



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: 31 March 2008
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: 31 March 2008

THE PROSECUTOR

v.

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

PUBLIC

**SEPARATE OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI ON THE DECISION ON THE MOTION FOR PROVISIONAL
RELEASE OF THE ACCUSED PETKOVIĆ**

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 Praljak
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 Trial Chamber granted the motion for provisional release formulated by the Accused **Milivoj PETKOVIĆ**.

Since the issue raised by this motion is extremely important, I feel it my duty to explain my position **in favour** of the motion.

Until recently, the Accused Milivoj Petković and the other accused had been granted provisional release pursuant to Rule 65 of the Rules by several Chambers without any problem.

This Rule states in paragraph B:

“Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and 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.”

In my opinion, the applicant amply meets the conditions set out in this Rule:

- The Republic of Croatia provided the required guarantees.
- The Accused proved time and again that he will appear before the Tribunal by surrendering voluntarily to the Tribunal on 5 April 2004 before being granted provisional release for the first time on 30 July 2004, and by returning each time to The Hague.
- The Accused has never posed a danger to a victim, witness or any other person.

The Appeals Chamber set aside a previous order for the provisional release of this Accused by the Trial Chamber on the principal ground that the Trial Chamber had not taken Rule 98 *bis* of the Rules into account in its decision.

In this regard, it should be noted that this Accused did not formulate any motion for acquittal and pointed out that he made an oral request through his Counsel that the Chamber rule on a judicial matter. The Trial Chamber thus did not have to rule on a

prima facie evaluation of the evidence concerning him pursuant to Articles 7.1 and 7.3 of the Statute.

In these conditions, it would have been paradoxical to make him bear the consequences of a Trial Chamber decision taken in application of this Rule at the request of the other accused when this Rule is a phase of the trial proceedings.

The flight risk of this Accused is moreover made totally moot because of the explicit requirement that the Croatian authorities keep him under 24-hour police surveillance.

I would also like to add that the matter of flight risk had been carefully analysed by Trial Chamber I presided over by **Judge Liu Daqun**.

In paragraph 29 of its order of 30 July 2004, the three Judges of Trial Chamber I indicated:

“The Trial Chamber notes that the fact that the Accused never tried to abscond prior to his arrest supports the likelihood that he will indeed appear for trial when so ordered by the Trial Chamber. This is true particularly because the Accused knew in advance that he was likely to be indicted by the Tribunal, and the Trial Chamber accepts that the Accused never attempted to go into hiding despite receiving indications that he was a suspect falling within the Tribunal’s jurisdiction and that he could face a severe sentence if convicted.”

Consequently, I do not see why the oral decision of Rule 98 *bis* could now have any impact on a possible flight.

The humanitarian reasons are set out in detail on pages 7 and 8 of his motion. I note in this regard that his 80-year-old mother is in ill health and is unable to visit her son in The Hague; thus, maintaining family ties also amply justifies the provisional release of the Accused when not needed by the trial.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]