



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: 5 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:** 5 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 PETKOVIĆ'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 Milivoj Petković ("Accused Petković"), filed confidentially by Counsel for the Accused Petković ("Petković Defence") on 27 October 2008.

## II. PROCEDURAL BACKGROUND

2. On 27 October 2008, the Petković Defence filed confidentially "Motion of Milivoj Petković for Provisional Release during 2008/2009 Winter Recess" ("Motion"), in which it asks for the Accused Petković to be granted provisional release on humanitarian grounds to the Republic of Croatia for as long as possible in the period between 12 December 2008 and 12 January 2009.<sup>1</sup>

3. On 29 October 2008, the Chamber rendered an oral decision in which it specified the deadline of 14 November 2008<sup>2</sup> for the Office of the Prosecutor ("Prosecution") to file a response to the Motion.

4. On 3 November 2008, the Ministry of Foreign Affairs of the Kingdom of the Netherlands wrote a letter to the Tribunal stating that it did not object to Milivoj Petković being granted provisional release.<sup>3</sup>

5. On 11 November 2008, the Chamber rendered an oral decision allowing the Prosecution to file a joint consolidated response of 12,000 words to the requests for

<sup>1</sup> Motion, paras. 1 and 32. The Chamber notes that the Petković Defence also submits the dates of 11 December 2008 and 10 January 2009, *ibid.* paras. 9 and 31.

<sup>2</sup> Transcript in French ("T(F)"), 29 October 2008, p. 33893, private session.

<sup>3</sup> Letter from the Ministry of Foreign Affairs of the Kingdom of the Netherlands on the provisional release of Milivoj Petković, 3 November 2008.

the provisional release of the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Ćorić.<sup>4</sup>

6. On 14 November 2008, the Prosecution filed its confidential joint response "Prosecution Consolidated Response to Prlić, Stojić, Petković, Praljak and Ćorić Applications for Provisional Release During the Winter Recess 2008-2009" ("Response"), in which the Prosecution objects, among other things, to granting release to the Accused Petković and asks the Chamber to grant a stay of execution of the present Decision, should the Chamber order the provisional release of Milivoj Petković, until the Appeals Chamber has ruled on the appeal the Prosecution intends to lodge.<sup>5</sup>

7. On 17 November 2008, the Chamber rendered an oral decision authorising the defence counsels of the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Ćorić to file a reply to the Prosecution Response by 19 November 2008.<sup>6</sup>

8. On 19 November 2008, the Petković Defence filed its confidential "Reply of Defence for Milivoj Petković to Prosecution Response to Prlić, Stojić, Petković, Praljak and Ćorić Applications for Provisional Release during the Winter Recess 2008-2009" ("Reply").

9. On 24 November 2008, the Petković Defence filed its confidential "Addendum to the Annex of the Motion of Milivoj Petković for Provisional Release during 2008/2009 Winter Recess" ("Addendum").

### III. APPLICABLE LAW

10. The provisions of Rule 65 (A) of the Rules of Procedure and Evidence ("Rules") stipulate that, once detained, an accused may not be released except by order of a Chamber. In compliance with Rule 65 (B) of the Rules, the Chamber may order a provisional release only after giving the host country and the state to which the

<sup>4</sup> T(F), 11 November 2008, p. 34462, private session.

<sup>5</sup> Response, paras. 1, 34-36, 60 and 61.

<sup>6</sup> T(F), 17 November 2008, pp. 34632 and 34633, private session.

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 pose no danger to victims, witnesses or other persons.

11. In accordance with the Tribunal established case-law, the decision to grant or deny provisional release pursuant to Rule 65 of the Rules stems from the discretionary power of the Chamber.<sup>7</sup> In order to determine if the conditions laid out in Rule 65 (B) of the Rules have been met, the Chamber must take into consideration all the relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision.<sup>8</sup> The Chamber must then provide a reasoned opinion for its decision on this matter.<sup>9</sup> The relevance of the presented material and the weight accorded to it are appraised on a case-by-case basis.<sup>10</sup> Because it relies first and foremost on the facts in the case, each request for provisional release is examined in the light of the particular circumstances of the accused.<sup>11</sup> The Chamber must examine these circumstances as they are at the time of reaching a decision on the provisional release, but also, as much as can be foreseen, on the circumstances at the time the accused is expected to return to the Tribunal.<sup>12</sup>

<sup>7</sup> *The Prosecution 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. 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.

<sup>8</sup> *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 ("*Miće Stanišić Decision*"), para. 8; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

<sup>9</sup> *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

<sup>10</sup> *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

<sup>11</sup> *The Prosecutor v. Bošković and Tarkulovski*, case no. IT-04-82-AR65.1, "Decision on Johan Tarkulovski's Interlocutory Appeal on Provisional Release", 4 October 2005 ("*Tarkulovski Decision*"), para. 7; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

<sup>12</sup> *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

12. In accordance with the recent Appeals Chamber case-law, the close of the Prosecution case constitutes a significant change in circumstance to warrant renewed and detailed assessment of the risk of flight by the Accused.<sup>13</sup> In these circumstances, and even if the Trial Chamber is convinced that sufficient guarantees have been presented, it must only exercise its discretionary power to grant provisional release if sufficiently compelling humanitarian grounds tip the scales in its favour.<sup>14</sup> Consequently, provisional release will only be granted "at a late stage of proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian grounds 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."<sup>15</sup>

13. Nevertheless, in accordance with the Appeals Chamber case-law, the Chamber is uniquely suited to assess whether the procedural circumstances, such as, for example, the close of the Prosecution case, increase the risk of flight by the Accused while on provisional release.<sup>16</sup>

#### IV. ARGUMENTS OF THE PARTIES

14. In support of its Motion, the Petković Defence maintains that (1) the Accused Petković complied in every respect with all the conditions set out when his previous provisional releases were granted<sup>17</sup> and shows that his conduct in detention has been exemplary up to now;<sup>18</sup> (2) the Accused Petković's personal circumstances and his conduct in the course of previous provisional releases indicate that he has not and is not likely to pose a danger to any victim, witness or other persons;<sup>19</sup> (3) the authorities of the Republic of Croatia undertake to make sure that the Accused Petković conforms to the conditions imposed by the Chamber should it decide to grant

<sup>13</sup> *The Prosecutor v. Prlić et al.*, case no. IT-04-074-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.

<sup>14</sup> Prlić Decision of 11 March 2008, para. 21; Prlić Decision of 25 April 2008, para. 16; Petković Decision, para. 17.

<sup>15</sup> Petković Decision, para. 17; Prlić Decision of 25 April 2008, para. 16.

<sup>16</sup> Milutinović Decision, para. 15.

<sup>17</sup> Motion, paras. 3, 5 and 6.

<sup>18</sup> Motion, para. 11.13).

<sup>19</sup> Motion, paras. 7 and 11-14.

provisional release to the Accused Petković, and that the Croatian Government has honoured its undertakings in this respect during the previous provisional releases of the Accused Petković;<sup>20</sup> (4) the authorities of the Republic of Croatia have provided guarantees that, once released, the Accused Petković (a) will appear at The Hague on the date specified by the Chamber, and (b) will not intimidate witnesses, victims or any other persons,<sup>21</sup> and (c) will comply with all measures ordered by the Chamber;<sup>22</sup> (5) the Accused Petković surrendered voluntarily to the Tribunal;<sup>23</sup> (6) the Government of the Kingdom of the Netherlands does not object to the provisional release of the Accused Petković;<sup>24</sup> and (7) the risk of flight of the Accused Petković has not increased following the decision adopted by the Chamber pursuant to Rule 98 *bis* of the Rules and the principle of presumed innocence applies until the end of the trial.<sup>25</sup> Finally, the Accused Petković undertakes to respect all conditions and limitations imposed by the Chamber and proposes several others.<sup>26</sup>

15. Relying on the relative differences in interpretation of the criterion of "sufficiently compelling humanitarian reasons" in Appeals Chamber case-law, and on a decision rendered by the Appeals Chamber on 14 April 2008,<sup>27</sup> the Petković Defence maintains that the existence of humanitarian reasons is not a necessary prerequisite for the provisional release of an accused once the Chamber is satisfied that the conditions of Rule 65 (B) of the Rules are satisfied.<sup>28</sup>

16. Nevertheless, should the Chamber decide to follow a strict interpretation of the criteria set out in the Appeals Chamber's decision of 21 April 2008,<sup>29</sup> the Petković Defence notes that the state of health of the Accused Petković's wife, Milka Petković,

<sup>20</sup> Motion, paras. 6 and 27-28 and *see also* Letter of guarantee from the Ministry of Justice of the Republic of Croatia dated 21 October 2008 attached in Confidential Annex 3 to the Motion.

<sup>21</sup> Motion, para. 27, *see also* Letter of guarantee by the Ministry of Justice of the Republic of Croatia dated 21 October 2008 attached in Confidential Annex 3 to the Motion.

<sup>22</sup> Motion, para. 28, *seen also* Letter of guarantee by the Ministry of Justice of the Republic of Croatia dated 21 October 2008 attached in Confidential Annex 3 to the Motion.

<sup>23</sup> Motion, paras. 11.9)-11.11).

<sup>24</sup> Letter from the Kingdom of the Netherlands on the provisional release of Milivoj Petković, 3 November 2008.

<sup>25</sup> Motion, para. 10. The Chamber notes a problem with the numbering of paragraphs on pages 3 and 4 of the Motion. The Chamber allocates paragraph number 10 to items (1), (2) and (3) of section B of the Motion.

<sup>26</sup> Motion, paras. 29-32.

<sup>27</sup> Motion, paras. 15-17; "Decision on Prosecution's Urgent Appeal against *Décision relative à la demande de mise en liberté provisoire de l'Accusé Pušić*", 14 April 2008, public.

<sup>28</sup> Motion, paras. 15-17.

and the mother of the said accused, Zorka Petković, constitute compelling humanitarian reasons that it considers sufficient to justify provisional release of the Accused Petković during the winter recess 2008-2009.<sup>30</sup> The Petković Defence indicates in particular that the grounds are similar to the compelling humanitarian reasons put forward in previous requests for provisional release subject to some changes.<sup>31</sup> In this regard, the Petković Defence submitted to the Chamber medical certificates dated 20 October 2008, 21 October 2008 and 23 November 2008 attesting to the health problems of the wife and of the mother of the Accused Petković.<sup>32</sup>

17. The Petković Defence argues that due to exceptional circumstances raised in the Motion, granting provisional release of the Accused Petković to the Republic of Croatia during the winter recess 2008-2009 would have beneficial effects on the health of the wife of the Accused Petković and would allow the Accused to visit his mother, whose health is also precarious.<sup>33</sup>

18. In its Response, the Prosecution opposes the provisional release of the Accused Petković on the grounds, among others, that none of the reasons offered by the Accused in support of his request for provisional release constitute sufficiently compelling humanitarian grounds to justify it.<sup>34</sup> The Prosecution also submits that the Petković Defence has not provided documents in support of claims by the Petković Defence regarding the negative effects of the separation of Milka Petković from her husband, the Accused Petković, on her mental health, nor any documents on the beneficial effect on the health of his wife of granting provisional release of the Accused Petković.<sup>35</sup> The Prosecution moreover claims that the Petković Defence has

<sup>29</sup> Motion, paras. 16 and 18; "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, public.

<sup>30</sup> Motion, paras. 18, 20-26; Medical certificate for Milka Petković dated 20 October 2008 attached in Confidential Annex 1 to the Motion; Medical certificate for Zorka Petković attached in Confidential Annex 2 to the Motion (the Chamber notes that this medical certificate is not dated); Medical certificate for Zorka Petković dated 21 October 2008 attached in Confidential Annex 2 to the Motion; Medical certificate for Zorka Petković dated 23 November 2008, attached in Confidential Annex to the Addendum.

<sup>31</sup> Motion, para. 19.

<sup>32</sup> Medical certificate for Milka Petković dated 20 October 2008 attached in Confidential Annex 1 to the Motion; Medical certificate for Zorka Petković attached in the Confidential Annex 2 of the Motion (the Chamber notes that the medical certificate is not dated); Medical certificate for Zorka Petković dated 21 October 2008 attached in Confidential Annex 2 to the Motion; Medical certificate for Zorka Petković dated 23 November 2008 attached in the Confidential Annex to the Addendum.

<sup>33</sup> Motion, paras. 22, 23 and 25.

<sup>34</sup> Response, paras. 1, 3, 39-45 and 61.

<sup>35</sup> Response, para. 44.

not shown that the Accused Petković could not receive the medical treatment prescribed for his teeth, jaw and spine in the Netherlands.<sup>36</sup>

19. The Prosecution alleges that the late stage of the proceedings and the imminent close of the Defence case of the first defence team indicate an increased risk of flight of the Accused and, also, that the alleged contacts between two of the co-accused and a witness during their previous provisional release reveal inadequacies in the surveillance system provided by the Croatian authorities.<sup>37</sup>

20. The Prosecution maintains, moreover, that the period of provisional release asked for by the Petković Defence is excessive.<sup>38</sup> Nevertheless, should the Chamber decide to grant the Motion by the Accused Petković, the Prosecution recalls that in its decision rendered on 29 April 2008, the Appeals Chamber decided that the length of provisional release should be proportional to the minimum period necessary for the accused to settle the humanitarian reasons presented in support of the request for provisional release,<sup>39</sup> and recalls that provisional release should be linked to strict conditions, similar to those requested in previous written submissions.<sup>40</sup> More specifically, the Prosecution seeks that special attention be accorded to round-the-clock surveillance by the relevant authorities.<sup>41</sup> The Prosecution maintains that without the assurance that an infallible surveillance system will be available to implement the terms of the Chamber's order, the Chamber should deny the request for provisional release of the Accused Petković.<sup>42</sup>

21. In its Reply, the Petković Defence holds that the Prosecution's allegations of increased risk of flight of the Accused Petković are unfounded.<sup>43</sup> It also maintains that the allegations by the Prosecution of a causal link between the alleged breaches of one of the terms of the Chamber's provisional release order by the Accused Pušić and Prlić – namely, the clause prohibiting an Accused on provisional release from having contact or talking to a victim or a potential witness – and the risk of flight of the Accused Petković are unfounded and do not lead to the conclusion that the

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<sup>36</sup> Response, para. 45.

<sup>37</sup> Response, para. 4-5 and 17-23.

<sup>38</sup> Response, para. 6.

<sup>39</sup> Response, paras. 6, 36, 56 and 57.

<sup>40</sup> Response, paras. 58 and 59.

<sup>41</sup> Response, para. 59.

<sup>42</sup> Response, paras. 58 and 59.



surveillance system for the Accused Petković by the Croatian authorities is deficient.<sup>44</sup> Moreover, referring to the previous decision for provisional release of the Accused Petković, the Petković Defence claims that no major procedural development has occurred in the case since Decision 98 *bis*.<sup>45</sup>

22. Moreover, the Petković Defence states that, contrary to what the Prosecution alleged, it has not argued the state of health of the Accused Petković in support of its Motion.<sup>46</sup> Furthermore, it maintains that the appraisal of whether the nature of the humanitarian grounds presented by the Petković Defence are sufficiently compelling is a matter under the discretionary power of the Chamber.<sup>47</sup>

23. Finally, the Petković Defence maintains that the Accused Petković is especially concerned about the health of his wife, Milka Petković, and his mother, Zorka Petković.<sup>48</sup> The Petković Defence argues that the Accused Petković is ready to have more stringent conditions imposed on him by the Chamber than those imposed during previous provisional releases, such as compulsory residence, as long as the Chamber grants him permission to visit his mother in the Republic of Croatia for one or two days.<sup>49</sup>

## V. DISCUSSION

24. First of all, the Chamber notes 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 of 3 November 2008 that it did not have any objections to the procedure for a possible provisional release of the Accused Petković.<sup>50</sup>

25. In its letter of 21 October 2008, the Government of the Republic of Croatia submitted guarantees that, if a motion for provisional release were to be granted by

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<sup>43</sup> Reply, paras. 2, 4-6.

<sup>44</sup> Reply, paras. 2, 4-6.

<sup>45</sup> Reply, para. 6.

<sup>46</sup> Reply, para. 7.

<sup>47</sup> Reply, para. 8.

<sup>48</sup> Reply, paras. 9 and 10.

<sup>49</sup> Reply, paras. 9 and 10.

<sup>50</sup> Letter from the Ministry of Foreign Affairs of the Netherlands on the provisional release of Milivoj Petković dated 3 November 2008.

the Chamber, the Accused Petković would not influence or pose a danger, during his provisional release, to any victims, witnesses or other persons and would return to The Hague on the date ordered by the Chamber.<sup>51</sup>

26. The Chamber notes that the Accused Petković complied with all the conditions and guarantees imposed during his previous provisional releases in keeping with the orders and decisions of the Trial Chambers rendered on 30 July 2004,<sup>52</sup> 26 June 2006,<sup>53</sup> 8 December 2006,<sup>54</sup> 11 June 2007,<sup>55</sup> 10 July 2007,<sup>56</sup> 29 November 2007,<sup>57</sup> 22 April 2008<sup>58</sup> and 17 July 2008.<sup>59</sup> Contrary to what the Prosecution submits,<sup>60</sup> the Chamber holds that the alleged breaches of the terms of the orders for provisional release by two of Milivoj Petković's co-accused should have no bearing on the risk of flight of the Accused Petković and do not bring into question, in this instance, the guarantees supplied by the Government of the Republic of Croatia. Moreover, even if the close of the Prosecution case constitutes, according to the Appeals Chamber, an important change in the circumstances which requires a new and detailed assessment of the risk of flight of an accused,<sup>61</sup> the Chamber holds that the guarantees to reappear in order to offset the risk of flight that may be imposed on the Accused Petković, would 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.

<sup>51</sup> Letter from the Ministry of Justice of the Republic of Croatia dated 15 October 2008, attached in Confidential Annex E to the Motion.

<sup>52</sup> *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Order on Provisional Release of Milivoj Petković", 30 July 2004.

<sup>53</sup> Decision on the Motion for Provisional Release of the Accused Petković, 26 June 2006, confidential.

<sup>54</sup> Decision on the Motion for Provisional Release of the Accused Petković, 8 December 2006, partly confidential.

<sup>55</sup> Decision on the Motion for Provisional Release of the Accused Petković, 11 June 2007, public with Confidential Annex.

<sup>56</sup> Order to Amend the Decision on the Motion for Provisional Release of the Accused Petković, 10 July, confidential.

<sup>57</sup> Decision on the Motion for Provisional Release of the Accused Petković, 29 November 2007, public with Confidential Annex.

<sup>58</sup> Further Decision to the Decision on Provisional Release of the Accused Petković, 22 April 2008, confidential.

<sup>59</sup> Decision on the Accused Petković's Motion for Provisional Release, 17 July 2008, public with Confidential Annex.

<sup>60</sup> Response, paras. 4-5 and 17-23.

<sup>61</sup> *Prlić* Decision of 11 March 2008, para. 20.

27. For these same reasons, the Chamber is of the opinion that the Accused Petković, if granted provisional release to the Republic of Croatia, will not pose a danger to victims, witnesses and other persons.<sup>62</sup>

28. 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 decision.<sup>63</sup> In this case, the Chamber must also consider the fact 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 recess. Consequently, during this period, there will be no court activity which will require the presence of the Accused Petković.

29. 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, whether the humanitarian reasons put forward by the Petković Defence are sufficiently compelling to justify the provisional release of the Accused Petković.<sup>64</sup>

30. The Prosecution argues that the arguments submitted by the Petković Defence do not constitute sufficiently compelling humanitarian grounds within the meaning of the Tribunal's case-law to justify the provisional release of the said Accused.<sup>65</sup> The Prosecution argues in particular that the Petković Defence has not supplied documents in support of the claims of the Petković Defence related to the negative effects of the separation of Milka Petković from her husband, the Accused Petković, on her mental health, or of the benefits of the provisional release of the Accused Petković on the health of his wife.<sup>66</sup> The Prosecution moreover alleges that the Petković Defence has

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

<sup>63</sup> *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

<sup>64</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>65</sup> Response, paras. 3 and 44.

<sup>66</sup> Response, para. 44.

not shown that the Accused Petković could not receive medical treatment prescribed for problems with his teeth, jaw and spine in the Netherlands.<sup>67</sup>

31. In this respect, the Chamber recalls that it has the duty to consider each request for provisional release in the light of the particular circumstances of the Accused<sup>68</sup> and that such an assessment is made at the time when it reaches its decision on provisional release, but it must also envisage as far as possible how the circumstances will have changed when the accused is to reappear before the Tribunal.<sup>69</sup> Consequently, as long as the Chamber considers that a ground raised by an accused – in light of his current situation – is sufficiently compelling, it may justify the provisional release of an accused.

32. Regarding the medical certificates submitted by the Petković Defence in support of its Motion, the Chamber finds that the mental health of the wife of the Accused Petković has deteriorated and that the mental health of the mother of the Accused has also deteriorated. The Chamber proceeded with an in-depth assessment, given in the Confidential Annex attached to this Decision, of the documents submitted by the Accused Petković in support of his Motion and holds that the presence of the Accused Petković at the side of his wife could help her overcome her hardships. It also considers that the possibility for the Accused Petković to see his mother will be beneficial to her. The Chamber characterises the humanitarian grounds raised by the Petković Defence as sufficiently compelling to justify the provisional release of the Accused Petković.

33. The Chamber then recalls that in keeping with the case-law of the Appeals Chamber, the length of provisional release at this late stage of the proceedings, and in particular after the close of the Prosecution case, must be proportional to the circumstances and to the sufficiently compelling humanitarian grounds that justify the provisional release.<sup>70</sup> Moreover, the Chamber recalls that the factors that it has to take into account affect not only the decision to grant or deny provisional release, but also, the length of the stay, if appropriate. The Chamber must find, *inter alia*, the proper

<sup>67</sup> Response, para. 45.

<sup>68</sup> *Tarkulovski* 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.

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

balance between the nature and the weight of the circumstances justifying provisional release for humanitarian reasons and its duration.<sup>71</sup>

34. In this case, the Accused Petković seeks provisional release for an unspecified period of time during the winter recess 2008-2009.<sup>72</sup> The Chamber, for its part, finds it necessary to limit the duration of provisional release to a period not exceeding the time necessary for the Accused Petković to visit his sick wife, but which also includes the time of the round trip journey. Consequently, the Chamber finds that provisional release not exceeding 12 days is proportionate to the gravity of the state of health of the Accused Petković's wife and mother.

## VI. CONCLUSION

35. For these reasons, the Chamber is convinced that the Accused Petković offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding 12 days (including travel) is proportionate to the gravity of the state of health of the wife and the mother of the Accused Petković. Consequently, in the exercise of its discretionary power, the Chamber decides to grant provisional release to the Accused Petković.

36. In view of the circumstances of the case and the late stage of the proceedings, the Chamber decides to impose upon the Accused Petković the following guarantees: that the Accused Petković remain within the confines set forth by the Chamber<sup>73</sup> and that he report daily to the police. The Chamber also decides to order the Croatian authorities to supervise the Accused Petković round-the-clock during his stay and to provide a situation report every three days.

37. 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.

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<sup>70</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>71</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

<sup>72</sup> Motion, paras. 1, 9 and 31.

<sup>73</sup> See in this regard the confidential Annex attached to this Decision.

**VI. DISPOSITION**

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

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

**PARTIALLY 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.

/signed/

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Jean-Claude Antonetti  
Presiding Judge

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

**[Seal of the Tribunal]**