



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: 1 April 2008  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

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

**Registrar:** Mr Hans Holthuis

**Decision of:** 1 April 2008

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON THE ACCUSED PRALJAK'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

**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 the confidential “Slobodan Praljak’s Motion for Provisional Release” with confidential annex, filed by Counsel for the Accused Slobodan Praljak (“Defence for the Accused Praljak”) on 14 March 2008 (“Motion”), in which the Defence for the Accused Praljak requests, for humanitarian and medical reasons, the provisional release of the Accused Praljak in the Republic of Croatia for the longest possible part of the suspension of the hearing before the Chamber,

**NOTING** the “Decision on Motion for Provisional Release of the Accused Praljak”, rendered by the Chamber on 19 February 2008 (“Decision of 19 February 2008”) and the confidential annex attached to the decision, in which the Chamber ordered the provisional release of the Accused Praljak during the dates and according to the conditions set out in the confidential annex,

**NOTING** the oral decision rendered pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”), rendered by the Chamber on 20 February 2008 (“98 *bis* Decision”), in which the Chamber denied the motions for acquittal presented by the Accused Ćorić and Pušić,<sup>1</sup>

**NOTING** the “Decision on Prosecution’s Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić” rendered by the Appeals Chamber on 11 March 2008 (“Appeals Chamber Decision”), in which it granted the interlocutory appeal of the Office of the Prosecutor (“Prosecution”) against the Decision of 19 February 2008,

**NOTING** the “Prosecution Consolidated Response to 1) Slobodan Praljak’s Motion for Provisional Release, 2) Motion of Milivoj Petković for Provisional Release during the Remainder of the Period Between Close of Prosecution Case and Beginning of Defence Case and 3) Supplemental Material in Support of Jadranko Prlić’s Motion for Renewed and Explicit Consideration of his Previously Granted Request for

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<sup>1</sup> 98 *bis* Decision, court transcript in French (“CT(F)”), pp. 27201-27238.

Provisional Release & Request Leave to Modify Conditions of Provisional Release” filed confidentially by the Prosecution on 20 March 2008 (“Response”), in which it objects to the provisional release of the Accused Praljak,

**NOTING** “Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s Response to Praljak’s Motion for Provisional Release & Praljak’s Reply to the Prosecution’s Response to Praljak’s Motion for Provisional Release”, filed confidentially by the Defence for the Accused Praljak on 21 March 2008 (“Reply”), in which it requests that the Chamber grant the Motion,

**CONSIDERING** that insofar as the Defence for the Accused Praljak has not provided any exceptional circumstances in support of its request for leave to file a reply, the Chamber finds that there is no cause to admit the Reply,

**CONSIDERING** that in support of the Motion, the Defence for the Accused Praljak reiterates the arguments presented in “Slobodan Praljak’s Motion for Provisional Release” filed confidentially by the Defence for the Accused Praljak on 28 January 2008 (“Motion of 28 January 2008”) to the effect that: (1) the Accused Praljak surrendered voluntarily to the Tribunal; (2) the Accused Praljak was previously granted provisional releases and complied scrupulously with the conditions set by the Trial Chamber in its decisions in this regard; (3) the host state has no objections to his provisional release; (4) the Government of the Republic of Croatia pledges that the Accused Praljak will abide by the conditions set by the Tribunal should a motion for provisional release be granted by the Chamber and guarantees that the Accused Praljak will return to The Hague at the Chamber’s request; (5) the Accused Praljak personally pledges to fully respect all of the conditions of his provisional release set by the Chamber, and finally (6) the Accused Praljak wishes to settle certain administrative matters, undergo medical tests and reunite with his family,<sup>2</sup>

**CONSIDERING** that in support of the Motion, the Defence for the Accused Praljak also puts forward other humanitarian considerations: (1) the Accused Praljak’s state of physical and mental fatigue after twenty-two months at trial; (2) the removal of his personal effects due to construction work in the United Nations Detention Unit and

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<sup>2</sup> Motion, paras. 15-25.

his planned move; and (3) denying the Motion would prevent him from resting, which would affect his active participation in his defence and the duration of the trial,<sup>3</sup>

**CONSIDERING** that in the Motion, the Defence for the Accused Praljak draws the Chamber's attention to the Tribunal practice of granting provisional release after decisions rendered pursuant to Rule 98 *bis* of the Rules and maintains that subordinating the right to submit a motion for provisional release to the right to submit a motion pursuant to Rule 98 *bis* would mean depriving the accused of the right to submit a motion of acquittal,<sup>4</sup>

**CONSIDERING** that the Defence for the Accused Praljak notes incidentally that it did not submit a motion pursuant to Rule 98 *bis* of the Rules and that refusing the Motion based on the motions for acquittal of his co-accused would constitute a violation of Rule 82 (A) of the Rules,<sup>5</sup>

**CONSIDERING** that the Defence for the Accused Praljak furthermore states that in response to the Appeals Chamber Decision, in the Government of the Republic of Croatia's letter of 12 March 2008, it provided supplementary guarantees against the risk of flight,<sup>6</sup>

**CONSIDERING** that in the Response, the Prosecution objects to the provisional release of the Accused on the grounds that he has not put forward sufficiently compelling reasons to disregard the Appeals Chamber Decision, in particular since it sets out that the 98 *bis* Decision constitutes a change in circumstance significant enough to warrant a thorough reconsideration of the risk of flight,<sup>7</sup>

**CONSIDERING** that in support of the Response, the Prosecution submits that the considerations put forward by the Accused Praljak regarding his state of physical and moral fatigue, the removal of his personal effects and his active participation in his own defence are sufficiently compelling justification for provisional release,<sup>8</sup>

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<sup>3</sup> Motion, paras. 4-6.

<sup>4</sup> Motion, paras. 8 and 9.

<sup>5</sup> Motion, para. 10.

<sup>6</sup> Motion, paras. 11 and 12.

<sup>7</sup> Response, paras. 11 and 12.

<sup>8</sup> Response, paras. 16-20.

**CONSIDERING** that in the Response, the Prosecution maintains that the Chamber concluded in the 98 *bis* Decision that the evidence presented by the Prosecution constituted sufficient grounds to convict the Accused Praljak beyond reasonable doubt and that the fact that motions for acquittal were filed by his co-accused does not change the Chamber's conclusion that the Prosecution presented sufficiently compelling evidence to justify the conviction of the Accused,<sup>9</sup>

**CONSIDERING** that the Prosecution furthermore submits that the Government of the Republic of Croatia did not present supplementary guaranties against the risk of flight and that the other arguments put forward by the Accused Praljak are identical to those examined by the Appeals Chamber in the Appeals Chamber Decision,<sup>10</sup>

**CONSIDERING** that in the alternative, should the Chamber grant the Motion, the Prosecution asks it this time to stay the execution of its decision until a ruling is made on the appeal it intends to lodge,<sup>11</sup>

**CONSIDERING** that pursuant to Rule 65 (B) of the Rules, the Chamber may order provisional release "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",

**CONSIDERING** that ever since the Appeals Chamber Decision, the Chamber must not limit itself to an examination of the risk of flight based on the conduct of the Accused and the guarantees that he will reappear as is did in its previous decisions, but must also take into account the 98 *bis* Decision,<sup>12</sup>

**CONSIDERING** that the Chamber recalls that it notes the Appeals Chamber's willingness to obtain supplementary guarantees of reappearace to offset the risk of flight and more compelling grounds regarding humanitarian considerations, taking into account the 98 *bis* Decision,<sup>13</sup>

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<sup>9</sup> Response, paras. 21-23.

<sup>10</sup> Response, paras. 24 and 25.

<sup>11</sup> Response, para. 39.

<sup>12</sup> See in particular the Decision on Motion for Provisional Release of the Accused Praljak, 29 November 2007, in which the Chamber found that the Accused Praljak had respected all the conditions of his previous provisional releases, that the host state was not opposed to his provisional release and that the Republic of Croatia had provided guarantees that the Accused would return to The Hague for the continuation of the trial.

<sup>13</sup> Decision on the Motion for Provisional Release of the Accused Pušić, 19 March 2008; Appeals Chamber Decision, paras. 20 and 21. In paragraph 21, the Appeals Chamber found in support of its

**CONSIDERING** that the Chamber recalls that it concluded in the 98 *bis* Decision that evidence provided by the Prosecution enabled a conclusion for the purposes of Rule 98 *bis* of the Rules that any reasonable trier of fact could deliver a sentence to the Accused Ćoriš and Pušić beyond reasonable doubt and that it did not reach a decision regarding the responsibility of the Accused Praljak who had not filed a motion pursuant to Rule 98 *bis* of the Rules,<sup>14</sup>

**CONSIDERING** that the Appeals Chamber found that the 98 *bis* Decision nonetheless entailed an important modification of the circumstances that justified a renewed and explicit consideration of the risk of flight of each of the co-accused,<sup>15</sup> including the Accused who did not file a motion for acquittal pursuant to Rule 98 *bis* of the Rules,

**CONSIDERING** consequently that the Chamber must ensure that there are supplementary guarantees of reappearances to offset the Accused Praljak's risk of flight and that the Request contains more compelling humanitarian considerations before being granted,

**CONSIDERING** that first with regard to the guarantees of reappearances, the Chamber recalls that the Appeals Chamber found that the guarantees accepted by the Chamber in its Decision of 19 February 2008 were not sufficient compared to the risk of flight in light of the 98 *bis* Decision,<sup>16</sup>

**CONSIDERING** that the Chamber finds that in the Government of the Republic of Croatia's letter of 12 March 2008, it took note of the Appeals Chamber Decision, reiterated the guarantees previously given and pledged to take all necessary measures or provide supplementary guarantees in support of the Accused Praljak's motion for provisional release,<sup>17</sup>

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decision setting aside provisional release that: "Nonetheless, in all cases, the Appeals Chamber finds that the various justifications for release offered by the Accused are not sufficiently compelling, particularly in light of 98 *bis* Ruling (...)."

<sup>14</sup> 98 *bis* Decision, CT(F) p. 27238.

<sup>15</sup> Appeals Chamber Decision, paras. 19 and 20.

<sup>16</sup> Appeals Chamber Decision, paras. 20 and 21.

<sup>17</sup> Motion, Confidential Annex I.

**CONSIDERING** that the Chamber finds that the detail regarding special surveillance measures for the duration of a possible provisional release could provide a supplementary guarantee of reappearance to offset the risk of flight,

**CONSIDERING** nevertheless that the only new arguments with regard to humanitarian considerations in the Motion concern the state of physical and mental fatigue of the Accused Praljak after twenty-two months at trial, the removal of his personal effects and the consequences that a denial of provisional release could have on his active participation in his defence,

**CONSIDERING** that in order to evaluate whether pre-trial detention of the Accused Praljak during twenty-two months constitutes an excessive measure, the Chamber recalls that according to the Appeals Chamber's case law, in order to interpret Rule 65 (B) and (D) of the Rules, the general principal of proportionality must be taken into account and that in public international law, a measure is only proportional when it is: (1) suitable, (2) necessary and when (3) its degree and scope remain in a reasonable relationship to the envisaged target;<sup>18</sup> the Chamber notes, following the example of the Appeals Chamber, that a procedural measure must never be arbitrary or excessive and that if one can be satisfied with a more lenient measure than compulsory detention, it should be applied,<sup>19</sup>

**CONSIDERING** that, consequently, the Chamber recalls that according to the Appeals Chamber case law, the actual or likely excessive length of the pre-trial detention is an additional discretionary consideration that may be taken into account when deciding on provisional release if all the conditions set out in Rule 65 (B) of the Rules are otherwise fulfilled,<sup>20</sup>

<sup>18</sup> *The Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-AR65, Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003, para. 13; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Mario Čerkez's Request for Provisional Release, 12 December 2003, para. 9; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Dario Kordić's Request for Provisional Release, 19 April 2004, para. 9; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Second Defence Request for Provisional Release of Stanislav Galić, 31 October 2005, para. 18.

<sup>19</sup> *The Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-AR65, Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003, para. 13.

<sup>20</sup> *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying His Provisional Release, 9 March 2006, para. 23; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on Third Motion for Provisional Release, 16 August 2006, para. 3. It should be noted that this decision was confirmed by the Appeals Chamber, *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR

**CONSIDERING** that the Accused Praljak has been in pre-trial detention for twenty-two months but was granted provisional release during the court recess in the winter of 2007/2008;<sup>21</sup> that the Chamber finds that keeping him in pre-trial detention does not constitute a disproportionate or excessive measure at this stage of the proceedings,

**CONSIDERING** next that with regard to the removal of the Accused's personal effects owing to work being done in the United Nations Detention Unit and the Accused's planned move, the Chamber finds that a temporary modification of the detention conditions does not constitute a humanitarian condition sufficient to justify provisional release pursuant to Rule 65 of the Rules,

**CONSIDERING** finally that the Chamber finds that an accused's active participation in his own defence and the fatigue that might result do not constitute a humanitarian consideration that would justify in itself his provisional release,

**CONSIDERING** that in these conditions, the Chamber finds that the Praljak Defence does not present more compelling humanitarian considerations in accordance with the Appeals Chamber Decision,

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rule 65 of the Rules,

**DENIES** the request to file a reply,

**DENIES** the Motion by a majority of the Judges, the Presiding Judge of the Chamber attaching a dissenting opinion.

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

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65.1, Decision on Appeal Against Decision Denying Motion for Provisional Release, 17 October 2006, paras. 8 and 9.

<sup>21</sup> See *The Prosecutor v. Jadranko Prlić et al*, Case No. IT-04-74-T, Decision on the Motion for Provisional Release of the Accused Praljak, 29 November 2007, in which the Chamber ordered the provisional release of the Accused Praljak during the dates and according to the conditions set out in the confidential annex attached to the decision.



*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

Done this first day of April 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**