

IN TRIAL CHAMBER II

Before:

Carmel Agius, Presiding Judge
Hans Hehrhik Brydensholt
Judge Albin Eser

Registrar:
Mr. Hans Hottelius

Decision of:
6 June 2005

PROSECUTOR
v.

Ramush HARADINAJ
Idriz BALAJ
Lahi BRAHIMAJ

DECISION ON RAMUSH HARADINAJ'S MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Carla del Ponte
Mr. Dermot Groome
Ms. Marie Tuma

Accused / Counsel for the Accused:

Ramush Haradinaj
Mr. Rodney Dixon
Mr. E. Ramussen
Mr. Connor Gearty
Mr. Michael O'Reilly

I. BACKGROUND

1. Ramush Haradinaj ("Accused") and two co-accused, Idriz Balaj and Lahi Brahimaj, are included in the same indictment which was confirmed on 4 March 2005 and initially placed under seal. On 9 March 2005, the Accused, who held the office of Prime Minister of Kosovo since 24 December 2004, voluntarily surrendered and was transferred to the United Nations Detention Unit ("UNDU") on the same day. The indictment was made public on 10 March 2005. At the initial appearance held on 14 March 2005, the Accused pleaded not guilty to all charges against him.¹

2. Trial Chamber II ("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 now seized of the "Defence Motion on Behalf of Ramush Haradinaj for Provisional Release" ("Motion"), filed by counsel for Ramush Haradinaj ("Defence") on 21 April 2005 pursuant to Rule 65 of the Rules of Procedure and Evidence of the International Tribunal ("Rules").²

3. The Office of the Prosecutor ("Prosecution") on 5 May 2005 filed the "Prosecution's Response to Defence Motion on Behalf of Ramush Haradinaj for Provisional Release" ("Response"), opposing the Motion. On 12 May 2005, the Defence sought leave to file a reply to the Response pursuant to Rule 126(b) of the Rules and attached the "Defence Reply to Prosecutor's Response to Defence Motion on Behalf of Ramush Haradinaj for Provisional Release" ("Reply"). On 17 May 2005, the Trial Chamber granted the relief sought and accepted the Reply.³ An oral hearing, at which both parties and a representative of the United Nations Interim Administration Mission in Kosovo ("UNMIK") addressed the Trial Chamber, was held on 24 May 2005.⁴

4. The Accused, who allegedly is a former commander of the Kosovo Liberation Army ("KLA"), is charged under Article 7(1) of the Statute of the Tribunal ("Statute")⁵ with 17 counts of crimes against humanity pursuant to Article 5 of the Statute, and with 20 counts of violations of the laws or customs of war pursuant to Article 3 of the Statute. All crimes alleged in the indictment are alleged to have taken place between 1 March 1998 and 30 September 1998 in the territory of Kosovo in the former Yugoslavia.

II. SUBMISSIONS

A. Written submissions

5. In support of the Motion, the Defence submits the following:

a) The Accused immediately resigned from his office as Prime Minister of Kosovo upon being informed of the indictment against him and voluntarily surrendered himself to the Tribunal without delay;

b) The legitimate authority and administration of Kosovo, UNMIK, has agreed to provide the necessary guarantees to ensure compliance with any conditions the Trial Chamber may impose if the Accused is provisionally released;

c) The Accused has already been provisionally released to Kosovo for a period of three days on compassionate grounds, with the Accused fully complying with all conditions imposed on him;⁶

d) The Accused has provided the Trial Chamber with a written undertaking that he will return for trial and not in any way interfere with any victims and witnesses, and fully abide by all conditions ordered by the Trial Chamber;

e) There has been no interference with witnesses on the part of the Accused from the time it was widely believed that he would be indicted, i.e. November 2004, and it has not been shown that the Accused would pose a concrete danger to anyone;

f) The Accused has an exceptional personal and political reputation, which is confirmed by a number of high-ranking international politicians, military officials and diplomats, who are all of the view that the Accused would honour all conditions imposed by the Trial Chamber;⁷

g) Considering the circumstances of the Accused's surrender, no security concerns in Kosovo are to be anticipated should he be provisionally released, on the contrary, transition developments in Kosovo would be enhanced should the Accused be allowed to return there.⁸

6. The Prosecution opposes the Motion and argues that the requirements to grant provisional release are not met. First, the Prosecution submits that the Trial Chamber cannot be satisfied that, on the evidence before it, UNMIK has the practical ability to arrest the Accused should that need arise. In that context, the Prosecution makes particular reference to the *Linaj* case, in which that accused's request for provisional release was denied. In that case, UNMIK had refused to provide guarantees concerning Mr. Linaj for the reason that it had limited resources available and "[g]iven Kosovo's geographic situation, [...] and the support resources available to a person in Mr. Linaj's situation should he seek to evade apprehension, it would be relatively easy to depart Kosovo into neighbouring territories".⁹ The Prosecution argues that this Chamber should draw the same conclusion in the present case since the factors determining UNMIK's refusal to provide those guarantees remain unchanged. Moreover, it is contended that the Accused in this case would have even more support resources available than Mr. Linaj. The Prosecution recalls that the Accused was in a senior position and that the charges against him are very serious, and that he therefore faces a potential lengthy sentence of imprisonment. As regards the Accused's previous provisional release for a period of three days, the Prosecution emphasises that the Accused was under constant surveillance of UNMIK or Tribunal personnel.¹⁰

7. Second, the Prosecution submits that the Accused will, if provisionally released, pose a danger to victims and witnesses. While the Prosecution concedes that it is not in possession of information that witnesses in this case have been subjected to intimidation by the Accused, it provides numerous examples illustrating that Kosovo is an exceptionally volatile place for witnesses testifying in criminal proceedings and that the provisional release of the Accused would negatively impact on the public perception of the safety of potential witnesses.¹¹ The Prosecution also makes reference to a violation of the UNDU detention rules by the Accused.¹²

8. The Motion makes two more submissions which depend on the decision taken by the Trial Chamber. In case that the Motion is denied, the Prosecution explicitly makes a commitment to deploy resources as necessary to expedite pre-trial proceedings.¹³ In case that the Trial Chamber grants the Accused provisional release, the Prosecution, pursuant to Rule 65(E) of the Rules, applies for a stay of that decision so that it may be appealed.¹⁴

9. In the Reply, the Defence reiterates that there is reason to believe that the Accused would again voluntarily surrender to the Tribunal and that UNMIK would in fact be in a position to ensure the Accused's attendance at the Tribunal.¹⁵ The Defence adds that the Prosecution has not adduced any evidence pertaining to any acts of intimidation or interference with witnesses that may be linked to the Accused, but merely refers to the public perception, which is insufficient. On the contrary, it states that the Accused has always shown a commitment to ensuring that witnesses are able to come forward without interference and give evidence before the Tribunal.¹⁶ As a further point, the Defence does not oppose the Prosecution's request for pre-trial protective measures for witnesses, despite the "generalised nature of these allegations".¹⁷

10. On 17 May 2005, the Trial Chamber received a confidential written submission by UNMIK which was subsequently made available to both parties. Therein, UNMIK declares that it has full authority and control over law enforcement in Kosovo and thus, it is in a position to provide specific guarantees regarding the Accused, if the Trial Chamber so requests.¹⁸ UNMIK further submits that its law enforcement capacities have been considerably enhanced since 2003 when it decided to provide guarantees in the *Linaj* case, including personnel increase with the Kosovo Police Service ("KPS") and other measures, such as the development of a comprehensive legal framework and availability of additional technical resources.¹⁹

B. Oral submissions

11. At the oral hearing, the Defence stated that the case for provisional release of the Accused was "an overwhelming one".²⁰ In addition to the arguments presented in its written submissions, the Defence stressed that the prospect of commencing the trial of the Accused before 2007 is remote; even if the Prosecution allocated all resources possible to expedite pre-trial preparations, the Accused would need considerable time to prepare for trial.²¹ In specification of the Motion, the Defence explained that the Accused seeks to be released to Pristina/Prishtinë, but be permitted to travel directly between Pristina/Prishtinë and his home address in Western Kosovo.²² At the end of the oral hearing, the Accused addressed the Trial Chamber in person and reiterated his dedication to return for trial and not to interfere with any victim or witness.²³

12. The Prosecution maintained its position that the Motion should be denied. It called upon the Trial Chamber to explore the limitations to UNMIK's ability to provide guarantees regarding its own capability to detain the Accused, should he be in breach of any conditions imposed on him; first, it was uncertain whether UNMIK's mandate, and hence, its ability to detain the Accused, would remain unchanged throughout the provisional release period; second, that these guarantees could not be taken over or provided to the same degree by the domestic institutions that would in all likelihood be charged with detaining the Accused, i.e., the Kosovo Protection Force ("KPF") and the KPS, both retaining strong links with the Accused from the past. The Prosecution also presented additional material to show that security concerns remain omnipresent for witnesses from Kosovo.²⁴

13. UNMIK was represented at the oral hearing by its Principal Deputy Special Representative for the Secretary-General, Mr. Larry Rossin. Mr. Rossin stated that UNMIK was not only willing to provide the Trial Chamber with commensurate guarantees regarding the Accused, but is also under an obligation to fully co-operate with the Tribunal.²⁵ He confirmed that UNMIK's capacities had substantially increased in the recent years, and said that the "overall level of security in Kosovo is good" and that the "overall level of crime and violence is low".²⁶ Mr. Rossin explained that the KPC was tasked with any security issues in Kosovo, and that the KPS was presently under the command and authority of the UNMIK Police Commissioner.²⁷ However, Mr. Rossin could not make any statement as to whether or not UNMIK's mandate would remain unchanged for the entire provisional release period of the Accused, based on the assumption that the trial would commence in 2007. However, he assured the Trial Chamber that should there be successor institutions, these would be such that would uphold the rule of law and transparent function of government.²⁸

C. Written submissions subsequent to the oral hearing

14. At the oral hearing, the Prosecution applied to be permitted to file an additional submission on information it had only received hours prior to the oral hearing.²⁹ The Trial Chamber granted this request, and also allowed the Defence to respond to the anticipated Prosecution filing and to reply to any new issues the Prosecution had raised at the oral hearing.³⁰

15. On 25 May 2005, the "Prosecution's Submission of New Information Relevant to Ramush Haradinaj's Application for Provisional Release" ("Prosecution's Additional Submission") was filed confidentially by the Prosecution, in which reference is made to a recent incident which appears to be an assassination attempt concerning a protected witness in Kosovo from other proceedings before the Tribunal. Although, as the Prosecution admits, no suspects have yet been identified and it is too early to establish a connection between the alleged assassination attempt and the victim's involvement in proceedings before the Tribunal, the Prosecution requests that, should the Trial Chamber be minded to grant the Motion, it defers its decision for a reasonable period of time to allow UNMIK to complete its preliminary inquiry into the matter and to report to the Trial Chamber regarding its findings.³¹ In response to a question posed at the oral hearing, the Prosecution recognises that pre-trial detention does not necessarily prevent witness intimidation. However, it maintains that the provisional release of an accused would substantially undermine the witnesses' confidence in the Tribunal, and should be appropriately considered.³² Otherwise, notwithstanding the affirmations to the contrary by the UNMIK representative, the Prosecution reaffirms its position that security concerns for witnesses in Kosovo are exceptionally high.³³

16. Also on 25 May 2005, the "Defence's Confidential Further Reply in Respect of the Application for Provisional Release of Ramush Haradinaj" ("Defence's Additional Submission") was filed confidentially by the Defence. The Defence emphasises that the alleged assassination attempt should not be taken to relate to any proceedings before the Tribunal or implicate the involvement of the Accused, and should therefore have no bearing on the current proceedings. Consequently, the Defence opposes the Prosecution's request for a deferral.³⁴ Furthermore, the Defence asserts that the Prosecution has been selective in identifying extracts from certain documents at the oral hearing relating to the international security presence in Kosovo, and presents own material that militates for a different conclusion.³⁵ The Defence also specifies that the Accused, if released, seeks to be permitted to participate in the political process and to be allowed to move throughout the whole territory of Kosovo, but that he will not comment on his matter before the Tribunal in any way whatsoever.³⁶ The Defence moreover opposes the Prosecution's application to stay a decision of the Trial Chamber to provisionally release the Accused.³⁷

17. The Trial Chamber on 26 May 2005 issued a request to UNMIK to express an assessment on whether the information contained in the additional submissions would have an impact on UNMIK's position *vis-à-vis* the Motion, as expressed at the oral hearing.³⁸

18. UNMIK responded on 27 May 2005 and concluded that, after a review of all additional submissions, its position regarding the willingness and ability to fulfil a range of requirements that the Trial Chamber may impose remains valid and is unaltered.³⁹

III. THE LAW

19. Article 21 of the Statute of the Tribunal is entitled "Rights of the accused" and provides, in relevant part:

1. All persons shall be equal before the International Tribunal.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

20. Rule 65 of the Rules governs provisional release and reads, in relevant part:

(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 giving the host country and the State to which the accused seeks to be released the opportunity to be heard 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.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may deem appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

(E) The Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision, and shall make such an application at the time of filing his or her response to the initial application for provisional release by the accused.

21. Rule 65 of the Rules must be read in the light of Article 21(3) of the Statute.⁴⁰ The burden of proof is upon the Accused to satisfy the Trial Chamber that, if released, he will appear for trial and will not pose any danger to victims, witnesses or other persons.⁴¹ Whereas a Trial Chamber is not obliged to deal with all possible factors which a Trial Chamber can take into account when deciding whether it is satisfied that, if released, an accused will appear for trial,⁴² it suffices to indicate all the relevant factors that the Trial Chamber has taken into account in reaching its decision, i.e., it must render a reasoned opinion.⁴³

22. In determining whether to grant provisional release to an accused, it is for the Trial Chamber to consider the particular circumstances of each case. When assessing the likelihood that an accused will appear for trial, Trial Chambers have regularly given significant weight to guarantees provided by the State or entity the accused sought to be released to.⁴⁴ In terms of reviewing whether there is any danger posed by an accused, if released, to victims, witnesses or any other person, one of the factors previously considered by other Trial Chambers was whether there was any suggestion that an accused had interfered with the administration of justice in any way since the date when an indictment was confirmed against him.⁴⁵ The assessment whether the accused would pose a danger cannot be made only *in abstracto*; a concrete danger has to be identified.⁴⁶

23. The Appeals Chamber has found that the following additional factors are especially relevant to the provisional release inquiry:

- Whether the accused is charged with serious criminal offences;
- Whether the accused is likely to face a long prison term, if convicted;
- The circumstances of the accused's surrender;
- The degree of co-operation given by the authorities of the State to which the accused seeks to be released;
- The guarantees offered by those authorities, and any personal guarantees offered by the accused;
- The likelihood that, in case of breach of the conditions of provisional release, the relevant authorities will re-arrest the accused if he declines to surrender; and
- The accused's degree of co-operation with the Prosecution.⁴⁷

Regarding the seriousness of the offences an accused is charged with, the Trial Chamber needs to make specific reference to the length of the sentence the accused can expect if convicted, and the incentive this may have on an accused to flee.⁴⁸ The Trial Chamber observes that the European Court of Human Rights has held that "the gravity of the charges cannot by itself serve to justify long periods of detention on remand".⁴⁹ The Trial Chamber further agrees that the expectation of a lengthy sentence cannot be held against an accused *in abstracto* because all accused before this Tribunal, if convicted, are likely to face heavy sentences.⁵⁰

25. With respect to government guarantees, the Appeals Chamber held that "the weight to be attributed to guarantees given by a government may depend a great deal upon the personal circumstances of the applicant, notably because of the position which he held prior to his arrest".⁵¹ The Trial Chamber notes that the Accused, in these circumstances, must not only be assessed at the time when the decision on provisional release is being taken, but also, as far as foreseeable, at the time when the case is due for trial and the accused will be expected to return.⁵² In so far as the Trial Chamber's reliance upon the guarantee of the presence of an accused in the hierarchy and the consequences thereof upon the weight of governmental guarantees are indeed significant factors which the Trial Chamber is expected to address as they could have an important bearing upon a State's willingness and readiness to arrest that person if he refuses to surrender himself.⁵³ Furthermore, the Trial Chamber is aware that the Tribunal is fully reliant on the authority and ability of States and other agencies to arrest fugitives since it does not have its own law enforcement mechanisms.⁵⁴

26. The Trial Chamber notes that according to Security Council Resolution 1244 of 10 June 1999, UNMIK is the authority which, in coordination with KFOR (the NATO forces in Kosovo), is entrusted with ensuring public safety, and conducting border monitoring, and is given the necessary means to enforce such duties.⁵⁵ Consequently, the Trial Chamber will take into account guarantees provided by UNMIK.

27. The Trial Chamber retains its discretion not to grant provisional release in cases where it is satisfied that the accused complies with the two requirements of Rule 65 of the Rules.⁵⁶ Consequently, the express requirements within Rule 65(B) of the Rules should not be construed as intending to exhaustively list the reasons why release should be refused in a given case.⁵⁷

28. The Trial Chamber will next examine the relevant factors pertinent to the request for provisional release. It will dedicate particular attention to the circumstances of the instant case, and assess 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.⁵⁸

IV. DISCUSSION

A. Whether the Accused, if released, will appear for trial

The charges against the Accused

29. Although a substantive review of whether or not the Accused will be convicted is a matter for determination of trial, the Trial Chamber notes that the Accused is charged with a total of 37 counts, including persecutions as a crime against humanity and violations of the laws or customs of war. If convicted, the Accused is likely to face a long prison sentence. Bearing in mind that this factor cannot in itself serve to justify long periods of pre-trial detention,⁵⁹ the Trial Chamber will nevertheless take into account that the length of his potential sentence could constitute an incentive for the Accused to flee. In this context, the Trial Chamber has also taken into account the submissions of the parties as to when this case will be ready for trial. As the Defence has observed during the oral hearing, the trial against the Accused is expected to start before 2007. The Prosecution, at the oral hearing, did not oppose this time assessment.⁶⁰ In light of the rights of the accused, and the relevant case-law from the European Court of Human Rights referred to above,⁶¹ the Trial Chamber considers this to be a relevant factor to be taken into account in deciding upon this question.

The circumstances of the Accused's voluntary surrender

30. The Accused was, when he surrendered to the Tribunal, a leading politician. On 3 December 2004, he was elected Prime Minister of Kosovo by the Kosovo Assembly. Moreover, he is the President of one of the main political parties, the Alliance for the Future of Kosovo.

31. On 8 March 2005, the Accused learned of the existence of an indictment against him, which was initially placed under seal. Only hours later, the Accused announced his decision to resign from his position as Prime Minister and to voluntarily surrender himself to the Tribunal. At a subsequent press conference, the Accused explained his decision in the following terms:

I have been called upon to make yet another sacrifice, which I never believed would happen. I have been informed that the Hague Tribunal has issued an indictment against me. First of all, I have to say before you, that I am innocent of whatever crime I am accused of. I am saying this because I am responsible and accountable for my people, before all else. [...] I had before me that I have worked the whole time through for the establishment of a democratic society, which deserves being part of my progressive world. This, in itself, means cooperation with international justice. In respect of how unjust this may be at the moment, I feel nothing. I feel proud. I feel that I am being removed from my work at a time when I was giving my utmost for my country, but I have to accept it for the sake of this country and for the sake of all of us. [...]

Therefore, I accept this burden. At the same time, I ask you to accept this fact. I ask from all of you to accept something that is nearly impossible to accept, but do this to honour your country and nation. I ask you to think of the great national interest.⁶²

32. On the following day, the Accused left Kosovo and surrendered himself to the Tribunal. The security situation remained calm in all regions of Kosovo.⁶³

33. It is not in dispute and the Trial Chamber acknowledges that the circumstances of the surrender of the Accused were exemplary and stand out in positive contrast against the conduct of other accused of his rank in comparable circumstances who have been indicted by the Tribunal. The Trial Chamber notes in particular the Accused's determination to submit to the court of international justice and his public call to the citizens of Kosovo to accept the indictment against him. This being said, the Trial Chamber at the same time considers that, overall, the voluntary character of the surrender of the Accused in this case, should be given comparable weight as to all other cases where the accused took a decision to leave family, friends and jobs behind and voluntarily submit themselves to the jurisdiction of this Tribunal.

The character of the Accused

34. The Trial Chamber was provided with ample references regarding the personal and political integrity of the Accused, including declarations by the Special Representative of the Secretary-General ("SRSG") in Kosovo, Søren Jessen-Petersen, the former Commander of Kosovo Force ("KFOR"), General Klaus Reinhardt, and Ibrahim Rugova, the President of Kosovo.⁶⁴ Mr. Jessen-Petersen described the Accused as a man of "dynamic leadership, strong commitment and vision" and that he had shown "dignity and maturity" in his decision to surrender.⁶⁵ General Reinhardt, who led KFOR from October 1999 until the spring of 2000, stated that the Accused "is a man in whom I trust wholeheartedly and whose advice I sought actively", and that he was a "politician with outstanding features who will be a key factor for the reconciliation of the different ethnic groups in Kosovo".⁶⁶ The Trial Chamber will attach appropriate weight to each of these references.

35. The Trial Chamber also notes that the Accused reiterates his intention to return to public service once his case is solved.⁶⁷ This is a factor which carries weight when considering whether the Accused has a motive to flee.

The Accused's undertaking

36. The Trial Chamber notes that the Accused has acknowledged to comply in full with all orders made by the Trial Chamber.

The guarantees to be provided by UNMIK

37. There is no doubt that UNMIK, being the interim civilian administration in Kosovo and with full authority over law enforcement, will fully co-operate and assist in any matter connected to proceedings before the Tribunal. In this case, UNMIK has expressed its willingness and readiness to detain the Accused, should there be a need for this, and the Trial Chamber is fully satisfied that this is the case.

38. The Prosecution nonetheless submits that the Trial Chamber should explore the practical limitations to UNMIK's ability to apprehend the Accused, should he try to abscond,⁶⁸ referring to the reasons for which UNMIK declined to provide any guarantees in the *Linaj* case and to the allegedly unchanged underlying factors: the borders and geography of Kosovo, the police resources available to UNMIK and the support resources available to the Accused.⁶⁹ During the oral hearing, the Prosecution submitted a number of reports from the UN Secretary-General to the Security Council on the international security presence in Kosovo and some other documents which in the view of the Prosecution support the argument of UNMIK's limited practical abilities in this field.⁷⁰

39. The Trial Chamber has to observe first that, although it will not and cannot make any comparison between the present case and the case of *Linaj* in terms of seriousness of the crimes or any other surrounding circumstances relating to the accused in both cases, there is a major difference between the two cases as far as the position of UNMIK is concerned. Whereas in the *Linaj* case, UNMIK made it clear that it was not able or unwilling to provide the necessary guarantees for a possible provisional release for one or more of the accused in this case, in Haradinaj's case, UNMIK has made it equally clear that it is positively able and willing to provide any guarantees that may be required for a provisional release of the Accused. The Trial Chamber further notes that, notwithstanding the evidence presented by the Prosecution after the oral hearing, which referred to the *Linaj* case, the Trial Chamber is not satisfied that a negative impact on the public perception of the safety of potential witnesses suffices as a ground for denying provisional release. As stated by the Trial Chamber in *Prljic*, "even if the Accused continues to enjoy influence, it does not necessarily follow that he will exercise it unlawfully".⁷¹

40. In this context, the Trial Chamber is not persuaded by the Prosecution's argument that the situation regarding UNMIK's capability to apprehend fugitives remains unchanged today. To the contrary, sufficient evidence has been adduced showing that UNMIK's resources were substantially enhanced in the past.⁷² The Trial Chamber is therefore satisfied that the actor providing the guarantees will be able to honour them, and certain limits apply to UNMIK's resources just as they do to the resources of states. However, all the Trial Chamber needs to be satisfied of, on the basis of the evidence before it, is that UNMIK will indeed be able to secure the Accused's attendance before the Tribunal.

41. The Trial Chamber further attaches importance to the fact that the Accused's former position as Prime Minister implicates that guarantees would carry less weight were they to be provided by his government, whereas the situation in this case fundamentally differs in that UNMIK is an international agency headed by the United Nations.

42. An additional issue was raised at the oral hearing when the Prosecution expressed doubts whether UNMIK is in a position to oversee a lengthy period of provisional release due to possible changes in its mandate in the future, which could not be excluded by UNMIK.⁷³ The Trial Chamber notes that UNMIK's mandate may not remain unchanged in the coming years and thus have an impact on UNMIK's authority and ability to apprehend the Accused. As there is no indication of such a change in the foreseeable future, the Trial Chamber finds that it does not invalidate the guarantees UNMIK would be providing in the present case. However, the Trial Chamber reserves its position regarding the Orders made in this Decision, should the need arise.

43. In light of the foregoing, the Trial Chamber is satisfied that, if released, the Accused will appear for trial.

B. Whether the Accused, if released, will not pose a danger to victims, witnesses or other persons

General situation for witnesses

44. The Prosecution has provided ample evidence that intimidation of witnesses in Kosovo and even attacks on their lives constitute a recurrent problem. The Trial Chamber takes this evidence very seriously and is also aware that the incidents reported may possibly only represent a fraction of the actual cases.⁷⁴ At the same time, the Trial Chamber takes notice of positive developments in this respect.⁷⁵

45. In this context, the Trial Chamber does not consider it necessary to further dwell on the submissions made by both parties with regard to the general security situation and the overall level of crime in Kosovo. The Trial Chamber has carefully studied the additional submissions provided by the Prosecution after the oral hearing and notes that in the Prosecution's view these are of an alarming nature. The Chamber is however not in a position to attach the same importance to these submissions as the claims laid down in these submissions are not UNMIK, as already observed, being confronted with these views, does not consider it necessary to change its position in relation to its willingness and ability to provide the necessary guarantees in relation to the case of the present Accused.

The impact of the Accused's provisional release on witnesses

46. In its submissions to the Trial Chamber, the Prosecution has not identified or alleged that the Accused can be linked to any of the incidents of witness interference that were mentioned. The Prosecution's main arguments are based on the assumption that (1) the perpetrators for these incidents would have a similar interest to interfere with witnesses in the present case, and (2) that the provisional release of the Accused would negatively impact on the public perception of the safety of potential witnesses.⁷⁶

47. The Trial Chamber is not persuaded that the Prosecution's first argument shows that the Accused's presence in Kosovo would have a negative impact on the security situation of witnesses, or induce the perpetrators from previous incidents to take steps against these witnesses. As regards the second argument, the Trial Chamber acknowledges that public perception of witness safety may play a crucial role under the circumstances prevailing in Kosovo for the willingness of witnesses to give evidence. However, since it has not been shown that the Accused would pose a concrete danger to anyone, including victims and witnesses, the Trial Chamber is not satisfied that a negative impact on the public perception of the safety of potential witnesses suffices as a ground for denying provisional release. As stated by the Trial Chamber in *Prljic*, "even if the Accused continues to enjoy influence, it does not necessarily follow that he will exercise it unlawfully".⁷⁷

48. The Trial Chamber notes that in this case, there is nothing in the evidence to suggest that the Accused interfered or would interfere with the administration of justice.⁷⁸ The Accused has also given an undertaking that he will not have any contact or interfere, directly or indirectly, with any potential witness.⁷⁹

Protective measures

49. Furthermore, the Trial Chamber recently issued a series of protective measures for witnesses during the pre-trial stage. Twenty-seven (27) potential witnesses were granted the use of pseudonyms, and the Prosecution was allowed to refrain from disclosing the identities of these individuals to the Defence until 30 days before the commencement of trial.⁸⁰ The Trial Chamber considers these measures to be a contribution to witness security, and an additional safeguard for the protection of potential witnesses concerned with the Accused's provisional release.

50. In light of the foregoing, the Trial Chamber is also satisfied that there is no evidence that, if released, the Accused will not pose a danger to any victim, witness or other person.

V. CONCLUSION

51. On the basis of the evidence adduced by the Accused in fulfillment of his burden of proof, including evidence of voluntary surrender, assurances by UNMIK and his own undertakings, as well as on the basis of the considerations elaborated above, the Trial Chamber is satisfied that, if released, he will appear for trial and that there are no indications that he will pose any danger to victims, witnesses or other persons.

52. For the foregoing reasons, the Trial Chamber grants the Motion for Provisional Release, subject to certain restrictions.

VI. DISPOSITION

53. For these reasons, pursuant to Rule 65 of the Rules, the Trial Chamber GRANTS the Motion for Provisional Release and ORDERS AS FOLLOWS:

1. The Accused shall be transported to an airport in the Netherlands by the Dutch authorities;

2. At the airport, the Accused shall be provisionally released into the custody of an official of UNMIK to be designated prior to release, who shall accompany the Accused for the remainder of his travel to Kosovo;

3. The Accused shall reside and remain within the territory of Kosovo throughout the period of his provisional release, more specifically, at Pristina/Prishtinë or at Glogjane/Glogjitan, with addresses for both places to be provided to UNMIK and to the Registrar of the Tribunal prior to his provisional release;

4. On his return, the Accused shall be accompanied by the same designated official of UNMIK, who shall deliver the Accused to the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by Order of the Trial Chamber, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit in The Hague;

5. During the first period of ninety (90) days, the Accused will not be allowed to make any public appearance or in any way get involved in any public political activity. The Accused will however be allowed to take up administrative or organisational activities in his capacity of President of the Alliance for the Future of Kosovo, provided such activities do not conflict with any of the conditions set out in this decision. After this period of ninety (90) days, the Trial Chamber will, if requested by the Defence, on the basis of the experience gained and after hearing the Prosecution and UNMIK on this issue, re-assess this condition;

6. During the period of his provisional release, the Accused shall abide by the following conditions, and UNMIK shall ensure compliance with such conditions:

- To remain within the confines of the municipality of Pristina/Prishtinë or Glogjane/Glogjitan;
- To inform UNMIK at least 24 hours in advance every time he intends to move from Pristina/Prishtinë to Glogjane/Glogjitan or vice versa and for how long he envisages to stay in either of these two places;
- To surrender his passport to UNMIK, which shall remain in its custody;
- To report each week to UNMIK at a time and local duty station to be designated by UNMIK;
- To consent to having UNMIK check about his presence and to the making of occasional, unannounced visits upon the Accused by UNMIK personnel or by a person designated by the Registrar of the Tribunal;
- Not to have any contact with the two other co-accused in the case;
- 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 current proceedings or the administration of justice;
- Not to discuss his case with anyone, including the media, other than with his counsels; not to make any statement or associate himself with any statement, public or otherwise, on his case or on any other case before this Tribunal or comparable cases that may be pending before the courts in Kosovo;
- Not to hold any governmental position at any level in Kosovo;
- To report to the Registrar of the Tribunal, within three days of the start of any employment or occupation, the position occupied, as well as the name and address of the employer;
- To comply strictly with any instructions given to him by anyone acting under the authority or occupation of UNMIK that may be necessary to enable them to comply with their obligations under this Order and their guarantees;
- To return to the Tribunal at such time and on such date as the Trial Chamber may order; and
- Not to comply strictly with any further Order of the Trial Chamber varying the terms of or terminating his provisional release.

54. The Trial Chamber further REQUIRES UNMIK to assume responsibility, and to confirm UNMIK's ability and authority in that regard to the Trial Chamber, as follows:

- By designating an official into whose custody the Accused shall be provisionally released and who shall accompany the Accused from an airport in the Netherlands to his place of residence in Pristina/Prishtinë or Glogjane/Glogjitan, and notifying, as soon as practicable, the Trial Chamber and the Registrar of the Tribunal of the name of the designated official;
- To take all reasonable measures to provide for the personal security and safety of the Accused while on provisional release, and to report immediately to the Registrar of the Tribunal should there be any concerns in that respect;
- At the request of the Trial Chamber or the parties to facilitate all means of co-operation and communication between the parties and to ensure the confidentiality of any such communication;
- To monitor the presence of the Accused at his place of residence in Pristina/Prishtinë or Glogjane/Glogjitan on a regular basis, and to submit a written report to the Trial Chamber every two weeks as to the compliance of the Accused with the terms of this Order;
- To arrest and detain the Accused immediately if he should breach any of the conditions of this Order; and to report immediately to the Trial Chamber any such breach;
- To immediately inform the Trial Chamber of any change of UNMIK's mandate that would affect