



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: 22 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: 22 April 2008

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIC
Slobodan PRALJAK
Milivoj PETKOVIC
Valentin ĆORIĆ
Berislav PUŠIĆ

PUBLIC WITH CONFIDENTIAL ANNEX

**FURTHER DECISION TO THE DECISION ON PROVISIONAL RELEASE
OF THE ACCUSED PETKOVIC**

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

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 of Milivoj Petković for Provisional Release during the Remainder of the Period Between Close of Prosecution Case and Beginning of Defence Case”, to which four confidential annexes are attached, filed by Counsel for the Accused Petković (“Petković Defence”) on 17 March 2008 (“Motion”), in which the Petković Defence requests the provisional release of the Accused Petković until the beginning of the Defence case,

NOTING the “Decision on Prosecution’s Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić”, rendered by the Appeals Chamber on 11 March 2008 (“Decision of 11 March 2008”), reversing the “Decision on the Motion for Provisional Release of the Accused Petković”, rendered partially confidentially by the Chamber on 19 February 2008,

NOTING the supplementary “Prosecution Consolidated Response to (1) Slobodan Praljak’s Motion for Provisional Release, (2) Motion of Milivoj Petković for Provisional Release During the Remainder of the Period Between Close of Prosecution Case and Beginning of Defence Case and, (3) Supplemental Material in Support of Jadranko Prlić’s Motion for Renewed and Explicit Consideration of his Previously Granted Request for Provisional Release and Request for Leave to Modify Conditions of Provisional Release”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 20 March 2008 (“Response”), in which the Prosecution objects to the Motion,

NOTING the “Addendum to the Annex of the Motion of Milivoj Petković for Provisional Release During the Remainder of the Period Between Close of Prosecution Case and Beginning of Defence Case”, filed confidentially by the Petković Defence on 21 March 2008 (“Addendum”), in which the Petković Defence provides additional documents in support of the Motion,

NOTING the “Decision on the Motion of the of the Accused Petković for Provisional Release”, rendered by the Chamber on 31 March 2008 (“Decision of 31 March

2008”), to which a confidential annex is attached, in which the Chamber ordered the provisional release of the Accused Petković during the dates and subject to the conditions set out in the confidential annex,

NOTING the “Decision on ‘Prosecution's Appeal from *Décision relative à la demande de mise en liberté provisoire de l'accusé Petković* dated 31 March 2008”, rendered by the Appeals Chamber on 21 April 2008 (“Decision of 21 April 2008”), in which the Appeals Chamber remands the Decision of 31 March 2008 to the Chamber,

CONSIDERING that in the Decision of 21 April 2008, the Appeals Chamber noted that a Trial Chamber may grant a motion for provisional release after the close of the Prosecution case only when serious and sufficiently compelling humanitarian reasons exist,¹

CONSIDERING that the Appeals Chamber also recalled that when provisional release is granted, its length should be proportional to the circumstances which justified the release,²

CONSIDERING that the Appeals Chamber held that the Decision of 31 March 2008 is based on new humanitarian grounds but that the Chamber failed to evaluate whether these circumstances were sufficiently compelling to justify the provisional release of the Accused,³

CONSIDERING that consequently, in the Decision of 21 April 2008, the Appeals Chamber remanded the Decision of 31 March 2008 to the Chamber so that the Chamber could evaluate whether the new humanitarian grounds put forth by the Petković Defence justify the provisional release of the Accused Petković with regard to the standard set out in the Decision of 21 April 2008,⁴

CONSIDERING that in the Decision of 31 March 2008, the Chamber noted that the depressive state of the Accused Petković's spouse and the deteriorating health of his

¹ Decision of 21 April 2008, p. 8.

² Decision of 21 April 2008, p. 8.

³ Decision of 21 April 2008, pp. 9 and 10.

⁴ Decision of 21 April 2008, p. 10.

mother were not previously brought to Chamber's attention, which was confirmed by the Appeals Chamber in its Decision of 21 April 2008,⁵

CONSIDERING that according to Tribunal jurisprudence, a visit to seriously ill family members may constitute humanitarian grounds justifying provisional release, if all of the other conditions set out in Rule 65 of the Rules of Procedure and Evidence ("Rules") have moreover been met,⁶

CONSIDERING that the Chamber recalls that the medical certificate dated 18 March 2008 relating to the health of the Accused Petković's spouse states that the health of Ms Petković has deteriorated over the past few months; that this deterioration is in part the result of being separated from her husband; that she suffers among other things from psychomotor inhibitions, anxiety, insomnia and that she is under psychiatric treatment,⁷

CONSIDERING that the Chamber further recalls that the new medical certificate of 17 March 2008 relating to the health of the Accused Petković's mother establishes that her state of health is extremely serious; that she suffers from coronary disease which prevents her from travelling to The Hague; that this condition is accompanied by periods of anxiety and depression and that the patient is undergoing treatment for this,⁸

CONSIDERING that the Chamber believes that these new circumstances are sufficiently different from those which were evaluated and deemed insufficient by the Appeals Chamber in the Decision of 11 March 2008 since, as the medical certificates provided by the Petković Defence attest, the health of the Accused Petković's spouse and mother has considerably worsened over the past few months, partly because they are far from the Accused,

CONSIDERING that the Chamber further holds that the continued detention of the Accused Petković in The Hague deprives him of regular visits from his seriously ill family members and that, in particular, the state of health of the Accused Petković's mother prevents her from travelling to the Netherlands,

⁵ Decision of 31 March 2008, pp. 5 and 6; Decision of 21 April 2008, p. 9.

⁶ Decision of 21 April 2008, p. 8.

⁷ Decision of 31 March 2008, pp. 5 and 6.

⁸ Decision of 31 March 2008, p. 6.

CONSIDERING that the Chamber holds that the foreseeably lengthy duration of the proceedings and, consequently, the continued detention of the Accused Petković have an extremely negative impact on the fragile health of his close family members, and that his provisional release will have a positive effect on the health of the Accused Petković's mother and spouse and on the mental state of the Accused himself,

CONSIDERING that as a result the Chamber deems that the humanitarian grounds put forth by the Petković Defence are sufficiently compelling to justify the provisional release of the Accused,

CONSIDERING further that in the Decision of 21 April 2008, the Appeals Chamber confirmed that the guarantees for future appearance provided by the Petković Defence were sufficient in light of the oral decision rendered by the Chamber pursuant to Rule 98 *bis* of the Rules on 20 February 2008,⁹

CONSIDERING moreover that the Chamber recalls that the other conditions set out in Rule 65 (B) of the Rules have been met,¹⁰

CONSIDERING finally that the Chamber believes that the length of the provisional release as scheduled in the confidential annex attached to this decision is proportional to the circumstances of the case at hand since it will permit the Accused, who will be under house arrest, to visit his spouse and his mother, who are both ailing, during an appropriate period in light of their state of health,

FOR THESE REASONS,

IN ACCORDANCE with the Decision of 21 April 2008 and Rule 65 of the Rules,

PARTIALLY GRANTS the Motion and orders the provisional release of the Accused Petković during the dates and subject to the conditions set out in the confidential annex attached to this decision.

THE PRESIDING JUDGE appends a separate opinion to this decision.

⁹ Decision of 21 April 2008, pp. 7 and 8.

¹⁰ Decision of 31 March 2008, p. 6.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]