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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 Former Yugoslavia since 1991

Case No. IT-95-11-PT

Date: 12 September 2005

Original: English

IN TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Amin El Mahdi
Judge Joaquín Martín Canivell

Registrar: **Mr. Hans Holthuis**

Decision of: **12 September 2005**

PROSECUTOR

v.

MILAN MARTIĆ

DECISION ON SECOND MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff

Counsel for the Accused:

Mr. Predrag Milovančević

I. Introduction

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 the Former Yugoslavia since 1991 ("Tribunal") is seized of the "Second Motion for Provisional Release" filed by the Defence on 25 April 2005, whereby the Defence for the accused Milan Martić ("Defence" and "Accused" respectively) requests the Trial Chamber to enter an order for the provisional release of the Accused on the grounds that the Accused will appear for trial and will not pose any danger to victims, witnesses or other persons ("Motion").[1] As annexes to the Motion, the Defence submits a decision of the Council of Ministers of the FRY to confirm the guarantees relating to the Accused[2] dated 16 February 2005 (Annex I) and a "Judgement in the Name of the Republic of Croatia" dated 27 July 1992 (Annex II).

II. Procedural background

2. On 9 September 2003 the Prosecution filed the second Amended Indictment which stands now against the Accused ("Second Amended Indictment").[3] On the basis of his alleged role in the events which occurred between January 1991 and August 1995 in the city of Zagreb and the Autonomous Region of Krajina or the ARK[4], the second Amended Indictment charges the Accused with the 19 counts pertaining to crimes against humanity and violations of the laws or customs of war.[5]

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[1] On 26 April 2005 the Defence filed the "Corrigendum to Second Motion for Provisional Release", where it requests "23 September 2003" in the first sentence in paragraph 17 of the Motion be read as "23 September 2002".

[2] This Decision confirms, *inter alia*, the guarantees of the Federal Government of the FRY No. 762-1/2002 dated 12 July 2002 relating to, *inter alia*, Milan Martić.

[3] See this Chamber's Decision on Motion for Leave to Amend the Indictment of 2 August 2002 finding the corrected amended indictment of 8 April 2002 as the one standing against the Accused. The original indictment against Milan Marti} was confirmed on 25 July 1995 and a Corrected Amended Indictment was filed by the Prosecution on 18 December 2002.

[4] Republic of Serbian Krajina.

[5] Persecutions on political, racial, and religious grounds (Count 1) as a crime against humanity; Extermination (Count 2) as a crime against humanity; Murder (count 3) as a crime against humanity; Murder (count 4) as a violation of the laws or customs of war; Imprisonment (count 5) as a crime against humanity; Torture (count 6) as a crime against humanity; Inhumane Acts (count 7) as a crime against humanity; Torture (count 8) as a violation of the laws or customs of war; Cruel Treatment (count 9) as a violation of the laws or customs of war punishable under article 3 of the Statute of the Tribunal; Deportation (count 10) as a crime against humanity; Inhumane Acts (Forcible Transfers) (count 11) as a crime against humanity; Wanton destruction of villages, or devastation not justified by military necessity (count 12) as a violation of the laws or customs of war; Destruction or wilful damage done to institutions dedicated to education or religion (count 13) as a violation of the laws or customs of war; Plunder of public or private property (count 14) as a violation of the laws or customs of war; Murder (count 15) as a crime against humanity; Murder (count 16) as a

3. Following the initial indictment, warrants for the arrest of the Accused were transmitted to the Republic of Croatia and Federal Republic of Yugoslavia.[6] On 11 April 2002 the FRY passed a law on cooperation with the Tribunal and threatened to arrest indictees who were in its territory. On 15 May 2002, Milan Martić arrived in the Netherlands and surrendered to the Tribunal.

4. The Defence filed a first motion for provisional release on 9 July 2002[7] and the Accused (who was allegedly having difficulties with his defence counsel) filed a "Request for Provisional Release until the Beginning of the Trial" on 10 July 2002. Both the motion and the request were denied by the Trial Chamber on 2 October 2002 on the grounds that it was not satisfied that the Accused would reappear for trial if released.[8] On 13 October 2002, the Defence applied for leave to appeal on the Trial Chamber's Decision. On 18 November 2002, a bench of three Judges of the Appeals Chamber dismissed the Defence application on the ground that the Defence had failed to demonstrate that the Trial Chamber erred in making the impugned decision.[9]

5. On 9 May 2005 the Prosecution opposed the second motion for provisional release in the "Prosecution Response to Second Defence Motion for Provisional Release" ("Response").

6. On 17 May 2005 the Defence filed the "Defence's Request for Leave to Reply to Prosecution's Response to Second Motion for Provisional Release and Reply" (the "Reply"), to which it annexed a decision granting the Accused's Yugoslav citizenship and the citizenship of the Republic of Serbia dated 8 May 2002 (Annex I), the relevant part of the Law on Yugoslav Citizenship which took effect on 1 January 1997 (Annex II) and the print of a webpage entitled " Yugoslav Refugees Can Claim Dual Citizenship" (Annex III). The request for leave to reply is granted hereby.

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violation of the laws or customs of war; Inhumane acts (count 17) as a crime against humanity; Cruel treatment (count 18) as a violation of the laws or customs of war; Attacks on civilians (count 19) as a violation of the laws or customs of war.

[6] On 2 August 1995, Judge Adolphus Karibi-Whyte issued a Request for Assistance to all states seeking information on the whereabouts of Mr Martić. On 23 January 1996 the Registrar requested the Republic of Croatia and the FRY to arrange for publication of the indictment in newspapers. On 8 March 1996 the Trial Chamber issued an international arrest warrant.

[7] Defence Motion for the Provisional Release of the Accused, 15 April 2002, (hereinafter the "First Motion").

[8] *Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, "Decision on the Motion for Provisional Release", 2 October 2002, (hereinafter the "First Decision").

III. Applicable Law

7. The Defence argues that although the Accused is charged with serious criminal offences and if convicted faces a potentially lengthy prison sentence, "the gravity of the charges cannot by itself serve to justify long periods of detention on remand" and accordingly it should not be weighed against granting provisional release.[10] It submits that the Accused surrendered on 15 May 2002 and "the Accused will spend more than three and a half years in detention awaiting the trial" since "[i]t is likely that the trial won't commence before the end of this year." [11] The Defence further argues that "a fundamental principle of criminal justice is 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'" and thus "the length of the pre-trial detention in this case is a factor that should be weighed in favour of the provisional release."[12]

8. By contrast, the Prosecution points out that "the ICTR appellate jurisprudence has affirmed that 'the length of pre-trial detention does not constitute *per se* exceptional circumstances for the purposes of provisional release'".[13]

9. Rule 64 of the Rules of the Procedures and Evidence (the "Rules") provides in relevant part that: "[u]pon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country."

10. Rule 65(A) and (B) of the Rules set out the basis upon which a Trial Chamber may order the provisional release of an accused:

> (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, witness or other person.

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[9] *Prosecutor v. Milan Martić*, Case No. IT-95-11-AR65, "Decision on Application for Leave to Appeal", 18 November 2002, (hereinafter the "Appeal Decision").
[10] The Motion, para. 22.
[11] The Motion, para. 24.
[12] The Motion,para. 26.
[13] The Response, para. 20. In footnote 41, the cases the Prosecution quotes are: *Ndayambaje v. Prosecutor*, Case No. ICTR-96-8-A, "Decision on Motion to Appeal against the Provisional Release Decision of Trial Chamber II of 21 October 2002," 10 January 2003 (Bench of three), p.5; *Kanyabashi v. Prosecutor,* Case No. ICTR-96-15-A, Decision, 13 June 2001 (Bench of three), p.3. Rule 65(B) of the ICTR rules provided, at the time, that provisional release "may be ordered by a Trial Chamber only in exceptional circumstances, 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, witness, or other person."

11. 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 European Convention on the Protection of Human Rights and Fundamental Freedoms ("ECHR").[14] The Trial Chamber is of the view that Rule 65 must be considered alongside the ICCPR and ECHR and the relevant jurisprudence.

12. The Trial Chamber considers that, as a general rule, a decision to not release an accused should be based on an assessment of whether public interest requirements, notwithstanding the presumption of innocence, outweigh the need to ensure, for an accused, respect for the right to liberty of person.[15] In this regard, the burden of proof rests on the accused to satisfy the Trial Chamber that he will appear for trial and will not pose a danger to any victim, witness or other person. The accused's burden is a substantial one, due to the jurisdictional and enforcement limitations of the Tribunal.[16]

13. Moreover, when interpreting Rule 65, the general principle of proportionality must be taken into account. A measure in public international law is proportional only when (1) it is suitable, (2) necessary and when (3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use a more lenient measure, it must be applied.[17]

14. In considering the two pre-conditions expressly laid down in Rule 65 (B), it must be recalled that the resource at the disposal of the Tribunal may influence the assessment of the risk of absconding or interfering with witnesses. These factors are as such neither decisive nor negligible in individual cases and must be considered in the context of all the information presented to the Trial Chamber. They may however become decisive if they heighten the risk that an accused will either fail to attend court or interfere with witnesses and if the Trial

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[14] 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.

[15] A balancing exercise must be carried out. First, it should be considered whether the two express pre-conditions laid down in rule 65 (B) have been met. These pre-conditions are cumulative. That is, if the Trial Chamber is not convinced that the accused will both appear for trial and not pose a risk to any victim, witness or other person, a request for provisional release must be denied, see *Prosecutor v. Rahim Ademi*, Order on Motion for Provisional Release, Case No. IT-01-46-PT, 20 February 2002, para. 21.

[16] *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Motion by Radoslav Brđanin for Provisional Release, Case No. IT-99-36PT, 25 July 2000, para.18.

[17] *Prosecutor v. Dragan Jokić*, Case No. IT-02-53-PT, Decision on Request for Provisional Release of Accused Jokić, 28 March 2002, para. 18.

Chamber can find no counter-balancing circumstances in the particular case before it.[18] It should be noted that the Trial Chamber retains discretion not to grant provisional release in cases where it is satisfied that the accused complies with the two requirements of the Rule.[19]

15. When interpreting Rule 65 of the Rules, the Trial Chamber deems that it must focus on the concrete situation of the individual applicant, and consequently the provision must not be applied in *abstracto,* but with regard to the factual basis of the particular case.[20]

16. In addition, according to the jurisprudence of the Tribunal, if a previous application for provisional release has been denied (as is the present case), the Trial Chamber must be also satisfied that there has been a material change in circumstances since the previous application such as to justify reconsideration of its previous decision.[21]

17. The Trial Chamber now turns to an assessment, taking 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.

IV. Discussion

18. In support of its statement that the Accused will appear for trial, the Defence argues in the Motion, *inter alia,* that:

(i) the improved cooperation of the government of Serbia and Montenegro represents a new circumstance which warrants reconsideration of decision on provisional release;[22]

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[18] Among the aforementioned circumstances are that the Tribunal lacks its own means to execute a warrant of arrest, or to re-arrest an accused who has been provisionally released. The Tribunal must also rely on the cooperation of States for the surveillance of accused who have been released. This calls for a more cautious approach in assessing the risk that an accused will abscond. It depends on the circumstances whether this lack of an enforcement mechanism creates such a barrier that provisional release should be refused. The situation could alternatively call for the imposition of strict conditions on the accused or a request for detailed guarantees by the government in question. In this regard, prior voluntary surrender of an accused is not without significance in the assessment of the risk that an accused will not appear at trial, *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42-PT, Order on Miodrag Jokić's Motion for Provisional Release, 20 February 2002, paras 22-22.

[19] 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; see also *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42-PT, Order on Miodrag Jokić's Motion for Provisional Release, 20 February 2002, para. 21.

[20] *Prosecutor v. Hadžihašanović et al.*, Case No. IT-01-47-PT, Decision Granting Provisional Release to Amir Kubura, 19 December 2001, para. 7.

[21] See, for instance, *Prosecutor v. Dragoljub Ojdanić,* Case No. IT-99-37-PT, "Decision on General Ojdanić's Fourth Application for Provisonal Release", 14 April 2005, para. 6.

[22] The Reply, para. 3. However, in para. 9 of its Motion, the Defence actually argues that the improved cooperation of the government of Serbia and Montenegro "represents a new circumstance which warrants reconsideration of decision on provisional release". But in the para. 3 of its Reply the Defence concedes that it "did not argue that the guarantees themselves represented a material change in circumstances; rather, the Defece argued that such a change is the added weight attached to the guarantees of Serbia and Montenegro".

(ii) the cooperation of the Accused with the Prosecution since his previous application, exemplified by an agreement of facts reached between the Prosecution and the Defence on behalf of the Accused[23] represents a new circumstance which warrants reconsideration of decision on provisional release;[24]

(iii) the behaviour of the Accused since his previous application, including his statements on the readiness to stand trial,[25] demonstrates that his surrender to the Tribunal was completely voluntary and that he has no intention to flee;[26]

(iv) in reaching the First Decision, the Trial Chamber attached excessive weight to the media coverage of the Accused's statements offered by the Prosecution, originating from times shortly after the forceful expulsion of the Accused from his homeland;[27]

(v) the newly submitted Judgement of the Military Tribunal in Split which sentenced the Accused to 15 years imprisonment[28] and the Accused's "entirely justified" disbelief of the impartiality of the Croatian courts[29], constitute the new evidence of the reasons why the Accused had lived in hiding before voluntarily surrendering to the Tribunal and of his willingness to stand trial.[30]

19. In support of the statement that the Accused will not pose a danger to any victim, witness or other person, the Defence submits first that there is no indication whatsoever that the Accused would do so or that he would in any other way obstruct justice and secondly that even if he had such intention, he will not be able to do so because of the regime of surveillance that he will be placed upon.[31]

20. In addition, the Defence emphasizes its financial difficulty in preparing the case, which urgently requires that Accused be provisionally released pending trial, so he may assist the preparation on a regular basis and in a most efficient way.[32]

21. In its Response, the Prosecution objects to the Motion and argues that the Accused has failed to establish that, if released, he will appear for trial because:

[23] The Motion, para. 14.
[24] The Motion, para. 13.
[25] The Motion, paras 17-8, where some quotations of the Accused's statements are made.
[26] The Motion, para. 16.
[27] The Motion, para. 19.
[28] The Motion, paras 19-20.
[29] The Motion, para. 19.
[30] The Motion, para. 21.
[31] The Motion, para. 23.
[32] The Motion, para. 30.

(i) the guarantees from the government of Serbia and Montenegro, which has been found in the First Decision to be of "substantial quality", do not represent a material change in circumstances justifying release;[33]

(ii) the agreement reached between the parties on facts which refer to political events in the area and the dates of their occurrence, does not rise to the level of conduct as evincing some degree of cooperation by the accused as, for example, an agreement to be interviewed by the Prosecution, which is cited by the Appeals Chamber in a previous decision;[34]

(iii) the Accused's surrender can not be said to be voluntary because: the surrender came after nearly seven years in hiding when he knew of the indictment against him and he lived under an alias, the newly adopted FRY Law on Cooperation left him no other choice, and the Law on Cooperation also provides that if fugitives surrender immediately before arrest, they obtain by law guarantees form Serbia and the federal government;[35]

(iv) the history of the Accused before his surrender demonstrates that he is adept at evading capture[36] and that he possesses the skills to live as a fugitive, which he can draw upon again if released;[37]

(v) the statements the Defence quotes to show the Accused's willingness to stand trial which were made by the Accused during the first provisional release hearing and the Status Conferences, does not ring true because they were belied by the Accused's lengthy history of flight, his ability to evade arrest for a long period of time, his repeated statement showing his willingness to resort to violence and numerous expressions of contempt for this Tribunal;[38]

(vi) the contention that excessive weight was attached to the statements given to the press by the Accused is not legitimately raised since the Defence had failed to do so in its application for leave to appeal the First Decision.[39] Even if it were raised legitimately, the public statements made by the Accused to the media are highly relevant according to

[33] The Response, para. 7.
[34] The Response, para. 8. The cited decision is: the *prosecutor v. Šainović and Ojdanić,* Case No. IT-99-37-AP65, "Decision on Provisional Release", 30 October 2002, para. 6.
[35] The Response, para. 10.
[36] The Response, para. 7.
[37] The Response, para. 10.
[38] The Response, para. 12.
[39] This application was filed on 18 October 2002.

an Appeal Decision,[40] and those statements were referred explicitly to by the Bench of the Appeals Chamber in this case;[41]

(vii) the alleged fear of extradition caused by a Judgement rendered against the Accused *in absentia* by a military tribunal in Split in July 1992 was not a real reason for remaining in hiding;[42]

(viii) in light of the significantly expanded proposed indictment which may warrant the likelihood of an increased sentence, the nature of the evidence against him disclosed, the three years spent in detention, and the dismissal of the First Motion, the Accused now has an even greater incentive to flee,[43] and the Accused is also undoubtedly aware that recent arrivals at the Tribunal have not been effected by arrests, which may provide another incentive to flee.[44]

22. The Prosecution argues that the Defence has not shown a material change in circumstances which justify that, if released, he will not pose a danger to any victim, witness or any other person because:

(i) the Accused has in the past made many public statements that he would not hesitate to resort to violence if attempts were made to arrest him, showing that he could be a danger to victims, witnesses, or others if released, or he could engage in other forms of obstructive behaviour;

(ii) the significant expansion of charges against him in the proposed amended indictment is an additional incentive to flee.[45]

23. The Prosecution further submits that the Defence's "longstanding argument concerning the lack of funds" cannot be revived at every opportunity in an attempt to support whatever motion the Defence is submitting, and thus it should be rejected.[46]

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[40] *prosecutor v. Šainović and Ojdanić,* Case No. IT-99-37-AP65, Decision on Provisional Release, 30 October 2002, p. 6.
[41] The Response, para.15.
[42] The Response, para, 17. The prosecution presents its arguments in support of this submission as follows: first, the issue of the Judgement came as an afterthought and in the First Decision the Trial Chamber stated that "Counsel apparently had not made any effort to retrieve those documents for submission to the Chamber in support of their argument", and documents relevant to the Judgement were first provided in the application for leave to appeal the Decision, and therefore "[t]o present this now as a "new circumstance" justifying release appears disingenuous";[42] second, it is manifestly unclear why the Accused's alleged fear of extraction to Croatia seemingly dissolved in 2002 before he surrendered to the Tribunal; third, Serbia and FRY do not extradite its citizens to other countries; fourth, the thrust of the Accused's statements following the issuance of the initial indictment by the Prosecution in 1995, has been that he does not recognize the Tribunal, but had no choice but to surrender following the enactment of the law on cooperation.
[43] The Response, para. 14.
[44] The Response, para. 18.
[45] The Response, para. 19.

24. The Prosecution finally requests a stay of the decision pending an appeal by the Prosecution pursuant to Rule 65(E) of the Rules if the Trial Chamber warrants release.[47]

25. In its Reply, the Defence objects to the Response and argues that the Accused has established that, if released, he will appear for trial because:

(i) a material change in circumstances is the added weight attached to the guarantees of Serbia and Montenegro, resulting from the significantly improved cooperation of its government with the Tribunal and recognised in the recent decisions granting provisional release;[48]

(ii) the right of the Defence to submit the judgement of the Croatian court as evidence with a new application for provisional release was expressly recognized by the Appeal Chamber, and the failure to submit this judgement in previous proceedings should not be taken against the Accused because of the difficulties he had with his former counsel;[49]

(iii) the Accused was admitted into the Yugoslav and Serbian citizenship only on 8 May 2002, which was a relief and an incentive for him to surrender to the Tribunal;[50]

(iv) the statements and acts of the Accused during his pre-trial detention cast new light on his surrender, confirming that it was completely voluntary and that his words at the provisional release hearing were sincere.[51]

(v) as a Krajina Serb, the Accused was a victim of the crimes committed by Croatian forces and he is in a bad psychological condition and therefore his acts and statements originating from 1996 should be placed in the context and not taken against him.[52]

26. The Defence reiterates further that none of the victims or witnesses whose identity is known to the Accused lives in Serbia, the territory where he sought to be released, and therefore he has no practical possibility to approach them and pose them a threat.[53]

27. In its Reply the Defence proposes a hearing to be held to discuss on provisional release. [54]

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[46] The Response, para. 21.
[47] The Response, para. 24.
[48] The Reply, para. 3.
[49] The Reply, para. 5.
[50] The Reply, paras. 6, 7.
[51] The Reply, para 8.
[52] The Reply, paras 9, 10.
[53] The Reply, para.11.
[54] The Reply, para. 13

28. The Trial Chamber finds that the arguments and supporting materials submitted by the parties are sufficient for the Trial Chamber to conclude on the issue and therefore it is not necessary to hold a hearing.

29. The Accused is charged with participating in serious crimes; if convicted, he is likely to face a long prison term. This may give him a strong incentive to flee. However, in itself, this argument made *in abstracto* cannot be used against the Accused. All accused before this Tribunal, if convicted, are likely to face heavy sentences.

30. In relation to the Defence's claim that the Trial Chamber "attached excessive weight to the media coverage" of the Accused's statements in the First Decision, the Trial Chamber concurs with the Prosecution that this issue is inappropriately raised here since the Defence failed to do so during the proceedings of its application for leave to appeal the First Decision.

31. The Trial Chamber notices that in its Reply the Defence does not contest the Prosecution's submission that an agreement on facts reached by the Defence and the Prosecution does not rise to the level of conduct as evincing some degree of cooperation by the Accused, which is alleged by the Defence in its Motion. However, the Trial Chamber endorses the Appeals Chamber's declarations that "[e]very accused before this Tribunal has a right to silence and a right not to incriminate him or herself"[55] and that it is "abundantly clear that a first principle of this Tribunal is that 'an accused is not required to assist the Prosecution in proving its case against them'".[56] Furthermore, the Trial Chamber is of the view that the Accused has no legal obligation whatsoever to cooperate with the Prosecution. The fact of non-cooperation plays no role in the exercise of the Trial Chamber's discretion on provisional release; in the events of cooperation, although it to some extent might help the Trial Chamber assess the willingness of the Accused to appear for trial, it does not constitute a decisive factor of the determination on provisional release.

32. The Trial Chamber considers the newly presented evidence which purports to show that the Accused's surrender to the Tribunal was fully voluntary, namely the Croatian Judgement dated 27 July 1992 which sentenced the Accused to 15-year imprisonment, the Decision to grant the Accused's Yugoslav citizenship and the citizenship of the Republic of Serbia dated

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[55] *Prosecutor v. Franko Simatović,* Case No. IT-03-39-AR65.2, Decision on Prosecution's Appeal Against Decision on Provisional Release, 3 December 2004, para. 9.

[56] *Prosecutor v. Sefer halilović,* Case No. IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, 19 August 2005, para. 35. See also *Prosecutor v. Franko Simatović,* Case No. IT-03-39-AR65.2, Decision on Prosecution's Appeal Against Decision on Provisional Release, 3 December 2004, para. 9.

8 May 2002, and the relevant part of the Law on Yugoslav Citizenship which took effect on 1 January 1997.

33. Although the Defence insists that the newly submitted Croatian Judgement and citizenship decision constitute new evidence of the reasons why the Accused had lived in hiding before surrendering to the Tribunal,[57] the Trial Chamber is not convinced that these submissions should in any way be considered as a material change in circumstances since the First Motion to justify reconsideration of the Trial Chamber's First Decision. On the contrary, the finding of the First Decision, *inter alia,* that the Accused had shown his capability of evading arrest for a prolonged period of time, that he had used a false name and had shown that he had the means and knew how to obtain false documents, that he had publicly and repeatedly displayed a serious disregard of the Tribunal in the past years, and he had publicly and repeatedly announced his willingness to resort to violence in case of a forcible apprehension, which constituted factors substantially weighing *against* that there existed no risk of flight with regard to the Accused,[58] remains intact notwithstanding the new submissions by the Defence.

34. Having balanced all the circumstances of this case, *inter alia,* the renewed guarantees by the government of the FRY and the Republic of Serbia, the Trial Chamber is not satisfied that, if released, the Accused will appear for trial.

35. Finally, the Trial Chamber emphasises that the issue of financial difficulties alleged by the Defence can not stand against the finding of lack of necessary prerequisites of provisional release pursuant to Rule 65(B) of the Rules.

36. In sum, the Trial Chamber finds it appropriate that the Accused be maintained in detention.

V. Disposition

PURSUANT TO Rule 65 of the Rules,

THIS TRIAL CHAMBER,

[57] The Motion, para. 21.
[58] The First Decision, p.6.

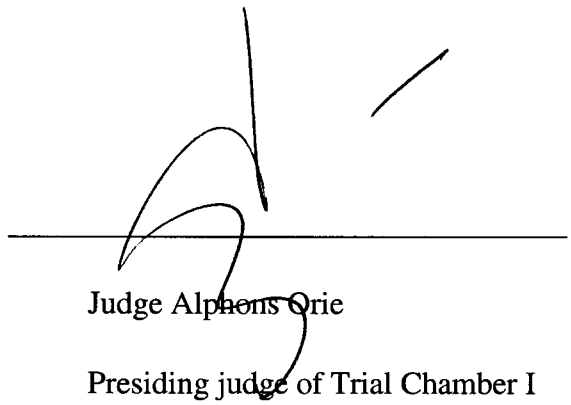
HEREBY DENIES the Second Motion for Provisional Release.

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

Dated this twelfth day of September 2005,

At The Hague

The Netherlands



Judge Alphons Orie

Presiding judge of Trial Chamber I

[Seal of the Tribunal]