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## **ALEKSOVSKI CASE:** **PROVISIONAL RELEASE OF THE ACCUSED REJECTED**

In a Decision rendered on 23 January 1998, Trial Chamber I *bis* (consisting of Judge Rodrigues, presiding, Judge Vohrah and Judge Nieto Navia) rejected the motion for provisional release presented by the Defence motion on the opening day of the trial, 6 January 1998.

### **The admissibility of the request**

The Prosecution submitted that provisional release under Rule 65 was possible only during the pre-trial phase, as Rule 65 is placed in Part V of the Rules, entitled "Pre-Trial Proceedings", and not in Part VI "Proceedings before the Trial Chambers".

The Trial Chamber, however, held that a request for provisional release may "*be presented throughout the duration of the preventive detention and until such time as the final decision has been taken. It may be granted as soon as the criteria and conditions provided for in Sub-rule 65(B) have been satisfied*".

Having found that the Accused was not barred from presenting a motion for provisional release after the beginning of his trial, the Trial Chamber considered the merits of his request and rejected it for the following reasons:

### **The denial of the request**

*"For the Trial Chamber to be able to evaluate and to reach a decision on provisional release, Sub-rule 65 (B) sets forth four conditions, three substantive criteria and one procedural criterion". As set forth in the Decision on Delalić's motion for provisional release of 15 November 1996, these criteria "are conjunctive in nature, and the burden of proof rests on the Defence. Thus, the Defence must establish that there are exceptional circumstances, that the accused will appear for trial, and that if released the accused will not pose a danger to any victim, witness or other person. Additionally, the host country must be heard. If any of these requirements are not met, the Trial Chamber is not authorised to grant provisional release and the accused must remain detained".*

Applying this test to the present case, the Trial Chamber held that these criteria had not been met even by the facts submitted by counsel for the accused. *"The acts which have been alleged but not proved are normal and characteristic of the condition of detention itself. (...) In fact, the length of the preventive detention (577 days since his arrest) is not at all excessive in view of the crimes ascribed to the accused; his physical condition has not been demonstrated to be so serious as to justify provisional release; moreover, the effects of his detention on the living conditions of his family are not unusual and the behaviour of the accused in prison need not be seriously taken into account for provisional release".*

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The full text of the Decision is available upon request from the Press and Information Office

**Internet address: <http://www.un.org/icty>**

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