



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-00-41-AR65
Date: 16 September 2002
Original: English
French

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Claude Jorda, President
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana

Registrar: Mr. Hans Holthuis

Decision of: 16 September 2002

THE PROSECUTOR

v.

PAŠKO LJUBIČIĆ

DECISION REJECTING THE APPLICATION FOR LEAVE TO APPEAL

The Office of the Prosecutor:
Mr. Christopher Staker

Defence Counsel:
Mr. Tomislav Jonjić

THE 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 (hereinafter “the Bench of the Appeals Chamber” and “the International Tribunal”),

SEIZED OF the Application for Leave to Appeal the Decision on the Defence Motion for the Provisional Release of the Accused dated 2 August 2002 filed by Paško Ljubičić on 8 August 2002 pursuant to Rule 65(D) of the Rules of Procedure and Evidence (hereinafter “the Application for Leave to Appeal”, “the Applicant” and “the Rules” respectively),

NOTING the Decision on the Defence Motion for the Provisional Release of the Accused rendered by Trial Chamber I on 2 August 2002 (hereinafter “the impugned Decision”), in which it rejected the Defence Motion for the Provisional Release of the Accused filed by the Applicant on 15 April 2002,

NOTING the Prosecution’s Response to the Accused’s Application for Leave to Appeal filed by the Prosecutor on 13 August 2002 (hereinafter “the Response”),

NOTING the Defence Request for Leave to Reply to the Prosecution’s Response to the Accused’s Application for Leave to Appeal (hereinafter “the Request for extension of time”) and the Defence Reply to the Prosecution’s Response to the Accused’s Application for Leave to Appeal (hereinafter “the Reply”) filed by the Applicant on 14 and 19 August 2002 respectively,

CONSIDERING that the Reply was filed within the time-limit set out in paragraph 6 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155 Rev. 1) and that there is therefore no reason to rule on the Request for extension of time;

CONSIDERING that in the impugned Decision, the Trial Chamber indicates that it examined “all the relevant elements” with regard to the specific facts of the case, including the alternative measures proposed by the parties – that is house arrest and detention in Croatia – and the fact that it was not clearly established that the Applicant’s surrender to the International Tribunal was not voluntary,

CONSIDERING that at the end of its examination, the Trial Chamber held that it was not satisfied that, if released, the Applicant would appear for trial and, considering in particular that he had shown he could escape a warrant of arrest, that he had the means by which to obtain forged documents and that the risk of his fleeing was accepted by the government of the Republic of Croatia and a Croatian court,

CONSIDERING that in his Application for Leave to Appeal, the Applicant stated that if his Application is granted:

- i) he will provide additional evidence establishing that he both voluntarily surrendered to the International Tribunal and that there is no risk of his fleeing and/ or his repeated use of forged documents
- ii) he will explain how the house arrest set out by the "*Criminal Procedure Act of the Republic of Croatia*" is sufficient guarantee that he will appear for trial,

CONSIDERING that in her Response, the Prosecutor objects to the Application for Leave to Appeal principally on the grounds that:

- i) in the said Application no error is alleged,
- ii) even supposing that the Applicant were granted leave to appeal, he should not be authorised to present additional evidence, unless he can establish that such evidence was not available at the time of the first instance proceedings,

CONSIDERING that, in his Reply, the Applicant both repeats the grounds for appeal set out in his Application for Leave to Appeal and develops additional arguments, that is that the Trial Chamber did not give enough consideration to certain elements, such as the fact that he used forged documents to protect his family and the fact that house arrest in Croatia amounts to detention,

PURSUANT to Rule 65(A) and (B) of the Rules which provides that once detained, an accused may not be released except upon an order of a Chamber or that such an order may only be issued after a Trial Chamber has given 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,

PURSUANT to Rule 65(D) of the Rules which sets out that leave to appeal a decision on provisional release may be accorded when good cause has been shown,

CONSIDERING that “good cause” under Rule 65(D) of the Rules requires that the Bench of the Appeals Chamber be satisfied by the Applicant that the Trial Chamber may have erred,

CONSIDERING that in this case, the Applicant did not demonstrate how the Trial Chamber erred in assessing the criteria set out in Rule 65(B) of the Rules,

CONSIDERING moreover that it is not appropriate for the parties to present additional evidence as part of an appeal of a decision rendered pursuant to Rule 65 of the Rules, considering both that these elements must firstly be presented to the Trial Chamber and that it is always possible for the Applicant to present a new request for provisional release when justified by the circumstances,

FOR THE FOREGOING REASONS,

REJECTS the Application for Leave to Appeal.

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

Done this sixteenth day of September 2002
At The Hague
The Netherlands

(signed)

Judge Claude Jorda
President

[Seal of the Tribunal]