

**UNITED
NATIONS**



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-A
Date: 14 May 2015
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Fausto Pocar
Judge Liu Daqun
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Decision of: 14 May 2015

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE “DECISION ON
VALENTIN ĆORIĆ’S MOTION SEEKING PROVISIONAL
RELEASE” ISSUED ON 12 MARCH 2015**

The Office of the Prosecutor:

Mr. Douglas Stringer
Mr. Mathias Marcussen

Counsel for the Accused:

Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of “Valentin Ćorić’s Request for Provisional Release”, filed publicly with an annex by Valentin Ćorić (“Ćorić”) on 5 December 2014 (“Motion”). The Office of the Prosecutor (“Prosecution”) filed a public as well as a confidential and *ex parte* response on 11 December 2014.¹ On 12 December 2014, the Deputy Registrar filed a confidential and *ex parte* submission.² On 15 December 2014, Ćorić filed his reply to the Response with a confidential and *ex-parte* annex.³ On 16 December 2014, Ćorić filed a confidential and *ex parte* reply to the Deputy Registrar’s Submission.⁴ The Deputy Registrar filed a confidential and *ex parte* supplementary submission with confidential and *ex parte* annexes on 22 December 2014.⁵

I. BACKGROUND

2. On 29 May 2013, Trial Chamber III of the Tribunal (“Trial Chamber”) convicted Ćorić, pursuant to Article 7(1) and 7(3) of the Statute of the Tribunal, of multiple counts of crimes against humanity, grave breaches of the Geneva Conventions of 1949, and violations of the laws or customs of war.⁶ He was sentenced to 16 years of imprisonment.⁷ Since the delivery of the Trial Judgement, Ćorić remains in custody at the United Nations Detention Unit (“UNDU”).⁸ Ćorić filed his notice of appeal on 4 August 2014⁹ and his appeal brief on 12 January 2015.¹⁰

II. APPLICABLE LAW

3. Rule 65(I) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a

¹ Prosecution Response to Ćorić’s Motion for Provisional Release, 11 December 2014 (confidential and *ex parte* version filed on the same day) (“Response”).

² Deputy Registrar’s Submission Regarding Valentin Ćorić’s Request for Provisional Release, 12 December 2014 (confidential and *ex parte*) (“Deputy Registrar’s Submission”).

³ Valentin Ćorić’s Reply to the Prosecution’s Response to His Request for Provisional Release, 15 December 2014 (public with confidential and *ex parte* annex) (“Reply”).

⁴ Valentin Ćorić’s Reply to the Deputy Registrar’s Response to His Request for Provisional Release, 16 December 2014 (confidential and *ex parte*) (“Reply to Deputy Registrar’s Submission”).

⁵ Deputy Registrar’s Supplementary Submission Regarding Valentin Ćorić’s Request for Provisional Release, 22 December 2014 (confidential and *ex parte* with confidential and *ex parte* annexes) (“Deputy Registrar’s Supplementary Submission”).

⁶ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013) (“Trial Judgement”), Vol. 4, p. 431.

⁷ Trial Judgement, Vol. 4, p. 431.

⁸ See Decision on Valentin Ćorić’s Motion Seeking Provisional Release Until Translation of the Judgement, 19 December 2013 (confidential and *ex parte*) (“Decision of 19 December 2013”), p. 3.

⁹ Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 4 August 2014. See also Re-filed Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 23 December 2014.

¹⁰ Appellant’s Brief of Valentin Ćorić, 12 January 2015 (confidential). See also Corrigendum to Appellant’s Brief of Valentin Ćorić, 12 January 2015 (confidential).

fixed period, if it is satisfied that: (i) the convicted person, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the convicted person, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release. These requirements must be considered cumulatively.¹¹ The Appeals Chamber recalls that “whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities”.¹² The discretionary assessments of the requirements under Rule 65 of the Rules are made on a case-by-case basis.¹³

III. DISCUSSION

A. Submission of the Parties

4. Ćorić requests provisional release until the appeals hearing or, in the alternative, for a period to be specified by the Appeals Chamber.¹⁴ In support of his request, Ćorić argues that the following “special circumstances” warrant his provisional release, namely that: (i) by December 2014, he had completed two-thirds of his sentence, which should include, according to Ćorić, periods of provisional release spent “in the custody of the authorities [of the] Republic of Croatia” (“Croatia”);¹⁵ (ii) the judicial proceedings in his case started in 2006;¹⁶ (iii) the appellate proceedings against him are certain to last for at least another year or longer and by the time the appeal judgement is rendered, he will have been in custody much longer than two-thirds of his sentence;¹⁷ (iv) he has always exhibited good behaviour while in detention, has complied with all terms of prior custodial release, and returned voluntarily to the UNDU;¹⁸ and (v) he has a heart condition that requires a follow-up diagnostic testing and review every five years, and the UNDU has failed to schedule any such testing or review in the past seven years.¹⁹

5. Ćorić also claims to meet the other requirements of Rule 65(I)(i) and (ii) of the Rules.²⁰ He submits, in this regard, that he poses no flight risk on the grounds that: (i) he has been “observing

¹¹ See, e.g., Decision on Berislav Pušić’s Application for an Extension of His Provisional Release, 27 January 2015 (confidential and *ex parte*) (“Decision of 27 January 2015”), para. 3; Decision on Berislav Pušić’s Urgent Renewed Application for Provisional Release on Medical Grounds, 24 July 2014 (confidential and *ex parte*) (“Decision of 24 July 2014”), para. 5 and references cited therein.

¹² See, e.g., Decision of 27 January 2015; Decision of 24 July 2014, para. 5 and references cited therein.

¹³ See, e.g., Decision of 27 January 2015; Decision of 24 July 2014, para. 5 and references cited therein.

¹⁴ Motion, pp. 2, 10.

¹⁵ Motion, para. 21 (p. 7).

¹⁶ Motion, para. 22 (p. 7).

¹⁷ Motion, para. 24.

¹⁸ Motion, para. 25.

¹⁹ Motion, para. 26.

²⁰ Motion, paras 14, 20 (p. 5), 23 (p. 6).

the precepts of criminal justice and completing the procedure for appeal, rather than absconding from it”;²¹ (ii) he had voluntarily surrendered to the Tribunal;²² (iii) he has complied with the conditions imposed during previous periods of provisional release;²³ and (iv) he has demonstrated exemplary behaviour during his detention at the UNDU.²⁴ He further supports his Motion by providing a written guarantee from the Government of Croatia ensuring that all necessary measures will be taken to abide by the conditions of provisional release.²⁵ Finally, Čorić contends that he will not pose a danger to any victim, witness or other person if he is provisionally released.²⁶ In this respect, he points to his behaviour during past periods of provisional release, when he had been under the constant surveillance of the Croatian authorities and had never attempted to interfere with any witnesses, victims, or other persons.²⁷

6. The Prosecution opposes the Motion and submits that Čorić has failed to meet the requirements of Rule 65(I)(i) and (iii) of the Rules.²⁸ The Prosecution argues that, while “special circumstances” might exist when a convicted person in an appeal proceeding has served two-thirds of his sentence, according to the figures provided by the UNDU, Čorić has served only two-fifths of his sentence at the time of the filing of the Motion.²⁹ The Prosecution also argues that contrary to Čorić’s submission, the time spent on provisional release cannot be included as “time spent in custody”.³⁰ The Prosecution further asserts that Čorić has not demonstrated that his apparent medical condition requires urgent attention or that such attention has not been available at the UNDU.³¹ Finally, the Prosecution argues that Čorić has failed to establish that he does not present a flight risk and that such risk is greater after a sentence of sixteen years of imprisonment has been imposed than during trial.³²

7. Čorić replies, *inter alia*, that the Prosecution is mistaken in arguing that he has served less than half of his sentence, as it only calculated the time spent at the UNDU as time spent in detention.³³ In support of his submission, Čorić reincorporates arguments raised in his prior request [REDACTED].³⁴ Furthermore, Čorić reiterates that he is not a flight risk.³⁵

²¹ Motion, para. 15. *See also* Motion, para. 5.

²² Motion, paras 12, 16. *See also* Motion, para. 4.

²³ Motion, paras 12, 17. *See also* Motion, paras 6, 9.

²⁴ Motion, para. 18.

²⁵ Motion, paras 7, 19, Annex A. *See also* Motion, para. 8.

²⁶ Motion, paras 21-23 (p. 6).

²⁷ Motion, para. 21, p. 6.

²⁸ Response, paras 1, 9.

²⁹ Response, paras 3-4.

³⁰ Response, para. 5.

³¹ Response, para. 6.

³² Response, para. 8.

³³ Reply, paras 5-6, 9.

³⁴ Reply, para. 6, Annex A (confidential and *ex parte*). *See also* [REDACTED].

³⁵ Reply, paras 11-15.

8. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹
9. [REDACTED].⁴⁰ [REDACTED].⁴¹
10. [REDACTED].⁴²

B. Analysis

11. The Appeals Chamber recalls that Rule 65(I)(iii) of the Rules imposes an additional prerequisite for provisional release at the post-trial stage, specifically the requirement that “special circumstances exist warranting such release”.⁴³ The Appeals Chamber also recalls that, while detention for a substantial period of time may amount to a special circumstance within the meaning of Rule 65(I)(iii) of the Rules, a determination must be made on a case-by-case basis.⁴⁴ In this regard, the Appeals Chamber recalls that Ćorić was detained at the UNDU during the periods between 5 April 2004 and 9 September 2004 and between 24 April 2006 and 21 December 2011, except for short periods of provisional release, and that he has also been detained there since 21 May 2013.⁴⁵ Excluding the time spent on provisional release,⁴⁶ Ćorić has so far been detained at the UNDU for a period far shorter than two-thirds of his sentence – which the Appeals Chamber found in the past to be “sufficiently substantial to constitute a special circumstance warranting” provisional release, under certain conditions⁴⁷ – and accordingly has failed to establish the existence of special circumstances warranting provisional release under Rule 65(I)(iii) of the Rules.⁴⁸

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED]. See [REDACTED]. See also [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ Decision of 24 July 2014, para. 9 and reference cited therein.

⁴⁴ Decision of 19 December 2013, p. 3 and references cited therein.

⁴⁵ See Decision of 19 December 2013, p. 3, fns. 16-18.

⁴⁶ In this regard, the Appeals Chamber especially notes that, between 9 September 2004 and 24 April 2006, Ćorić was on provisional release within the locality of his chosen residence in Croatia. See Trial Judgement, vol. 5, paras 33-34; *Prosecutor v. Jadranko Prlić et al.*, Case Nos. IT-04-74-AR65.1, IT-04-74-AR65.2, IT-04-74-AR65.3, Decision on Motions for Re-Consideration, Clarification, Request for Release and Applications for Leave to Appeal, 8 September 2004, paras 47-48. Moreover, when while on provisional release between 21 December 2011 and 21 May 2013, Ćorić was required to remain within the city of Zagreb and was under police 24-hour police surveillance, but could move freely within Zagreb. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Valentin Ćorić’s Request for Provisional Release, 29 November 2011 (confidential and *ex parte*) (the English translation of the French original was filed on 2 December 2011), paras 35, 38, p. 13, Annex 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.27, Decision on Prosecution Appeal of Decision on Valentin Ćorić’s Provisional Release, 20 December 2011 (confidential and *ex parte*), para. 22; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.32, Decision on the Prosecution’s Appeal of the Decision on Further Extension of Valentin Ćorić’s Provisional Release, 25 May 2012, paras 2, 25.

⁴⁷ *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motion on behalf of Enver Hadžihasanović for Provisional Release, 20 June 2007, para. 13.

⁴⁸ See also Decision of 19 December 2013, p. 3.

12. With respect to Ćorić's health condition, the Appeals Chamber recalls that special circumstances related to humane and compassionate considerations have been found to exist where there is an "acute justification", such as the applicant's medical need, a memorial service for a close family member, or a visit to a close relative in extremely poor health whose death is believed to be imminent.⁴⁹ Requests premised solely on the combination of advanced age and poor health, without further demonstrating the existence of an acute crisis or a life-threatening medical condition, have not met the threshold of "acute justification".⁵⁰ In this case, the Deputy Registrar refutes Ćorić's claim that the UNDU has failed to provide him with follow-up diagnostic procedures concerning his heart condition. [REDACTED].⁵¹ [REDACTED].⁵² Based on the materials submitted by the Deputy Registrar, the Appeals Chamber is not persuaded that Ćorić has demonstrated that an acute medical justification exists or that any treatment required for his heart condition cannot be adequately carried out within The Netherlands.

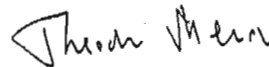
13. Having weighed the factors discussed above, the Appeals Chamber concludes that Ćorić has failed to establish the existence of special circumstances warranting provisional release pursuant to Rule 65(I)(iii) of the Rules. In light of the foregoing, and considering that the requirements of Rule 65(I) of the Rules are cumulative, the Appeals Chamber need not consider whether the requirements of Rule 65(I)(i) and (ii) have been met.⁵³

IV. DISPOSITION

14. For the foregoing reasons, the Appeals Chamber **DENIES** the Motion.

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

Dated this 14th day of May 2015,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]

⁴⁹ See Decision of 24 July 2014, para. 9 and references cited therein.

⁵⁰ See Decision on Milivoj Petković's Motion for Provisional Release, 19 December 2013 (confidential), para. 8 and references cited therein.

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ Decision of 19 December 2013, p. 4.