



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: 13 June 2012
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: 13 June 2012

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF ORDER ON MOTION FOR
EXTENSION OF PROVISIONAL RELEASE OF ACCUSED SLOBODAN
PRALJAK AND MODIFICATION OF CONDITIONS**

The Office of the Prosecutor:

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
Ms Nika Pinter and Ms Natacha Fauveau-Ivanović for Slobodan Praljak
Ms Vesna Alaburić and Mr Zoran Ivanišević for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

SEIZED of “Slobodan Praljak’s Motion for Extension of Provisional Release and Modification of Conditions”, filed as a confidential document by Counsel for the Accused Slobodan Praljak (“Praljak Defence”; “Accused Praljak”) on 30 May 2012, with three confidential and *ex parte* annexes (“Motion”) and in which the Praljak Defence asks the Chamber to: (1) extend the provisional release of the Accused Praljak for [REDACTED];¹ (2) allow him to reside [REDACTED] for [REDACTED];² and (3) alternatively, to extend the provisional release of the Accused Praljak under the same conditions as those defined in the initial decision,³

NOTING the “Addendum to Slobodan Praljak’s Motion for Extension of Provisional Release and Modification of Conditions with Confidential Annex”, filed as a confidential document by the Praljak Defence on 1 June 2012 (“Addendum”), in which it discloses to the Chamber a letter from the Ministry of Justice of the Republic of Croatia dated 24 May 2012,⁴

NOTING the “Prosecution Response to Slobodan Praljak’s Motion for Extension of Provisional Release and Modification of Conditions”, filed as a confidential and *ex parte* document by the Office of the Prosecutor (“Prosecution”) on 7 June 2012 (“Response”),⁵ in which it opposes the extension of the provisional release of the Accused Praljak for a period of [REDACTED]⁶ and the modification of the conditions with respect to his place of residence,⁷

¹ Motion, paras 5, 10 and 21.

² Motion, paras 6, 11-14 and 16-21.

³ Motion, para. 22.

⁴ Confidential annex to the Addendum (Letter from the Ministry of Justice of the Republic of Croatia dated 24 May 2012).

⁵ The Chamber notes that the Prosecution filed an initial version (confidential) of the Response on 6 June 2012 and a new version (confidential and *ex parte*) on 7 June 2012. It also notes that the filing of the new version became necessary because of a technical error in the first version. Consequently, it considers that this Response was filed within the time-limit set by the Chamber in the confidential and *ex parte* Annex 1 to the Decision of 30 November 2011.

⁶ Response, paras 1 to 4 and 10 to 13.

⁷ Response, paras 1, 5 to 9.

NOTING the “Decision on Slobodan Praljak’s Motion for Provisional Release”, filed as a confidential and *ex parte* document on 30 November 2011 (“Decision of 30 November 2011”), in which the Chamber granted provisional release to the Accused Praljak in Zagreb, Republic of Croatia, [REDACTED] and in which the Chamber assigned to the provisional release certain conditions relating to residence and surveillance, among others,⁸

NOTING the “Decision on Motion for Extension of Provisional Release of Accused Slobodan Praljak and Modification of Conditions”, rendered as a confidential and *ex parte* document on 8 March 2012 (“Decision of 8 March 2012”), in which the Chamber granted an extension of the provisional release of the Accused Praljak in Zagreb, Republic of Croatia, for [REDACTED], until [REDACTED], on the same conditions as those established in the Decision of 30 November 2011,⁹

CONSIDERING that, in the Motion, the Praljak Defence requests an extension of the provisional release of the Accused Praljak for [REDACTED] under the arrangement it seeks or, alternatively, under the same conditions as those defined in the Decision of 30 November 2011;¹⁰ that, in this respect, the Ministry of Justice of the Republic of Croatia has renewed its guarantees for the return of the Accused Praljak,¹¹

CONSIDERING, furthermore, that in the Motion, the Praljak Defence asks for a modification of his place of residence during his provisional release [REDACTED], and permission to travel to [REDACTED], and bases this request on [REDACTED] and [REDACTED],¹²

CONSIDERING, on the one hand, that the Praljak Defence claims that: (1) [REDACTED]¹³ and (2) [REDACTED]¹⁴

⁸ Confidential and *ex parte* Annex 2 to the Decision of 30 November 2011.

⁹ Decision of 8 March 2012, pp. 8 and 9. The Chamber notes that the appeal lodged on 15 March 2012 as a public document by the Prosecution against this Decision, “Prosecution Appeal of *Décision portant sur la demande de prolongation de la mise en liberté provisoire et de modifications des conditions assorties à la mise en liberté provisoire de l’Accusé Slobodan Praljak*”, is still pending before the Appeals Chamber.

¹⁰ Motion, paras 21 and 22.

¹¹ Confidential annex to the Addendum (Letter from the Ministry of Justice of the Republic of Croatia dated 24 May 2012).

¹² Motion, paras 12 to 14.

¹³ Motion, para 16 and confidential and *ex parte* Annex 2 [REDACTED].

¹⁴ Motion, paras 14 and 17.

CONSIDERING, on the other hand, that the Praljak Defence claims that: (1) [REDACTED]¹⁵ (2) [REDACTED]¹⁶ and (3) [REDACTED]¹⁷

CONSIDERING that the Praljak Defence requests, alternatively, an extension of the provisional release of the Accused Praljak for [REDACTED] under the same conditions as those defined in the Decision of 30 November 2011,¹⁸

CONSIDERING that, in the Response, the Prosecution opposes the extension of the provisional release of the Accused Praljak for [REDACTED] on the ground that the Motion is not justified since the Praljak Defence is simply reiterating the arguments that substantiated its first motion and that, consequently, the Chamber is not able to exercise its discretion and to determine whether the requested extension of provisional release respects the proportionality requirement.¹⁹

CONSIDERING that the Prosecution, moreover, maintains that according to the regime established by the Trial Chamber and approved by the Appeals Chamber, provisional release of the Accused is virtually automatic unless he violates the conditions of his provisional release; that the Chamber is simply extending the provisional release of the Accused without him having to return to the United Nations Detention Unit (“UNDU”); that the Chamber, therefore, is no longer evaluating whether the Accused will return to the UNDU when it orders him to do so; that the Chamber is simply confirming that the conditions of the provisional release imposed six months ago continue to be observed, which cannot replace an assessment of the flight risk; that the fact that the conditions of provisional release were respected does not represent a way of assessing the flight risk and that with every extension of provisional release, it becomes more difficult for the Chamber to make this assessment;²⁰

CONSIDERING that with regard to the request for modification of the place of residence, the Prosecution maintains that, in its Decision of 8 March 2012, the Chamber already denied an identical motion of the Praljak Defence [REDACTED]; that this is, therefore, a request for reconsideration for which the requirements have

¹⁵ Motion para. 18.

¹⁶ Motion, para 18 and confidential and *ex parte* Annex 3 ([REDACTED]).

¹⁷ Motion, paras 17 and 18.

¹⁸ Motion, para. 22.

¹⁹ Response, paras 2 to 4.

not been met and that [REDACTED] grounds raised by the Praljak Defence are not convincing,²¹

CONSIDERING that the Chamber finds that the Ministry of Justice of the Republic of Croatia provided guarantees in a letter of 24 May 2012 that, should the Accused Praljak be granted provisional release by the Chamber, he would not influence or endanger victims, witnesses or others during his provisional release and would return to The Hague on the date ordered by the Chamber,²²

CONSIDERING that the Chamber finds in light of the reports submitted by the Croatian authorities pursuant to the decisions of 30 November 2011 and 8 March 2012 that the Accused Praljak respected the conditions of his provisional release,

CONSIDERING that the Chamber is not persuaded by the Prosecution's argument that an extension of the provisional release would be a factor that increases the flight risk of the Accused;²³ that the Chamber notes in this respect that the Prosecution does not provide any evidence or indicia of flight risk of the Accused Praljak,

CONSIDERING that the Chamber is of the opinion that respecting the conditions of the provisional release and the guarantees provided by the Republic of Croatia for each motion requesting an extension of the provisional release are sufficient to assess whether the requirements under Rule 65 (B) of the Rules have been met,

CONSIDERING that, in view of the above, the Chamber is convinced that, should the provisional release of the Accused Praljak be extended, he would return to the UNDU; that he would not pose a danger to the victims, witnesses or others and, consequently, that the conditions under Rule 65 (B) of the Rules have been met,

CONSIDERING that, with respect to the request of the Praljak Defence for a modification of the conditions of the provisional release of the Accused Praljak, the Chamber deems, contrary to what the Prosecution argues,²⁴ this does not constitute a request for reconsideration since it is included in a new motion for an extension of the

²⁰ Response, paras 10 to 13.

²¹ Response, paras 5 to 9.

²² Confidential annex to the Addendum (Letter of the Ministry of Justice of the Republic of Croatia dated 24 May 2012).

²³ Response, paras 10 to 12.

²⁴ Response, paras 5 to 9.

provisional release and that the Chamber must examine the arguments of the Praljak Defence in light of these new circumstances,

CONSIDERING that the Chamber recalls in this respect that the aim of the conditions imposed on the Accused Praljak is not only to ensure that he will not endanger victims or witnesses and will return to the UNDU as soon as the Chamber so orders, but also to eliminate the impact his release could have on the victims of the crimes alleged in this case,²⁵ and that the Chamber would therefore not relax them without a sufficiently important ground,

CONSIDERING that the Chamber deems that the [REDACTED] grounds raised by the Praljak Defence are not sufficiently important to relax these conditions, in particular since the Accused did not show that the treatment recommended to him is not available in Zagreb,

CONSIDERING, consequently, that the Chamber decides that it is not appropriate to modify the conditions of the provisional release of the Accused Praljak,

CONSIDERING that the Chamber, consequently, deems that an extension of the provisional release of the Accused Praljak for [REDACTED] and under the same conditions as those imposed in the Decision of 30 November 2011, in particular with regard to his place of residence, allows the Chamber to keep control over the progress of the said provisional release,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule (65) of Rules,

PARTIALLY GRANTS the Motion,

ORDERS the extension of the provisional release of the Accused Praljak until [REDACTED],

²⁵ Decision of 8 March 2012, pp. 7 and 8.

ORDERS that the conditions of the provisional release set out in confidential and *ex parte* Annexes 1 and 2 to the Decision of 30 November 2011 continue to apply *mutatis mutandis* to the present decision,

AND

DENIES the Motion in all other respects.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]