

IT-03-66-R77
D296 - D290
04 MARCH 2005

296 AT

**UNITED
NATIONS**



**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: IT-03-66-R/77
Date: 4th March 2005
Original: English**

BEFORE THE TRIAL CHAMBER

**Before: Judge Liu Daqun, Presiding
Judge Amin El Mahdi
Judge Alphons Orie, pre-trial judge**

Registrar: Mr. Hans Holthuis

Decision of: 4th March 2005

PROSECUTOR

v.

Beqë BEQAJ

ORDER FOR PROVISIONAL RELEASE

Office of the Prosecutor:
Mr. David Akerson

**The Government of the
Kingdom of The Netherlands**

Defence Counsel:
Mr. Tjarda Eduard van der Spoel

**The United Nations Mission in
Kosovo (UNMIK)**

TRIAL CHAMBER I (the “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 (the “Tribunal”);

BEING SEISED of the “Request for Provisional Release” filed on 28 December 2004 whereby the Defence for the accused Beqë Beqaj (“the Accused”) requests that the Accused be provisionally released to Slovenia or to Kosovo on the grounds that (1) if released the Accused would have no incentive to flee because of the limited severity of the maximum sentence to be imposed for contempt of the Tribunal not exceeding seven years or a fine of 100,000 euros, (2) the Accused is father of six children who are dependent on the income he gains in Slovenia, (3) the Accused has no criminal record and did not try to resist arrest, (4) the Accused guarantees that he will not communicate in any way with any victim or witness, and (5) the Accused is ready to accept any conditions the Chamber may impose on him (“the Request”);

NOTING the “Prosecution’s Response to Defence Request for Provisional Release” filed on 5 January 2005 whereby the Prosecution does not oppose the Application for Provisional Release provided that the Accused signs an undertaking not to have any contact of any kind with any victim, witness or accused in any ICTY proceedings and that the accused comply with all other conditions imposed by the Chamber;

NOTING the Defence “Reply to Prosecutor’s Response to Defence Request for Provisional Release” filed on 7 January 2005 whereby the Accused promises that he will “not have any contact with any victim, witness or accused in any ICTY proceeding” and “comply with all other conditions imposed by the Court”;

NOTING that the Accused was arrested and transferred to the custody of the United Nations Detention Unit on 4th November 2004 pursuant to Rule 64 of the Rules of Procedure and Evidence (“the Rules”);

NOTING the initial appearance of the Accused on 8th November 2004 where the Accused pleaded not guilty to all charges of contempt of the Tribunal contained in the indictment against him dated 21st October 2004 and amended on 8th November 2004;

NOTING that the Application for Provisional Release is made pursuant to Rule 65(A) and (B) of the Rules which set out the basis upon which a Trial Chamber may order the provisional release of an accused as follows:

- (A) Once detained, an accused may not be released except upon an order of a Chamber.
- (B) Release may be ordered by a Trial Chamber only after hearing the Host Country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witnesses or other person.

NOTING that Rule 65 of the Rules must be read in light of the ICCPR and ECHR and the relevant jurisprudence¹ and that, as a general rule, a decision *not* to release an accused shall be based on an assessment of whether the interests of justice and any public interest requirements substantially outweigh the need to ensure respect for the right to liberty of a person and the presumption of innocence of an accused;

CONSIDERING, in addition, that factors specific to the functioning of the Tribunal may influence the assessment of the risk of absconding or interfering with witnesses;²

CONSIDERING that the Chamber retains a discretion not to grant provisional release, if so warranted by the circumstances of the case, even in cases where it is satisfied that the accused complies with the two requirements of the Rule 65;³

CONSIDERING that the Chamber has carefully taken into consideration the arguments and submissions made by the parties, the facts of the case, the law, as well as the guarantees of the Accused and the guarantees provided by the relevant authorities, taken as a whole;

CONSIDERING in particular that the Chamber takes due account of the written undertaking filed by the Accused who stated that he will “not have any contact with any victim, witness or accused in any ICTY proceeding” and “comply with all other conditions imposed by the Court”;

¹ Article 21(3) of the Statute of the Tribunal (“Statute”) mandates that the accused shall be presumed innocent until proved guilty. This provision both reflects and refers to international standards as enshrined *inter alia* in Article 14(2) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”). Furthermore, Article 9(3) of the ICCPR emphasises *inter alia* 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”. Article 5(3) of the ECHR provides *inter alia* that “everyone arrested or detained ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial”. These human rights instruments form part of public international law.

² *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42-PT, Order on Miodrag Jokić’s Motion for Provisional Release, 20 February 2002, para .22.

³ See for example, *Prosecutor v. Kovačević*, Case No. IT-97-24-PT, Decision on Defence Motion for Provisional Release, 21 January 1998, *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Momir Talić for Provisional Release, 28 March 2001.

CONSIDERING the information provided by the Defence Counsel of the Accused that the Accused has lost his job in Slovenia and that provisional release to that country is therefore no longer sought;

FINDING that, upon balancing all the relevant circumstances as required by Rule 65(B), it is appropriate to provisionally release the Accused to his chosen place of residence in Kosovo;

CONSIDERING that pursuant to Rule 65(C) of the Rules, the 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” and that the Accused has consented to the imposition of any conditions necessary;

NOTING, however, that the authorities in charge of security in KOSOVO, The United Nations Mission in Kosovo (UNMIK) have been heard in the matter but have not responded whether it can and will provide any guarantees that the Accused will not threaten, intimidate or pose any danger to any victim, witness or accused in other proceedings before this Tribunal;

CONSIDERING the Appeals Chamber’s ruling that it is not indispensable to obtain, as a condition for provisional release, a written guarantee from the State to which the Accused is provisionally released, that the Accused will not threaten, intimidate or pose any danger to witnesses or victims and that he will appear for trial;⁴

CONSIDERING that, under the circumstances, the Chamber is satisfied that the Accused will not threaten, intimidate or pose any danger to witnesses or victims and that he will appear for trial by virtue his solemn declaration to this effect:

PURSUANT TO Rules 54 and 65 of the Rules,

HEREBY GRANTS the Application and **PROVISIONALLY RELEASES** the Accused as of the date of this Order, or as soon as practicable thereafter, on the following terms and conditions:

ORDERS the Accused:

1. to take residence at Ruga Anton Çeta 52, 38412 Shtime, Kosovo, upon his return to Kosovo;

⁴ See AC Decision on interlocutory appeal of 2nd December 2004 in *The Prosecutor v. Čermak & Markač*, (IT-03-73-AR65.1) at par. 30; and AC Decision on Dragan Jokic’s appeal of 18th December 2002 in *Blagojević*, (IT-02-53-AR65) at par. 10.

2. not to leave Shtime and the vicinity within 20 kilometres thereof without the written permission of the Trial Chamber;
3. to undertake not to contact or in any way seek to intimidate or pose any danger to any victim, witness or accused person in any proceedings before the United Nations International Criminal Tribunal for the Former Yugoslavia;
4. to surrender his passport and report every week in person to the nearest local police station which has an UNMIK civilian police presence;
5. to return for Trial in The Hague upon the Chamber's Order; and
6. to accept that any violation of the conditions set out above will imply his arrest and return to the United Nations Detention Unit in The Netherlands;

REQUIRES the authorities of UNMIK to:

1. instruct its agent at the local police station with UNMIK civilian police presence closest to the Accused's residence to report back to the Chamber, through UNMIK, the Accused's compliance with the requirement of weekly personal reports to that police station;
2. monitor on a regular basis the compliance of the Accused with the conditions for his provisional release as ordered by the Trial Chamber and to carry out unannounced visits to the residence of the Accused to occasionally check his presence; and to maintain a log of the monitoring and of all such visits and to include this information in the monthly report to the Trial Chamber;
3. ensure as far as possible the personal security and safety of the Accused during his provisional release in Kosovo and to report immediately to the Registrar if any threats are made to the security of the Accused during his stay in Kosovo, including information on the investigation of such threats;
4. immediately arrest the Accused if he violates or attempts to violate any of the conditions for provisional release set out by the Trial Chamber, to report any such breach or attempt immediately to the Trial Chamber, and to make arrangements for his return to the United Nations Detention Unit at the Tribunal in The Hague;

5. ensure that the Accused is brought back for trial upon the Trial Chamber's Order and to accompany him by a designated UNMIK official from Kosovo back to Schiphol Airport (or any other designated airport in The Netherlands) and to hand the Accused over there to the Dutch Authorities along with his passport and other travel documents;
6. facilitate all means of communication and cooperation between the Parties to this case and to ensure the confidentiality of any such communication.

REQUESTS the Registrar of the International Tribunal to:

- 1) to ensure that the Accused is safely escorted from Schiphol Airport to his residence in Kosovo;
- 2) consult with the Ministry of Justice of the Netherlands and with UNMIK as to the practical arrangements for the Accused's provisional release and his return for trial;
- 3) keep the Accused in custody until relevant arrangements are made for his travel;
- 4) ensure that all expenses for transport of the Accused from Dutch territory to his place of residence and back are covered;
- 5) transmit this Order to the competent authorities.

REQUESTS the Dutch authorities to:

- 1) transport the Accused to Schiphol airport (or any other airport in the Kingdom of the Netherlands) as soon as practicable;
- 2) at the airport, provisionally release the Accused into the custody of the designated official of the Tribunal ;
- 3) on the Accused's return, take custody of the Accused at a place, date and time to be determined by the Trial Chamber and transport the Accused back to the United Nations Detention Unit.

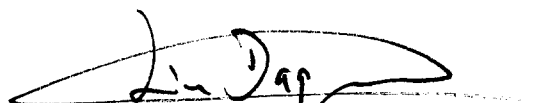
REQUESTS the authorities of the States through whose territory the Accused may travel to:

- 1) hold the Accused in custody for any time he will spend in transit at the airport;

- 2) arrest the Accused and detain him pending his return to the United Nations Detention Unit, should he attempt to escape.

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

Dated this fourth day of March, 2005
At The Hague,
The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]