

IT-06-90-T
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28 January 2011

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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-06-90-T
Date: 28 January 2011
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Kinis
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Order of: 28 January 2011

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

ORDER ISSUING A PUBLIC REDACTED VERSION OF THE
CONFIDENTIAL "DECISION ON IVAN ČERMAK'S MOTION FOR
PROVISIONAL RELEASE PURSUANT TO RULES 54 AND 65" OF 10 DECEMBER
2010

Office of the Prosecutor

Mr Alan Tieger

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

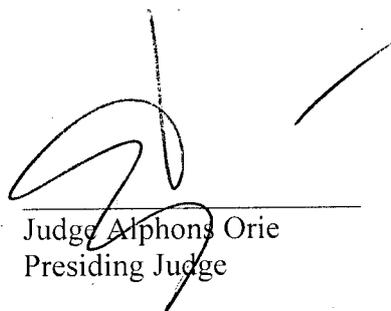
TRIAL CHAMBER I of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

RECALLING the Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65 ("Decision"), issued confidentially on 10 December 2010;

CONSIDERING that some of the information contained in the Decision is to remain confidential;

HEREBY ISSUES a public redacted version of the Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this 28th day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]



International Tribunal for the
Prosecution of Persons Responsible for
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Judge Elizabeth Gwaunza

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PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC REDACTED VERSION

DECISION ON IVAN ČERMAK'S MOTION FOR PROVISIONAL RELEASE
PURSUANT TO RULES 54 AND 65

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PROCEDURAL HISTORY

1. Čermak has been granted provisional release on various occasions since 2 December 2004.¹ Most recently, on 9 July 2010, the Chamber granted a motion by the Čermak Defence for provisional release holding that the requirements of Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) had been met and that the need to ensure [REDACTED] constituted a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release (“July 2010 Decision”).² On 15 November 2010, the Čermak Defence filed a new motion, requesting that Čermak be provisionally released on a day after 18 December 2010 and for a period that the Chamber deems appropriate and proportionate in the circumstances (“Motion”).³ On 23 November 2010, the Čermak Defence filed a letter from the Government of the Republic of Croatia (“Croatia”) dated 15 November 2010, providing guarantees with respect to the requested provisional release (“Croatian Guarantees”).⁴ On 24 November 2010, the Prosecution filed its Response, in which it did not oppose the Motion (“Response”).⁵ On the same day, the Tribunal’s host state filed a letter pursuant to Rule 65 (B) of the Rules stating that it had no objection to the Motion being granted.⁶

SUBMISSIONS OF THE PARTIES

2. The Čermak Defence requests that Čermak be granted provisional release for a period deemed appropriate by the Chamber [REDACTED].⁷ The Čermak Defence submits, in support of its application, that Čermak surrendered to the Tribunal voluntarily, co-operated with the Prosecution prior to trial, and that his conduct during trial has been proper and co-operative.⁸ In addition, Čermak agrees to be bound by the same conditions as those ordered by the Chamber in its July 2010 Decision, as well as any other measures the Chamber deems appropriate.⁹ The Čermak Defence further submits that Čermak never posed a danger to victims, witnesses, or other persons in the case, and notes that because the parties have

¹ For a detailed procedural history, see Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 24 March 2010 (“March 2010 Decision”), para. 1.

² Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 9 July 2010, paras 5-8.

³ Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 15 November 2010, para. 17.

⁴ Ivan Čermak’s Submission of the Guarantees of the Republic of Croatia for Provisional Release, 23 November 2010.

⁵ Prosecution’s Response to Čermak’s Request for Provisional Release, 24 November 2010.

⁶ Letter by the Ministry of Foreign Affairs, The Netherlands, 24 November 2010.

⁷ Motion, para. 2.

⁸ Motion, para. 5.

concluded their cases, any remote risk to the Prosecution witnesses has ceased to exist.¹⁰ The Čermak Defence also submits that it will take all reasonable steps to eliminate media coverage of Čermak's departure from and return to the United Nations Detention Unit ("UNDU").¹¹

3. The Čermak Defence further submits that the Chamber has recognized [REDACTED] to be a relevant factor in determining whether to grant provisional release to Čermak, and that [REDACTED] is a positive factor in this regard.¹² [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].¹⁵ It further submits that [REDACTED] is a sufficiently compelling humanitarian ground to justify provisional release, and that this has been recognized both by the Appeals Chamber and the Chamber in this case.¹⁶

4. In its Response, the Prosecution notes that both the Appeals Chamber and the Trial Chamber have previously ruled that [REDACTED] constitutes a sufficiently compelling humanitarian ground warranting Čermak's provisional release [REDACTED].¹⁷ The Prosecution observes that the Čermak Defence relies on the same rationale and conditions in support of the Motion.¹⁸ In light of the previous decisions by the Appeals Chamber and the Trial Chamber, the Prosecution does not oppose the granting of provisional release on the same conditions for a period proportional to meeting the humanitarian ground on which the request is grounded, which in this case means provisional release should end on 10 January 2011, [REDACTED].¹⁹

APPLICABLE LAW

5. The Chamber recalls the applicable law on provisional release as previously set out.²⁰

⁹ Motion, para. 7.

¹⁰ Motion, para. 13.

¹¹ Motion, para. 14.

¹² Motion, para. 8.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Motion, paras 10-12.

¹⁷ Response, para. 1.

¹⁸ Ibid.

¹⁹ Response, para. 2.

²⁰ See March 2010 Decision, paras 5-6.

DISCUSSION

6. In its July 2010 Decision, the Chamber found that Čermak did not pose a risk of flight if provisionally released.²¹ Since that time there have been no developments that would impact negatively on this assessment. On the basis of the renewed Croatian Guarantees, the Chamber is satisfied that Croatia would be willing and able to secure Čermak's attendance before the Tribunal and his compliance with any conditions that may be imposed by the Chamber.²² For these reasons, having considered that the proceedings are in the post-Rule 98 *bis* stage, the Chamber remains satisfied that, if provisionally released, Čermak would return for trial.

7. As was the case in previous decisions on provisional release for Čermak, the Chamber has received no indication that, if released, Čermak would pose a danger to witnesses, victims, or other persons.²³ Moreover, nothing arose during the recent periods of provisional release that would suggest that Čermak would not abide by all conditions set by the Chamber.²⁴ In conclusion, the Chamber finds that the requirements set out in Rule 65 (B) of the Rules for granting provisional release have been met. As the proceedings are now in the post-Rule 98 *bis* stage, the Čermak Defence must demonstrate, as a further requirement, the existence of compelling humanitarian grounds which tip the balance in favour of provisional release.

8. [REDACTED].

9. The Chamber has previously held that [REDACTED].²⁵ [REDACTED]. [REDACTED]. For these reasons, the Chamber is satisfied that [REDACTED] constitutes a sufficiently compelling humanitarian ground to tip the balance in favour of granting provisional release.

10. The Chamber considers that the compelling humanitarian ground in this case is best served by [REDACTED]. Considering that [REDACTED], and the fact that there will be no hearings requiring Čermak's presence during that period, the Chamber finds that provisional

²¹ July 2010 Decision, para. 5.

²² See Croatian Guarantees.

²³ See Decision on Motion for Provisional Release of Ivan Čermak, 14 March 2008, para. 9; Decision on Motion for Provisional Release of Ivan Čermak, 18 July 2008 para. 20; Decision on Motion for Provisional Release of Ivan Čermak, 2 December 2008, para. 12; Decision on Motion for Provisional Release of Ivan Čermak, 27 February 2009, para. 8; Decision on Motion for Provisional Release of Ivan Čermak, 14 July 2009, para. 10; Decision on Motion for Provisional Release of Ivan Čermak, 14 December 2009, para. 8 ("December 2009 Decision"); March 2010 Decision, para. 8; July 2010 Decision, para. 6.

²⁴ See *Ibid.*

²⁵ December 2009 Decision, para. 10.

release from 18 December 2010 until 10 January 2011 is proportionate to the present circumstances.

DISPOSITION

11. For the foregoing reasons and pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules, the Chamber hereby **GRANTS** the Motion, and **ORDERS** as follows:

- (a) On **18 December 2010**, or the first practicable day thereafter, Čermak shall be transported to the appropriate airport in The Netherlands by the appropriate Dutch authorities;
- (b) At the appropriate airport, Čermak shall be provisionally released by the Dutch authorities into the custody of an official of Croatia to be designated prior to his release in accordance with subparagraph (e)(4), below, who shall accompany Čermak for the remainder of his travel to and from the address listed in Annex B of the Motion;
- (c) On his return, Čermak shall be accompanied by the same designated official of Croatia, who shall deliver him into the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport him back to the UNDU in The Hague;
- (d) During the provisional release, Čermak shall:
 - 1) surrender his passport and any other valid travel documents to the Ministry of Interior of Croatia;
 - 2) remain within the confines of his private residence in Croatia, at the address listed in Annex B of the Motion;
 - 3) report once a week to the local police station;
 - 4) consent to having his presence checked, including checking by occasional, unannounced visits by the Ministry of Interior, officials of Croatia, the local police, or by a person designated by the Registrar of the International Tribunal;
 - 5) not have any contact or in any way interfere with victims or potential witnesses or otherwise interfere with the proceedings or the administration of justice;

- 6) not seek direct access to documents or archives nor destroy evidence;
 - 7) not discuss or speak about the case with anyone, including the media, other than his counsel;
 - 8) not engage in any activity that is not in accordance with the private nature of the provisional release, including any contact with public officials or public figures not relating to the administration of the provisional release;
 - 9) comply strictly with any requirements of the Croatian authorities necessary to enable such authorities to comply with their obligations pursuant to the present decision;
 - 10) return to the custody of the Tribunal by **10 January 2011**, or at such time and date as the Chamber may order;
 - 11) comply strictly with any order issued by the Chamber varying the terms of, or terminating, the provisional release;
- (e) The Chamber requires Croatia, to assume responsibility for:
- 1) the personal security and safety of Čermak while on provisional release;
 - 2) ensuring compliance with the conditions imposed on Čermak under the present decision;
 - 3) all expenses concerning the transport of Čermak from the airport in The Netherlands to his place of residence in Croatia, and back to The Netherlands;
 - 4) ensuring that upon release of Čermak at the airport in The Netherlands, designated officials of Croatia (whose names shall be provided in advance to the Chamber and the Registry) take custody of Čermak from the Dutch authorities and accompany him as detailed in subparagraphs (b) and (c), above;
 - 5) not issuing any new passports or other documents which would enable Čermak to travel;
 - 6) monitoring on a regular basis the presence of Čermak at the address detailed in Annex B of the Motion, and maintaining a log of such reports;

- 7) submitting a written report every week to the Chamber and the Registry as to the presence of Čermak and his compliance with the terms of the present decision;
- 8) reporting immediately to the Registrar of the Tribunal the substance of any threats to the security of Čermak, including full reports of investigations related to such threats;
- 9) immediately detaining Čermak should he breach any of the terms and conditions of his provisional release and reporting immediately any such breach to the Registry and the Chamber.

12. The Chamber further **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice of The Netherlands as to the practical arrangements for the provisional release of Čermak, and to continue to detain Čermak at the UNDU in The Hague until such time as the Chamber and the Registrar have been notified of the name of the designated official of Croatia into whose custody Čermak is to be provisionally released.

13. Finally, the Chamber **REQUESTS** the authorities of all states through which Čermak will travel:

- (a) to hold him in custody for any time that he will spend in transit at an airport in their territories; and
- (b) to arrest and detain him pending his return to the UNDU in The Hague, should he attempt to escape.

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

Judge Alphons Orie
Presiding Judge

Dated this 10th day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]