



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-04-84-R77.4-A  
Date: 9 February 2009  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Liu Daqun, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andréia Vaz

**Acting Registrar:** Mr. John Hocking

**Decision of:** 9 February 2009

**PROSECUTOR**

v.

**ASTRIT HARAQIJA  
and  
BAJRUSH MORINA**

**DECISION ON MOTION OF BAJRUSH MORINA FOR  
PROVISIONAL RELEASE**

*Public*

**The Office of the Prosecutor:**

Ms. Barbara Goy

**Counsel for Astrit Haraqija:**

Mr. Karim A. A. Khan

**Counsel for Bajrush Morina:**

Mr. Jens Dieckmann

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Appeals Chamber” and “International Tribunal”, respectively), is seized of the “Motion on Behalf of Bajrush Morina for Provisional Release With Confidential Annex A” filed on 2 February 2009 (“Motion”) by Bajrush Morina (“Morina”), in which he requests provisional release “for the remainder of the duration of the appeals proceedings” in this case.<sup>1</sup>

## I. BACKGROUND

2. As a result of a warrant of arrest issued by Trial Chamber I (“Trial Chamber”) on 25 April 2008, Morina surrendered and was transferred to the custody of the International Tribunal to stand trial.<sup>2</sup> Pursuant to requests for provisional release filed on behalf of Morina, the Trial Chamber granted him provisional release at the pre-trial and trial stages.<sup>3</sup> Upon completion of the trial, the Trial Chamber convicted him of one count of contempt of the Tribunal, punishable under Rule 77(A)(iv) and Rule 77(G) of the Rules of Procedure and Evidence (“Rules”).<sup>4</sup> As a result, the Trial Chamber sentenced Morina to a term of imprisonment of three months, subject to credit for time already spent in detention pending surrender to the International Tribunal or pending trial pursuant to Rule 101(C) of the Rules, which the Trial Chamber calculated to be 36 days as of the date of its Judgement.<sup>5</sup> This calculation took into account his previous periods of provisional release. On 2 January 2009, Morina, his co-accused Astrit Haraqija, and the Prosecution filed their Notices of Appeal against the Impugned Decision.<sup>6</sup> Thus, the Appeals Chamber is presently seized of the case. On 5 February 2009, the Appeals Chamber received a statement from the Dutch Ministry of Foreign Affairs that the Kingdom of the Netherlands does not have any objections to Morina’s provisional release.<sup>7</sup>

<sup>1</sup> Motion, para. 25.

<sup>2</sup> *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-0484-R77.4, Judgement on Allegations of Contempt, 17 December 2008 (“Impugned Decision”), para. 11; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-0484-R77.4, Decision on Defence Motion for Provisional Release of the Accused Bajrush Morina, 13 May 2008, para. 12.

<sup>3</sup> Morina was granted provisional release on 13 May 2008 and 15 September 2008, see *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-0484-R77.4, Decision on Defence Motion for Provisional Release of the Accused Bajrush Morina, 13 May 2008; and *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-0484-R77.4, Decision on Defence Application for Provisional Release of the Accused Bajrush Morina, 15 September 2008 (“Second Decision on Morina’s Provisional Release”).

<sup>4</sup> Impugned Decision, para. 121.

<sup>5</sup> Impugned Decision, paras 120, 121.

<sup>6</sup> Notice of Appeal on Behalf of Bajrush Morina, 2 January 2009; Astrit Haraqija’s Notice of Appeal of the “Judgement on Contempt Allegations” dated 17 December 2008, 2 January 2009; Prosecution’s Notice of Appeal, 2 January 2009.

<sup>7</sup> Correspondence of Host Country re: Provisional Release of Mr. Bajrush Morina, signed 4 February 2009 and filed 5 February 2009.

## II. SUBMISSIONS AND DISCUSSION

3. Pursuant to Rule 102(A) of the Rules, as soon as notice of appeal is given, the enforcement of a judgement shall be stayed until the decision on the appeal has been determined, the convicted person meanwhile remaining in detention. As noted above, the parties in this case filed notices of appeal on 2 January 2009.<sup>8</sup> However, under Rule 65(I) of the Rules, the Appeals Chamber may grant provisional release to a convicted person if it is satisfied that: “(i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the appellant, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release.” These requirements must be considered cumulatively.<sup>9</sup> “Whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities.”<sup>10</sup> Morina submits that he fully meets the requirements set out in Rule 65(I) of the Rules.<sup>11</sup> The Appeals Chamber notes that the Prosecution has not filed a response and does not object to Morina’s provisional release.<sup>12</sup> As the non-objection of the Prosecution is not dispositive of this request,<sup>13</sup> the Appeals Chamber will address these requirements in turn.

### **A. The appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be**

4. Morina submits that if granted provisional release on appeal he will appear at the hearing of the appeal as determined by the Appeals Chamber.<sup>14</sup> He points out that as of the date of the filing of his motion, he has already served nearly 100 percent of the sentence imposed by the Trial Chamber and that there is thus no incentive for him to flee.<sup>15</sup> He also points out that the Trial Chamber itself recognised that he was not a flight risk as he had not only surrendered to the International Tribunal as soon as he was aware of the indictment, but had also acted in a spirit of cooperation throughout

<sup>8</sup> *Supra*, fn. 6.

<sup>9</sup> *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motion on Behalf of Enver Hadžihasanović for Provisional Release, 20 June 2007 (“*Hadžihasanović Decision*”), para 8; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Radoslav Brdanin’s Motion for Provisional Release, 23 February 2007 (“*Brdanin Decision*”), para. 5.

<sup>10</sup> *Hadžihasanović Decision*, para. 8; *Brdanin Decision*, para. 5.

<sup>11</sup> Motion, para. 11.

<sup>12</sup> The Appeals Chamber notes that the Prosecution has not filed a response, but indicated to a Senior Legal Officer of the Appeals Chamber and to the Defence that it does not oppose the Motion and will not file a response.

<sup>13</sup> *Hadžihasanović Decision*, para. 9.

<sup>14</sup> Motion, para. 12.

<sup>15</sup> Motion, para. 13.

these proceedings and complied with the conditions set out by the Trial Chamber when he was previously granted provisional release.<sup>16</sup>

5. The Appeals Chamber notes that Morina was convicted of contempt and the particularly serious nature of this offence. However, the Appeals Chamber also takes into account the fact that the Trial Chamber sentenced Morina to a term of three months imprisonment, which would have been served in full on 9 February 2009 but for the notices of appeal filed by the parties in this case.<sup>17</sup> While the pending appeal of the Prosecution may give Morina an incentive to flee, given that it could possibly result in an increased sentence, the Appeals Chamber considers that two facts militate against that possibility. First, Morina voluntarily surrendered to the Tribunal as soon as he was made aware of the Indictment against him.<sup>18</sup> Second, he has a record of returning to custody after provisional release and complying with other conditions set out by the Trial Chamber for that release. These factors suggest that if granted provisional release, he would surrender into detention when required to do so by the Appeals Chamber.

6. The Appeals Chamber notes that Morina has not submitted any State guarantees in support of his Motion. While the submission of State guarantees is not a pre-requisite to provisional release, it is generally advisable for an applicant seeking provisional release to submit guarantees in order to satisfy the International Tribunal that he will appear when required.<sup>19</sup> In the instant case, the Appeals Chamber understands that UNMIK has indicated in consultations with the Registry that they would be prepared to provide the standard guarantees for Morina and to honour any directions provided by this Chamber in event of provisional release. The Appeals Chamber accepts this as sufficient guarantee of compliance, and understands it to mean that it would comply with terms similar to those previously ordered by the Trial Chamber.

7. In light of the foregoing, the Appeals Chamber is satisfied that Morina does not pose a flight risk and therefore meets the requirements of Rule 65(I)(i) of the Rules.

**B. The appellant, if released, will not pose a danger to any victim, witness or other person**

8. Morina submits that his good behaviour throughout the proceedings demonstrates that he will not pose a danger to any victim, witness or other protected person, and points out that his

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<sup>16</sup> Motion, paras 14, 15 and 16.

<sup>17</sup> The Appeals Chamber notes that to date, Morina has served a total of 90 days on account of the 36 days prior to his sentencing, and a further 54 days from the date of his sentencing to today (17 December 2008 to 9 February 2009).

<sup>18</sup> Second Decision on Morina's Provisional Release, para. 8.

<sup>19</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Berislav Pusić, 30 July 2004, para. 32; *Prosecutor v. Blagojević et al.*, Case No. IT-02-53-AR65, Decision on Application by Dragan Jokić for Leave to Appeal, 18 April 2002, paras 7-8.

previous periods of provisional release were without incident.<sup>20</sup> The Appeals Chamber is satisfied that Morina's past periods of provisional release were indeed without incident and that his good behaviour throughout the proceedings in this case illustrate that he does not pose a danger to victims, witnesses or other persons as required by Rule 65(I)(ii) of the Rules.

### C. Special circumstances exist warranting such release

9. As regards the third requirement, Morina submits that special circumstances exist warranting his provisional release in that he will "in a couple of days have served the whole term of imprisonment to which he was sentenced by the Trial Chamber".<sup>21</sup> He further points out that since a date has not yet been scheduled for the delivery of the Appeals Chamber's Judgement in this case there is no reason why he should not be granted provisional release pending the outcome of the Appeal.<sup>22</sup>

10. The Appeals Chamber recalls that detention for a substantial period of time may amount to a special circumstance within the meaning of Rule 65(I)(iii) of the Rules. In *Kvočka*, the Appeals Chamber held that, "the fact that the appellant ha[d] already served around 80% of the sentence imposed by the Trial Chamber amount[ed] to a special circumstance warranting his release".<sup>23</sup> Similarly, in *Mrkšić*, the Appeals Chamber held that the fact that Šljivančanin had served almost 90 percent of the sentence imposed by the Trial Chamber constituted a special circumstance.<sup>24</sup> In the circumstances of this case, taking into account that Morina has previously been granted provisional release and that his past periods of provisional release have not given rise to any concern, as well as the fact that he would have already served the entire sentence imposed by the Trial Chamber were it not for the notices of appeal, the Appeals Chamber finds that special circumstances warranting Morina's provisional release have been established.

## III. CONCLUSION

11. The Appeals Chamber finds that Morina has satisfied all the conditions necessary for the granting of provisional release under Rule 65(I). The Appeals Chamber notes that Morina requests that, in the event he is granted provisional release, he be authorised to leave his place of residence once a week in order to visit his elderly parents at their family home.<sup>25</sup> The Appeals Chamber

<sup>20</sup> Motion, paras 17 and 18.

<sup>21</sup> Motion, para. 19.

<sup>22</sup> Motion, para. 20.

<sup>23</sup> *Prosecutor v. Miroslav Kvočka*, Case No. IT-98-30/1-A, Decision on Kvočka's Request for Provisional Release, 17 December 2003 ("*Kvočka* Decision"), pp 3-4; *Hadžihasanović* Decision, para. 13.

<sup>24</sup> *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on the Motion of Veselin Šljivančanin for Provisional Release, 11 December 2007, p. 3.

<sup>25</sup> Motion, para. 23.

grants Morina's request given that Morina was previously granted provisional release at trial under the same circumstances.<sup>26</sup>

#### IV. DISPOSITION

12. For the foregoing reasons and pursuant to Rules 102(A) and 65(I) of the Rules, the Appeals Chamber **GRANTS** the Motion and **ORDERS** that Morina be provisionally released pending the disposition of his appeal under the following terms and conditions:

- a. As soon as practicable, the Morina shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- b. At Schiphol airport, Morina shall be provisionally released into the custody of the security officer designated by the Registrar of the Tribunal who shall accompany Morina for the remainder of his travel to Kosovo/Kosova;
- c. At Priština airport, Morina shall be met by a designated official of the UNMIK, who shall accompany Morina to his place of residence;
- d. Morina shall provide the address at which he will be staying in Kosovo/Kosova to the authorities of UNMIK and the Registrar of the Tribunal before leaving the United Nations Detention Unit ("UNDU") in The Hague;
- e. The authorities of UNMIK shall instruct Morina that during the period of his provisional release, he shall abide by the following conditions:
  - i. to remain within the confines of the municipality of his residence, but is allowed to leave his place of residence in consultation with UNMIK one day a week between 10.00 and 18.00 in order to visit his parents in Gexhe;
  - ii. 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;
  - iii. not to discuss his case with anyone, including the media, other than with his counsel;
  - iv. to continue to cooperate with the Tribunal;

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<sup>26</sup> Decision on Bajrush Morina's Request to Vary Conditions of Provisional Release, 14 October 2008, p. 3.

- v. to comply strictly with any requirements of the authorities of the UNMIK necessary to enable them to comply with their obligations under this Decision and their guarantees;
  - vi. to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.
- f. The authorities of the UNMIK shall ensure that:
- i. Morina surrenders his passport to the UNMIK authorities upon arrival to Kosovo/Kosova;
  - ii. Morina reports weekly to the UNMIK police in the place of his residence;
  - iii. a report on provisional release of Morina is sent to the Trial Chamber on a weekly basis.
- g. Morina shall return to the UNDU in The Hague at the time to be determined by the Trial Chamber. He shall be accompanied from the place of his residence in Kosovo/Kosova by the same designated official of the UNMIK, who shall deliver Morina at Priština airport to the custody of the security officer designated by the Registrar of the Tribunal. Upon arrival at Schiphol airport, Morina shall be delivered to the custody of the Dutch authorities, and the Dutch authorities shall then transport Morina back to the UNDU in The Hague.

**REQUIRES** the UNMIK to assume responsibility as follows:

- a. by designating an official of the UNMIK who shall accompany Morina from Priština airport to his place of residence, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated official;
- b. for all expenses concerning transport of Morina from Priština airport to his residence;
- c. 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;
- d. to report immediately to the Trial Chamber any breach of the conditions set out above.

**INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice in the Netherlands as to the practical arrangements for the release of Morina, designate the official who shall accompany Morina from Schiphol airport to Priština airport and back and to continue to detain


Morina at the UNDU in The Hague until such time as Morina has provided the address at which he will be staying in Kosovo/Kosova and until the Trial Chamber and the Registrar have been notified of the name of the designated official of the UNMIK who is to accompany Morina from Priština airport to Morina's place of residence.

**REQUESTS** the authorities of all States through whose territory Morina will travel,

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

**ORDERS** that Morina shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release.

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



Judge Liu Daqun  
Presiding Judge

Dated this 9<sup>th</sup> day of February 2009  
At The Hague  
The Netherlands

**[Seal of the International Tribunal]**