

IT-02-60-PT  
D7719-D7716  
19 NOVEMBER 2002

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**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-02-60-PT  
Date: 19 November 2002  
Original: ENGLISH

**IN TRIAL CHAMBER II**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Decision of:** 19 November 2002

**PROSECUTOR**

v.

**VIDOJE BLAGOJEVIĆ  
DRAGAN OBRENOVIĆ  
DRAGAN JOKIĆ  
MOMIR NIKOLIĆ**

**DECISION ON VIDOJE BLAGOJEVIĆ'S  
APPLICATION FOR PROVISIONAL RELEASE**

**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. Michael Karnavas, Ms Suzana Tomanović for Vidoje Blagojević  
Mr. David Wilson, Mr Dušan Slijepčević for Dragan Obrenović  
Mr. Miodrag Stojanović, Ms. Cynthia Sinatra for Dragan Jokić  
Mr. Veselin Londrović, Mr. Stefan Kirsch for Momir Nikolić

**THIS 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 ("International Tribunal"),

**NOTING** the decision of the Appeals Chamber<sup>1</sup> to quash two decisions of this Trial Chamber in which the accused Vidoje Blagojević<sup>2</sup> ("Accused" or "Defence") and Dragan Obrenović,<sup>3</sup> respectively, were denied provisional release,

**NOTING** that the matter has been returned to this Trial Chamber for reconsideration and that the Chamber "is directed to take into account the guarantees of the Republika Srpska when determining whether the accused would appear for trial if provisionally released",<sup>4</sup>

**NOTING** that the Scheduling Order of 8 October 2002 establishes a schedule for the Defence and the Prosecution to file written submissions on the question of provisional release,

**NOTING** the filings by the Defence related to this issue, including its request for a hearing,<sup>5</sup> which the Trial Chamber denied,<sup>6</sup>

**NOTING** the consolidated response filed by the Office of the Prosecutor ("Prosecution") on 12 November 2002, "Prosecution's Consolidated Response Pursuant to the Trial Chamber's Scheduling Order of 8 October 2002 Concerning Provisional Release of Vidoje Blagojević and Dragan Obrenović" with Annexes, ("Prosecution's Response"),

**NOTING** that the Prosecution's Response draws attention to recent events in the Republika Srpska,

**NOTING** the "Accused Blagojević's Notice of the Prosecution's Failure to Adequately Respond to the Trial Chamber's Scheduling Order of 8 October 2002 & Request of Hearing to: A. Compel the Prosecution to Submit Credible Evidence Substantiating its Allegations that Mr. Blagojević's

<sup>1</sup> *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR65 and IT-02-60-AR65.2, Decision on Provisional Release of Vidoje Blagojević and Dragan Obrenović, 3 October 2002 ("Appeals Chamber Decision").

<sup>2</sup> Decision on Vidoje Blagojević's Application for Provisional Release, 22 July 2002 ("Trial Chamber Decision").

<sup>3</sup> Decision on Dragan Obrenović's Application for Provisional Release, 22 July 2002.

<sup>4</sup> Appeals Chamber Decision, para. 8.

<sup>5</sup> Accused Blagojević's Request for an Expedited Hearing to Present Evidence in Light of the Appeals Chamber's Decision on Provisional Release Remanding the Matter to the Trial Chamber for Reconsideration of Its Earlier Findings and to Resolve Strongly Disputed Issues of Novel Facts which the Prosecution Raised in its Response to the Appeals Chamber, 8 October 2002; Appendix to: Accused Blagojević's Request for an Expedited Hearing to Present Evidence in Light of the Appeals Chamber's Decision on Provisional Release Remanding the Matter to the Trial Chamber for Reconsideration of Its Earlier Findings and to Resolve Strongly Disputed Issues of Novel Facts which the Prosecution Raised in its Response to the Appeals Chamber, 10 October 2002; Accused Blagojević's Motion for Reconsideration of Trial Chamber's Scheduling Order re: Written Submissions & Non-Opposed Request for an Expedited Hearing, 10 October 2002; Accused Blagojević's Written Submissions as Directed by the Trial Chamber's Scheduling Order of 8 October 2002 Regarding the Appeals Chamber's Decision.

"Whereabouts" had to be "Uncovered" or in the Alternative Confess Error that it has Made Misrepresentations to the Trial and Appeals Chambers in Order to Deprive Mr. Blagojevic a Fair Opportunity to Obtain Provisional Release; and B. For Accused Blagojevic to Supplement the Record Concerning the Prosecution's New Claims that Guarantees from the Government of the Republika Srpska are Not Reliable," ("Defence Notice") filed on 18 November 2002,

**CONSIDERING** that the decision taken by the Trial Chamber to deny the request for provisional release was independent of the guarantees provided by the authorities which gave them,<sup>7</sup>

**CONSIDERING FURTHER** that the decision taken by the Trial Chamber to deny the request for provisional release was *de facto* solely based on the fact that the Trial Chamber was "not satisfied that, if released, Mr. Blagojević would appear for trial",<sup>8</sup>

**CONSIDERING** therefore that the submissions by the Prosecution and the Defence Notice cannot be considered relevant for our decision,

**CONSIDERING** that no real new facts have been put forward by the Defence to cause this Chamber to reconsider the Trial Chamber Decision,

**CONSIDERING** that the Prosecution maintains its objection to the provisional release of the Accused in the Prosecution's Response,

**CONSIDERING** that the trial in this case is scheduled to commence in May 2003,

**REINCORPORATING** paragraphs 30 to 33 and paragraphs 53 to 59 of the impugned Trial Chamber Decision,

**CONSIDERING** that the Trial Chamber remains not satisfied that if released, Mr. Blagojević would appear for trial,

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<sup>6</sup> Decision on Blagojević's Motion for Reconsideration and request for an Expedited Hearing, 11 October 2002.

<sup>7</sup> Trial Chamber Decision, para. 52.

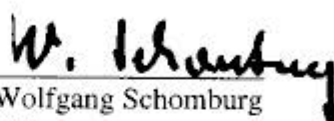
<sup>8</sup> Trial Chamber Decision, para. 54. See also, *Ibid.*, para. 53.

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**PURSUANT** to Rule 65 of the Rules of Procedure and Evidence,

**HEREBY DENIES** the Motion.

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

  
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Judge Wolfgang Schomburg  
Presiding

Dated this nineteenth day of November 2002,  
At The Hague  
The Netherlands

[Seal of the Tribunal]