



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 ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

**DISSENTING OPINION BY PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI REGARDING THE 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 Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

The majority of the Trial Chamber Judges did not grant the Accused Slobodan Praljak's motion in which he requested provisional release on humanitarian grounds.

Bearing in mind the importance of this request and owing to the Trial Chamber's refusal by a majority, I would like to explain the reasons why I was **in favour** of this request for provisional release.

First, as put forward by the mover in his written submissions, this case is the most complex one before the Tribunal and, with regard to the duration of the trial, will certainly be the longest to date in the history of international criminal justice because of the number of witnesses produced by both the Prosecution and all of the accused.

Therefore, this factor must be taken into account in view of the length of **provisional detention** during the trial phase.

Indeed, how can we justify the fact that provisional detention with no chance of release might continue for at least four years?

Luckily, to date, during the first phase of the trial, the accused were granted provisional release several times during Court recesses.

Bearing in mind the length of the trial, it seems to me absolutely necessary for the Accused to benefit from provisional release during this procedural phase of the trial, pursuant to Rule 65 of the Rules.

With regard to the possible impact of the Appeals Chamber's recent decision, I feel that it should not be taken into consideration.

The Appeals Chamber found that the Trial Chamber's prior decision should be set aside, since the Trial Chamber made no reference to Rule 98 *bis* of the Rules.

It seems to me that the Trial Chamber's **discretionary power** is the power to take a decision with full liberty and full independence. It is the power to take measures as a function of the expediency of a finding; the Judge who is seized should be able to exercise his jurisdiction with complete independence, under the supervision, if so required, of an Appeals Chamber.

The fundamental issue raised in this context is the following: can a Trial Chamber release an accused pursuant to the Rules?

Rule 65 of the Rules of Procedure and Evidence provides that provisional release may be subject to conditions that the Chamber deems appropriate, and the Chamber must be certain that the accused will not endanger any victim, witness or any other person if released.

According to the context provided, a Trial Chamber has the discretionary power to release an accused under the explicit condition that the requirements set out in Rule 65 are fulfilled. It is only when these requirements are not fulfilled that the Appeals Chamber may exercise its supervisory power.

In the present case, guarantees were given by the Republic of Croatia and to date the Accused has never shown any hostility towards the Tribunal, fully providing his own defence with the assistance of his counsel.

The humanitarian grounds put forward are more than satisfactory. First, the Accused alleges that his ill health requires a medical check-up in Zagreb by his family doctor who has been treating him for several years.

The Accused also spoke of his **exhausted state** and the need to recharge his batteries in the company of his family, particularly by the visit of his four grandchildren who have been unable to come to The Hague.

In the present case, the risk of flight is **practically zero**, particularly since the Accused has announced on several occasions his desire to establish the TRUTH.

In addition, since the beginning, the Trial Chamber has put the Accused under the surveillance of Croatia's police services.

I would add in conclusion: who is better placed than the Trial Chamber Judges, who have been in contact with the Accused and their counsel for more than two years, to appreciate the merits of requests for provisional release.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]