



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-04-84-R77.4

Date: 20 January 2009

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van den Wyngaert
Judge Bakone Justice Moloto

Acting Registrar: Mr. John Hocking

Decision of: 20 January 2009

PROSECUTOR

v.

ASTRIT HARAQIJA

and

BAJRUSH MORINA

PUBLIC

**DECISION ON THE JOINT DEFENCE APPLICATION FOR
PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Dan Saxon

Counsel:

Mr. Karim A. A. Khan for Astrit Haraqija
Mr. Jens Dieckmann for Bajrush Morina

1. **TRIAL CHAMBER I** (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (“Tribunal”) is seised of the Haraqija and Morina (“Defence”) Joint Application for Provisional Release (“Application”) submitted orally on 17 December 2008,¹ after the rendering of the Trial Judgement in this case (“Judgement”), and hereby renders its Decision.

2. In its Application, the Defence notes that according to Rule 65(I) of the Rules of Procedure and Evidence (“Rules”), the Appeals Chamber “may grant provisional release to convicted persons pending an appeal or for a fixed period”. However, according to the Defence, there is a “gap” in the Rules in that before a notice of appeal is filed and the Appeals Chamber becomes seised of the case, the convicted person does not have any recourse to seek provisional release.²

3. The Defence submits that the Trial Chamber which pronounced the judgement has “inherent power” to grant provisional release pending an application to the Appeals Chamber.³ The Defence further submits that Astrit Haraqija and Bajrush Morina have been granted provisional release previously and that they complied with all its conditions.⁴

4. The Prosecution decided not to address the merits of the Application.⁵

5. The Trial Chamber notes that with the pronouncement of the Judgement, Astrit Haraqija and Bajrush Morina were sentenced to 5 and 3 months of imprisonment respectively, therefore, for the purpose of the Rules, becoming “convicted persons”. Whereas the regime of provisional release of accused persons is determined by Rule 65(A)-(H) within the purview of the Trial Chamber, the Trial Chamber acknowledges that the Rules expressly provide that the Appeals Chamber seised of the case may grant provisional release for the convicted person (Rule 65(I)).

6. The Trial Chamber is of the opinion that it has no jurisdiction over the subject-matter of the present Application. Save for specific circumstances which are not pertinent here,⁶ with the rendering of a Trial Judgement, a Trial Chamber ceases to be seised of a case. As a consequence, unless an appeal is filed, the Trial Judgement becomes final and binding and there is no possibility for application for any provisional release.

¹ T. 394-399.

² T. 394-395, 397-399.

³ T. 395.

⁴ T. 396.

⁵ T. 396.

⁶ See Rules 102(B), 122.

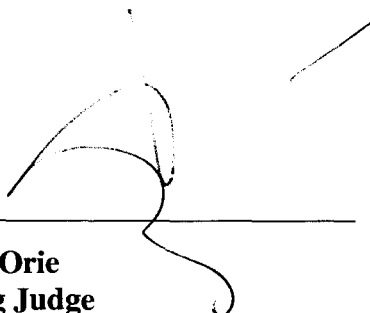
7. As acknowledged by the Defence, any issue of a gap arises only in the event that an appeal is subsequently filed.⁷ In this context, the Trial Chamber notes that the Defence is free to immediately submit such an appeal once the Judgement has been filed and seize the Appeals Chamber with any request for provisional release.⁸ In other words, whether such an appeal is filed at once, or at the latest fifteen days from the filing of the Judgement, is a matter for the Defence. Thus, it is in the hands of the Defence to minimise or even prevent the emergence of a procedural gap regarding provisional release.

8. For the foregoing reasons, the Application is **DENIED**.

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

Dated this twentieth day of January 2009

At The Hague
The Netherlands



Alphons Orié
Presiding Judge

[Seal of the Tribunal]

⁷ T. 398.

⁸ Rule 77(J) of the Rules.