



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: 25 May 2009  
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 John Hocking

**Decision of:** 25 May 2009

**THE PROSECUTOR**

v.

Jadranko PRLIĆ  
Bruno STOJIĆ  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ĆORIĆ  
Berislav PUJIĆ

***PUBLIC***

**REDACTED VERSION OF "DECISION ON SLOBODAN PRALJAK'S MOTION  
FOR PROVISIONAL RELEASE (2009 SUMMER JUDICIAL RECESS)" OF 18  
MAY 2009**

**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 Dra' en 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 request for provisional release from the Accused Slobodan Praljak (“Accused Praljak”), submitted pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) and filed confidentially by Counsel for the Accused Praljak (“Praljak Defence”) on 22 April 2009.

## II. PROCEDURAL BACKGROUND

2. On 22 April 2009, the Praljak Defence confidentially filed “The Accused Praljak’s Motion for Provisional Release During the Period of the 2009 Summer Judicial Recess”, with an Annex, in which it requests, for humanitarian reasons, the provisional release of the Accused Praljak to the Republic of Croatia (“Croatia”) for a brief period so that the Accused [redacted]. The Motion is accompanied by a Confidential Annex disclosing a letter from the Croatian Government, dated 29 April 2009, providing guarantees that, should the Accused Praljak be granted provisional release by the Chamber, he will not influence or place in danger, during his provisional release, victims, witnesses or other persons, and will return to The Hague on the date ordered by the Chamber.

3. On 27 April 2009, the Ministry of Foreign Affairs of the Netherlands wrote a letter to the Tribunal indicating that it did not object to the provisional release of the Accused Praljak, should he leave the territory of the Netherlands.<sup>1</sup>

4. On 6 May 2009, the Office of the Prosecutor (“Prosecution”) publicly filed the “Prosecution Response to the Accused Praljak’s Motion for Summer Recess Release” (“Response”), in which it objects to the Motion. In an oral decision rendered during

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<sup>1</sup> Letter of 27 April 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands regarding the provisional release of Slobodan Praljak.

private session on 7 May 2009, the Chamber ordered the Registry to confidentially record the Response.<sup>2</sup>

### III. ARGUMENTS OF THE PARTIES

5. The Praljak Defence contends, firstly, that the Accused Praljak meets the conditions for provisional release set out in Rules 65 (B) of the Rules of Procedure and Evidence (“Rules”). Accordingly, it recalls that the Chamber has, on several occasions, including after the close of the Prosecution case, determined that the Accused would appear for trial if provisionally released.<sup>3</sup>

6. The Praljak Defence further recalls that the Accused has always complied with the conditions imposed by the Chamber when previous provisional releases were granted, and never posed a danger to any persons.<sup>4</sup>

7. The Praljak Defence further maintains that there are sufficiently compelling humanitarian grounds to justify provisional release. In support of this argument, the Praljak Defence alleges, *inter alia*, that [redacted].<sup>5</sup> The Praljak Defence deems that a medical certificate is not necessary to confirm [redacted].<sup>6</sup> The Praljak Defence further recalls that the Accused Praljak has not benefited from a period of release and, as a result, has been separated from his family for one and a half years.<sup>7</sup>

8. The Praljak Defence further contends that Appeals Chamber case-law violates its rights in that it made decisions on the matter based not on a consideration of the rights of the accused but, rather, on concerns as to the effect on public opinion of allowing an individual to return home after the Prosecution has rested its case.<sup>8</sup>

9. Lastly, the Praljak Defence places the question of the length of the provisional release entirely at the discretion of the Chamber.<sup>9</sup>

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<sup>2</sup> Transcript in French, T(F), pp. 39747 and 39748.

<sup>3</sup> Motion, para. 18.

<sup>4</sup> Motion, paras 19 and 20.

<sup>5</sup> Motion, paras 2, 3, and 28.

<sup>6</sup> Motion, para. 8.

<sup>7</sup> Motion, para. 29.

<sup>8</sup> Motion, paras 4 to 7.

<sup>9</sup> Motion, para. 29.

10. In its response, the Prosecution recalls that the Appeals Chamber has held that the Trial Chamber cannot consider the possible health benefits that would result from the release of the accused as constituting sufficient humanitarian circumstances justifying a provisional release. [redacted]. [redacted].<sup>10</sup>

11. The Prosecution further recalls that the Appeals Chamber has decided that if a Trial Chamber finds that the humanitarian reasons put forward by an accused are insufficient to justify his provisional release, it cannot take into account the fact that a lengthy detention may have a negative effect on the state of health of the accused in the future to establish that compelling humanitarian grounds existed at the time of issuing its decision.<sup>11</sup>

12. The Prosecution further recalls that the Appeals Chamber found that when a Trial Chamber is seized of a request for provisional release based on compelling humanitarian grounds, it must assess whether these grounds are of a sufficiently different nature and present a higher degree of gravity than those already rejected by the Appeals Chamber. However, the Prosecution deems that the humanitarian grounds raised by the Praljak Defence in the present case are no different to those previously put forward in applications submitted in 2008.<sup>12</sup> The Prosecution concludes that, as the Praljak Defence has not established the existence of compelling humanitarian grounds to justify the provisional release of the Accused, it is not necessary to consider what length of release would be proportional to the said grounds.<sup>13</sup>

13. Lastly, the Prosecution recalls that the Appeals Chamber has already found that prolonged provisional detention does not violate the fundamental rights of the accused.<sup>14</sup>

#### IV. APPLICABLE LAW

14. Rule 65 (A) of the Rules stipulates that once detained, an accused may not be released except by an order of a Chamber. In compliance with Rule 65 (B) of the

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<sup>10</sup> Response, para. 11.

<sup>11</sup> Response, para. 12, iv.

<sup>12</sup> Response, para. 13.

<sup>13</sup> Response, para. 16.

<sup>14</sup> Response, paras 17 to 26.

Rules, the Chamber may order a provisional release 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 pose no danger to any victim, witness or other person.

15. 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>15</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>16</sup> The Chamber must then provide a reasoned opinion for its decision on this matter.<sup>17</sup> The relevance of the presented material and the weight to be accorded to it are appraised on a case-by-case basis.<sup>18</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>19</sup> The Chamber must examine these circumstances as they are at the time of

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<sup>15</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>16</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 ("*Mićo Stanišić Decision*"), para. 8; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

<sup>17</sup> *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

<sup>18</sup> *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

<sup>19</sup> *The Prosecutor v. Boškovski and Tarčulovski* Case No. IT-04-82-AR65.1, "Decision on Johan Tačulovski's Interlocutory Appeal on Provisional Release", 4 October 2005, para. 7; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

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>20</sup>

16. In accordance with recent Appeals Chamber case-law, the close of the Prosecution case constitutes a significant enough change in circumstance to warrant a renewed and detailed assessment of the risk of flight by the Accused.<sup>21</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>22</sup>

17. Nevertheless, in accordance with 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>23</sup>

## V. DISCUSSION

18. The Chamber further notes that, in accordance with Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber, in its letter dated 27 April 2009, that it was not opposed to the procedure for a possible provisional release of the Accused Praljak.<sup>24</sup>

19. In its letter of 20 April 2009, the Government of Croatia supplied guarantees that the Accused Praljak, should he be granted provisional release by the Chamber, would not influence or place in danger, during his provisional release, victims, witnesses, or other persons, and would return to The Hague on the date ordered by the Chamber.<sup>25</sup>

20. 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

<sup>20</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10, *Mičo Stanišić* Decision, para. 8.

<sup>21</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>22</sup> *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

<sup>23</sup> *Milutinović* Decision, para. 15.

<sup>24</sup> Letter of 27 April 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

reasonable Trial Chamber would be expected to consider in order to come to a decision.<sup>26</sup> In this instance, the Chamber must also consider that the Accused Praljak 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 be suspending hearings during the summer judicial recess. As a result, during this period there will be no judicial activity requiring the presence of the Accused Praljak.

21. The Chamber further notes that the Accused Praljak has respected all the conditions imposed when he was previously granted provisional release pursuant to the orders and decisions of the Trial Chambers rendered on: 30 July 2004,<sup>27</sup> 1 July 2005,<sup>28</sup> 14 October 2005,<sup>29</sup> 26 June 2006,<sup>30</sup> 8 December 2006,<sup>31</sup> 11 June 2007,<sup>32</sup> and 29 November 2007.<sup>33</sup>

22. Furthermore, even if the closing 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>34</sup> the Chamber holds that the guarantees to reappear in order to offset the risk of flight, such as those that might be imposed on the Accused Praljak, neutralise all possible risk of flight.

23. Finally, the Chamber notes that the Accused Praljak is particularly involved in his own defence. An example of this being the duration of the testimony of the Accused, which has taken up 36 of the 55 hours granted by the Chamber to the Praljak

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<sup>25</sup> Letter of 20 April 2009 from the Ministry of Justice of the Republic of Croatia, attached in the Confidential Annex to the Motion.

<sup>26</sup> *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

<sup>27</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Provisional Release of Slobodan Praljak", 30 July 2004.

<sup>28</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Slobodan Praljak's Motion for Variation of Conditions of Provisional Release", 1 July 2005.

<sup>29</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision to Grant Accused Slobodan Praljak's Supplemental Application for Variation of Conditions of Provisional Release", 14 October 2005.

<sup>30</sup> "Decision on Motion for Provisional Release of the Accused Praljak", 26 June 2006, confidential.

<sup>31</sup> "Decision on Motion for Provisional Release of the Accused Praljak", 8 December 2006, partially confidential.

<sup>32</sup> "Decision on Motion for Provisional Release of the Accused Praljak", 11 June 2007, public with Confidential Annex.

<sup>33</sup> Decision on Motion for Provisional Release of the Accused Praljak", 29 November 2007, public with Confidential Annex.

<sup>34</sup> *Prlić* Decision of 11 March 2008, para. 20.

Defence for the presentation of its defence case. The Chamber considers that, in view of this investment, the fact that the Praljak Defence will not have closed its case before the summer judicial recess in itself constitutes an additional guarantee of reappearance.

24. In view of his respectful conduct during his earlier provisional releases, his investment in the hearings and the continuation of the presentation of his defence case after the summer judicial recess, the Chamber is assured that the Accused Praljak, if released, will appear for the continuation of his trial.

25. For these same reasons, and should the Accused Praljak be granted provisional release to Croatia, the Chamber is of the opinion that the Accused Praljak will not pose a danger to victims, witnesses and other persons.<sup>35</sup>

26. 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 Praljak Defence are sufficiently compelling to justify the provisional release of the Accused Praljak.<sup>36</sup>

27. [redacted].

28. [redacted].

29. With regard to the length of the trial, the Appeals Chamber has held that the Chamber “could not rely on the possibility that his health condition might, at some indeterminate point in the future, be impacted to such an extent by the length of detention to establish that sufficiently compelling humanitarian circumstances in fact existed at the time it issued the Impugned Decision. Neither could the Trial Chamber consider that the overall health benefit that would result from Praljak’s release constituted a sufficiently compelling humanitarian circumstance.”<sup>37</sup>

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<sup>35</sup> This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

<sup>36</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>37</sup> “Decision on Prosecution’s Appeal of the Trial Chamber’s Decision to Provisionally Release the Accused Praljak During the 2008 Summer Recess,” 28 July 2008, para. 16.



30. In this connection, the Chamber notes once again the report that the Registrar of the Tribunal presented during a diplomatic seminar organized by the Tribunal on 10 June 2008 (“Registrar’s Report”), in which he expressed his concerns as to the conditions of detention at the Detention Unit that, in his view, inevitably affect the state of health of the accused. Accordingly, he noted that:

“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.”<sup>38</sup>

With regard to the separation of the accused from their families, the Registrar noted 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.”<sup>39</sup>

The Registrar finished 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. Considering the poor health condition of a number of the detainees held by the UNDU and the drastically deteriorating health of some, there is a very real and serious risk of a life-threatening episode occurring at the UNDU at some time in the future and without warning. Whilst I do not wish to sound alarmist, I do wish to present a realistic picture and share with you our concerns of what reasonably may take place in the future.”<sup>40</sup>

31. The Chamber holds that the conclusions of the Registrar’s Report accord with its own observations. Over the long hours spent in the courtroom, the Chamber has

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<sup>38</sup> Registrar’s Report, p. 7.

<sup>39</sup> Registrar’s Report, p. 3.

observed [redacted]. The Chamber recalls in addition that the Accused Praljak has been held in the Detention Unit since the beginning of the proceedings, 25 April 2006,<sup>41</sup> this being a period of over three years, and that he has not benefited from any release for the past year and a half.

32. The Chamber recalls that in such a lengthy trial, the good physical and mental health of the Accused is particularly important in ensuring that the proceedings go forward smoothly and efficiently.

33. The Chamber is thus of the opinion that a short period spent with his relatives would help ease the negative effects of lengthy detention on the Accused Praljak.

34. In view of the above and in the exercise of its discretionary power, the Chamber holds that the long time spent in provisional detention and the foreseeable length of the trial are already [redacted] and constitute a sufficiently compelling humanitarian reason for granting him provisional release.

35. The Chamber also recalls that, in keeping with 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, must be proportional to the circumstances and to the sufficiently compelling humanitarian grounds that justify the provisional release.<sup>42</sup> Moreover, the Chamber recalls that the factors that it must 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 also find, *inter alia*, the

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<sup>40</sup> Registrar's Report, p. 8.

<sup>41</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Provisional Release of Slobodan Praljak," 30 July 2004; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Slobodan Praljak's Motion for Variation of Conditions of Provisional Release," 1 July 2005; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Décision de faire droit à la demande supplémentaire de Slobodan Praljak aux fins de modification des conditions de sa mise en liberté provisoire," 14 October 2005; "Decision on Motion for Provisional Release of the Accused Praljak," 26 June 2006; "Decision on the Accused Praljak's Motion for Provisional Release," 8 December 2006; "Decision on the Motion for Provisional Release of the Accused Praljak," 11 June 2007; "Decision on the Motion for Provisional release of the Accused Prlić," 29 November 2007.

<sup>42</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

proper balance between the nature and the weight of the circumstances justifying provisional release for humanitarian reasons and its duration.<sup>43</sup>

36. In the present case, the Praljak Defence did not request provisional release for a specific period but left it to the discretion of the Chamber to set forth its length. The Chamber holds, in view of the circumstances in the case, that a provisional release not exceeding 10 days is proportionate to the circumstances of the Accused Praljak and to the need to allow him to recuperate after three years in preventative detention.

## VI. CONCLUSION

37. For these reasons, and in the light of the Registrar's Report and its own observations during the hearings, the Chamber takes the view that the provisional release of the Accused Praljak not exceeding 10 days (including travel) is proportionate to the need to [redacted]. Consequently, in the exercise of its discretionary power, the Chamber decides to authorise a short period of provisional release for the Accused Praljak.

38. In view of the circumstance of the case and the stage of the proceedings, the Chamber decides to impose upon the Accused Praljak the following guarantees: that the Accused Praljak remain confined to his home in accordance with the conditions set forth by the Chamber.<sup>44</sup> The Chamber also decides to order the Croatian authorities to carry out 24-hour surveillance of the Accused Praljak during his stay and to provide a situation report every three days.

39. Accordingly, the Accused Praljak will be released during the dates and according to the conditions set forth in the Confidential Annex attached to the present Decision.

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<sup>43</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

<sup>44</sup> See in this regard the Confidential Annex attached to this Decision.

40. However, the Chamber decides to stay the execution of its decision to release the Accused Praljak until a decision has been taken on the appeal that the Prosecution intends to file.<sup>45</sup>

## VII. DISPOSITION

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

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

**GRANTS** the Request,

**ORDERS** the provisional release of the Accused Praljak during the dates and according to the conditions set forth in the Confidential Annex attached to the present Decision,

**AND**,

**ORDERS** that the execution of the present Decision be stayed until the Appeals Chamber has ruled on the appeal that the Prosecution intends to file against this Decision.

Presiding Judge Jean-Claude Antonetti attaches a concurring separate opinion.

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

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<sup>45</sup> Response, para. 28.

/signed/

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Jean-Claude Antonetti

Presiding Judge

Done this twenty-fifth day of May 2009

At The Hague

The Netherlands

**[Seal of the Tribunal]**

**CONFIDENTIAL ANNEX**

[redacted]

**SEPARATE OPINION OF PRESIDING JUDGE JEAN-CLAUDE  
ANTONETTI**

[redacted]