



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: 29 November 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: 29 November 2007

THE PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

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

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

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 “Motion for Provisional Release of Berislav Pušić” and its six annexes, filed confidentially by Counsel for the Accused Berislav Pušić (“Defence for the Accused Pušić”) on 13 November 2007 (“Berislav Pušić’s Motion”), wherein the Defence for the Accused Pušić requests, for humanitarian reasons, the provisional release of the Accused Berislav Pušić (“Accused Pušić”) for a reasonable period over the winter 2007/2008 judicial recess,

NOTING the “Prosecution Consolidated Response to Defence Applications for Provisional Release During Winter Recess”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 15 November 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) the authorities of the Government of the Republic of Croatia and those of the Republic of Bosnia and Herzegovina have 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 father, spouse and two sons (Boris and Marcel) all suffer from ill health and (5) the Accused Pušić wishes to be treated for his bad back,

CONSIDERING that the Accused Pušić requests the Chamber to provisionally release him into the territory of the Republic of Croatia and into the territory of the Republic of Bosnia and Herzegovina, and that in support of this request, he submits, first, that the state of health of his father and his son Marcel does not permit them to travel to the Republic of Croatia and, second, that the Accused Pušić would like to travel to Mostar, where he has medical coverage, for physiotherapy sessions,

CONSIDERING that in the 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 alternatively that should the Chamber grant Berislav Pušić's Motion, the Prosecution requests that: (1) the Chamber prohibit the Accused Pušić from setting foot or travelling in Bosnia and Herzegovina, and should the Chamber authorise the Accused Pušić's presence in Mostar, the Chamber limit his stay to a very short period and his movements to the round trip travel, and only under constant surveillance; (2) the Accused Pušić be prohibited from having any contact with any witness, potential witness (be it a witness called by the Prosecution, Defence or Chamber) or victim; (3) the Accused Pušić be prohibited from discussing the case with anyone other than his Counsel and (4) from having any contact with the media,

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 8 December 2006,⁶ and 11 June 2007,⁷

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 *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Pušić, 11 June 2007.

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

CONSIDERING that in letters dated 19 October and 5 November 2007, the authorities of the Herzegovina-Neretva canton and those of the Republic of Croatia respectively provided guarantees to the effect that the Accused Pušić would return to The Hague and would not abscond,

CONSIDERING therefore that the Chamber is satisfied that, if released, the Accused Pušić will appear for the remainder of his trial before the Chamber,

CONSIDERING that the Chamber will adjourn proceedings for the winter 2007/2008 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 visit his ailing sons, father 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, father and son Boris are ill,

CONSIDERING that a visit by the Accused Pušić to his close family members might help them in their hour of need,

CONSIDERING, however, that to be certain that the Accused Pušić, if released, will not pose a threat to any victim, witness or other person, the Chamber decides to limit his stay in the territory of the Republic of Croatia to a short period,

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

CONSIDERING that the Chamber reminds the Accused Pušić that he may attend physiotherapy sessions in the Kingdom of the Netherlands and that his state of health does not argue in favour of a trip to Mostar,

⁸ See letter from the Ministry of Foreign Affairs dated 16 November 2007.

CONSIDERING that the Chamber is of the opinion that during his stay in the territory of 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,

PARTIALLY GRANTS Berislav Pušić's Motion **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,

DENIES Berislav Pušić's Motion in all other respects,

JUDGE ANTONETTI appending a dissenting opinion as regards the public nature of the present decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]