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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-01-48-T

Date: 22 July 2005

Original: English

**IN TRIAL CHAMBER I, SECTION A**

**Before:** Judge Liu Daqun, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Amin El Mahdi

**Registrar:** Mr. Hans Holthuis

**Decision of:** 22 July 2005

**PROSECUTOR**

**v.**

**SEFER HALILOVIĆ**

***CONFIDENTIAL***

**DECISION ON RENEWED MOTION FOR PROVISIONAL  
RELEASE**

**The Office of the Prosecutor:**

Mr. Philip Weiner  
Ms. Sureta Chana  
Mr. David Re  
Mr. Manoj Sachdeva

**Counsel for the Accused:**

Mr. Peter Morrissey  
Mr. Guénaél Mettraux

**TRIAL CHAMBER I, SECTION A**, (“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 “Renewed Motion for Provisional Release”, filed by the Defence on 6 July 2005 (“Motion”), in which the Defence requests the provisional release of Sefer Halilović (“Accused”) from the end of the Defence case until the rendering of the judgement in this case;

**NOTING** the “Prosecution’s Response to Renewed Motion for Provisional Release”, filed on 15 July 2005 (“Response”), in which the Prosecution submits that the Motion should be denied;

**NOTING** the “Decision on Request for Pre-Trial Provisional Release”, issued on 13 December 2001 by Trial Chamber III, seized of the case at that time, granting the request for provisional release;

**NOTING** the decision of the Trial Chamber of 21 April 2005 denying the “Motion for Provisional Release”,<sup>1</sup> on the basis that it was not considered appropriate, in light of the circumstances of the present case, to grant provisional release at that stage of the proceedings;<sup>2</sup>

**NOTING** that on 9 May 2005 the Red Cross, following a request from the Defence, responded that it was not in a position to assist Mr Halilović financially, in order for his children and wife to travel to The Hague; and that the Registry had earlier informed the Defence that it could not provide financial support to the Accused for this purpose either;<sup>3</sup>

**NOTING** that the main Defence arguments in support of the Motion are that:

1. all requirements for provisional release are met in this case and the granting of this motion would not in any way impact upon the proceedings;<sup>4</sup>
2. the requirements set out in Rule 65 of the Rules of Procedure and Evidence (“Rules”) were met at the time the pre-trial provisional release was granted and the circumstances relevant to this assessment have not changed in any relevant manner;<sup>5</sup> and
3. the pre-trial provisional release of the Accused was subject to a number of conditions with which the Accused has complied fully over a period of more than two years;<sup>6</sup>

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<sup>1</sup> “Motion for Provisional Release”, filed confidentially by the Defence on 1 April 2005.

<sup>2</sup> “Decision on Motion for Provisional Release”, 21 April 2005 (“Decision denying Motion for Provisional Release”).

<sup>3</sup> Motion, paras 5 and 13 (iii).

<sup>4</sup> Motion, para. 9.

<sup>5</sup> Motion, para. 12.

<sup>6</sup> Motion, para. 12.

**NOTING** that the Defence also submits that exceptional circumstances, even though they are not a condition of provisional release, strongly support the present application, such as:

- (i) a member of Mr Halilović's close family was subjected to very serious threats;<sup>7</sup>
- (ii) Mr Halilović should be permitted to ensure that his close family has a place in which to live whilst he is in The Hague for the purpose of his trial;<sup>8</sup>
- (iii) as Mr Halilović is indigent and receives no financial assistance from the authorities or from the Red Cross, he is not in a position to pay for the travel of his family to The Hague and as a result he has not seen his children, as well as his aging mother, for almost six months and, until the judgement is rendered in this matter there is no real prospect that he will be able to find financial support for their travel to The Hague;<sup>9</sup>
- (iv) Mr Halilović's attitude towards the Tribunal both prior and during his trial has been exemplary, and he has sought at all times to cooperate with the Tribunal and to abide by any ruling, restriction or condition set by the Tribunal; he has also shown dignity and respect for the Court and the witnesses;<sup>10</sup>

**NOTING** that the main Prosecution arguments in support of its Response are that:

1. the Trial Chamber dismissed a previous Defence motion for provisional release on 21 April 2005,<sup>11</sup> which was filed on similar grounds, and that there has been no change of circumstance which would merit consideration of this renewed filing;<sup>12</sup>
2. the Accused does not satisfy the requirements for provisional release at this late stage of the trial;<sup>13</sup>
3. "given the seriousness of the charges against the Accused, his seniority and the fact that the case against the Accused is soon to be concluded and weighing the risk of absconding against staying for judgement on a balance of convenience comes down to in favour of continued detention till judgement is pronounced";<sup>14</sup>

**HAVING CONSIDERED** all of the arguments of the parties;

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<sup>7</sup> Motion, para. 13 (i).

<sup>8</sup> Motion, para. 13.

<sup>9</sup> Motion, para. 13 (iii).

<sup>10</sup> Motion, para. 13 (v).

<sup>11</sup> Decision denying Motion for Provisional Release.

<sup>12</sup> Response, para. 3.

<sup>13</sup> Response, para. 3.

<sup>14</sup> Response, para. 7.

**CONSIDERING** that pursuant to Articles 20 and 21 of the Statute of the Tribunal (“Statute”) the Trial Chamber has to ensure a fair and expeditious trial and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

**NOTING** that pursuant to Rule 65 (B) of the Rules a Chamber may order a provisional release of an accused 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 following two requirements are met: (i) the accused will appear for trial and, (ii) if released, will not pose a danger to any victim, witness or other person”;<sup>15</sup>

**NOTING** further that Rule 65 (C) of the Rules provides that “[t]he Trial Chamber may impose such conditions upon the release of the accused 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 others”;

**CONSIDERING** that the Trial Chamber’s discretion under Rule 65 must be exercised in light of all the circumstances of the case;

**CONSIDERING** that the Accused voluntarily surrendered to the custody of the Tribunal on 25 September 2001;

**CONSIDERING** that the Accused complied with all the conditions imposed upon him while provisionally released during the pre-trial proceedings;

**CONSIDERING** that the Accused has conducted himself with due respect towards the Tribunal;

**NOTING** that the Registry provided a certified copy of the Motion to the relevant authorities in the Netherlands who have not opposed the provisional release of the Accused;

**NOTING** the written guarantee provided by the Government of the Federation of Bosnia and Herzegovina, dated 30 June 2005, attached to the Motion, in which it is stated that “the competent organs of the Federation of Bosnia and Herzegovina will ensure that Sefer Halilović responds to every call by the Court to The Hague or any other place which the Trial Chamber determines, and will execute all the orders of the Court which the Trial Chamber orders by its decision”;<sup>16</sup>

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<sup>15</sup> See also *Prosecutor v. Ivan Čermak’s and Mladen Markač*, Case No. IT-03-73-PT, Decision on Ivan Čermak’s and Mladen Markač’s Second Motions for Provisional Release, 14 September 2004, para. 7, in which the Chamber found that “release may be granted if a Chamber is satisfied that the [two requirements] are met and if it is also satisfied that release is appropriate in a particular case.”

<sup>16</sup> Annex to the Request.

**CONSIDERING** that the jurisprudence of the Tribunal gives due weight to the personal circumstances of the Accused in deciding whether to grant provisional release, and furthermore the Trial Chamber finds that such considerations should not be limited to the pre-trial stage of the proceedings;

**CONSIDERING** the circumstances submitted by the Defence in support of the Motion, in particular the need of the Accused to solve with the competent authorities the matter of the apartment where his family lives, and the impossibility for his family to pay for a visit to The Hague;

**CONSIDERING** that the Defence case ended on 14 July 2005, that the “Prosecution Motion to Call Rebuttal Evidence” has been denied by the Trial Chamber’s Decision of 21 July 2005,<sup>17</sup> and that therefore no further witnesses will be heard in the present case;

**CONSIDERING** that the parties’ closing arguments are scheduled for 25 and 26 August 2005 for which, in the interests of justice, and in particular in order for the Accused to be present during the trial proceedings, the Trial Chamber finds it necessary that the Accused be present;

**CONSIDERING** that the Trial Chamber is satisfied that the Accused, if released, will appear for closing arguments, and that he will not pose any danger to any victim, witness or other person;

**CONSIDERING** furthermore that the Trial Chamber has been informed by the Defence that recently again very serious threats have been made against a member of Mr Halilović’s close family;

**CONSIDERING** that therefore the Trial Chamber expressly entrusts the Government of the Federation of Bosnia and Herzegovina to assume responsibility for, and to take the appropriate measures to ensure, the personal security and safety of the Accused while he is on provisional release,

**FOR THE FOREGOING REASONS,**

**HEREBY PARTIALLY GRANTS** the Motion and **ORDERS** the provisional release of Sefer Halilović as soon as possible, at the latest from 26 July 2005 until 24 August 2005 on the following terms and conditions:

- 1) The Accused shall be transported to Schiphol airport in The Netherlands by the Dutch authorities.

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<sup>17</sup> “Decision on Prosecution Motion to Call Rebuttal Evidence”, 21 July 2005.

- 2) At Schiphol airport the Accused shall be provisionally released into the custody of the designated official of the Government of the Federation of Bosnia and Herzegovina who shall accompany the Accused for the remainder of his travel to the Federation of Bosnia and Herzegovina ("Bosnia and Herzegovina") and to his place of residence in Sarajevo.
- 3) On his return, the Accused shall be accompanied by the designated official of the Government of Bosnia and Herzegovina who shall deliver the Accused into the custody of the Dutch authorities at Schiphol airport on 24 August 2005 and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit.
- 4) During his release, the Accused shall abide by the following conditions and the Bosnia and Herzegovina's authorities shall ensure compliance with such conditions:
  - a) within one day of his arrival, to report the address where the Accused will be staying to the local police and the Registrar of the Tribunal, and to indicate any changes of address to the Registrar within one day of such change,
  - b) to surrender his passport to the Government of Bosnia and Herzegovina,
  - c) to remain within the confines of Sarajevo,
  - d) to report once a week to the local police in Sarajevo,
  - e) to consent to having officials of Bosnia and Herzegovina verify his presence with the local police and to occasional unannounced visits to the Accused by these officials or by a person designated by the Registrar,
  - f) not to have any contacts whatsoever or in any way interfere with victims or potential witnesses in any case before the Tribunal or otherwise interfere in any way with the proceedings or the administration of justice,
  - g) not to discuss his case publicly, including with the media,
  - h) to comply strictly with any requirements of the authorities of Bosnia and Herzegovina necessary to enable them to comply with their obligations under the order for provisional

release and their guarantees,

- i) to return to the United Nations Detention Unit on 24 August 2005,
- j) to comply strictly with any order of the Trial Chamber varying the terms of, or terminating, the provisional release of the Accused,

**REQUIRES** the Government of Bosnia and Herzegovina to assume responsibility for:

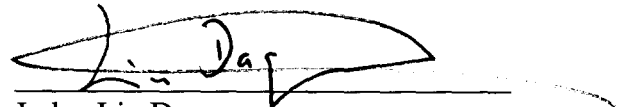
- 1) Transport expenses of the Accused from Schiphol airport to his place of residence and back,
- 2) The personal security and safety of the Accused while on provisional release,
- 3) Reporting immediately to the Registrar of the Tribunal the substance of any threats to the security of the Accused, including full reports of investigations related to such threats,
- 4) Immediately detaining the Accused should he breach any of the terms or conditions of his provisional release and reporting immediately any such breach to the Trial Chamber,
- 5) Respecting the primacy of the Tribunal in relation to any existing or future proceedings in Bosnia and Herzegovina concerning the Accused,

**INSTRUCTS** the Registrar of the Tribunal to consult the Ministry of Justice of The Netherlands and the authorities of Bosnia and Herzegovina as to the practical arrangements for the release of the Accused,

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

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

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

  
Judge Liu Daqun  
Presiding Judge

Dated this twenty-second day of July 2005  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**