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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 the Former Yugoslavia Since 1991

Case: IT-95-11-AR65

Date: 18 November 2002

Original: English

BEFORE A BENCH OF THREE JUDGES OF THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney

Registrar: Mr Hans Holthuis

Decision of: 18 November 2002

PROSECUTOR

v

MILAN MARTIĆ

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:
Ms Hildegard Uertz-Retzlaff

Counsel for the Defence:
Mr Strahinja Kastratović

THIS BENCH of the Appeals 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"),

SEISED of the "Application for Leave to Appeal on Decision on the Motion for Provisional Release" ("Application") filed by Milan Martić ("Applicant") on 18 October 2002 against the "Decision on the Motion for Provisional Release" rendered by Trial Chamber I on 10 October 2002 ("Impugned Decision"), which denies the Applicant's motion for provisional release;

NOTING the "Prosecution's Response to Defence Application for Leave to Appeal on Decision on the Motion for Provisional Release" filed by the Prosecutor on 25 October 2002 which submits that the Applicant has failed to show "good cause" and that consequently the Application should be denied;

NOTING that the Impugned Decision was rendered under Rule 65 of the Rules of Procedure and Evidence of the Tribunal ("Rules");

NOTING that, pursuant to Rule 65(D) of the Rules, applications for leave to appeal shall be filed within seven days of filing of the impugned decision, and that the Application was therefore filed one day out of time;

CONSIDERING that the delay in the filing of the Application did not prejudice the Prosecution's right to respond to it or the proceedings in this appeal and that the Prosecution has made no objection to the late filing;

FINDING that there is good cause in the terms of Rule 127 of the Rules[1] and therefore **RECOGNISING** the filing of the Application as validly done;

NOTING that, pursuant to Rule 65(B) of the Rules, an accused may only be provisionally released if the Trial Chamber is satisfied that he or she will appear for trial and, if released, will not pose a danger to any victim, witness or other person;

NOTING that the Impugned Decision was taken on the ground that the Trial Chamber was not satisfied that the Applicant would appear for trial if released;

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[1] Rule 127 of the Rules provides that "on good cause being shown by motion" the Appeals Chamber may "enlarge or reduce any time prescribed by or under the Rules".

CONSIDERING that the Applicant's main submission is that the Impugned Decision fails "to identify the basic reasons for the conclusion that the Applicant will not appear at trial in case he is provisionally released";

CONSIDERING that the factors relied upon by the Trial Chamber in reaching the Impugned Decision include *inter alia* the circumstances that the Applicant had shown his capability of evading arrest for a prolonged period of time as he lived incognito for a period of seven years; that the Applicant had publicly and repeatedly displayed a serious disregard of the Tribunal in the past years, as was evidenced by press interviews submitted by the Prosecution; and that the Applicant had in the past publicly and repeatedly announced his willingness to resort to violence in case of a forcible apprehension, again as evidenced by statements given to the press;

CONSIDERING that, in detailing these factors, the Trial Chamber has identified the reasons for its conclusion, contrary to the assertion of the Applicant;

NOTING the argument, put forward in the Application, that "it is not for the accused to convince the Trial Chamber that he will appear before it when the time comes";

CONSIDERING that, on the contrary, the burden does lie upon the accused in an application for provisional release to satisfy the Trial Chamber that, if released, he will appear for trial;

NOTING the argument, put forward in the Application, that the Applicant was forced to live incognito because he had been convicted *in absentia* by the Croatian courts, and **NOTING ALSO** the documents annexed to the Application and relevant to this claim which were not submitted to the Trial Chamber ("Documents");

CONSIDERING that this argument was examined by the Trial Chamber; that no application has been made to admit the Documents as additional evidence on appeal; and that the Applicant may always re-submit his motion for provisional release together with the Documents or any other new materials to the Trial Chamber;

NOTING that, pursuant to Rule 65(D) of the Rules, leave to appeal a decision rendered under that Rule may be granted upon good cause being shown;

CONSIDERING that "good cause" within the meaning of Rule 65(D) of the Rules requires that the party seeking leave to appeal under that provision satisfy the bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision;

FINDING that the applicant has failed to demonstrate that the Trial Chamber may have erred in taking the Impugned Decision;

HEREBY DISMISSES the Application.

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

Dated this eighteenth day of November 2002,
At The Hague,
The Netherlands.

Judge Theodor Meron
Presiding

[Seal of the Tribunal]