

**UNITED  
NATIONS**

IT-00-41-PT  
D 3302 - D 3302  
18 August 2005

3302

YCB



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-00-41-PT

Date: 18 August 2005

Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Theodor Meron**

**Registrar: Mr Hans Holthuis**

**Order of: 18 August 2005**

**PROSECUTOR**

v.

**PAŠKO LJUBIČIĆ**

**ORDER ON REQUEST FOR MODIFICATION OF CONDITIONS OF DETENTION**

**Counsel for the Prosecutor**  
**Mr Mark Harmon**

**Counsel for Paško Ljubičić**  
**Mr Tomislav Jonjić**

1. On 26 July 2005 the Trial Chamber in this case rejected a second application by Paško Ljubičić (“Accused”) for provisional release.<sup>1</sup> In making that application, the Accused had suggested that a condition of his provisional release could include being placed under house arrest in his wife’s flat in Mostar. The Trial Chamber, finding that that request constituted a request for modification of conditions of detention pursuant to Rule 64 of the Rules of Evidence and Procedure (“Rules”), held that it was to be made before the President and remitted the application for provisional release to me “to the extent that it concerns a request for modified conditions of detention”.<sup>2</sup>

2. Rule 64 provides as follows:

Upon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside the host country. The President, may, on the application of a party, request modifications of the conditions of a detention of an accused.

3. In referring this matter to me, the Trial Chamber relied on paragraph 13 of the Accused’s second application for provisional release in which he stated:

The Applicant wishes to demonstrate his unconditional determination to appear before the Court by willing to, should the Trial Chamber decide so, remain under house arrest until the beginning of trial. The Applicant’s determination to consent “to the imposition of any condition necessary to his provisional release”, even then when those conditions is very rigorous, is an important fact that the Trial Chamber cannot neglect.<sup>3</sup>

While the Trial Chamber reasonably construed this paragraph as being a request to modify the conditions of detention, I am not persuaded that the Accused was making such an application. In my view, the Accused was conveying to the Trial Chamber that he would abide by any conditions that it deemed reasonable to impose should it determine to grant his application for provisional release. Accordingly, I do not consider that it would be fair to the Accused to render a decision at this time without first allowing him the opportunity to specifically address the requirements of Rule 64 and show exceptional circumstances.

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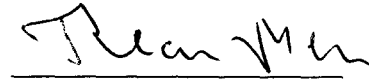
<sup>1</sup> Decision on Second Application for Provisional Release, 26 July 2005 (“Decision”).

<sup>2</sup> *Ibid*, paras.19, 35.

<sup>3</sup> Second Application for the Provisional Release of the Accused, 18 October 2004.

4. If the Accused wishes to make an application pursuant to Rule 64, he should do so addressing the requirements of the Rule. Should he bring such an application, the Prosecution will be entitled to file a response thereto.

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



Theodor Meron  
President

Done this 18<sup>th</sup> day of August 2005,  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**