



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: 21 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: 21 November 2002

PROSECUTOR

v.

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

CONFIDENTIAL

**DECISION ON EXPEDITED MOTION TO MODIFY
CONDITIONS OF APPEARANCE FOR
STATUS CONFERENCE, 27 NOVEMBER 2002**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

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

The Registrar:

Mr. Hans Holthuis

TRIAL CHAMBER II (“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 confidential “Expedited Motion to Modify Conditions of Appearance for Status Conference, 27 November 2002” (“Motion”), filed on 15 November 2002, on behalf of the accused, Dragan Jokić (“Accused” or “Defence”) in response to the Scheduling Order filed by the Trial Chamber on 11 November 2002, in which the Accused requests that he be permitted to stay overnight at a hotel rather than in the United Nations Detention Unit (“Detention Unit”),

NOTING that the Accused is currently provisionally released pursuant to the Appeals Chamber decision of 28 May 2002 “Decision on Application by Dragan Jokić for Provisional Release” (“Provisional Release Decision”), which invalidated the Trial Chamber decision of 28 March 2002, “Decision of Request for Provisional Release of Accused Jokić”, in which the Accused’s request for provisional release was denied,

NOTING that in the Scheduling Order, the Trial Chamber ordered that the Accused return to the Detention Unit not later than 26 November 2002 to attend a Status Conference on 27 November 2002, and then may return to Bosnia and Herzegovina under the same conditions set out by the Provisional Release Decision,

NOTING the confidential “Prosecution’s Response to Expedited Motion to Modify Conditions of Appearance for Status Conference, 27 November 2002” (“Prosecution’s Response”) filed by the Office of the Prosecutor (“Prosecution”) on 19 November 2002, in which it “takes no position” regarding the overnight facilities provided for Dragan Jokić during his stay for the Status Conference, while reserving its right to express a different position regarding this issue in the future, “including the commencement of trial in this case”,

RECALLING the “Agreement Between the United Nations and the Kingdom of the Netherlands Concerning the Headquarters 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”¹, which states in relevant part:

**ARTICLE XX
THE SUSPECT OR ACCUSED**

1. The host country shall not exercise its criminal jurisdiction over persons present in its territory, who are to be or have been transferred as a suspect or an accused to the premises of the Tribunal

¹ Headquarter Agreement, S/1994/848, 27 May 1994, signed in New York on 29 July 1994.

pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in this Article shall cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of fifteen consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

ARTICLE XXV IDENTIFICATION CARDS

1. At the request of the Tribunal, the Government shall issue identification cards to persons referred to in Articles XIV, XV, XVIII, XIX and XX of this Agreement certifying their status under this Agreement.

2. The Security Service of the Tribunal shall maintain photographic and other appropriate records of the suspect and accused persons referred to in Article XXI.

ARTICLE XXVI SECURITY, SAFETY AND PROTECTION OF PERSONS REFERRED TO IN THIS AGREEMENT

The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

CONSIDERING that the Provisional Release Decision includes the following terms and conditions:

- That during the period of provisional release, the Accused shall apply by certain terms and conditions, and that the authorities of the Republika Srpska shall ensure the compliance of the Accused with the conditions of his provisional release, including *inter alia*:
 - not to have any direct contacts or in anyway interfere with victims or potential witnesses or otherwise interfere in any other way with the proceedings or the administration of justice;
 - not to discuss the case with anyone, including the media, other than his counsel and immediate members of his family;
 - to return to the Tribunal at such time and on such date as the Trial Chamber may order;
 - to strictly comply with any order of the Trial Chamber varying the terms of, or terminating, the provisional release of the Accused; and
 - to assume responsibility for all expenses concerning transport from Schiphol to Zvornik and back.
- That upon return to the Netherlands, the Accused shall be accompanied by a designated official of Bosnia and Herzegovina, or by such other designated officials as the Trial Chamber may accept, who shall deliver the Accused into the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by the Trial Chamber; the Dutch authorities shall then transport the accused back to the United Nations Detention Unit,

CONSIDERING that the Trial Chamber, in deciding upon the present Motion, is guided by the need to fully respect the rights of the Accused and that, in the case of an accused granted provisional release, any variations to the terms of the provisional release must respect the principle of proportionality. A measure in public international law is proportional only when (1) suitable, (2) necessary and when (3) its degree and scope remain in a reasonable relationship to the envisaged target (proportionality in its narrowest sense). Procedural measures should never be capricious or excessive. If it is sufficient to use a more lenient measure, that measure must be applied,

CONSIDERING that the Defence submits that Mr. Trivan Jovicic, Minister Counsellor – Liaison Officer for the Republika Srpska, will escort the Accused at all times during his travel to The Hague on 26 November 2002 and his travel from The Hague to the Republika Srpska on 28 November 2002,

CONSIDERING that the Defence submits that “safety and security is not at issue with regard to Mr. Jokić” and that “defence counsel will assume all responsibility for the appearance, security and accommodations of Dragan Jokić”,

CONSIDERING that the Defence further submits that it will bear the costs incurred by the Accused,

CONSIDERING that the Accused has satisfied all conditions for provisional release as set forth in the Provisional Release Decision, and pledges to “continue to abide by these conditions and any other requirements or Orders of this Trial Chamber”,

CONSIDERING that the Prosecution explicitly does not oppose the Motion,

CONSIDERING that in the Provisional Release Decision, the Appeals Chamber decided that it is not necessary for the Accused to remain in the Detention Unit, and in following that Decision, the Trial Chamber consequently does not see the necessity (i.e., proportionality) to detain the Accused in the Detention Unit for the period 26 November 2002 until 28 November 2002,

PURSUANT TO Rule 54, Rule 65 and Rule 65*bis*,

HEREBY GRANTS the Motion, and

ORDERS:

- the Defence to inform the Trial Chamber forthwith, but no later than 22 November 2002 at 12:00pm, *ex parte* and under seal, the location where the Accused will be during his stay in The Hague;

- that for the purposes of his stay in The Hague, the Accused shall stay in the hotel or in the premises of the Tribunal, and take the most direct route between the hotel and the Tribunal; and
- that the Accused must obey any instructions or directions from the Dutch police or other authorised security agencies of The Netherlands when not in the premises of the Tribunal, and

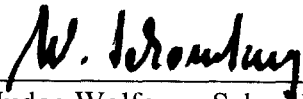
MODIFIES the terms of the Provisional Release Decision for the period while the Accused is travelling to attend the Status Conference, namely 26 November 2002 until 28 November 2002 when the Accused returns to Zvornik, Republika Srpska, Bosnia and Herzegovina to the extent that the Accused may travel to the Status Conference and remain in a hotel during his time in The Hague, and

MAINTAINS certain terms and conditions of the Accused's provisional release, namely: (i) not to have any direct contacts or in anyway interfere with victims or potential witnesses or otherwise interfere in any other way with the proceedings or the administration of justice; (ii) not to discuss the case with anyone, including the media, other than his counsel and immediate members of his family; (iii) to return to the Tribunal at such time and on such date as the Trial Chamber may order; (iv) to strictly comply with any order of the Trial Chamber varying the terms of, or terminating, the provisional release of the Accused; and (v) to assume responsibility for all expenses concerning transport from Schiphol to Zvornik and back, and

REQUESTS the Registry to consult with the relevant authorities from The Netherlands to ensure that all practical arrangements for the Accused and the representative of Bosnia and Herzegovina are provided for, and

FURTHER REQUESTS the Registrar to attend, in person or by representative, that part of the Status Conference to be held on 27 November 2002 from 9:00am until 1:45pm in which the question of whether it is necessary and mandatory for the Accused to remain in the Detention Unit during trial will be discussed, and be prepared to give submissions on this question,

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


 Judge Wolfgang Schoenburg
 Presiding

Dated this twenty-first day of November 2002,
 At The Hague
 The Netherlands

[Seal of the Tribunal]