



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-95-11-PT
Date: 10 October 2002
Original: English

BEFORE THE TRIAL CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphonsus Orié

Registrar: Mr. Hans Holthuis

Order of: 10 October 2002

PROSECUTOR

v.

MILAN MARTIĆ

DECISION ON THE MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff

Counsel for the Accused:

Mr. Strahinja Kastratović

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 “Motion for provisional release” filed by formerly assigned Defence Counsel Geert-Jan Knoops on 9 July 2002 (“the Motion”) and the “Request for Provisional Release Until the Beginning of the Trial”, filed by the accused Milan Martić (“the accused”) on 10 July 2002 (“the accused’s Request”);

NOTING the “Request for Provisional Release” submitted by currently assigned Defence Counsel Strahinja Kastratović on 26 June 2002, at a time when he was not the assigned Counsel to the accused;

NOTING the “Prosecution’s Response to Motion for Provisional Release filed by the Accused Milan Martić”, filed on 18 July 2002 (“the Prosecution’s Response”), and the “Prosecution’s Addendum to Response to Motion for Provisional Release filed by the Accused Milan Martić”, filed on 23 July 2002 (“the Prosecution’s Addendum”);

NOTING the “Guarantee of the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Serbia”, dated 13 June 2002 and submitted to the Chamber on 21 June 2002;

NOTING the letter of the Embassy of the Federal Republic of Yugoslavia and the attached “Guarantee of the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Serbia”, dated 12 June and submitted to the Chamber on 23 June 2002;

NOTING the letter of the Dutch Ministry to the Registrar, dated 16 July 2002 and filed on 18 July 2002;

NOTING the Chamber’s “Order Scheduling a Hearing on the Motion for Provisional Release and a Status Conference”, rendered on 9 September 2002;

NOTING that the Motion for Provisional Release was addressed at a hearing held on 23 September 2002 according to Rule 65 (B) of the Rules of Procedure and Evidence of the Tribunal (“the Rules”); that the authorised representatives of the Federal Government of the Federal Republic of Yugoslavia, Mr. Savo Marković, Federal Minister of Justice, and Mr. Dusan Vukasinović, First

Counsel of the Embassy in the Hague, participated in this hearing to explain about the guarantees offered by their Government and the Government of the Republic of Serbia;

CONSIDERING that the accused requests to be provisionally released until the commencement of his trial; that he and his Counsel argue, *inter alia*, that: the accused voluntarily surrendered¹; the accused reported within 25 days of the adoption of the Law of Co-operation in the Federal Republic of Yugoslavia (FRY)²; there is no risk of flight since there is no suspicion that the accused will not obey decisions on his release or in any other way disobey to avoid returning to the Tribunal to stand trial; he is a permanent resident of FRY and his family resides there³; the pre-trial detention is likely to be of considerable length⁴; the accused recognises the Tribunal and wishes to prove his innocence and to clear his name⁵; the accused received double guarantees from the FRY and the Republic of Serbia which should be taken into account⁶; in case of his release, the accused would spend all his time in a friend's weekend home and would report to the police on a daily basis, if necessary⁷;

CONSIDERING that the Prosecution opposes the Motion and submits 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;

CONSIDERING that the Prosecution, in support of her argument, *inter alia*, submits that: the accused was aware of the indictment against him for a period of seven years during which time he hid from the Tribunal⁸; the accused did also not surrender as he became aware of the Rule 61 proceedings conducted in his case⁹; the accused only surrendered to the Tribunal in the year 2000, after and because the Law on Co-operation was enacted by the FRY; the accused, therefore, only surrendered because it became impossible for him to successfully hide any longer¹⁰; the accused has proven by his behaviour in the past that he possesses the skills and means to hide from arrest¹¹; he has further proven by various statements given to the press, that he may be willing to resort to violence and to resist apprehension or to engage in other kinds of obstructive behaviour in case of a

¹ *The accused's Request; the Motion*, p. 3

² *Transcript*, p. 34

³ *Transcript*, p. 22, 23

⁴ *the Motion*, p. 4

⁵ *The accused's Request*

⁶ *The accused's Request; the Motion*, p. 3

⁷ *The accused's Request; Transcript*, pp. 37, 38

⁸ *Prosecution's Response*, p. 2

⁹ *Prosecution's Response*, p. 1

¹⁰ *Prosecution's Response*, p. 2; *Transcript*, pp. 24, 25

¹¹ *Transcript*, p. 26

forcible arrest, should such ever become necessary¹²; the “guarantees” given by the accused himself are not trustworthy since he has demonstrated in the past repeatedly and publicly that he does not acknowledge the Tribunal as impartial¹³; the guarantees of the FRY and the Republic of Serbia can only be of little value if the accused himself cannot prove that there is no risk of flight¹⁴; the Prosecutor has applied to amend the indictment against the accused substantially; the accused was not aware of these additional charges when he surrendered and will therefore now have an even greater incentive to flee or interfere with witnesses¹⁵; the guarantees provided are also of limited value because there still exists a failure of the Governments of FRY and the Republic of Serbia to provide sustained and full co-operation to the Tribunal¹⁶; the Defence argument that the detention is likely to be prolonged is purely speculative¹⁷;

CONSIDERING that the accused and his Counsel did not deny that the accused was at large for seven years and that he used false documents during this time; that they, however, argued that during this time, he did not hide from being arrested by the Tribunal but from being arrested and convicted by the Croatian authorities¹⁸; that he submitted that he was convicted *in absentia* by several courts in Croatia to a sentence amounting to 99 years of imprisonment¹⁹;

CONSIDERING that, questioned by the court, neither the accused nor his Counsel were able to provide any details about the alleged convictions by Croatian courts²⁰; that they stated that they never received a single indictment nor judgment and that all their information relies on information from the mass media²¹; that the Counsel apparently had not made any effort to retrieve those documents for submission to the Chamber in support of their argument²²;

CONSIDERING FURTHER that: neither the accused nor his Counsel did deny that the press statements, submitted in the Prosecutor’s Addendum, were indeed made by the accused; they admitted that the accused did not recognise this court in the past to the extent that the regime in the FRY and the Republic of Serbia was not recognised by the Tribunal²³; he also did so because no indictment was issued against the Croatian government and the politicians for the ethnic cleansing

¹² *Prosecution’s Response*, p. 5

¹³ *Prosecution’s Request*, pp. 4, 5; *Transcript*, p. 27

¹⁴ *Prosecution’s Request*, p. 6; *Transcript*, p. 29

¹⁵ *Prosecution’s Request*, p. 5; *Transcript*, pp. 27, 28

¹⁶ *Prosecution’s Request*, p. 6; *Transcript*, p. 29

¹⁷ *Prosecution’s Request*, pp. 6, 7

¹⁸ *Transcript*, p. 41

¹⁹ *Transcript*, pp. 40-43

²⁰ *Transcript*, pp. 41-43

²¹ *Transcript*, pp. 42, 43

²² *Transcript*, p. 42

²³ *Transcript*, p. 35

of “his” people when the indictment against him was entered²⁴; another reason for his failure to surrender was that, at the time, he received no “back up” from his State for a potential surrender otherwise he had surrendered earlier²⁵; in the past a different regime was in power and this fact also had an impact on his personal attitude towards the Tribunal²⁶; he only wanted to stand his trial before the Tribunal as a Yugoslav citizen and, therefore, had to postpone his surrender until he had received his Yugoslav passport²⁷;

CONSIDERING the presentation of the authorised Representative of the FRY, Minister of Justice Marković, who submitted, *inter alia*, that: the provided guarantees are serious guarantees of a serious state²⁸; the official attitude of his state with regard to co-operation has changed since the democratic government came into power; his presence in the hearing is the best test that his state is now seriously committed to co-operation with the Tribunal²⁹; a positive decision on the Provisional Release Motion of the accused would strengthen the further co-operation of the FRY with the Tribunal³⁰; it would also encourage other perpetrators outside the reach of the law and to whom the FRY would offer guarantees to voluntarily surrender³¹; co-operation should go “both ways” since both partners in it were equal³²;

CONSIDERING Rule 65 of 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 person³³”; 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 others³⁴”;

CONSIDERING that applications for provisional release must be decided based on the particular facts of each individual case³⁵;

²⁴ *Transcript*, p. 36

²⁵ *Transcript*, pp. 36, 37

²⁶ *Transcript*, pp. 40, 47

²⁷ *Transcript*, p. 48

²⁸ *Transcript*, p. 30

²⁹ *Transcript*, p. 31

³⁰ *Transcript*, p. 31

³¹ *Transcript*, p. 32

³² *Transcript*, p. 32

³³ Rule 65(B) of the Rules.

³⁴ Rule 65(C) of the Rules.

³⁵ *Pros. v. Rahim Ademi, Order on Motion for Provisional Release*, Case No. IT-01-46-PT, 20 February 2002, para 28; *Pros. v. Paško Ljubičić, Decision on the Defence Motion for the Provisional Release of the Accused*, Case No. IT-00-41-PT, 2 August 2002, p. 5. See also *Pros. v. Simić et al., Decision on Simo Zarić’s application for provisional release*,

CONSIDERING that it is for the accused to satisfy the Chamber that he will, once provisionally released, not abscond but appear for trial as ordered³⁶; that, without ignoring the major importance of the guarantees provided by States to ensure the return of accused persons once provisionally released, the Chamber considers them to provide a firm and reliable support once the attitude of the accused himself has given the Chamber the confidence that he has committed himself to appear at trial;

CONSIDERING that the Chamber notes several factors which substantially weigh *against* the assumption of the Defence that there exists no risk of flight with regard to the accused; in particular, the facts that: the Accused has shown his capability of evading arrest for a prolonged period of time, he has used a false name and has shown that he has the means and knows how to obtain false documents³⁷; the accused has publicly and repeatedly displayed a serious disregard of the Tribunal in the past years; he has, in the past, publicly and repeatedly announced his willingness to resort to violence in case of a forcible apprehension;

CONSIDERING that balancing all elements presented by the parties, the accused did not satisfy the Chamber with his explanations as to his recent change of mind and the motives for his voluntary surrender and willingness to stand trial before the Tribunal;

CONSIDERING that, the Chamber is also not satisfied that the surrender of the accused to the Tribunal was, as asserted by the Defence, necessarily fully voluntary³⁸;

Case No. IT-95-9-PT, 4 April 2000; *Prosecution v. Simić et al., Decision on Miroslav Tadić's application for provisional release*, Case No. IT-95-9-PT, 4 April 2000; *Prosecution v. Simić et al., Decision on Milan Simić's application for provisional release*, Case No. IT-95-9-PT, 29 May 2000; *Prosecution v. Halilović, Decision on request for pre-trial provisional release*, Case No. IT-01-48-PT, 13 December 2001; *Pros. v. Mile Mrkšić, Decision on Mile Mrkšić's Application for Provisional Release*, Case No. IT-95-13/1-PT, 24 July 2002, para 35.

³⁶ *Pros. v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalić*, Case No. IT-96-21-T, 25 September 1996, para 1; *Pros. v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalić*, Case No. IT-96-21-T, 24 October 1996, para 2; *Pros. v. Simo Drljača and Milan Kovačević, Decision on Defence Motion for Provisional Release*, Case No. IT-97-24-PT, 20 January 1998, para 6; *Pros. v. Radoslav Brdanin & Momir Talić, Decision on Motion by Radoslav Brdanin for Provisional Release*, Case No. IT-99-36-PT, 25 July 2000, para 18; *Pros. v. Radoslav Brdanin & Momir Talić, Decision on Motion by Momir Talić for Provisional Release*, Case No. IT-99-36-PT, 28 March 2001, para 18. See also the Appeals Chamber in *Pros. v. Radoslav Brdanin & Momir Talić* which confirmed that "under sub-Rule 65 (B), the burden of proof is on an applicant to satisfy a Trial Chamber that provisional release should be ordered"; *Decision on Application for Leave to Appeal*, Case No. IT-99-36-ARS65, 7 September 2000, p. 3; *Pros. v. Momčilo Krajišnik & Biljana Plavšić, Decision on Momčilo Krajišnik's Notice of Motion for Provisional Release*, Case No. IT-00-39 & 40-PT, 8 October 2001, para 12.

³⁷ The Chamber herein relies on the considerations that were already taken into account in its Provisional Release Decision in *Pros. v. Paško Ljubičić, Decision on the Defence Motion for the Provisional Release of the Accused*, Case No. IT-00-41-PT, 2 August 2002, p. 6.

³⁸ The Chamber took note of the Provisional Release Decision in *Pros. v. Mile Mrkšić* with similar underlying circumstances and arguments of the parties. The accused Mrkšić against whom an indictment was issued in 1997, surrendered to the Tribunal on the same day as the accused Milan Martić, after the Law on Co-operation had been enacted in the FRY. The accused Mrkšić submitted, *inter alia*, that he had evaded arrest for six years because he was deterred from surrendering as a result of a decision of a competent military tribunal preventing him to do so (para 42).

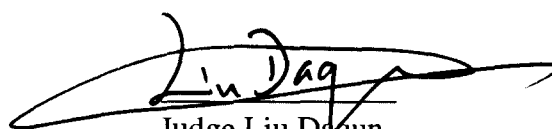
CONSIDERING that the failure of the accused to satisfy the Chamber that if released, he will appear for trial, cannot be cured by the submission of guarantees by the Government of the FRY and the Republic of Serbia, notwithstanding their substantial quality³⁹;

FOR THE FOREGOING REASONS

HEREBY DISMISSES the Motion.

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

Dated this tenth day of October 2002,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]

The Chamber did rejected this argument and found that “in light of the circumstantial evidence surrounding his presence before this Tribunal, it seems rather doubtful whether the Accused, having failed to voluntarily surrender during all these years can be treated as if he had in fact, voluntarily surrendered.”; *Pros. v. Mile Mrkšić, Decision on Mile Mrkšić’s Application for Provisional Release*, Case No. IT-95-13/1-PT, 24 July 2002, para 43.

³⁹ In this regard, the Chamber recalls the reasoning that was given in its Provisional Release Decision in *Pros. v. Rahim Ademi*, namely, that “the Tribunal lacks its own means to execute a warrant of arrest, or to re-arrest an accused who has been provisionally released”, that it must “rely on the co-operation of States for the surveillance of accused who have been released” and that, therefore, “a more cautious approach in assessing the risk that an accused may abscond” must be taken; *Pros. v. Rahim Ademi, Order on Motion for Provisional Release*, Case No. IT-01-46-PT, 20 February 2002, para. 24. This consideration was also recalled by Trial Chamber II in *Pros. v. Mile Mrkšić, Decision on Mile Mrkšić’s Application for Provisional Release*, Case No. IT-95-13/1-PT, 24 July 2002, para 41.