



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 PETKOVIĆ**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Ms Vesna Alaburić for Milivoj Petković

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 “The Accused Milivoj Petković’s Motion for Provisional Release” and its three annexes filed on 2 June 2006 (“Milivoj Petković’s Motion”) by Counsel for the Accused Milivoj Petković (“Defence for the Accused Petković”) whereby the Defence for the Accused Petković requests, for humanitarian reasons, the provisional release of the Accused Milivoj Petković (“Accused Petković”) to Split, Republic of Croatia, between 14 July 2006 and 4 August 2006;

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 Motion the Defence for the Accused Petković submits that: 1) Milivoj Petković surrendered voluntarily to the Tribunal;¹ 2) during his previous provisional release the Accused Petković fully complied with the conditions imposed by the Trial Chamber in its decision on provisional release;² 3) in its letter of 23 May 2006 the Government of the Republic of Croatia pledged that the Accused Petković would comply with the conditions imposed by the Tribunal should the request for provisional release be granted by the Chamber and guaranteed that the Accused Petković would return to The Hague at the request of the Chamber;³ and 4) the father and spouse of the Accused Petković 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 Milivoj Petković’s Motion, para. 1.

² Milivoj Petković’s Motion, paras. 9 and 10.

³ Milivoj Petković’s Motion, para. 12; Annex 1 to Milivoj Petković’s Motion.

⁴ Milivoj Petković’s Motion, paras. 18, 21 and 22; Annexes 2 and 3 to Milivoj Petković’s Motion.

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 Petković, while on earlier release, complied with all the conditions imposed by Trial Chamber I in its orders dated 30 July 2004⁷ and 7 October 2005;⁸

CONSIDERING that the host country has not objected to any provisional release proceedings;⁹

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

CONSIDERING further that the Republic of Croatia has undertaken to cover the transport costs of the Accused Petković from The Netherlands to Split and back;

CONSIDERING in addition that, given the Accused’s appropriate behaviour on previous occasions, the Chamber is satisfied that, if released, the Accused Petković 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 Petković will therefore not be required in court;

CONSIDERING that the motion for provisional release by the Accused Petković in order to visit his ailing father and spouse can be considered as a request based on humanitarian grounds;

⁶ Prosecution Response, para. 6.

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

⁸ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision to Grant Accused Milivoj Petković’s Application for Variation of the Conditions for Provisional Release, 7 October 2005.

⁹ See oral communication by the Ministry of Foreign Affairs, 22 June 2006.

CONSIDERING that the Defence for the Accused Petković submitted medical certificates to the effect that the father and spouse of the Accused Petković are seriously ill;

CONSIDERING that a brief visit by the Accused Petković might help his father 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 which would enable the Accused to visit his father and spouse should be limited to nine days, including travel;

CONSIDERING that such a short visit will enable the police authorities of the Republic of Croatia to carry out effective surveillance of the Accused Petković, 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 Petković 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 the surveillance as ordered, the Chamber has decided that wherever possible the Accused will be released in succession;

CONSIDERING therefore that the Accused Petković will be released from 8 August 2006 to 16 August 2006;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules

GRANTS Milivoj Petković's Motion in part; and

ORDERS the provisional release of the Accused Petković from 8 August 2006 to 16 August 2006 under the following conditions:

ORDERS the Accused Petković:

- 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 Split, 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 16 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;

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

- 1) to ensure compliance with the conditions imposed on the Accused Petković by the Trial Chamber;
- 2) to ensure that the transport costs of the Accused Petković 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 Petković at Schiphol Airport (or any other airport in The Netherlands) and who will escort the Accused Petković 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 Petković on his return flight to the Kingdom of The Netherlands at the end of his provisional release and hand over the Accused Petković 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 Petković for any travel purposes;
- 7) to submit the Accused Petković to continuous physical surveillance during his stay;
- 8) to guarantee the personal safety and security of the Accused Petković 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 Petković and to submit to the Registrar full reports on the investigations carried out to this effect;
- 10) to immediately detain the Accused Petković should he breach any of the conditions of his provisional release and to 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 Petković;
- 2) to hold the Accused Petković 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 Petković 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 Petković into the custody of the official designated by the Government of the Republic of Croatia;
- 3) upon his return, to take the Accused Petković 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 Petković in custody for any time he will spend in transit at the airport;
- 2) to arrest and detain the Accused Petković 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]