



**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-99-37-PT
Date: 14 April 2005
Original: English**

IN THE TRIAL CHAMBER

**Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy**

Registrar: Mr. Hans Holthuis

Decision of: 14 April 2005

PROSECUTOR

v.

MILAN MILUTINOVIĆ

DECISION ON SECOND APPLICATION FOR PROVISIONAL RELEASE

The Office of the Prosecutor

**Mr. Thomas Hannis
Ms. Christina Moeller**

Counsel for Milan Milutinović

**Mr. Eugene O'Sullivan
Mr. Slobodan Zečević**

Procedural background

1. On 3 June 2003, this Trial Chamber refused an application by Milan Milutinović (“Milutinović” or “the Accused”) for provisional release until the commencement of his trial on the basis that it was not satisfied (1) that his surrender could properly be described as voluntary, (2) that much weight could be attributed to the government guarantees in view of the senior position held by the Accused (President of Serbia) until his arrest, and (3) that the medical condition of the Accused was of such a nature as to require his release pending trial (“First Decision”).¹ The first leg of the test in Rule 65(B) of the Rules of Procedure and Evidence (“Rules”) was therefore not met.

2. In December 2004, Milutinović, together with his co-accused Nikola Šainović (“Šainović”) and Dragoljub Ojdanić (“Ojdanić”), again applied for provisional release.² The Prosecution responded,³ and the Accused and each of his co-accused replied.⁴ The Trial Chamber convened a hearing in this matter on 10 March 2005 at which Mr. Zoran Stojković, Minister of Justice in the Government of the Republic of Serbia, was examined and cross-examined, and Mr. Slavojub Carić, Consul of the Embassy of the State Union of Serbia and Montenegro in The Hague, made a statement, with regard to the guarantees.⁵

¹ *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, “Decision on Provisional Release”, 3 June 2003 (“First Decision”).

² Mr. Milan Milutinović’s Second Motion for Provisional Release, 17 December 2004 (“Motion”); Third Request for Provisional Release (filed by Šainović), 23 December 2004 (“Šainović Application”); General Ojdanić’s Fourth Application for Provisional Release, 14 December 2004 (“Ojdanić Application”).

³ Prosecution’s Response to Milan Milutinović’s Second Motion for Provisional Release with Annexes A, B, and Confidential Annex C, 22 December 2004 (“Prosecution Response”); Prosecution’s Response to General Ojdanić’s Fourth Application for Provisional Release with Annexes A, B, C and Confidential Annex D, 22 December 2004; and Prosecution’s Response to Nikola Šainović’s Third Defence Request for Provisional Release with Annexes A and B and the Prosecution’s Supplemental Response to Nikola Šainović’s Third Defence Request for Provisional Release with Confidential Annex A, filed on 6 January 2005 and 20 January 2005 respectively.

⁴ Application to File a Reply and Reply to Prosecution’s Response to Mr. Milan Milutinović’s Second Motion for Provisional Release, 29 December 2004 (“Reply”); General Ojdanić’s Reply to Prosecutor’s Response to Fourth Application for Provisional Release”, 28 December 2004; Defence Reply to Prosecution’s Response to Nikola Šainović’s Third Defence Request for Provisional Release and Defence Second Reply to Prosecution’s Supplemental Response to Šainović’s Third Request for Provisional Release, filed on 13 January 2005 and 27 January 2005 respectively.

⁵ *See, Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, “Order to Defence to Make Arrangements for an Oral Hearing on Provisional Release”, Case No. IT-99-37-PT, 10 February 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, “Scheduling for Hearing on Defence Requests for Provisional Release”, 2 March 2005; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, “Order Rescheduling Hearing on Defence Requests for Provisional Release”, 7 March 2005; *see also*, Joint Defence Request to Re-schedule a Hearing on Defence Requests for Provisional Release”, 4 March 2005.

3. The Trial Chamber has considered these applications for provisional release individually, making a separate determination in relation to each accused. The present Decision has been made in light of the particular submissions, written and oral, received relating to Milutinović's second application for provisional release ("Motion").⁶ While the Motion was filed confidentially, no reason was given to justify it not being publicly filed. The present Decision is issued publicly as nothing in it reveals material which could justify a confidential status.

Discussion

4. Rule 65(B) ("Provisional Release") of the Rules requires an applicant for provisional release to satisfy the Trial Chamber of two matters:
- (i) that he will appear for trial, and
 - (ii) that, if released, he will not pose a danger to any victim, witness or other person.⁷

If an accused satisfies the Trial Chamber on both points, the Trial Chamber may then proceed to consider whether, in the exercise of its discretion, it should release the accused. However, in this case, it is difficult to see that there could be any basis for refusing the Motion if the accused were to satisfy the Trial Chamber on both points. Since this is not the Accused's first application, he must also satisfy the Trial Chamber that there has been a material change in circumstances since the last application such as to justify reconsideration of its previous decision. Again, if the Trial Chamber decides on the basis of the material presented to them, including any new circumstances, that the test in Rule 65(B) has been met, it is difficult to see that that could be viewed as other than a material change in circumstances, in light of the grounds on which the Accused's first application was refused. The first and crucial question, therefore, is whether circumstances have now changed so that it is established that, if released, the Accused will appear for trial. That is the question to which the Trial Chamber now turns.

⁶ Motion, *supra* note 2.

⁷ *Prosecutor v. Šainović & Ojdanić*, Case No. IT-99-37-PT, "Decision on Application of Nikola Šainović and Dragoljub Ojdanić for Provisional Release," 26 June 2002 ("Šainović Trial Chamber Decision"), para. 11, citing *Prosecutor v. Blagojević et al.*, Case No. IT-02-53-AR65, "Decision on Application by Dragan Jokić for Leave to Appeal," 18 April 2002, para. 7.

(a) Is it now established that, if released, Milutinović will appear for trial?

5. Milutinović argues that, since his first application, he has shown his willingness to cooperate with the Prosecution by (a) providing a full transcript of an interview that he gave to Brook Lapping Productions, a London based production company, portions of which were used in the production of the BBC three part documentary “The Fall of Milošević”, (b) not opposing the Prosecution Motion for Joinder of the instant case with the indictment against Pavković & others (IT-03-70-I), and (c) currently working with the Prosecution in an attempt to reach agreement in connection with the use of 92*bis* witnesses at trial.⁸
6. The Prosecution argues that neither the Defence position as regards the Prosecution Motion for Joinder, nor the fact that Rule 92 *bis* discussions were finally held between the parties, as instructed by the Senior Legal Officer, can be deemed forms of cooperation with the Tribunal or the Prosecution that would justify, on their own, a deviation of the Trial Chamber from its previous findings. The Prosecution states that these factors cannot be regarded as sufficient *indicia* of the Accused’s intent to appear for trial, if released.⁹
7. The Trial Chamber considers that, although the factors mentioned at (a) and (c) in paragraph 5 above show a generally cooperative disposition towards the Tribunal, the degree of cooperation with the Tribunal and the Prosecution involved is not such as to merit the Trial Chamber attaching more than modest weight to it in its determination. However, the cooperation shown persuades the Trial Chamber that it ought to give some weight to his personal guarantee that, if released, he will comply with any conditions of his release and that he will return to the Tribunal when required.¹⁰
8. Of far greater significance is the situation in relation to the guarantees presented in support of the application. Milutinović submits guarantees from both the Government of the Republic of Serbia and the Federal Government of the Federal Republic of Yugoslavia, dated 23 and 27 January 2003, respectively.¹¹ The Trial Chamber received confirmation of the same guarantees from the Government of Serbia and the Council of Ministers of Serbia

⁸ Motion, *supra* note 2, para. 8.

⁹ Prosecution Response, *supra* note 3, para. 12.

¹⁰ Motion, *supra* note 2, Annex 1 (“Personal Guarantee/Undertaking of Milan Milutinović in Support of Motion for Provisional Release, 23 January 2003”).

and Montenegro, on 25 February 2005.¹² In their guarantees, Serbia and Montenegro undertake various obligations. These include the obligation of the Federal Ministry of the Interior to ensure, through the Secretariat of the Serbian Ministry of the Interior, that the accused reports daily to a police station and to inform the Tribunal immediately should the accused fail to present himself, and the obligation of “Yugoslav organs” to arrest the accused immediately if he tries to escape or violates any other condition of his provisional release and to inform the Tribunal of such fact. The Government of the Republic of Serbia undertakes to honour all orders of the Trial Chamber so that the he can appear for trial before the Tribunal at any time.

9. While these guarantees are identical to those that were before the Trial Chamber at the time of the first application, Milutinović submits that there are new circumstances which should reassure the Trial Chamber that they will be complied with, if required, to ensure the Accused’s appearance for trial.

10. Milutinović argues that recent Appeals Chamber jurisprudence, in particular the decisions granting provisional release in the *Mrksić, Prlić, Čermak, Stanišić and Simatović* cases,¹³ all involving accused that held high ranking positions, constitutes a change in circumstances concerning the weight to be attributed to government guarantees. This factor, coupled with the personal circumstances of Mr. Milutinović, who surrendered at the end of his term as President of the Republic of Serbia, indicates that full weight should be given to those Government Guarantees, as assurances that he will appear for trial.¹⁴

11. The Prosecution submits that the Defence submissions with regard to government guarantees demonstrate a lack of understanding of the law on guarantees. In essence, the

¹¹ Conclusion of the Government of the Republic of Serbia 05 no: 713/205/2003 of 20 January 2003, 3 February 2003; Guarantee of the Federal Government of the Federal Republic of Yugoslavia no.: 762-1/2003 of 27 January 2003, 3 February 2003.

¹² Guarantees from Government of Republic of Serbia and Council of Ministers of Serbia and Montenegro in Support of Mr. Milutinović Second Motion for Provisional Release filed on 17 December 2004, 25 February 2005, Annexes 1 & 2.

¹³ *Prosecutor v. Mrksić*, Case No. IT-95-13/1-AR65, “Decision on Appeal against Refusal to Grant Provisional Release”, 8 October 2002 (“*Mrksić* Decision”); *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65, “Decision on Motions for Re-Consideration, Clarification, Request for Release and Applications for Leave to Appeal”, 8 September 2004; *Prosecutor v. Čermak, et al.*, Case No. IT-03-73-AR65.1, “Decision on Joint Motion for Leave to Appeal Decision on Provisional Release,” 13 October 2004; *Prosecutor v. Stanišić*, “Decision on Prosecution’s Appeal against Decision Granting Provisional Release,” IT-03-69-AR65.1, 3 December 2004; *Prosecutor v. Simatović*, Case No. IT-03-69-AR65.2, “Decision on Prosecution’s Appeal against Decision Granting Provisional Release,” 3 December 2004.

¹⁴ Motion, *supra* note 2, p. 7 - 8

Prosecution submits that, whether and to what extent guarantees of the Government of Serbia and Montenegro were found to be reliable in other cases and for other accused, is entirely irrelevant in the instant case.¹⁵

12. This submission has support in the case-law of the Tribunal.¹⁶ The Trial Chamber is bound to evaluate the guarantees offered in light of the circumstances of this particular case as a whole and the personal circumstances of the Accused.

13. At the oral hearing of 10 March 2005, the evidence led on behalf of the Accused from Mr. Zoran Stojković confirmed the commitment of the Government of the Republic of Serbia to respect the conditions for the release of each accused as determined by the Trial Chamber and the Tribunal, and to arrest any accused granted provisional release who breaches any condition of his release.¹⁷ He mentioned a number of factors which, the defence submitted, indicated the reliability of that commitment.

14. Minister Stojković testified that, since the establishment of the Council for Cooperation with the Tribunal in 2004, six or seven indictees had voluntarily surrendered to the Tribunal and that he expected more individuals to arrive in the near future.¹⁸ Minister Stojković explained that, although he was aware of statements made to the press by General Pavković to the effect that he will not surrender voluntarily, such statements were merely his personal views; the Government, he said, was committed to enforce the law in order to ensure his presence at the Tribunal.¹⁹ Minister Stojković acknowledged that government officials in Serbia have publicly stated that all indictees were encouraged to surrender voluntarily; however, he said, if they fail to do so, they will be arrested.²⁰ He drew a distinction between accused persons still at large, on the one hand, and those brought before the International Tribunal and provisionally released under the conditions set by the Trial Chamber, on the other. While, in the former case, an intervention of the domestic courts in Serbia is required for an accused to be arrested, in the latter case, he explained, the government has direct

¹⁵ Prosecution Response, *supra* note 3, para. 18.

¹⁶ The weight to be attributed to guarantees given by a government may depend a great deal upon the personal circumstances of the applicant and must be determined in relation to whole circumstances of the particular case. See, *Prosecutor v. Šainović & Ojdanić*, Case No. IT-99-37-AR65, "Decision on Provisional Release", 30 October 2002 ("Appeals Chamber's Decision on Provisional Release"), para. 7; *Mrksić* Decision, *supra* note 13, para. 9.

¹⁷ Transcript, 10 March 2005, pp. 884-888.

¹⁸ *Ibid*, p. 895.

¹⁹ *Ibid*, p. 898.

²⁰ *Ibid*, pp. 901, 904, 912-913.

authority and obligation to bring the accused to the Tribunal in accordance with the conditions set by the Trial Chamber.²¹ The Minister said, "...there is no possibility for us not to comply with the conditions we agreed to once you have made your decision for provisional release".²² In addition, Minister Stojković confirmed that, as the former President of the Republic of Serbia, Mr. Milutinović will be subject to constant surveillance, including video surveillance of his residence.²³

15. Mr. Slavojub Carić made a statement attesting to the fact that the Council of Ministers of Serbia and Montenegro issued a Decision on 16 February 2005 confirming the Guarantees issued by the Federal Government of the Federal Republic of Yugoslavia of 20 January 2003.²⁴

16. The Prosecution argues that new material available undermines the reliability and credibility of the guarantees of Serbia and Montenegro with regard to this Accused and in the context of this specific case. The Prosecution submits that, similar to the past situation of this Accused, who remained President of Serbia for three years after being indicted, authorities in Serbia and Montenegro have publicly stated that they will not arrest the remaining fugitives of the Kosovo case (co-accused Pavković, Lazarević, Lukić and Đorđević) but leave it to them to decide whether they wish to surrender. The Prosecution further submits that, in the assessment of the cooperation of Serbia and Montenegro with the Tribunal recently provided by the Prosecutor to the Security Council, she reported that Serbia and Montenegro remains the country most reluctant to cooperate with the Tribunal.²⁵ The Prosecution argues that this general level of cooperation, in addition to the concrete level of cooperation with regard to specific Accused constitutes new circumstances that strongly militate against the reliability and credibility of the government guarantees in this case.²⁶

17. The Prosecution acknowledged that, in recent months, the number of voluntary surrender of indictees "appears to have been increasing on a weekly basis almost".²⁷ However, the Prosecution submits that the reliability and credibility of the guarantees are undermined by

²¹ *Ibid*, pp. 903, 907-908.

²² *Ibid*, p. 904.

²³ *Ibid*, p. 890.

²⁴ *Ibid*, p. 911.

²⁵ Prosecution Response, *supra* note 3, Annex B ("Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia to the Security Council, 23 November 2004").

²⁶ *Ibid*, paras. 19-22.

²⁷ Transcript, 10 March 2005, p. 895.

the failure by authorities in Serbia and Montenegro to arrest other high profile fugitives, including General Pavković, and General Lukić.²⁸

18. The Trial Chamber recalls that the weight to be attributed to government guarantees depends on the personal circumstances of the accused.²⁹ Circumstances arising in a particular case and concerning an individual accused must be assessed at the time when the decision on provisional release is being taken, and also, as far as foreseeable, the time when he will be expected to return for trial.³⁰
19. The Accused is the former President of the Republic of Serbia. Initially indicted on 24 May 1999, he was transferred into the custody of the Tribunal on 20 January 2003, after the expiration of his term as President on 29 December 2002. As stated in the First Decision, the Trial Chamber considers that the senior position held by Milutinović and the consequence thereof upon the weight of governmental guarantees to be significant factors that inform its assessment in relation to the willingness of the Republic of Serbia and the State Union of Serbia and Montenegro to arrest him should he refuse to appear for trial.
20. The Trial Chamber further observes that, even though the reliability of a guarantee must not be exclusively determined by reference to an assessment of the level of cooperation by the authority providing it, the general level of cooperation by that authority with the International Tribunal is relevant in determining whether it would arrest the accused in question.³¹ What would happen if that authority were obliged under its guarantee to arrest the particular accused is one question that must be answered on the balance of probabilities on the basis of information currently available.
21. The Trial Chamber notes that the level of cooperation of the Serbian authorities with the Tribunal has increased in recent months. Indeed, as acknowledged by the Prosecution,³² an example of this cooperation is seen in the assistance of the authorities in the transfer of some of the indictees to the Tribunal, as illustrated by the recent transfer of General Lazarević, and the cooperation of the Serbian authorities with regard to waivers authorising officials or

²⁸ *Ibid*, pp. 895-896.

²⁹ Appeals Chamber's Decision on Provisional Release, *supra* note 16, para. 7.

³⁰ *Ibid*.

³¹ *Prosecutor v. Čermak & Markač*, Case No. IT-03-73-AR65.1, "Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release", 2 December 2004, para. 32.

³² Transcript, 10 March 2005, p. 895.

former officials to be interviewed.³³ In fact, the Trial Chamber observes that, since October 2004, Serbian authorities have assisted in the transfer of at least 10 indictees, including General Lazarević, Momčilo Perišić, Drago Nikolić, Vinko Pandurević, Ljubomir Borovčanin and, most recently, General Lukić. It appears that the policy of the Government of Serbia to encourage all indictees to surrender voluntarily, failing which they will be arrested and transferred, is working in practice. Furthermore, the evidence, which was not contradicted, and which the Trial Chamber accepts, is that, to date, the guarantees of the Government of the Republic of Serbia and the Federal Government have been respected and upheld in relation to accused who have been provisionally released pending trials.³⁴

22. While the failure to arrest the other fugitives is still a matter of concern, the Trial Chamber is persuaded by the steady influx of indictees from the Republic of Serbia, encouraged by the Government to surrender to the Tribunal voluntarily, coupled with the strong assurances given by Minister Stojković to ensure the fulfilment of the guarantees, and the statement made by Mr. Carić, that the Government of the Republic of Serbia and the Federal Government of Serbia and Montenegro would implement the guarantees provided in support of the application. In arriving at that decision, the Trial Chamber has taken into account the personal circumstances of the Accused, including the senior position previously held by him.

23. The Trial Chamber has considered the findings made in the foregoing paragraphs, particularly paragraphs 7 and 22, against the background of the case as a whole, including the gravity of the charges which will be likely to result in a lengthy term of imprisonment in the event of conviction, and the circumstances surrounding the surrender of the Accused, and is satisfied that the Accused will appear for trial, if released.

(b) Whether, if released, the Accused will not pose a danger to any victim, witness or other person

24. The Trial Chamber observes that, in opposing the Motion, the Prosecution has not argued that, if released, Milutinović would pose a danger to victims, witnesses or other persons. In the absence of any suggestion that the Accused has interfered with the administration of

³³ Prosecution Response, *supra* note 3, Annex B (“Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia to the Security Council, 23 November 2004”).

³⁴ Transcript, 10 March 2005, p. 886; Motion, *supra* note 2, para. 10.

justice in any way since the date when the indictment was confirmed against him,³⁵ the Trial Chamber is satisfied, on the basis of the personal undertaking of the Accused together with the guarantees of the Federal Government of Serbia and Montenegro and the Government of the Republic Serbia to ensure full compliance with such conditions as the Trial Chamber may impose, and the arrangements that will be made to monitor the movements of the Accused, that this condition is met.

(c) Determination

25. Although the Accused relies on his health condition as a factor that militates in favour of his provisional release until trial, he has presented no material to suggest that he can't be adequately cared for in custody.
26. As mentioned in paragraph 4, it is difficult to see that, where two requirements in Rule 65(B) are met, provisional release should not be granted.
27. However, if further justification for that conclusion were required, it can be found in the period of time that the Accused would otherwise be likely to spend in custody pending trial. The Defence submits that Milutinović has been in pre-trial detention for two years and there is no indication when the instant case will go to trial. The Prosecution also indicated that it intends to file a motion for joinder which is likely to delay the readiness of the case for trial by several months.
28. At the hearing, the Prosecution confirmed its intention to file a motion to join General Lazarević and his co-accused with the defendants in this case.³⁶ The Prosecution acknowledged that this development might considerably impact on the prospect for commencement of trial in this case, and that, in the event of a joinder, "the Court may decide that [it] has to release these defendants if their trial is not going to start until 2006".³⁷
29. The Trial Chamber notes that Milutinović was transferred to the Tribunal on 20 January 2003 and, as of 10 March 2005, he had been in detention for 2 years, 1 month, and 20 days. In this context, the Trial Chamber must consider the submission that it should take into

³⁵ Šainović Trial Chamber Decision, *supra* note 7, para. 16.

³⁶ Transcript, 10 March 2005, p. 915.

³⁷ *Ibid.*

account the likelihood that Milutinović might face a longer pre-trial procedure in light of the Prosecution application for joinder (“the Joinder Motion”).³⁸ In the Joinder Motion, the Prosecution requests that the accused in the present Case No. IT-99-37-PT, Milutinović, Šainović, and Ojdanić, and the accused in Case No. IT-03-70-PT, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević and Streten Lukić be jointly charged and tried.³⁹ The Prosecution has argued in support of that application that the crime-base allegations and the modes of liability for the crimes are the same for all accused.⁴⁰ Furthermore, all accused are charged pursuant to Articles 3 and 5 of the Statute of the Tribunal for the same crimes.⁴¹ A joint trial, it is submitted, will not interfere with the rights of the Accused to an expeditious trial as “a date for trial has not been scheduled [in Case No. IT-99-37-PT] and it appears that a Trial Chamber will not become available to try this case before autumn or winter 2005 or early 2006”. Should the Joinder Motion be granted, the Prosecution estimates that a period of six to eight months would be adequate for the accused in Case No. IT-03-70-PT to prepare their defence.

30. Article 21(3) of the Statute of the Tribunal mandates that “the accused shall be presumed innocent until proved guilty”. The presumption of innocence is enshrined in Article 14(2) of the International Covenant on Civil and Political Rights (“the ICCPR”), the Statute of the International Criminal Court (“ICC”),⁴² and in a number of international human rights treaties.⁴³ It follows from this fundamental principle of criminal justice that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...”.⁴⁴
31. While these provisions must be interpreted in light of the specific context in which the Tribunal operates, these norms simply strengthen the Accused’s application in circumstances where, as in this case, he has satisfied the Trial Chamber that he will appear for trial and that he will not pose any danger to victims, witnesses or other persons.

³⁸ *Prosecutor v. Milutinović et al.*, Case Nos. IT-99-37-PT, IT-03-70-PT, “Prosecution Motion for Joinder”, 1 April 2005.

³⁹ *Ibid.*, para. 3.

⁴⁰ *Ibid.*, para. 24.

⁴¹ *Ibid.*

⁴² ICC Statute, Article 66.

⁴³ See, European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), Article 6(2); the American Convention on Human Rights (“the American Convention”), Article 8; the African Charter on Human and Peoples’ Rights (“the African Charter”), Article 7.

⁴⁴ Article 9(3) of the ICCPR; *see also*, Article 5(3) of the ECHR.

32. Even though there is no suggestion that the length of the pre-trial detention is excessive in this case, the Trial Chamber considers that a period of over two years in pre-trial detention, coupled with the real possibility that an application for joinder might further delay the start of the trial for several months, is a factor to be weighed in favour of the Accused in the exercise of the Trial Chamber's discretion.
33. The Trial Chamber is satisfied that the Accused should be provisionally released pending trial.

Stay

34. The Prosecution has applied for a stay of the Decision of the Trial Chamber to release the Accused pending appeal pursuant to Rule 65(E). The Trial Chamber will grant the request.

DISPOSITION

35. For these reasons, the Trial Chamber **GRANTS** the Motion and **GRANTS** the Prosecution's application for a stay and **ORDERS**:

- (1) the provisional release of Milan Milutinović subject to the terms and conditions set out in the Order for Provisional Release appended to this Decision; and
- (2) the provisional release of Milan Milutinović is stayed pending an appeal by the Prosecution pursuant to Rule 65(D), (E), (F) and (G) of the Rules.

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



Judge Patrick Robinson
Presiding

Dated this fourteenth day of April 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

ORDER FOR PROVISIONAL RELEASE OF MILAN MILUTINOVIĆ

1. Milan Milutinović (“the Accused”) shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
2. At Schiphol airport, the Accused shall be provisionally released into the custody of an official of the government of Serbia and Montenegro to be designated prior to release in accordance with operative paragraph (2)(a) hereof, who shall accompany the Accused for the remainder of his travel to Serbia and Montenegro and to his place of residence;
3. On his return, the Accused shall be accompanied by the same designated official of the government of Serbia and Montenegro, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by Order of the Trial Chamber, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague;
4. During the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the governments of Serbia and Montenegro and the Republic of Serbia, including the local police, shall ensure compliance with such conditions:
 - (i) to remain within the confines of the municipality of Belgrade;
 - (ii) to surrender his passport to the Ministry of Justice;
 - (iii) to report each day to the police in Belgrade at a local police station to be designated by the Ministry of Justice;
 - (iv) to provide the address at which he will be staying to the Ministry of Justice and the Registrar of the International Tribunal before leaving the United Nations Detention Unit in The Hague;
 - (v) to consent to having the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits upon the Accused by the Ministry of Justice or by a person designated by the Registrar of the International Tribunal;
 - (vi) not to have any contact with the co-accused in the case;

- (vii) not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- (viii) not to discuss his case with anyone, including the media, other than with his counsel;
- (ix) to continue to cooperate with the International Tribunal;
- (x) to comply strictly with any requirements of the authorities of Serbia and Montenegro and the Republic of Serbia necessary to enable them to comply with their obligations under this Order and their guarantees;
- (xi) to return to the International Tribunal at such time and on such date as the Trial Chamber may order; and
- (xii) to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release; and

REQUIRES The Governments of the State Union of Serbia and Montenegro and the Republic of Serbia to assume responsibility as follows:

- a) by designating an official of the government of Serbia and Montenegro into whose custody the Accused shall be provisionally released and who shall accompany the Accused from Schiphol airport to Serbia and Montenegro and to his place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the International Tribunal of the name of the designated official;
- b) for the personal security and safety of the Accused while on provisional release;
- c) for all expenses concerning transport of the Accused from Schiphol airport to Belgrade and back;
- d) for all expenses concerning accommodation and security of the Accused while on provisional release;
- e) at the request of the Trial Chamber or the parties to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;

- f) to submit a written report to the Trial Chamber every month as to the compliance of the Accused with the terms of this Order;
- g) to arrest and detain the Accused immediately if he should breach any of the conditions of this Order; and
- h) to report immediately to the Trial Chamber any breach of the conditions set out above; and

INSTRUCTS the Registrar of the International Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for his release and to continue to detain the Accused at the United Nations Detention Unit in The Hague until such time as the Trial Chamber and the Registrar have been notified of the name of the designated official of the government of Serbia and Montenegro into whose custody the Accused is to be provisionally released; and

REQUESTS the authorities of all States through which the Accused will travel:

- a) to hold the Accused in custody for any time that he will spend in transit at the airport;
- b) to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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



Judge Patrick Robinson
Presiding

Dated this fourteenth day of April 2005
At The Hague
The Netherlands

[Seal of the Tribunal]