugned Decision”) rejecting the Applicant’s request for provisional release;

NOTING the “Prosecution’s Response to Accused Mrkšić’s Application for Leave to Appeal Decision on Provisional Release” filed by the Office of the Prosecutor out of time on 7 August 2002;

NOTING the “Defence Reply to ‘Prosecution’s Response to Accused Mrkšić’s Application for Leave to Appeal Decision on Provisional Release’” filed by the Applicant on 9 August 2002;

NOTING that Rules 65(A) and (B) of the Rules of Procedure and Evidence of the International Tribunal (the “Rules”) provide that once detained, an accused may not be released except upon an order of a Trial Chamber and that such order may only be made after hearing the host country 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;

NOTING that Rule 65(D) of the Rules provides that a party may appeal against a decision on provisional release upon good cause being shown;

CONSIDERING that the Application seeks leave to appeal the Impugned Decision on the grounds that: (i) “the conclusions of the Trial Chamber in this case are in complete contrast to the conclusions reached by the Trial Chambers in the *Gruban*, *Šainović*, *Jokić* and *Plavšić* cases” and that therefore “different Trial Chambers of the Tribunal apply double

standards for identical issues” and that it falls to the Appeals Chamber to decide on this matter “for the future activity of the Tribunal”; and (ii) “the Trial Chamber incorrectly stated that the health condition of the accused was not so poor as to provide grounds for granting provisional release”;

CONSIDERING that good cause may be satisfied by showing that the Impugned Decision is inconsistent with other decisions of the International Tribunal on the same issues;

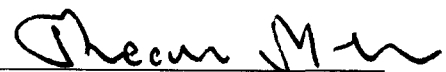
FINDING that good cause within the meaning of Rule 65(D) of the Rules for the granting of leave to appeal to the full Appeals Chamber has been shown;

PURSUANT to Rule 65(D) of the Rules,

HEREBY,

1. **GRANTS** the Application.
2. **INFORMS** the parties of their obligations to submit written briefs in accordance with the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155 Rev.1) and the Practice Direction on the Length of Briefs and Motions (IT/184 Rev.1).

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



Theodor Meron
Presiding Judge

Dated this 26th day of August 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]