

IT-95-9/2-T  
D468-D465  
06 SEPTEMBER 2002

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AT

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-95-9/2-T  
Date: 6 September 2002  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Florence Ndepele Mwachande Mumba, Presiding  
Judge Sharon A. Williams  
Judge Per-Johan Viktor Lindholm

**Registrar:** Mr. Hans Holthuis

**Decision of:** 6 September 2002

**PROSECUTOR**

v.

**MILAN SIMIĆ**

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**DECISION ON MOTION FOR PROVISIONAL RELEASE**

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**The Office of the Prosecutor:**

Mr. Gramsci Di Fazio  
Mr. Phillip Weiner  
Ms. Aisling Reidy

**Counsel for the Accused:**

Mr. Slobodan Zecević  
Ms. Catherine Baen

**THIS TRIAL CHAMBER** (“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 Provisional Release of Milan Simić” (“Motion”), filed by the defence of Milan Simić (“Defence”) on 22 July 2002 wherein the Defence requests (i) the provisional release of Milan Simić pending sentencing, subject to certain terms and conditions enumerated in the Motion, and (ii) an oral hearing on this matter,

**NOTING** the “Response of the Prosecutor to the Defence Motion for the Provisional release of Milan Simić” (“Response”), filed by the Office of the Prosecutor (“Prosecution”) on 26 July 2002,

**NOTING** the “Joint Motion For Consideration of Plea Agreement Between Milan Simić and the Office of the Prosecutor” together with the annexed Plea Agreement (“Plea Agreement”) filed on 13 May 2002,

**NOTING** that Milan Simić entered a plea of guilty to counts 4 and 7 of the Fourth Amended Indictment based on the factual basis set out in the Plea Agreement, and that the Trial Chamber, in accordance with Rule 62bis of the Rules of Procedure and Evidence of the Tribunal (“Rules”), entered a finding of guilt with respect to the said counts on 15 May 2002,<sup>1</sup>

**NOTING** that the sentencing hearing for Milan Simić was held on 22 July 2002 and that the Trial Chamber is now adjourned to deliberate,

**NOTING** the provisions of Rule 65 (A), (B) and (I) of the Rules which provide:

- (A) Once detained, an *accused* may not be released except upon an order of a Chamber;
- (B) Release 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; and

[...]

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<sup>1</sup> T. 8012.

- (I) Without prejudice to the provisions of Rule 107, the Appeals Chamber may grant provisional release to *convicted persons pending an appeal* or for a fixed period if it is satisfied that:
- (i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;
  - (ii) the appellant, if released, will not pose a danger to any victim, witness or other person, and
  - (iii) special circumstances exist warranting such release.

**NOTING** the arguments of the Defence in the Motion that, *inter alia*, “Rule 65 does not address the situation where a Defendant has been convicted and is awaiting sentencing; however, both Sections (A) through (H) and (I) of Rule 65 seem to serve as applicable provisions in this situation”,

**NOTING** the arguments of the Prosecution in its Response that, *inter alia*, (i) “Rule 65 (A) – (H) refers to the Trial Chamber’s power to grant provisional release **solely** to an accused person” (ii) “Rule 65 (I) is the only sub-section which deals with convicted persons being granted provisional release, and expressly confers such powers of release to the Appeals Chamber, and (iii) “the rules do not contemplate the provisional release of a convicted person who is awaiting sentence”,

**CONSIDERING** that there is no need for an oral hearing on this matter,

**CONSIDERING** that Rule 65 (A) to (H) is explicit in its provisions and directed at orders by a Trial Chamber for the provisional release of “accused” persons only,

**CONSIDERING** that Rule 65 (I) confers powers of release to the Appeals Chamber with reference to cases of “convicted persons pending an appeal or for a fixed period”,

**CONSIDERING** that, as the sentencing judgement for Milan Simić has yet to be delivered by the Trial Chamber, Milan Simić is presently a convicted person awaiting sentencing,

**CONSIDERING THEREFORE** that the Trial Chamber is not competent to order the release of a convicted person who is awaiting sentence,

**CONSIDERING FURTHER THAT** following Milan Simić’s plea of guilty and subsequent conviction by the Trial Chamber, he no longer enjoys any presumption of innocence in his favour,

**PURSUANT TO** Rule 65 of the Rules,

**HEREBY DENIES THE MOTION.**

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



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Judge Florence Ndepele Mwachande Mumba  
Presiding Judge

Dated this sixth day of September 2002  
At The Hague  
The Netherlands

[Seal of the Tribunal]