

IT-02-60-PT
D7719-D7716
19 NOVEMBER 2002

7719 KB

**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-02-60-PT
Date: 19 November 2002
Original: ENGLISH

IN TRIAL CHAMBER II

Before: Judge Wolfgang Schomburg, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Carmel Agius

Registrar: Mr. Hans Holthuis

Decision of: 19 November 2002

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN OBRENOVIĆ
DRAGAN JOKIĆ
MOMIR NIKOLIĆ**

**DECISION ON VIDOJE BLAGOJEVIĆ'S
APPLICATION FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Michael Karnavas, Ms Suzana Tomanović for Vidoje Blagojević
Mr. David Wilson, Mr Dušan Slijepčević for Dragan Obrenović
Mr. Miodrag Stojanović, Ms. Cynthia Sinatra for Dragan Jokić
Mr. Veselin Londrović, Mr. Stefan Kirsch for Momir Nikolić

THIS 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 ("International Tribunal"),

NOTING the decision of the Appeals Chamber¹ to quash two decisions of this Trial Chamber in which the accused Vidoje Blagojević² ("Accused" or "Defence") and Dragan Obrenović,³ respectively, were denied provisional release,

NOTING that the matter has been returned to this Trial Chamber for reconsideration and that the Chamber "is directed to take into account the guarantees of the Republika Srpska when determining whether the accused would appear for trial if provisionally released",⁴

NOTING that the Scheduling Order of 8 October 2002 establishes a schedule for the Defence and the Prosecution to file written submissions on the question of provisional release,

NOTING the filings by the Defence related to this issue, including its request for a hearing,⁵ which the Trial Chamber denied,⁶

NOTING the consolidated response filed by the Office of the Prosecutor ("Prosecution") on 12 November 2002, "Prosecution's Consolidated Response Pursuant to the Trial Chamber's Scheduling Order of 8 October 2002 Concerning Provisional Release of Vidoje Blagojević and Dragan Obrenović" with Annexes, ("Prosecution's Response"),

NOTING that the Prosecution's Response draws attention to recent events in the Republika Srpska,

NOTING the "Accused Blagojević's Notice of the Prosecution's Failure to Adequately Respond to the Trial Chamber's Scheduling Order of 8 October 2002 & Request of Hearing to: A. Compel the Prosecution to Submit Credible Evidence Substantiating its Allegations that Mr. Blagojević's

¹ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-AR65 and IT-02-60-AR65.2, Decision on Provisional Release of Vidoje Blagojević and Dragan Obrenović, 3 October 2002 ("Appeals Chamber Decision").

² Decision on Vidoje Blagojević's Application for Provisional Release, 22 July 2002 ("Trial Chamber Decision").

³ Decision on Dragan Obrenović's Application for Provisional Release, 22 July 2002.

⁴ Appeals Chamber Decision, para. 8.

⁵ Accused Blagojević's Request for an Expedited Hearing to Present Evidence in Light of the Appeals Chamber's Decision on Provisional Release Remanding the Matter to the Trial Chamber for Reconsideration of Its Earlier Findings and to Resolve Strongly Disputed Issues of Novel Facts which the Prosecution Raised in its Response to the Appeals Chamber, 8 October 2002; Appendix to: Accused Blagojević's Request for an Expedited Hearing to Present Evidence in Light of the Appeals Chamber's Decision on Provisional Release Remanding the Matter to the Trial Chamber for Reconsideration of Its Earlier Findings and to Resolve Strongly Disputed Issues of Novel Facts which the Prosecution Raised in its Response to the Appeals Chamber, 10 October 2002; Accused Blagojević's Motion for Reconsideration of Trial Chamber's Scheduling Order re: Written Submissions & Non-Opposed Request for an Expedited Hearing, 10 October 2002; Accused Blagojević's Written Submissions as Directed by the Trial Chamber's Scheduling Order of 8 October 2002 Regarding the Appeals Chamber's Decision.

“Whereabouts” had to be “Uncovered” or in the Alternative Confess Error that it has Made Misrepresentations to the Trial and Appeals Chambers in Order to Deprive Mr. Blagojevic a Fair Opportunity to Obtain Provisional Release; and B. For Accused Blagojevic to Supplement the Record Concerning the Prosecution’s New Claims that Guarantees from the Government of the Republika Srpska are Not Reliable,” (“Defence Notice”) filed on 18 November 2002,

CONSIDERING that the decision taken by the Trial Chamber to deny the request for provisional release was independent of the guarantees provided by the authorities which gave them,⁷

CONSIDERING FURTHER that the decision taken by the Trial Chamber to deny the request for provisional release was *de facto* solely based on the fact that the Trial Chamber was “not satisfied that, if released, Mr. Blagojević would appear for trial”,⁸

CONSIDERING therefore that the submissions by the Prosecution and the Defence Notice cannot be considered relevant for our decision,

CONSIDERING that no real new facts have been put forward by the Defence to cause this Chamber to reconsider the Trial Chamber Decision,

CONSIDERING that the Prosecution maintains its objection to the provisional release of the Accused in the Prosecution’s Response,

CONSIDERING that the trial in this case is scheduled to commence in May 2003,

REINCORPORATING paragraphs 30 to 33 and paragraphs 53 to 59 of the impugned Trial Chamber Decision,

CONSIDERING that the Trial Chamber remains not satisfied that if released, Mr. Blagojević would appear for trial,

⁶ Decision on Blagojević’s Motion for Reconsideration and request for an Expedited Hearing, 11 October 2002.

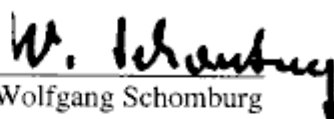
⁷ Trial Chamber Decision, para. 52.

⁸ Trial Chamber Decision, para. 54. See also, *Ibid.*, para. 53.

PURSUANT to Rule 65 of the Rules of Procedure and Evidence,

HEREBY DENIES the Motion.

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



Judge Wolfgang Schomburg
Presiding

Dated this nineteenth day of November 2002,
At The Hague
The Netherlands

[Seal of the Tribunal]