



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: 19 March 2008  
Original: ENGLISH  
French

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**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:** 19 March 2008

**THE PROSECUTOR**

v.

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

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***PUBLIC WITH CONFIDENTIAL ANNEX***

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

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**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Douglas Stringer

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Prljak  
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić  
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 “Application for Provisional Release of Berislav Pušić” and its annex, filed confidentially by Counsel for the Accused Berislav Pušić (“Defence for the Accused Pušić”) on 4 February 2008 (“Application”), in which the Defence for the Accused Pušić requests, for humanitarian and medical reasons, the provisional release of the Accused Pušić to the Republic of Croatia during the entire time the hearings before the Chamber are suspended,

**NOTING** the “Prosecution Response to Application for Provisional Release of Berislav Pušić”, filed confidentially and *ex parte* by the Office of the Prosecutor (“Prosecution”) on 5 February 2008 (“Response”), in which the Prosecution opposes the provisional release of the Accused Pušić,

**NOTING** the “Motion for Leave to File and Supplemental Prosecution Response in Opposition to Application for Provisional Release of Berislav Pušić”, filed confidentially and *ex parte* by the Prosecution on 26 February 2008 (“Supplemental Response”), in which it requests that new facts and circumstances arguing against provisional release be taken into account,

**NOTING** the *ex parte* hearing of 29 January 2008 during which the state of health of the Accused Pušić was discussed,<sup>1</sup>

**NOTING** the order requesting the appointment of a panel of three experts,<sup>2</sup> rendered confidentially and *ex parte* by the Chamber on 31 January 2008 (“Order Appointing Experts”), in which the Chamber ordered the Registry to appoint three experts in order to evaluate the state of health of the Accused Pušić and file a preliminary report in this respect on 22 February 2008, followed by a final report on 15 April 2008,

**NOTING** the “Request for Medical Treatment” filed confidentially and *ex parte* by the Defence for the Accused Pušić on 1 February 2008 (“Request for Medical

<sup>1</sup> Transcript in French (“T(F)”), *ex parte*, 29 January 2008, pp. 1-10.

<sup>2</sup> Mindful of the need to respect the confidentiality of this order, its title is not reproduced herein.

Treatment”), in which it requests the provisional release of the Accused Pušić for the entire period between the end of the Prosecution case and the beginning of the Defence case so that the Accused Pušić may undergo treatment in Zagreb,

**NOTING** the “Joint Preliminary Report regarding Berislav Pušić”, transmitted confidentially and *ex parte* to the Chamber by the panel of three experts in its French version on 25 February 2008 (“Preliminary Report”),

**NOTING** the “Oral Decision rendered pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, rendered by the Chamber on 20 February 2008 (“98 *bis* Decision”), in which the Chamber denied the motions for acquittal presented by the Accused Ćorić and Pušić,

**CONSIDERING** that in support of the Application and the Request for Medical Treatment,<sup>3</sup> 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 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 all suffer from ill health and, finally, (5) as the Accused Pušić is himself ill, he should undergo special treatment in Zagreb,

**CONSIDERING** that in the Response, the Prosecution opposes the provisional release of the Accused on the grounds that the Accused has not provided sufficient information or justification regarding the state of his health;<sup>4</sup> that the period requested by the Accused is excessive;<sup>5</sup> that the Republic of Croatia’s ability to carry out effective surveillance of the Accused during the period requested is uncertain,<sup>6</sup> and that the Accused fails to provide any specific information as to the humanitarian

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<sup>3</sup> In the Application, the Accused Pušić also refers to his previous requests for provisional release and in particular to the “Motion for Provisional Release of Berislav Pušić” of 13 November 2007, confidential, to which six annexes are attached.

<sup>4</sup> Response, paras. 3 to 7.

<sup>5</sup> Response, para. 7.

<sup>6</sup> Response, para. 7.

grounds related in particular to the state of health of certain members of his family, in support of his request for release,<sup>7</sup>

**CONSIDERING** alternatively that should the Chamber grant the Application, the Prosecution requests that: (1) the Chamber prohibit the Accused Pušić from setting foot or travelling in Bosnia and Herzegovina; (2) the Accused Pušić be prohibited from having any contact with any witnesses or victims; (3) the Accused Pušić be prohibited from discussing the case with anyone other than his Counsel; (4) the Accused Pušić be prohibited from having any contact with the media and, finally (5) the provisional release not be granted prior to the pronouncement of the oral decision rendered pursuant to Rule 98 *bis*,<sup>8</sup>

**CONSIDERING** that in conclusion to its Response, the Prosecution opposes the Accused Pušić's application "until further information on Mr. Pušić's medical condition and other factors justifying provisional release is submitted",<sup>9</sup>

**CONSIDERING** that in the Supplementary Response, the Prosecution again opposes the provisional release of Berislav Pušić on the grounds that the new facts and circumstances argue against provisional release, namely the 98 *bis* Decision and the Preliminary Report regarding the state of health of the Accused,<sup>10</sup>

**CONSIDERING** that in fact the Prosecution believes, considering the 98 *bis* Decision denying the Accused Pušić's motion for acquittal, that "based on the accumulation of evidence against the Accused Pušić during the course of the entire Prosecution case-in-chief, [...] Pušić [...] may perceive a higher likelihood of conviction and therefore be more motivated not to return for trial",<sup>11</sup>

**CONSIDERING** that in its Supplementary Response, the Prosecution also considers that the Preliminary Report indicates that the Accused Pušić's condition "is not life-threatening, and that he can receive treatment at the UN Detention Unit",<sup>12</sup>

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<sup>7</sup> Response, para. 2.

<sup>8</sup> Response, paras. 8 and 9.

<sup>9</sup> Response, para. 9.

<sup>10</sup> Supplementary Response, para. 1.

<sup>11</sup> Supplementary Response, para. 5.

<sup>12</sup> Supplementary Response, para. 2.

**CONSIDERING** alternatively that, should the Chamber grant the Application, the Prosecution this time requests the Chamber to stay its decision pending a ruling on the appeal it intends to lodge,<sup>13</sup>

**CONSIDERING** that pursuant to Rule 65 (B) 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 since the Appeals Chamber decision of 11 March 2008,<sup>14</sup> the Chamber must not limit itself to an examination of the flight risk based on the conduct of the Accused and guarantees that they will reappear for trial, as it has in its previous decisions,<sup>15</sup> but must also take into account the 98 *bis* Decision,

**CONSIDERING** in fact that in its Decision, the Appeals Chamber considered that “the 98 *bis* Ruling in this case constitutes a significant enough change in circumstance to warrant the renewed and explicit consideration by the Trial Chamber of the risk of flight posed by the accused pursuant to Rule 65(B) of the Rules”,<sup>16</sup>

**CONSIDERING** that the Chamber recalls that in this case it did in fact render a decision pursuant to Rule 98 *bis* of the Rules on 20 February 2008;<sup>17</sup> that in this Decision it denied in particular the Accused Pušić’s motion for acquittal on the grounds that “the evidence led by the Prosecution allows for the purposes of Rule 98 *bis*, the finding that any reasonable trier of fact could<sup>18</sup> make a finding of guilt [...], beyond all reasonable doubt, with regard to all the counts of the indictment under JCE 1 and 3”,<sup>19</sup>

<sup>13</sup> Supplementary Response, para. 7.

<sup>14</sup> *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, (“Appeals Chamber Decision”).

<sup>15</sup> See in particular, the Decision on the Motion for Provisional Release of the Accused Pušić, 29 November 2007, in which the Chamber noted that the Accused has respected all of the conditions imposed during his previous periods of provisional release, that the host country had not opposed the provisional release and that the Republic of Croatia had provided assurances that the Accused would return to The Hague for the continuation of the trial.

<sup>16</sup> Appeals Chamber Decision, para. 20.

<sup>17</sup> 98 *bis* Decision, T(F), pp 27201 to 27238.

<sup>18</sup> Emphasis added.

<sup>19</sup> Décision 98 *bis*, CRF, p. 27238.

**CONSIDERING** that the Chamber recalls that for the purposes of its 98 *bis* Decision it did not rule on the probative value of the evidence, as that assessment is carried out only at the end of the trial, after all of the evidence, both inculpatory and exculpatory, will have been presented,<sup>20</sup>

**CONSIDERING** that the Chamber also recalls that for the purposes of its 98 *bis* Decision it took into account only the inculpatory evidence and not the exculpatory evidence presented by the Defence, including the Defence for the Accused Pušić,<sup>21</sup>

**CONSIDERING** that the Chamber further pointed out in its 98 *bis* Decision that “there is no contradiction between the dismissal of a 98 *bis* motion and a judgement of acquittal at the end of the trial”,<sup>22</sup> which indeed attests that the consideration of exculpatory evidence may lead a Chamber to enter a judgement of acquittal at the end of the trial even though that motion for acquittal had been dismissed at the time the Rule 98 *bis* decision was rendered,

**CONSIDERING** that in its 98 *bis* Decision, the Chamber referred in this respect to the Judgement of the Appeals Chamber in the *Jelisić* case dated 5 July 2001, in which it was recalled that an acquittal at the end of the trial is possible even if, after a decision to dismiss under Rule 98 *bis*, no Defence evidence has been adduced,<sup>23</sup>

**CONSIDERING** that the Chamber therefore holds that its 98 *bis* Decision, for which it was careful to note that it was dismissing the motions for acquittal based on the Prosecution evidence alone and that this decision was valid solely for the purposes of the procedure under Rule 98 *bis* of the Rules, may not be considered as a “pre-judgement” increasing the flight risk of the Accused,

**CONSIDERING** that in this respect and *mutatis mutandis*, the Chamber recalls that several Chambers have provisionally released the Accused after a decision dismissing a motion for acquittal has been rendered pursuant to Rule 98 *bis* of the Rules,<sup>24</sup> even

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<sup>20</sup> 98 *bis* Decision, T(F), p. 27207.

<sup>21</sup> *Ibidem*.

<sup>22</sup> *Ibid*.

<sup>23</sup> *The Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeal Judgement of 5 July 2001, para. 37.

<sup>24</sup> *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Decision on Motions by Enver Hadžihasanović and Amir Kubura for Provisional Release, 19 July 2005. To be noted is the fact that this decision was upheld by the Appeals Chamber, *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-AR65.3, Decision on Application for Leave to Appeal, 28 July 2005.

after the Decision of the Appeals Chamber,<sup>25</sup> at the end of the trial prior to the Judgment,<sup>26</sup> after the Trial Judgement and prior to the Appeals Judgement,<sup>27</sup> upon the decision of the Appeals Chamber itself after the Trial Judgement<sup>28</sup> and, finally, upon the decision of the Appeals Chamber quashing the decision of a Trial Chamber which had denied a motion for release,<sup>29</sup>

**CONSIDERING** that despite these reminders, the Chamber takes note of the Appeals Chamber's desire to obtain additional guarantees for future appearance to offset the flight risk as well as more compelling reasons as regards the humanitarian grounds, in light of the Rule 98 *bis* Decision,<sup>30</sup>

**CONSIDERING** first that as regards the guarantees for future appearance, the Chamber first recalls that the Accused Pušić, while on earlier release, complied with all the conditions imposed by the Trial Chambers in their orders and decisions dated

<sup>25</sup> *The Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Pavković Motion for Temporary Provisional Release, 14 March 2008.

<sup>26</sup> *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007 and *The Prosecutor v. Halilović*, Case No. IT-01-48-T, Decision on Motion for Provisional Release, 1 September 2005.

<sup>27</sup> *The Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-A, Decision on Motion on Behalf of Enver Hadžihasanović for Provisional Release, 20 June 2007 and *The Prosecutor v. Mrkšić and Šljivančanin*, Case No. IT-95/13/1-A, Decision on the Motion of Veselin Šljivančanin for Provisional Release, 11 December 2007.

<sup>28</sup> *The Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on the Request for Provisional Release of Miroslav Kvočka, 17 December 2003 ; *The Prosecutor v. Simić et al.*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić pursuant to Rule 65 (I) for Provisional Release for a Fixed Period to Attend Memorial Services for His Father, 21 October 2004 ; *The Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Defence Request for Provisional Release of Stanislav Galić, 23 March 2005.

<sup>29</sup> *The Prosecutor v. Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005; *The Prosecutor v. Čermak and Markač*, Case No. IT-03-73-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, 2 December 2004.

<sup>30</sup> Appeals Chamber Decision, paras. 20 and 21. At paragraph 21, the Appeals Chamber noted in support of its decision quashing the provisional releases that: "Nonetheless, in all cases, the Appeals Chamber finds that the various justifications for release offered by the Accused are not sufficiently compelling, particularly in light of the 98 *bis* Ruling [...]"

30 July 2004,<sup>31</sup> 22 August 2005,<sup>32</sup> 15 November 2005,<sup>33</sup> 8 February 2006,<sup>34</sup> 26 June 2006,<sup>35</sup> 8 December 2006,<sup>36</sup> 11 June 2007,<sup>37</sup> and 29 November 2007,<sup>38</sup>

**CONSIDERING** that the Chamber also notes that the host country has not objected to any possible provisional release proceedings,<sup>39</sup>

**CONSIDERING** that in a letter dated 11 January 2008, the authorities of the Republic of Croatia pledged that should the application for provisional release be granted by the Chamber, the Accused Pušić will not influence or pose a danger to any victim, witness or other person while on provisional release and will return to The Hague on the date ordered by the Chamber,<sup>40</sup>

**CONSIDERING** that the Chamber deems that around-the-clock surveillance, along with a weekly situation report from the authorities of the Republic of Croatia to the Chamber, should address the Appeals Chamber's concern for obtaining additional guarantees against the risk of flight,

**CONSIDERING** that under these circumstances, the Chamber considers that all of these assurances so provided will ensure, as sought by the Appeals Chamber, that the Accused Pušić appears for the continuation of the trial,

**CONSIDERING** moreover that the request for provisional release must additionally be based on humanitarian considerations,

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<sup>31</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Berislav Pušić, 30 July 2004.

<sup>32</sup> *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.

<sup>33</sup> *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.

<sup>34</sup> *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.

<sup>35</sup> 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.

<sup>36</sup> Decision on the Motion for Provisional Release of the Accused Pušić, 8 December 2006.

<sup>37</sup> Decision on the Motion for Provisional Release of the Accused Pušić, 11 June 2007.

<sup>38</sup> Decision on the Motion for Provisional Release of the Accused Pušić, 29 November 2007.

<sup>39</sup> See letter from the Ministry of Foreign Affairs of the Netherlands dated 7 February 2008.

<sup>40</sup> See letter from the Ministry of Foreign Affairs of the Republic of Croatia in the annex attached to the Motion, dated 11 January 2008.



**CONSIDERING** that the Chamber first recalls that the Accused Pušić would like to visit his sons, father and spouse, all of whom suffer from ill health as attested by the medical certificates that were transmitted to the Chamber,<sup>41</sup>

**CONSIDERING** moreover that the Accused Pušić himself suffers from ill health; that an *ex parte* hearing was held on 29 January 2008 in order to allow Counsel for the Accused Pušić the opportunity to inform the Chamber about the state of health of the Accused,

**CONSIDERING** that following that hearing, the Chamber, concerned by the state of health of the Accused Pušić, requested the Registry to appoint three experts in order to evaluate his state of health and to file a preliminary report in this regard,

**CONSIDERING** that contrary to the Prosecution's assertion,<sup>42</sup> the Preliminary Report still mentions the Accused Pušić's poor state of health and specifically describes the disease from which he suffers,

**CONSIDERING** that the Chamber notes that in its Supplementary Response, the Prosecution considers that in any case the Accused Pušić may be treated at the detention unit and that his state of health does not justify treatment in Zagreb,<sup>43</sup>

**CONSIDERING** that the Chamber notes however that in the Preliminary Report, the experts consider it preferable that the Accused Pušić have recourse to treatment that is as close as possible to his social environment, which should allow for his state of health to improve and, thereafter, for him to resume participation in the hearings,

**CONSIDERING** that the Chamber recalls in this respect that for several months the state of health of the Accused Pušić has been poor and that as a result, on many occasions in December 2007 and January 2008 he was absent from the hearings before the Chamber for health reasons,

**CONSIDERING** that the Chamber therefore deems it necessary to follow the advice of the experts and to provide the Accused Pušić with the most appropriate care; in the long run this should allow him to participate normally in the proceedings,

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<sup>41</sup> Application, para. 4.

<sup>42</sup> Supplementary Response, para. 2.

<sup>43</sup> Supplementary Response, paras. 2 and 6.

**CONSIDERING** furthermore that the Chamber believes, taking into account the scope of this case and the duration of the proceedings which began on 25 April 2006<sup>44</sup> and will resume beginning on 5 May 2008 with the opening of the Defence case,<sup>45</sup> that a limited visit with the family must also be taken into consideration,

**CONSIDERING** moreover that the Chamber has suspended the hearings from 21 February 2008 until 4 May 2008 and that during this period, the presence of the Accused Pušić will be required only to attend, if he so wishes, the two meetings on 17 and 26 March 2008, which were scheduled by the Chamber pursuant to Rule 65 *ter* of the Rules, and the pre-Defence conference pursuant to Rule 73 *ter* of the Rules, scheduled for 21 April 2008,<sup>46</sup>

**CONSIDERING** as a result that in the exercise of its discretionary power, the Chamber authorizes the provisional release of the Accused Pušić,

**CONSIDERING**, however, that the provisional release should be limited to a short period, including return 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 Pušić, thereby providing an additional guarantee that he will appear for the resumption of trial,

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

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

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<sup>44</sup> The Defence case is scheduled to begin on 4 May 2008.

<sup>45</sup> See in this regard the Scheduling Order, 14 February 2008.

<sup>46</sup> Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting a New Schedule, 28 January 2008 and Scheduling Order, 14 February 2008.

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 65 of the Rules,

**PARTIALLY GRANTS** the Application,

**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, **AND**

**DENIES** the Application in all other respects.

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

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this nineteenth day of March 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**