



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: 11 June 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 11 June 2007

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ

CONFIDENTIAL ANNEX

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

The Office of the Prosecutor:

Mr Kenneth Scott

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”),

SEIZED of the “Confidential Application for Provisional Release of Berislav Pušić” and its three annexes, filed confidentially by Counsel for the Accused Berislav Pušić (“Defence for the Accused Pušić”) on 29 May 2007 (“Berislav Pušić’s Motion”), whereby the Defence for the Accused Pušić requests, for humanitarian reasons, the provisional release of the Accused Berislav Pušić (“Accused Pušić”) during the summer 2007 judicial recess,

NOTING the “Prosecution Consolidated Response to Defence Applications for Provisional Release During Summer Holiday” and its two annexes, filed confidentially by the Prosecution on 1 June 2007 (“Response”),

CONSIDERING that in support of Berislav Pušić’s Motion, the Defence for the Accused Pušić submits that: (1) Berislav Pušić surrendered voluntarily to the Tribunal; (2) while on earlier release the Accused Pušić fully complied with the conditions imposed by the Trial Chamber in its decisions on provisional release; (3) in a letter dated 3 May 2007, 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, and (4) the Accused Pušić’s son and spouse suffer from ill health,

CONSIDERING that in its Response, the Prosecution again opposes the provisional release of all the Accused because none of the reasons given by the Accused in support of their motions for provisional release constitute humanitarian grounds for release,

CONSIDERING that in its Response the Prosecution opposes the provisional release of the Accused Pušić because he allegedly violated the terms of his provisional release as imposed by the Chamber in its Decision on Motion for Provisional Release of the Accused Pušić, rendered on 26 June 2006,

CONSIDERING alternatively that should the Chamber grant Berislav Pušić's Motion, the Prosecution requests that: (1) the Accused Pušić be prohibited from setting foot or travelling in Bosnia and Herzegovina; (2) the Accused Pušić be prohibited from having any contact with any witness, potential witness or victim; (3) the Accused Pušić be prohibited from discussing the case with anyone other than his Counsel and from having any contact with the media, and (4) the period of provisional release be significantly reduced,

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 the Trial Chambers in their orders and decisions dated 30 July 2004,¹ 22 August 2005,² 15 November 2005,³ 8 February 2006,⁴ 26 June 2006,⁵ and 8 December 2006,⁶

CONSIDERING that in an oral decision of 12 March 2007, the Chamber considered that there was no reason to initiate proceedings under Rule 77 of the Rules of Procedure and Evidence ("Rules") and declared the debate on the matter closed,⁷

CONSIDERING that the host country has not objected to any possible provisional release proceedings,⁸

¹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Berislav Pušić, 30 July 2004.

² *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Berislav Pušić's Application for Variation of Conditions of Provisional Release, 22 August 2005 (confidential).

³ *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).

⁴ *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).

⁵ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Pušić, 26 June 2006; The dates of the Accused Pušić's provisional release mentioned in the previous decision were amended by the Order Amending the Decision on the Accused Pušić's Request for Provisional Release, 4 July 2006.

⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Pušić, 8 December 2006.

⁷ Court transcript in French, 12 March 2007, pp. 15422 and 15423 (private session).

⁸ See letter from the Ministry of Foreign Affairs dated 1 June 2007.

CONSIDERING that in a letter dated 3 May 2007, 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,

CONSIDERING in addition that 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 judicial recess and that the presence of the Accused Pušić will therefore not be required in court during this period,

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

CONSIDERING that the Defence for the Accused Pušić has produced medical certificates confirming that the Accused Pušić's spouse and son are ill,

CONSIDERING that a visit by the Accused Pušić to his son and spouse might help them in their hour of need,

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

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

CONSIDERING therefore that the Accused Pušić will be provisionally released during the dates and subject to the conditions set out in the confidential annex to this decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules,

GRANTS Berislav Pušić's Motion in part,

JUDGE ANTONETTI appending a partially dissenting opinion as regards the partly confidential nature of the present decision and,

ORDERS the provisional release of the Accused Pušić during the dates and subject to the conditions set out in the confidential annex to this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]