



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: 17 July 2008
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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: 17 July 2008

THE PROSECUTOR

v.

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

PUBLIC with CONFIDENTIAL ANNEX

**DECISION ON THE ACCUSED PETKOVIĆ'S MOTION
FOR PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr Kenneth Scott
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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

I. INTRODUCTION

1. 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”) is seized of a motion for provisional release by the Accused Milivoj Petković (“Accused Petković”) filed confidentially by Counsel for the Accused Petković (“Petković Defence”) on 1 July 2008.

II. PROCEDURAL BACKGROUND

2. On 1 July 2008, the Petković Defence confidentially filed the “Motion of Milivoj Petković for Provisional Release During July/August 2008 Summer Recess” (“Motion”), in which for humanitarian reasons it requests provisional release of the Accused Petković to the Republic of Croatia for as long as the Chamber deems fit during the 2008 summer recess.¹

3. On 10 July 2008, the Office of the Prosecutor (“Prosecution”) confidentially filed a Prosecution Consolidated Response to Defence Applications for Provisional Release During the Summer Recess (“Response”), in which the Prosecution opposes the release of the Accused Petković.²

III. APPLICABLE LAW

4. Under Rule 65 (A) of the Rules of Procedure and Evidence (“Rules”), once detained, an accused may not be released except upon an order of a Chamber. According to Rule 65 (B), release may be ordered by the 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.

5. According to established Tribunal jurisprudence, the Chamber has discretionary power over the decision to grant or deny provisional release pursuant to Rule 65 of

¹ Motion, p. 1, 31.

² Response, paras 2, 30-33, 49.

the Rules.³ To assess whether the conditions set forth in Rule 65 (B) of the Rules have been met, the Chamber must take into account all the relevant factors that a reasonable Trial Chamber would take in order to make its decision.⁴ The Chamber must then give reasons for its decision on these points.⁵ The relevance of the factors referred to and the weight to be ascribed to them is decided on a case-by-case basis.⁶ Because they depend primarily on the facts of the case in question, all requests for provisional release are examined in the light of the particular situation of the accused.⁷ The Chamber must examine this situation when deciding on provisional release, but, as far as it is able, must foresee what this situation will be like when the accused is to return to the Tribunal.⁸

6. According to recent rulings by the Appeals Chamber, the close of the Prosecution case constitutes an important change of situation that requires a new and detailed evaluation of an accused's risk of flight.⁹ Under these conditions, even if the Trial Chamber is convinced that sufficient guarantees have been given, it may not exercise its discretionary power to grant provisional release unless sufficiently compelling

³ *The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.A, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008 (“*Jovica Stanišić Decision*”), para. 3; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006 (“*Milutinović Decision*”), para. 3; *The Prosecutor v. Popović et al.*, Case No. IT-65-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006, para. 5; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.7, Decision on “Prosecution's Appeal from Décision relative à la Demande de mise en liberté provisoire de l'Accusé Petković dated 31 March 2008, 21 April 2008 (“*Petković Decision*”), para. 5; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.8, Decision on Prosecution's Appeal from Décision relative à la demande de mise en liberté provisoire de l'Accusé Prlić, dated 7 April 2008, 25 April 2008 (“*Prlić Decision of 25 April 2008*”), para. 7.

⁴ *The Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005 (“*Mićo Stanišić Decision*”), para. 8; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

⁵ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

⁶ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

⁷ *The Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release, 4 October 2005 (“*Tarčulovski Decision*”), para. 7; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

⁸ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

⁹ *The Prosecutor v. 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 (“*Prlić Decision of 11 March 2008*”), para. 20.

humanitarian reasons cause the scales to tip in this direction.¹⁰ Consequently, provisional release may only be granted “at a late stage of the proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian reasons exist to justify the release and, even when provisional release is found to be justified in light of the nature of the circumstances, the length of the release should nonetheless be proportional to these circumstances.”¹¹

7. Nonetheless, according to Appeals Chamber precedents, the Trial Chamber can best assess these matters if procedural circumstances such as the close of the Prosecution case increase the risk of flight during provisional release.¹²

IV. ARGUMENTS OF THE PARTIES

8. In support of the Motion, the Petković Defence submits that (1) the Accused Petković has already enjoyed provisional release six times and fully respected the conditions and guarantees that he would return imposed by the Trial Chamber in its decisions in this regard;¹³ (2) during his previous releases, the Chamber considered that the conditions set out in Rule 65 (B) of the Rules had been met with regard to the Accused Petković;¹⁴ (3) the presence of the Accused Petković is not required during the summer recess;¹⁵ (4) the Accused Petković’s flight risk has not increased following the Chamber’s decision pursuant to Rule 98 *bis* of the Rules with respect to his previous provisional releases;¹⁶ (5) the Accused Petković’s personal circumstances – such as the fact that he has never lived abroad, that he speaks no foreign language and that previously he had never been sentenced or charged – do not allow him to flee outside the territory of the former Yugoslavia;¹⁷ (6) the Accused Petković surrendered to the Tribunal voluntarily on 5 April 2004;¹⁸ (7) the Accused Petković’s conduct during detention in the United Nations Detention Unit has been exemplary;¹⁹ (8) there is no risk that the Accused Petković will endanger the life of any victim, witness or

¹⁰ *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

¹¹ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

¹² *Milutinović* Decision, para. 15.

¹³ Motion, paras. 2-3, 5-6.

¹⁴ Motion, paras. 4, 7.

¹⁵ Motion, para. 9.

¹⁶ Motion, para. 11.

¹⁷ Motion, para. 11.

¹⁸ Motion, para. 11.

¹⁹ Motion, para. 11.

other person;²⁰ (9) the Government of the Republic of Croatia has provided guarantees regarding the provisional release of the Accused Petković and the Government of the Republic of Croatia has always respected its obligations pursuant to the conditions imposed by the Chamber;²¹ (10) finally, the Accused Petković states that he will submit to the conditions and limitations imposed by the Chamber and proposes several measures in this regard such as remaining within the confines set by the Chamber, surrendering his passport to the Croatian authorities or having no contact with the media.²²

9. For compelling humanitarian reasons that it regards as sufficient to justify the provisional release of the Accused Petković, the Petković Defence recalls the arguments it already raised in support of the motion for provisional release filed on 17 March 2008 and supplemented by an addendum dated 21 March 2008,²³ in particular the state of health of the Accused Petković's wife and mother.²⁴ In this regard, the Petković Defence sent the Chamber several medical certificates dated 18 March 2008, 16 May 2008, and 1 and 2 June 2008, attesting to the precarious health of the Accused Petković's wife and mother²⁵ whom he would like to visit.²⁶

10. The Petković Defence furthermore refers to the Reasons for the *Pušić* Decision, filed by the Appeals Chamber on 23 April 2008,²⁷ in which the Appeals Chamber stated that there is no requirement to prove the existence of "sufficiently compelling

²⁰ Motion, paras. 12-14.

²¹ Motion, paras. 27-28.

²² Motion, paras. 29-31.

²³ Motion of Milivoj Petković for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case, 17 March 2008; 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, 21 March 2008. The Accused Petković notes the poor health of his wife and mother therein.

²⁴ Motion, paras. 18-26.

²⁵ Motion, paras. 18-26; Medical certificate of the Accused Petković's wife dated 18 March 2008 and attached in annex to the Motion; Medical certificate of the Accused Petković's wife dated 2 June 2008 and attached in annex to the Motion; Medical certificate of the Accused Petković's mother dated 16 May 2008 and attached in annex to the Motion; Medical certificate of the Accused Petković's mother dated 1 June 2008 and attached in annex to the Motion; Medical certificate of the Accused Petković's mother dated 2 June 2008 and attached in annex to the Motion.

²⁶ Motion, paras. 22, 26.

²⁷ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.6, Reasons for Decision on Prosecution's Urgent Appeal Against *Décision relative à la mise en liberté de l'Accusé Pušić* issued on 14 April 2008, Case No. IT-04-74-AR65.6, 23 April 2008 ("Reasons for the *Pušić* Decision").

humanitarian grounds” to justify provisional release as long as the conditions set out in Rule 65 (B) of the Rules have been met.²⁸

11. In its Response, the Prosecution objects to provisional release for the Accused Petković because, *inter alia*, the period he requested is excessive and because none of the reasons offered by the Accused in support of his request for release constitute sufficiently compelling humanitarian grounds to justify it.²⁹

12. The Prosecution considers that the grounds raised by the Petković Defence to not reach the level of sufficiently humanitarian grounds.³⁰ It alleges that these grounds are similar to those raised by the Petković Defence in its previous motion for provisional release, the ensuing decision of which was sent back to the Chamber by the Appeals Chamber for further reasoning.³¹ Furthermore, the humanitarian grounds presented by the Petković Defence do not essentially differ from those raised in the Accused Petković’s motion for provisional release in January 2008 that was rejected, according to the Prosecution, as not justifying provisional release by the Appeals Chamber as well.³²

13. In the alternative, should the Chamber grant the Motion, the Prosecution requests that provisional release not exceed seven days, which would be sufficient time for him to visit the members of his family (including travel),³³ and that it be subject to strict terms and conditions.³⁴ In particular, the Prosecution requests that the Chamber prohibit the Accused (1) from any and all travel to or presence in Bosnia and Herzegovina; (2) from having any contact with any victims; (3) from discussing the case with anyone except his counsel, and (4) from any and all contact with the media.³⁵

²⁸ Motion, paras. 16-17, Reasons for the *Pušić* Decision, paras. 14-15.

²⁹ Response, paras. 2, 32, 49.

³⁰ Response, para. 32.

³¹ Response, para. 31; *Petković* Decision, para. 20.

³² Response, para. 32; *Prlić* Decision of 11 March 2008.

³³ Response, paras 33, 50.

³⁴ Response, paras 2, 47, 50.

³⁵ Response, para. 47.

14. Finally, should the Trial Chamber grant the Motion, the Prosecution requests a stay of the Trial Chamber's decision until a decision has been taken on the appeal it intends to lodge.³⁶

V. DISCUSSION

15. Firstly, the Chamber finds that, pursuant to Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber in its letter dated 3 July 2008 that it did not have any objections to the procedure for a possible provisional release.³⁷

16. In its letter dated 18 June 2008, the Government of the Republic of Croatia submitted to the Chamber guarantees that the Accused Petković, if a motion for provisional release were to be granted by the Chamber, would not influence or pose a danger, during his provisional release, to any victim, witness or any other person and would return to The Hague on the date ordered by the Chamber.³⁸

17. The Chamber notes that the Accused Petković complied with all the conditions and guarantees of his return imposed during his earlier provisional releases in keeping with the orders and decisions of the Trial Chambers rendered on 30 July 2004,³⁹ 26 June 2006,⁴⁰ 8 December 2006,⁴¹ 11 June 2007,⁴² 10 July 2007,⁴³ 29 November 2007,⁴⁴ and 22 April 2008.⁴⁵ The Chamber states, in particular, that the Accused Petković complied with the conditions imposed during his last provisional release which took place after the close of the Prosecution case. The Chamber further notes that the Prosecution does not challenge the fact that the Accused Petković will appear

³⁶ Response, para. 48.

³⁷ Letter from the Ministry of Foreign Affairs of the Netherlands dated 3 July 2008.

³⁸ Letter from the Ministry of Justice of the Republic of Croatia in annex to the Motion, dated 18 June 2008.

³⁹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004.

⁴⁰ Decision on the Motion for Provisional Release of the Accused Petković, 26 June 2006.

⁴¹ Decision on the Motion for Provisional Release of the Accused Petković, 8 December 2006.

⁴² Decision on the Motion for Provisional Release of the Accused Petković, 11 June 2007.

⁴³ Order to Amend the Decision on the Motion for Provisional Release of the Accused Petković, 10 July 2007.

⁴⁴ Decision on the Motion for Provisional Release of the Accused Petković, 29 November 2007.

⁴⁵ Further Decision to the Decision on Provisional Release of the Accused Petković, 22 April 2008.

upon termination of his provisional release.⁴⁶ The Chamber holds that the guarantees to return offsetting the risk of flight, such as those imposed on the Accused Petković during his last provisional release,⁴⁷ effectively neutralise all possible risk of flight. Regarding his respectful conduct during his earlier provisional releases, the Chamber is assured that the Accused Petković, if released, will appear for the continuation of his trial.

18. Furthermore, for these same reasons, the Chamber is of the opinion that the Accused Petković, if released, will not pose a danger to any victim, witness or any other person, which, again, is not challenged by the Prosecution.⁴⁸

19. Nevertheless, according to the Appeals Chamber, regarding the stage of the proceedings and the close of the Prosecution case, the Chamber has the duty to determine, in addition, if the humanitarian grounds put forward by the Petković Defence are sufficiently compelling to justify the provisional release of the Accused Petković.⁴⁹

20. The Petković Defence submits that Rule 65 (B) does not mention humanitarian grounds for provisional release to be granted and, with respect to this, refers to the position of the Appeals Chamber in the Reasons for the *Pušić* Decision.⁵⁰ At the same time, the Petković Defence recognizes that this position goes against the position adopted by the Appeals Chamber in the *Petković* Decision.⁵¹ Furthermore, the position adopted in the *Petković* Decision was subsequently confirmed by the majority of the Appeals Chamber in the *Prlić* Decision of 25 April 2008⁵² and the *Stojić* Decision of 29 April 2008.⁵³ Owing to this, and in accordance with the majority position of the Appeals Chamber, the Chamber therefore considers it necessary to examine the humanitarian grounds raised by the Petković Defence in order to assess if

⁴⁶ Response.

⁴⁷ Further Decision to the Decision on Provisional Release of the Accused Petković, 22 April 2008.

⁴⁸ Response. This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

⁴⁹ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁵⁰ Motion, paras. 16-17; Reasons for the *Pušić* Decision.

⁵¹ Motion, para. 16; *Petković* Decision, para. 17.

⁵² *Prlić* Decision of 25 April 2008, para. 16.

⁵³ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.9. Decision on "Prosecution's appeal from Décision relative à la demande de mise en liberté provisoire de l'accusé Stojić dated 8 April 2008", 29 April 2008 ("*Stojić* Decision"), para. 19.

they are sufficiently compelling to justify the Accused Petković's provisional release.⁵⁴

21. The Prosecution considers that the elements raised by the Petković Defence do not reach the level of sufficiently compelling grounds and alleges that these grounds are similar to those raised by the Petković Defence in the last motion for provisional release and that of January 2008, which the Appeals Chamber did not accept.⁵⁵ In this regard, the Chamber recalls that the Appeals Chamber returned the case to the Chamber so that it could provide its reasons and that the Accused Petković was subsequently given provisional release.⁵⁶ In addition, the Chamber recalls that it has the duty to consider each motion on provisional release in the light of the particular circumstances of the Accused⁵⁷ and that such an assessment is made at the time when it reaches its decision on provisional release.⁵⁸ Consequently, as long as the Chamber considers that a ground raised by an accused – in the light of his current situation – is sufficiently compelling, it may justify the provisional release of an accused.

22. Regarding the medical certificates submitted by the Petković Defence, the Chamber finds the state of health of the Accused Petković's mother and wife very serious. The Chamber proceeded with an in-depth assessment, given in the confidential annex attached hereto, and holds that the presence of the Accused Petković at the side of his wife and mother for a short period could assist them in overcoming their hardships. Therefore, the Chamber characterises the humanitarian grounds raised by the Petković Defence as sufficiently compelling to justify the provisional release of the Accused Petković.

23. The Chamber recalls that in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, it must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a

⁵⁴ Motion, paras. 21-26.

⁵⁵ Response, paras. 31, 32; *Prlić* Decision of 11 March 2008; *Petković* Decision, para. 20.

⁵⁶ *Prlić* Decision of 11 March 2008; Further Decision to the Decision on the Provisional Release of the Accused *Petković*, 30 March 2008; Further Decision to the Decision on the Provisional Release of the Accused *Petković*, 22 April 2008.

⁵⁷ *Tarčulovski* Decision, para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

⁵⁸ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

decision.⁵⁹ In this case, the Chamber must also consider the fact that the Accused Petković surrendered voluntarily to the Tribunal and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case. Furthermore, the Chamber will suspend hearings during the summer court recess. Consequently, during this period, there will be no court activity which will require the presence of the Accused Petković.

24. Furthermore, the Chamber recalls that, in keeping with the case-law of the Appeals Chamber, the excessive length of actual or likely detention is an additional discretionary consideration which can be taken into account in determining provisional release if all the requirements of Rule 65 (B) of the Rules have been met.⁶⁰ To this effect, the Chamber refers to a report the Registrar of the Tribunal submitted at a Diplomatic Seminar organised by the Tribunal on 10 June 2008 (“Registrar’s Report”) in which he gave an overview of the United Nations Detention Unit (“Detention Unit”) and of the equipment at the disposal of the accused.⁶¹ The Chamber observes that in his report, the Registrar discussed the “unique status of the UNDU detainee population,” and noted that:

“Whilst the UNDU is a remand institution, the average period of detention is significantly longer than the one of national jurisdictions and possibly even closer to many penitentiary institutions. This inevitably has a detrimental affect upon the mental state of the detainees as they are awaiting or undergoing complex trials and appeals over an extended period of time, causing long term stress which is well-known to induce or exacerbate health conditions.”⁶²

The Registrar also discussed the question of the impact of lengthy detentions and hearings on the health of the detainees:

⁵⁹ *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

⁶⁰ *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj’s Interlocutory Appeal Against the Trial Chamber’s Decision Denying His Provisional Release, 9 March 2006, para. 23; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on Third Motion for Provisional Release, 16 August 2006, p. 3. It is to be noted that this Decision was confirmed by the Appeals Chamber, *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR65.1, Decision on Appeal Against Decision Denying Motion for Provisional Release, 17 October 2006, paras. 8-9.

⁶¹ Speech by Mr Hans Holthuis, Registrar, ICTY Diplomatic Seminar, The Hague, 10 June 2008.

⁶² Registrar’s Report, p. 3-4.

“In addition, the prolonged pre-trial and trial detention, the stress of the trial, the geographical distance from their relatives are circumstances which contribute to exacerbate their overall health condition, both physical and psychological.”⁶³

With respect to the separation of the detainees from their families, the Registrar considered that:

“The distance from the detainees’ family and the familial social support network, as well as the detainees’ lack of familiarity with the surroundings, inevitably impact on the health condition of the detainees.”⁶⁴

The Registrar ended his report with the following conclusion:

“Despite the measures in place at the UNDU as mentioned, in view of the statistics of the present population of the UNDU (*i.e.*, advanced average age, adverse personal circumstances and existence of serious medical conditions), the risk of the occurrence of a life threatening incident can be described as relatively high. Whilst I do not wish to sound alarmist, I do wish to present a realistic picture and share with you our concerns in this respect.”⁶⁵

25. The Chamber finds that the present case is particularly lengthy because of its scale, complexity and the large number of accused. Except for several short periods of provisional release, the Accused Petković has been detained in the Detention Unit since the commencement of the proceedings on 25 April 2006,⁶⁶ that is for more than two years. The Chamber further notes that the trial will not be terminated before 2010. The Tribunal is responsible for the health of the accused who are under its authority and custody. Concerned for the well-being of the accused, the Chamber holds that the possibility that the Accused Petković has been suffering seriously from his lengthy detention in the Detention Unit, such as described in the Registrar’s Report, is a supplementary factor to be taken into account when making a decision pursuant to Rule 65 (B) of the Rules. The Chamber considers that a certain period outside the Detention Unit and in a family environment during the court recess will allow the Accused Petković to recuperate. Accordingly, the Chamber hopes to prevent a

⁶³ Registrar’s Report, p. 7.

⁶⁴ Registrar’s Report, p. 3.

⁶⁵ Registrar’s Report, p. 8.

⁶⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004; Decision on Motion for Provisional Release of the Accused Petković, 26 June 2006; Decision on the Motion for Provisional Release of the Accused Petković, 8 December 2006; Decision on the Motion for Provisional Release of the Accused Petković, 11 June 2007; Order Amending the Decision on the Motion for Provisional Release of the Accused Petković, 10 July 2007;

possible deterioration of the physical and mental state of the Accused, as discussed in the Registrar's Report.

26. The Chamber further recalls that pursuant to the case-law of the Appeals Chamber, the length of provisional release at a late stage of the proceedings, and in particular after the close of the Prosecution case, is to be proportionate to the circumstances and sufficiently compelling humanitarian reasons justifying provisional release.⁶⁷ In addition, the Chamber recalls that the factors it has to take into account influence not only the decision on whether or not to grant provisional release, but also its duration, if any. Thus, *inter alia*, the Chamber must find the proper balance between the nature and weight of the circumstances justifying provisional release for humanitarian reasons and its duration.⁶⁸

27. In this case, the Accused Petković seeks provisional release for as long as the Chamber deems fit.⁶⁹ The Chamber, for its part, holds it necessary to limit the duration of provisional release to a period not in excess of the time necessary for the Accused Petković to visit his ill family members and to recuperate, but which includes the time of the round trip journey. Consequently the Chamber holds that a provisional release not in excess of 14 days is proportionate to the gravity of the illness of the Accused Petković's mother and wife and to the necessity of permitting the Accused Petković to rest after two years of detention.

V. CONCLUSION

28. For these reasons, and in light of the Registrar's Report, the Chamber is convinced that the Accused Petković offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding 14 days (including travel) is proportionate to the gravity of the illnesses of the Accused Petković's father and brother and to the need to safeguard the health of the Accused himself and to prevent any repercussions on his health from the length of his detention. Consequently, in the exercise of its discretionary power, the Trial Chamber decides to grant provisional release to the Accused Petković.

Decision on Provisional Release of the Accused Petković, 29 November 2007; Further Decision Regarding the Decision on Provisional Release of the Accused Petković, 22 April 2008.

⁶⁷ Petković Decision, para. 17; Prlić Decision of 25 April 2008, para. 16.

29. In view of the circumstances of the case and the stage of the proceedings, the Chamber decides to impose upon the Accused Petković the following obligations: that the Accused Petković remain within the confines set forth by the Trial Chamber⁷⁰ and report daily to the police. The Chamber also decides to order the Croatian authorities to supervise the Accused Petković twenty-four hours a day during his stay and to provide a situation report every three days.

30. As such, the Accused Petković will be released for the dates and according to the conditions set forth in the confidential annex attached to the present Decision.

31. Nonetheless, the Chamber decides to stay execution of its decision to release the Accused Petković until a ruling has been made on the Appeal the Prosecution intends to lodge.⁷¹

VI. DISPOSITION

32. **FOR THE FOREGOING REASONS**, the Chamber,

PURSUANT TO Rule 65 (B) of the Rules,

GRANTS the Motion,

ORDERS the provisional release of the Accused Petković for the dates and according to the conditions set forth in the confidential annex attached to the present Decision,

AND

ORDERS a stay of execution of the present decision until the Appeals Chamber has ruled on the Appeal the Prosecution intends to lodge against this Decision.

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

⁶⁸ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

⁶⁹ Motion, paras. 1, 32.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷⁰ See in this regard the confidential Annex attached to this Decision.

⁷¹ Response, para. 48.