



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 No.: IT-04-74-T
Date: 26 June 2006
Original: ENGLISH
French

IN THE TRIAL CHAMBER

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel

Registrar: Mr Hans Holthuis

Decision of: 26 June 2006

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

CONFIDENTIAL

**DECISION ON MOTION FOR PROVISIONAL RELEASE OF THE
ACCUSED PUŠIĆ**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

The Republic of Croatia

TRIAL CHAMBER III (“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”);

BEING SEIZED OF the “Confidential Application for Provisional Release of Berislav Pušić” and its three annexes filed on 5 June 2006 (“Berislav Pušić’s Application”) by Counsel for the Accused Berislav Pušić (“Defence for the Accused Pušić”) whereby the Defence for the Accused Pušić requests, for humanitarian reasons, the provisional release of the Accused Berislav Pušić (“Accused Pušić”) to Zagreb, Republic of Croatia, for three weeks during the 2006 summer recess;

NOTING the confidential “Prosecution Response to Defence Applications for Provisional Release during Summer Recess” filed on 15 June 2006 (“Prosecution Response”) by the Office of the Prosecutor (“Prosecution”);

CONSIDERING that in support of its Application, the Defence for the Accused Pušić submits that: 1) Berislav Pušić surrendered voluntarily to the Tribunal;¹ 2) while on earlier release the Accused Pušić fully complied with the conditions imposed by the Trial Chamber in its decisions on provisional release;² 3) in its letter of 23 May 2006 the Government of the Republic of Croatia pledged that the Accused Pušić would comply with the conditions imposed by the Tribunal should the application for provisional release be granted by the Chamber and guaranteed that the Accused Pušić would return to The Hague at the request of the Chamber;³ and 4) the son and spouse of the Accused Pušić are in a precarious state of health;⁴

CONSIDERING that in its Response the Prosecution opposes the motions for provisional release of all the accused primarily because the reasons given by the accused in support of their motions do not constitute humanitarian grounds for release;⁵

¹ Berislav Pušić’s Application, para. 4.

² Berislav Pušić’s Application, paras. 6 and 8.

³ Berislav Pušić’s Application, para. 6; Annex 3 to Berislav Pušić’s Application.

⁴ Berislav Pušić’s Application, paras. 2 and 3; Annexes 1 and 2 to Berislav Pušić’s Application.

⁵ Prosecution Response, para. 5.

CONSIDERING alternatively that should the Chamber grant the motions, the Prosecution requests that: 1) the accused be prohibited from entering and travelling in Bosnia and Herzegovina; and 2) the accused be prohibited from having any contact with any witness, potential witness or victim;⁶

CONSIDERING that pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) the Chamber may order provisional release “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”;

CONSIDERING that the Accused Pušić, while on earlier release, complied with all the conditions imposed by Trial Chamber I in its order dated 30 July 2004⁷ and confidential order dated 22 August 2005⁸, and by Trial Chamber II in its confidential decisions dated 15 November 2005⁹ and 8 February 2006 ;¹⁰

CONSIDERING that the host country has not objected to any provisional release proceedings;¹¹

CONSIDERING that in its letter of 23 May 2006 the Government of the Republic of Croatia provided guarantees to the effect that the Accused Pušić would return to The Hague and would not abscond if released;

CONSIDERING in addition that, given the Accused Pušić’s appropriate behaviour on the previous occasion, the Chamber is satisfied that, if released, the Accused Pušić will not pose a danger to any victim, witness or other person;

CONSIDERING that the Chamber will adjourn proceedings for the summer recess and that the presence of the Accused Pušić will therefore not be required in court;

⁶ Prosecution Response, para. 6.

⁷ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Berislav Pušić, 30 July 2004.

⁸ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Berislav Pušić’s Motion for Variation of Conditions of Provisional Release, 22 August 2005 (confidential).

⁹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Berislav Pušić’s Second Application for Variation of Conditions of Provisional Release, 15 November 2005 (confidential).

¹⁰ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Berislav Pušić’s Third Application for Variation of Conditions of Provisional Release, 8 February 2006 (confidential).

¹¹ See Ministry of Foreign Affairs oral communication of 22 June 2006.

CONSIDERING that the application for provisional release submitted by the Accused Pušić to visit his ailing son and spouse may be considered as a request based on humanitarian grounds;

CONSIDERING that the Defence for the Accused Pušić submitted medical certificates to the effect that the son and spouse of the Accused Pušić are ill;

CONSIDERING that a brief visit by the Accused Pušić might help his son and spouse in their hour of need;

CONSIDERING that the conditions set out in Rule 65 of the Rules have been met;

CONSIDERING, however, that the period of provisional release should be limited to nine days, including travel, to enable the Accused Pušić to be with his son and spouse;

CONSIDERING that such a short period will enable the police authorities of the Republic of Croatia to carry out effective surveillance of the Accused Pušić, thereby providing an additional guarantee that he will appear for trial after the summer recess;

CONSIDERING that the Chamber is of the opinion that during his stay in his country the Accused Pušić must be under continuous surveillance by the authorities of the Republic of Croatia in order to guarantee his own safety and appearance for trial;

CONSIDERING further that in order to facilitate surveillance as ordered, the Chamber has decided that wherever possible the accused will be released in succession;

CONSIDERING therefore that the Accused Pušić will be released from 1 August 2006 to 9 August 2006;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules

GRANTS Berislav Pušić's Application in part; and

ORDERS the provisional release of the Accused Pušić from 1 August 2006 to 9 August 2006 under the following conditions:

ORDERS the Accused Pušić:

- 1) upon arrival to submit to surveillance by the authorities of the Republic of Croatia under the conditions set out below;
- 2) to remain within the confines of Zagreb, Republic of Croatia;
- 3) to surrender his passport to the Ministry of the Interior of the Republic of Croatia;
- 4) within one day of his arrival, to provide the address at which he will be staying to the Ministry of the Interior and to the Registrar of the Tribunal and to advise them of any change of address within one day of such change;
- 5) not to have any contact whatsoever or in any way interfere with victims or potential witnesses;
- 6) not to interfere in any way with the proceedings or the good administration of justice, in particular by destroying evidence;
- 7) not to discuss the case except with his Counsel and not to have contact with the media;
- 8) to have no contact with any other accused before the Tribunal;
- 9) to comply strictly with any requirements of the authorities of the Republic of Croatia to enable them to comply with their obligations under this order and their guarantees;
- 10) to return to the Tribunal on 9 August 2006;
- 11) to comply strictly with any further order of the Chamber varying the terms of, or terminating the provisional release;
- 12) not to act in any official function in the Republic of Croatia;

REQUESTS the Government of the Republic of Croatia, including the local police:

- 1) to ensure compliance with the conditions imposed on the Accused Pušić by the Trial Chamber;
- 2) to ensure that the transport costs of the Accused Pušić from The Netherlands to his place of residence and back are covered;

- 3) to designate an official of the Republic of Croatia into whose custody the Dutch authorities will release the Accused Pušić at Schiphol Airport (or any other airport in The Netherlands) and who will escort the Accused Pušić during the rest of his journey to his place of temporary residence;
- 4) to ensure that an official designated by the Republic of Croatia shall escort the Accused Pušić on his return flight to the Kingdom of The Netherlands at the end of his provisional release and hand over the Accused Pušić to the Dutch authorities in the Kingdom of The Netherlands at such time and place to be determined by the Trial Chamber;
- 5) to facilitate, at the request of the Trial Chamber or the parties, all forms of cooperation and communication between the parties and to guarantee the confidentiality of any such communication;
- 6) not to issue a new passport or travel document to the Accused Pušić for any travel purposes;
- 7) to submit the Accused Pušić to continuous physical surveillance during his stay;
- 8) to guarantee the personal safety and security of the Accused Pušić for the duration of his provisional release;
- 9) to immediately inform the Registrar of the Tribunal of the nature of any threat to the safety of the Accused Pušić and to submit to the Registrar full reports on the investigations carried out to this effect;
- 10) to immediately detain the Accused Pušić should he breach any of the conditions of his provisional release and immediately report any such breach to the Trial Chamber;

REQUESTS the Registrar of the Tribunal:

- 1) to consult with the Ministry of Justice of The Netherlands as to the practical arrangements for the release of the Accused Pušić;
- 2) to hold the Accused Pušić in detention while the necessary arrangements are being made for his journey;

- 3) to forward this Decision to the competent authorities;

REQUESTS the Dutch authorities:

- 1) to transport the Accused Pušić to Schiphol Airport (or any other airport in the Kingdom of The Netherlands) as soon as possible;
- 2) at the airport, to release the Accused Pušić into the custody of the official designated by the Government of the Republic of Croatia;
- 3) upon his return, to take the Accused Pušić into their custody at such time and place to be determined by the Trial Chamber and to transport him to the United Nations Detention Unit;

REQUESTS the authorities of all States through which the Accused will travel:

- 1) to hold the Accused Pušić in custody for any time he will spend in transit at the airport;
- 2) to arrest and detain the Accused Pušić pending his return to the United Nations Detention Unit should he attempt to escape.

DECIDES that this Decision shall be rendered public only after the return of the sixth and last accused to the United Nations Detention Unit.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]