



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: 7 April 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: 7 April 2008

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 PRLIĆ**

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 Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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 "Jadranko Prlić's Motion for Provisional Release" ("Motion"), filed confidentially by Counsel for the Accused Jadranko Prlić ("Prlić Defence") on 26 March 2008, in which the Prlić Defence requests, on humanitarian grounds, for the Accused Prlić to be granted provisional release to go to the Republic of Croatia for as long a period as possible before the reopening of the hearing before the Chamber,

NOTING the "Prosecution Consolidated Response to 1) Jadranko Prlić's Motion for Provisional Release, filed 26 March 2008 ; 2) Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defense Case, Filed 27 March 2008 ; and 3) Valentin Ćorić's Request for Provisional Release, Filed 25 March 2008", filed confidentially by the Office of the Prosecutor ("Prosecution") on 4 April 2008 ("Response"), in which it objects to the release of the Accused Prlić,

NOTING the "Decision on the Motion for Provisional Release of the Accused Prlić", rendered by the Chamber on 19 February 2008 ("Decision of 19 February 2008") and the Confidential Annex attached to the Decision in which the Chamber orders the provisional release of the Accused Prlić during the dates and subject to the conditions set out in the Confidential Annex,

NOTING the oral decision pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("Rules") rendered by the Chamber on 20 February 2008 ("98 *bis* Decision"), in which it denies the motion for acquittal by the Accused Ćorić and Pušić,¹

NOTING the "Decision on Prosecution's Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić", rendered by the Appeals Chamber on 11 March 2008 ("Appeals Chamber Decision"),

¹ 98 *bis* Decision, court transcript in French, pp. 27201 to 27238.

in which it grants the appeal brought by the Prosecution against the Decision of 19 February 2008,

NOTING the "Decision on a Motion for Reconsideration" rendered by the Chamber on 25 March 2008, in which the Chamber denies the Motion by the Prlić Defence in which it requests that the Chamber reconsider its Decision of 19 February 2008, taking into account the Appeals Chamber Decision,

CONSIDERING that in support of the Motion, the Prlić Defence reiterated the arguments presented in "Jadranko Prlić's Motion for Provisional Release", filed confidentially by the Prlić Defence on 28 January 2008 ("Motion of 28 January 2008") that (1) the Accused Prlić surrendered voluntarily to the Tribunal; (2) he has been provisionally released on several occasions and fully complied with the conditions imposed by the Trial Chamber in its decisions in this regard; and (3) the authorities of the Republic of Croatia provided written guarantees that he would return to the Tribunal,²

CONSIDERING that in support of the Motion, the Prlić Defence also puts forward that new humanitarian reasons have arisen since the Decision by the Appeals Chamber: the deterioration of the state of health of the Accused Prlić's father and brother,³

CONSIDERING that in the Motion, the Prlić Defence notes that on 18 February 2008, the Accused Prlić's father, who is progressively losing his sight, underwent a surgical intervention for cancer of the kidney;⁴ that the Accused Prlić's mother, whose health is precarious, cannot travel to the Netherlands and has to stay in Croatia to take care of her husband⁵ and, finally, that the Accused Prlić's brother, who had a liver transplant in 2007, is today experiencing post-operative kidney and heart complications,⁶

² Motion, paras. 1 to 13.

³ Motion, para. 14.

⁴ Motion, para. 14 a) and medical certificate dated 14 March 2008.

⁵ Motion, para. 14 b).

⁶ Motion, para. 14 c).

CONSIDERING that the Accused Prlić fears that he will not see his brother alive if he is not granted provisional release before the reopening of the hearing set for 5 May 2008,⁷

CONSIDERING that in its Response, the Prosecution refers to its earlier submissions⁸ and considers that the Prlić Defence does not provide sufficient elements that would justify provisional release⁹ or a reversal of the Decision by the Appeals Chamber,¹⁰

CONSIDERING that should the Chamber grant the Motion, the Prosecution would like to request to defer the implementation of its decision until a ruling is made on the appeal that it intends to bring,¹¹

CONSIDERING that pursuant to Rule 65 (B) of the 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, the Chamber must not limit itself to an examination of the flight risk based on the conduct of the accused and guarantees that he will reappear, as it has in its previous decisions, but must also take into account the 98 *bis* Decision,¹²

CONSIDERING that the Chamber recalls that it takes note of the Appeals Chamber's wish to obtain additional guarantees to offset the flight risk as well as reasons regarding humanitarian grounds in light of the 98 *bis* Decision,¹³

CONSIDERING that the Appeals Chamber found that the 98 *bis* Decision introduced an important change of circumstances that would justify a more thorough

⁷ Scheduling Order, 14 February 2008.

⁸ The Prosecution in particular refers to "Prosecution Response to Jadranko Prlić's Motion for Expedited Renewed & Explicit Consideration of His Previously Granted Request for Provisional Release", filed on 12 March 2008.

⁹ Response, para. 15.

¹⁰ Response, para. 19.

¹¹ Response, para. 35.

¹² See the "Decision on the Application for Provisional Release of the Accused Pušić", 19 March 2008, p. 5.

¹³ "Decision on the Application for Provisional Release of the Accused Pušić", 19 March 2008.

re-evaluation of flight risks regarding each of the co-accused, including the accused who did not file a motion to be acquitted pursuant to Rule 98 *bis*,¹⁴

CONSIDERING that, as a result, the Chamber finds by a majority, the Presiding Judge dissenting, that it needs to ensure that there are additional guarantees to offset the flight risk and that the Motion presents more compelling humanitarian considerations before granting the provisional release,

CONSIDERING that with regard first to the considerations of a humanitarian nature, the Chamber finds that the Motion recalls circumstances already mentioned in the Motion of 28 January 2008, which were taken into consideration and denied by the Appeals Chamber in its Decision of 11 March 2008,

CONSIDERING that the Chamber notes, however, that the Prlić Defence reports new humanitarian considerations to justify provisional release,

CONSIDERING, in fact, that the state of health of the Accused Prlić's father is particularly serious since, at the age of almost 80 and almost blind,¹⁵ he has just undergone an operations for cancer, as confirmed by several medical certificates produced by the Prlić Defence,¹⁶

CONSIDERING that, with regard to the Accused Prlić's brother, the Chamber notes that the Prlić Defence has supplied the Chamber with several medical certificates confirming that his brother is regularly checked at the hospital in order to monitor the outcome of the operation and that a certificate dated 14 March 2008 takes note of the deteriorating state of his health,

CONSIDERING that the Chamber finds that fact that the state of health of the Accused Prlić's father and brother is extremely serious is a factor in favour of granting provisional release,

CONSIDERING, next, that concerning the guarantees of reappearance, the Chamber recalls first of all that the Appeals Chamber considered in its Decision of 11 March

¹⁴ Appeals Chamber Decision, paras. 19 and 20.

¹⁵ See in this regard the medical certificate of 19 January 2008.

¹⁶ Medical certificates dated 27 February, 12 and 14 March 2008.

2008 that the guarantees provided by the Chamber in its Decision of 19 February 2008 against a flight risk were not sufficient, in the light of the 98 *bis* Decision,¹⁷

CONSIDERING that in its Decision of 19 February 2008, the Chamber in particular ordered that the Accused Prlić remain within the boundaries of Zagreb in the Republic of Croatia and that the Accused Prlić be under constant physical surveillance during his stay,

CONSIDERING that the Chamber notes that the Government of the Republic of Croatia reiterated in its letter date 12 March 2008 its commitments with regard to the Appeals Chamber Decision,¹⁸

CONSIDERING that the Chamber also finds that, in addition, guarantees for a 24-hour surveillance can be applied; that it orders to this effect that the Accused Prlić report daily to the police authorities,¹⁹ and instructs the Croatian authorities to present a report every three days,

CONSIDERING that in view of the serious humanitarian circumstances and the additional guarantees of reappearance, the Chamber is able to order provisional release for the Accused Prlić,

CONSIDERING, moreover, that the Chamber is certain that during the provisional release the Accused Prlić will not pose a danger to a victim, witness or any other person,

CONSIDERING however that for reasons of judicial economy, the Chamber finds by a majority, the Presiding Judge dissenting, that a stay of the implementation of the present decision should be ordered until the Appeals Chamber rules on the appeal that the Prosecution intends to bring against the present decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 (B) of the Rules,

¹⁷ Appeals Chamber Decision, paras. 20 and 21.

¹⁸ Motion, para. 8.

¹⁹ See in this regard the Confidential Annex.

PARTIALLY GRANTS the Motion and anticipates the provisional release of the Accused Prlić during the dates and under the conditions stipulated in the Confidential Annex attached to the present decision,

AND,

ORDERS by a majority the stay of the implementation of the present decision until the Appeals Chamber rules on the appeal that the Prosecution will bring against this decision,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventh day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]