



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: 2 December 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 2 December 2008

THE PROSECUTOR

v.

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

PUBLIC with CONFIDENTIAL ANNEX

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

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

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 Bruno Stojić (“Accused Stojić”) filed confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 23 October 2008.

II. PROCEDURAL BACKGROUND

2. On 23 October 2008, the Stojić Defence confidentially filed “Motion of Bruno Stojić for Provisional Release During the Period of Winter Judicial Recess” (“Motion”), in which it requests for humanitarian reasons provisional release of the Accused Stojić to the Republic of Croatia between 12 December 2008 and 9 January 2009, for as long as possible a period at the discretion of the Chamber.¹

3. On 29 October 2008, the Chamber rendered an oral decision wherein it fixed the deadline for the Prosecution's response to the Motion for 14 November 2008.²

4. The Ministry of Foreign Affairs of the Kingdom of the Netherlands informed the Tribunal in its letter dated 6 November 2008 that it did not have any objections to the provisional release of Bruno Stojić.³

5. On 11 November 2008, the Chamber rendered an oral decision wherein it authorised the Prosecution to file a joint consolidated response up to 12,000 words to the motions for provisional release of the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Ćorić.⁴

6. On 14 November 2008, the Prosecution confidentially filed a consolidated response (“Prosecution Consolidated Response to Prlić, Stojić, Petković, Praljak and Ćorić Applications for Provisional Release During the Winter Recess 2008-2009”) (“Response”) wherein, *inter alia*, the Prosecution objects to the provisional release of

¹ Motion, pp. 1, 12 and 17.

² Court Transcript in French (“T(F)”), 29 October 2008, p. 33893, private session.

³ Letter of consent to the provisional release of Bruno Stojić by the Ministry of Foreign Affairs of the Kingdom of the Netherlands, 6 November 2008.

⁴ T(F), 11 November 2008, p. 34462, private session.

the Accuse Stojić and respectfully requests the Chamber to grant a stay of its decision if it were to grant the provisional release of Bruno Stojić until the Appeals Chamber rules on the appeal the Prosecution intends to file against the decision.⁵

7. On 14 November 2008, the Stojić Defence confidentially filed the “Addendum to Motion of Bruno Stojić for Provisional Release During the Period of Winter Judicial Recess Dated 23 October 2008, with Confidential Annex F” wherein it filed supplementary information on the deterioration of the state of health of the brother of the Accused Stojić with medical certificates in support thereof.⁶

8. On 17 November 2008, the Chamber rendered an oral decision authorising Defence Counsel for the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Ćorić to file a reply by 19 November 2008⁷ to the Prosecution’s Response.

9. On 19 November 2008, the Stojić Defence confidentially filed “Bruno Stojić’s Reply to Prosecution Consolidated Response to Prlić, Stojić, Petković, Praljak and Ćorić Applications for Provisional Release During the Winter Recess 2008-2009” (“Reply”).

III. APPLICABLE LAW

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

11. According to Tribunal jurisprudence, the Chamber has discretionary power over the decision to grant or deny provisional release pursuant to Rule 65 of the Rules.⁸ To assess whether the conditions set forth in Rule 65 (B) of the Rules have

⁵ Response, paras. 1, 34-36, 60 and 61.

⁶ Addendum, para. 3, and Confidential Annex F attached to the Addendum.

⁷ CT(F), 17 November 2008, pp. 34632 and 34633, private session.

⁸ *The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, 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.*

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.⁹ The Chamber must then give reasons for its decision on these points.¹⁰ The relevance of the factors referred to and the weight to be ascribed to them is decided on a case-by-case basis.¹¹ Because they rely 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.¹² 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.¹³

12. 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.¹⁴ 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 humanitarian reasons cause the scales to tip in this direction.¹⁵ 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

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.

⁹ *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.

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

¹¹ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

¹² *The Prosecutor v. Boškoski 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.

¹³ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mićo Stanišić* Decision, para. 8.

¹⁴ *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.

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.”¹⁶

13. Nonetheless, according to Appeals Chamber precedents, the Trial Chamber can best assess whether procedural circumstances, such as the close of the Prosecution case, increase the accused’s risk of flight during provisional release.¹⁷

IV. ARGUMENTS OF THE PARTIES

14. In support of the Motion, the Stojić Defence submits that: (1) the Accused Stojić complied fully with all the terms laid down for the previous periods of his provisional release;¹⁸ (2) the authorities of the Republic of Croatia pledge to ensure that the Accused Stojić complies with the conditions imposed by the Chamber should the Accused Stojić be granted provisional release and recalls that, in this regard, the Government of Croatia upheld its obligations during the previous periods of provisional release of the Accused Stojić;¹⁹ (3) that the authorities of the Republic of Croatia have provided guarantees that, if released, the Accused Stojić: (a) will appear at The Hague on the date set by the Chamber, and (b) will not present a threat to witnesses, victims or any other person,²⁰ and (c) will take all the measures as ordered by the Chamber;²¹ (4) the Accused Stojić surrendered voluntarily to the Tribunal;²² (5) the Government of the Kingdom of the Netherlands has given its consent to the provisional release of the Accused Stojić;²³ and (6) the risk of flight of the Accused Stojić has not increased following the Decision of the Chamber pursuant to Rule 98 *bis* of the Rules.²⁴ Finally, the Accused Stojić pledges to comply with the conditions and restrictions imposed by the Chamber and adds that he will accept house arrest

¹⁵ *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

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

¹⁷ *Milutinović* Decision, para. 15.

¹⁸ Motion, paras. 14-16.

¹⁹ Motion, paras. 1 and 13, *see also* Confidential Annex E.

²⁰ Motion, para. 13, *see also* Confidential Annex E.

²¹ Motion, para. 13, *see also* Confidential Annex E.

²² Motion, paras. 10 and 14.

²³ Letter of consent by the Ministry of Foreign Affairs of the Kingdom of the Netherlands to the provisional release of Bruno Stojić, 6 November 2008.

²⁴ Motion, para. 16.

should the Chamber grant him provisional release for a longer period than the previous time.²⁵

15. Regarding the compelling humanitarian reasons it regards as sufficient to justify the provisional release of the Accused Stojić, the Stojić Defence draws particular attention to the state of health of the Accused Stojić's brother, wife, mother-in-law and sister-in-law.²⁶ In this connection, the Stojić Defence sent the Chamber medical certificates dated 1 October 2008, 6 October 2008, 13 October 2008, 15 October 2008 and 12 November 2008 testifying to the physical problems of the Accused Stojić's wife, mother-in-law, brother and sister-in-law.²⁷ The Stojić Defence further submits that the compelling humanitarian reasons put forward in the previous requests for the provisional release of the Accused Stojić are still valid.²⁸

16. The Stojić Defence submits that, for exceptional circumstances put forward in the Motion, provisional release of the Accused Stojić to the Republic of Croatia during the winter judicial recess 2008-2009 would be beneficial to the physical and emotional state of the Accused Stojić's wife.²⁹ The Stojić Defence also submits that the recent surgery the Accused Stojić's brother constitutes in itself a sufficiently compelling humanitarian ground for granting the Motion of the Accused Stojić.³⁰ In this respect, the Stojić Defence argues that the provisional release of the Accused Stojić to the Republic of Croatia during the winter judicial recess 2008-2009 would allow him to lend his support and affection to his brother's four children, as he is close to them, should his brother remain hospitalised following the surgery he underwent on 26 October 2008.³¹

17. In its Response, the Prosecution objects to provisional release of the Accused Stojić because, *inter alia*, none of the reasons offered by the Accused in support of his

²⁵ Motion, para. 16.

²⁶ Motion, paras. 5-12; Addendum, paras. 1-3.

²⁷ Motion, paras. 5-12. Addendum, paras. 1-3. Medical certificate of the Accused Stojić's wife dated 1 October 2008 attached in Confidential Annex A to the Motion; Medical certificate of the Accused Stojić's mother-in-law dated 6 October 2008 attached in Confidential Annex B to the Motion; Medical certificate of the Accused Stojić's brother dated 13 October 2008 attached in Confidential Annex C to the Motion; Medical certificate of the Accused Stojić's brother dated 12 November 2008 attached in Confidential Annex F to the Addendum; Medical certificate of the Accused Stojić's sister-in-law dated 15 October 2008 attached in Confidential Annex D to the Motion.

²⁸ Motion, paras. 5, 6, and 9.

²⁹ Motion, para. 11.

³⁰ Motion, para. 12.

request for release constitute sufficiently compelling humanitarian grounds to justify it.³² Furthermore, the Prosecution observes that no documents have been provided in support of the assertions of the Stojić Defence that the Accused Stojić's wife and sister-in-law are not able to travel to The Hague to visit the Accused and that the detrimental effect of the precarious medical condition of the Accused Stojić's family members on his mental health has not been substantiated.³³

18. The Prosecution alleges that, given the advanced stage of the proceedings and the almost completed first defence case, there is an increased risk of flight of the Accused and, second, the alleged contacts between two of the co-accused and a witness during the previous period of provisional release demonstrate deficiencies in the monitoring system of the Croatian Authorities.³⁴

20. Furthermore, the Prosecution maintains that the period requested for the provisional release of the Accused Stojić is excessive.³⁵ However, should the Chamber grant the Motion of the Accused Stojić, the Prosecution recalls that the Appeals Chamber, in its Decision rendered on 29 April 2008, decided that any period of provisional release should be limited to the minimum period necessary for an accused to fulfil the compelling humanitarian reasons submitted in support of his request for provisional release,³⁶ and recalls that the provisional release must include strict terms, similar to those requested in its previous submissions.³⁷ In particular, the Prosecution requests that the 24-hour surveillance of the Accused by the relevant authorities be substantively addressed.³⁸ The Prosecution maintains that in the absence of assurances on the availability of a fool-proof surveillance system in keeping with the terms of the Chamber's order, the Chamber should dismiss the request for provisional release of the Accused Stojić.³⁹

³¹ Addendum, paras. 2 and 3; Medical certificate of the Accused Stojić's brother dated 12 November 2008 in Confidential Annex F annexed to the Addendum.

³² Response, paras. 1, 3, 34-36 and 61.

³³ Response, paras. 34 and 35.

³⁴ Response, paras. 4-5 and 17-23.

³⁵ Response, para. 6.

³⁶ Response, paras. 6, 36, 56 and 57. *See also* 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, para. 20.

³⁷ Response, paras. 58 and 59.

³⁸ Response, para. 59.

³⁹ Response, paras. 58 and 59.

21. Finally, should the Chamber grant the Motion, the Prosecution respectfully requests a stay of the Chamber's decision until a decision has been taken on the appeal it intends to lodge.⁴⁰

22. In its Reply, the Stojić Defence argues that it submitted medical certificates in support of the compelling humanitarian grounds raised in its Motion.⁴¹ The Stojić Defence stresses that the medical certificates provided in support of its Motion as well as in those in the Addendum attest to the deterioration of the state of health of the Accused Stojić's brother and the precarious health of certain of the Accused's family members and that they show compelling humanitarian reasons for the provisional release of the Accused Stojić.⁴²

23. The Stojić Defence also puts forward that there is no merit in the Prosecution's claims that the duration of the provisional release requested by the Stojić Defence is excessive.⁴³ In respect to this, the Stojić Defence recalls that even though it requested as long as possible a period for provisional release during the winter judicial recess 2008-2009, its request does not state a fixed period and it indicated explicitly that the determination of the period rests on the discretionary power of the Chamber.⁴⁴

24. Finally, the Stojić Defence stresses that the Government of the Republic of Croatia provided a letter of guarantee and recalls that the Croatian Authorities have upheld their obligations in this respect during the previous periods of provisional release of the Accused Stojić.⁴⁵ The Stojić Defence adds that the alleged encounters in Croatia of Bruno Stojić's two co-accused and a witness should not impact the reliability of the guarantees provided by the Croatian Government in support of the Motion of the Accused Stojić and/or the latter's risk of flight.⁴⁶ Moreover, the Stojić Defence informs the Chamber that should the Chamber consider it necessary to have supplementary guarantees in order to grant the Motion of the Accused, the Accused

⁴⁰ Response, para. 60.

⁴¹ Reply, para. 4.

⁴² Reply, paras. 4-6.

⁴³ Reply, para. 7.

⁴⁴ Reply, paras. 8 and 9.

⁴⁵ Reply, paras. 10 and 11.

⁴⁶ Reply, paras 11 and 12.

Stojić states he will accept, as appropriate, home confinement with the possibility of paying supervised visits to his brother in hospital.⁴⁷

V. DISCUSSION

25. 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 6 November 2008 that it did not have any objections to the procedure for possible provisional release.⁴⁸

26. In its letter dated 15 October 2008, the Government of the Republic of Croatia provided guarantees that the Accused Stojić, 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.⁴⁹

27. The Chamber finds that the Accused Stojić has complied with all the conditions and guarantees imposed during his earlier provisional releases in keeping with the orders and decisions of the Trial Chambers rendered on 30 July 2004,⁵⁰ 15 July 2005,⁵¹ 26 June 2006,⁵² 8 December 2006,⁵³ 26 June 2006,⁵⁴ 8 December 2006,⁵⁵ 11 June 2007,⁵⁶ 29 November 2007,⁵⁷ 29 April 2008,⁵⁸ 17 July 2008.⁵⁹ Contrary to the submissions of the Prosecution,⁶⁰ the Chamber holds that the allegations on the

⁴⁷ Reply, para. 14.

⁴⁸ Letter from the Ministry of Foreign Affairs of the Netherlands dated 6 November 2008.

⁴⁹ Letter from the Ministry of Justice of the Republic of Croatia dated 15 October 2008 attached in Confidential Annex E to the Motion.

⁵⁰ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Bruno Stojić, 30 July 2004.

⁵¹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Bruno Stojić's Motion for Variation of Conditions of Provisional Release, 15 July 2005.

⁵² Decision on Motion for Provisional Release of the Accused Stojić, 26 June 2006.

⁵³ Decision on the Motion for Provisional Release of the Accused Stojić, 8 December 2006.

⁵⁴ Decision on Motion for Provisional Release of the Accused Stojić, 26 June 2006, confidential.

⁵⁵ Decision on the Motion for Provisional Release of the Accused Stojić, 8 December 2006, partially confidential.

⁵⁶ Decision on the Motion for Provisional Release of the Accused Stojić, 11 June 2007, with Confidential Annex.

⁵⁷ Decision on the Motion for Provisional Release of the Accused Stojić, 29 November 2007, with Confidential Annex.

⁵⁸ Further Decision Regarding the Decision on Provisional Release of the Accused Stojić, 29 April 2008.

⁵⁹ Decision on the Accused Stojić's Motion for Provisional Release, 17 July 2008, with Confidential Annex.

⁶⁰ Response, paras. 17, and 20-23.

violation of the terms in the orders on the provisional release of Bruno Stojić's two co-accused would not affect the Accused Stojić's risk of flight or, in this case, the guarantees provided by the Government of the Republic of Croatia. Also, even if according to the Appeals Chamber the closing of the Prosecution's case constitutes an important change in the situation which demands a detailed re-evaluation of the risk of flight of an accused,⁶¹ the Chamber considers that the guarantees to reappear and against the risk of flight imposed on the Accused Stojić neutralise all risk of possible flight. With regard to his respectful conduct during his earlier periods of provisional release, the Chamber is certain that the Accused Stojić, if released, will appear for the continuation of this trial.

28. Further, for these same reasons, it is the opinion of the Chamber that the Accused Stojić, if released to the Republic of Croatia, will not pose a danger to any victim, witness or any other person.⁶²

29. Nevertheless, according to the Appeals Chamber, with regard to the stage of the proceedings and the close of the Prosecution case, the Chamber has the duty to determine, in addition, whether the humanitarian grounds put forward by the Stojić Defence are sufficiently compelling to justify the provisional release of the Accused Stojić.⁶³

31. The Prosecution submits that the arguments of the Stojić Defence do not constitute compelling humanitarian reasons within the meaning of the Tribunal's case law.⁶⁴ The Prosecution argues that two of the assertions made by the Stojić Defence have no merit.⁶⁵ The Prosecution notes that the allegations of the Stojić Defence regarding the negative affect of the medical condition of the Accused Stojić's family members on the mental health of the Accused and those regarding the impossibility of the Accused Stojić's wife and sister-in-law to travel to The Hague to visit the Accused are not supported.⁶⁶ In this connection, the Chamber recalls that it has the duty to examine every request for provisional release in the light of the particular

⁶¹ *Prlić* Decision of 11 March, para. 20.

⁶² This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

⁶³ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁶⁴ Response, para. 34.

⁶⁵ Response, paras. 34 and 35.

⁶⁶ Response, paras. 34 and 35.

circumstances of the Accused⁶⁷ and that this assessment is done at the time a decision on provisional release is taken but must also, as much as can be foreseen, include the circumstances of the accused when he is expected to reappear before the Tribunal.⁶⁸ Consequently, as long as the Chamber considers that - in the light of the situation at the time - the grounds raised by an accused are compelling enough, the provisional release of an accused is justified.

32. Regarding the medical certificates submitted by the Stojić Defence, the Chamber takes note of the psychological problems of the Accused Stojić's wife as well as the precarious physical health of the Accused Stojić's brother. The Chamber proceeded with an in-depth assessment, given in the confidential annex attached to this Decision, of the documents submitted by the Accused Stojić in support of his Motion and holds that the presence of the Accused Stojić at the side of his wife and his brother for a short period could assist them in overcoming their hardships. Therefore, the Chamber characterises the humanitarian grounds raised by the Stojić Defence as sufficiently compelling to justify the provisional release of the Accused Stojić.

33. The Chamber recalls that in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, the Chamber must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a decision.⁶⁹ In this case, the Chamber must also consider that the Accused Stojić 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 winter court recess. Consequently, during this period, there will be no court activity which will require the presence of the Accused Stojić.

34. 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

⁶⁷ *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.

⁶⁸ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

⁶⁹ *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

circumstances and compelling humanitarian grounds justifying provisional release.⁷⁰ 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 the Chamber must find, *inter alia*, a balance between the nature and weight of the circumstances justifying provisional release for humanitarian grounds and its duration.⁷¹

35. In this case, the Accused Stojić seeks provisional release for a long, unspecified period of time during the winter judicial recess 2008-2009.⁷² The Chamber, for its part, holds it necessary to limit the duration of provisional release to a period not exceeding the time necessary for the Accused Stojić to visit his sick family members but which includes the time of the round trip journey. Consequently, the Chamber holds that a provisional release not exceeding 12 days is proportionate to the gravity of the illness of the Accused Stojić's wife and brother.

V. CONCLUSION

39. For these reasons, the Chamber is convinced that the Accused Stojić offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding 12 days (including travel) is proportionate to the seriousness of the illnesses of the wife and brother of the Accused Stojić. Consequently, in the exercise of its discretionary power, the Chamber decides to grant provisional release to the Accused Stojić.

40. In view of the circumstances of the case and the advanced stage of the proceedings, the Chamber decides to impose upon the Accused Stojić the following guarantees: that the Accused Stojić remain within the confines set forth by the Chamber⁷³ and report daily to the police. The Chamber also decides to order the Croatian authorities to supervise the Accused Stojić twenty-four hours a day during his stay and to provide a situation report every three days.

41. As such, the Accused Stojić will be released during the dates and according to the conditions set forth in the confidential annex attached to the present Decision.

⁷⁰ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁷¹ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

⁷² Motion, paras. 1, 12, 16, and 17.

⁷³ See in this regard the confidential Annex attached to this Decision.

42. Nonetheless, the Chamber decides to stay the execution of its decision to release the Accused Stojić until a ruling has been made on the appeal the Prosecution intends to lodge.⁷⁴

VI. DISPOSITION

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

PURSUANT TO Rules 65 (B) and 65 (E) of the Rules,

PARTIALLY GRANTS the Motion,

ORDERS the provisional release of the Accused Stojić during 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.

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this second day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷⁴ Response, para. 60.