



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-AR65.32

Date: 25 May 2012

Original: English

IN THE APPEALS CHAMBER

Before: Judge Arlette Ramaroson, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz

Registrar: Mr. John Hocking

Decision of: 25 May 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PROSECUTION'S APPEAL OF THE
DECISION ON FURTHER EXTENSION OF VALENTIN
ČORIĆ'S PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Nataša Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Zoran Ivanišević for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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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 an appeal filed by the Office of the Prosecutor ("Prosecution") on 13 March 2012¹ against a decision issued confidentially by Trial Chamber III of the Tribunal ("Trial Chamber") on 6 March 2012 ("Impugned Decision"), which extends the provisional release of Valentin Ćorić ("Ćorić") until 21 June 2012.² Ćorić responded on 16 March 2012.³ The Prosecution did not file a reply.

I. BACKGROUND

2. On 29 November 2011, the Trial Chamber found that the criteria of Rule 65(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules") were satisfied and exercised its discretion to grant Ćorić provisional release for three months.⁴ The Trial Chamber also decided that, before the expiry of the three-month period, Ćorić could apply for an extension of his provisional release and established the procedure to be followed in this respect.⁵ On 20 December 2011, the Duty Judge dismissed an appeal lodged by the Prosecution against the Decision Granting Provisional Release.⁶ On 6 March 2012, the Trial Chamber extended Ćorić's provisional release until 21 June 2012.⁷

¹ Prosecution Appeal of *Ordonnance relative à la demande de prolongation de la mise en liberté provisoire de l'accusé Ćorić*, 13 March 2012 ("Appeal").

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Motion to Extend Provisional Release of Accused Ćorić, 6 March 2012 (confidential; public redacted version filed on the same day) (the English translations of the French originals were filed on 15 March 2012).

³ Valentin Ćorić's Response Brief in Opposition to the Prosecution Appeal of Decision on Valentin Ćorić's Provisional Release, 16 March 2012 (confidential and *ex parte*) ("Response"). A review of the Response demonstrates that it does not contain information which raises confidentiality concerns. The Appeals Chamber, therefore, sees no rationale that justifies maintaining its confidential status.

⁴ *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* with two confidential and *ex parte* annexes) (the English translation of the French original was filed on 2 December 2011) ("Decision Granting Provisional Release"), paras 35-36, p. 13.

⁵ Decision Granting Provisional Release, paras 36-37, Annex 1.

⁶ *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 (confidential and *ex parte*), 20 December 2011 ("Decision of 20 December 2011"), para. 22.

⁷ Impugned Decision, p. 6. Although the date until which the provisional release of Ćorić has been extended was confidential, the Appeals Chamber does not find that this information warrants giving the present decision confidential status. Cf. *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević's Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012, para. 18; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber's Decision on Vinko Pandurević's Provisional Release of 11 January 2012, 17 January 2012, pp. 2-3.

II. STANDARD OF REVIEW

3. The Appeals Chamber recalls that an interlocutory appeal is not a *de novo* review of the Trial Chamber's decision.⁸ The Appeals Chamber has previously held that a decision on provisional release by the Trial Chamber under Rule 65 of the Rules is a discretionary one.⁹ Accordingly, the relevant inquiry is not whether the Appeals Chamber agrees with that discretionary decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision.¹⁰

4. In order to successfully challenge a discretionary decision on provisional release, a party must demonstrate that the Trial Chamber has committed a "discernible error".¹¹ The Appeals Chamber will only overturn a Trial Chamber's decision on provisional release where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.¹² The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.¹³

III. APPLICABLE LAW

5. Under Rule 65(B) of the Rules, a Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person; and after having given both the host country and the State to which the accused seeks to be released the opportunity to be heard.¹⁴ Provisional release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement, and a Trial Chamber in granting such a release, may consider the existence of sufficiently compelling humanitarian grounds.¹⁵

6. In deciding whether the requirements of Rule 65(B) of the Rules have been met, a Trial Chamber must consider all of those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned

⁸ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.26, Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, 15 December 2011 ("Decision of 15 December 2011") para. 3 and references cited therein.

⁹ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹⁰ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹¹ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹² See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹³ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹⁴ See, e.g., Decision of 15 December 2011, para. 5 and references cited therein.

¹⁵ Rule 65(B) of the Rules. See also Decision of 15 December 2011, para. 5.

opinion indicating its view on those relevant factors.¹⁶ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.¹⁷ This is because decisions on motions for provisional release are fact-intensive and cases are considered on an individual basis in light of the particular circumstances of the individual accused.¹⁸ The Trial Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.¹⁹

IV. DISCUSSION

A. Preliminary Matter

7. The Prosecution argues that the Trial Chamber committed an error of law in not ordering Ćorić to file a public redacted version of his Original Motion because, in the Trial Chamber's view, the filing of the public redacted version of the Impugned Decision satisfied the requirement of transparency and public nature of the proceedings.²⁰ In the interests of justice, the Prosecution further requests the Appeals Chamber to order Ćorić to file a public redacted version of his Original Motion.²¹ Although Ćorić mentions the Prosecution's argument, he does not respond to it.²² The Appeals Chamber notes that the confidential and *ex parte* status of the Original Motion was due to the inclusion of information concerning the medical conditions of one member of Ćorić's family.²³ The Appeals Chamber finds that the Prosecution, in this case, has not demonstrated that the Trial Chamber's issuance of a public redacted version of its Impugned Decision was insufficient to satisfy the requirement of public proceedings. Therefore, the Appeals Chamber dismisses this argument.

B. Analysis

8. The Prosecution submits that the Impugned Decision should be reversed.²⁴ It argues that, when granting the extension of the provisional release of Ćorić, the Trial Chamber committed a discernible error by failing to properly exercise its discretion by: i) ignoring "the principle of

¹⁶ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁷ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁸ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁹ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

²⁰ Appeal, paras 2, 15-16, referring to *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Valentin Ćorić's Motion Seeking Renewal of Provisional Release, 24 February 2012 (confidential and *ex parte* with a confidential and *ex parte* annex) ("Original Motion").

²¹ Appeal, paras 2, 17.

²² See Response, para. 3.

²³ Original Motion, paras 6, 8.

²⁴ Appeal, paras 1, 17.

detention”; ii) failing to consider other important factors such as the gravity of the crimes charged; iii) failing to consider the impact of further provisional release on the international public’s confidence in the proper administration of justice; and iv) failing to address the insufficiency of Ćorić’s request for provisional release.²⁵ Ćorić responds that the Prosecution fails to demonstrate that the Trial Chamber committed a discernible error in the exercise of its discretion and that, accordingly, the Appeal should be dismissed.²⁶

1. Alleged abuse of discretion by ignoring the “principle of detention”

9. The Prosecution submits that the Trial Chamber failed to exercise its discretion by not considering Rules 64 and 65(A) of the Rules and the Tribunal’s unique jurisdiction, which favours “detention as the rule and not the exception”.²⁷

10. Ćorić responds that the Trial Chamber was not required to consider Rules 64 or 65(A) of the Rules as Rule 65(B) of the Rules is a self-contained procedural regime governing provisional release.²⁸ He argues that the Trial Chamber properly considered the requirements of Rule 65(B) of the Rules and found that they were met.²⁹ Ćorić further argues that this argument is raised for the first time on appeal.³⁰

11. As a preliminary remark, the Appeals Chamber notes that the Prosecution did not advance this argument in its Response to Ćorić’s Original Motion and raised this argument for the first time on appeal.³¹ The Appeals Chamber recalls that a Trial Chamber “is generally not required to deal with matters which the parties have not raised before it, unless it considers those matters to be vital to the issues it has to decide upon” and that “the appeal’s process is not meant to offer the parties a remedy to their previous failings at trial.”³² Nonetheless, the Appeals Chamber finds that this argument merits consideration.

12. The Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred by ignoring the basic premise of the rule-based framework of detention, favouring detention as the rule and not the exception. In this context, the Appeals Chamber recalls that

²⁵ Appeal, paras 1, 3-14.

²⁶ Response, p. 1, paras 4, 22.

²⁷ Appeal, para. 4. See also Appeal, paras 1, 3, 5.

²⁸ Response, para. 11. See also Response, para. 12.

²⁹ Response, para. 13.

³⁰ Response, para. 11.

³¹ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Response to Valentin Ćorić’s Motion Seeking Renewal of Provisional Release, 29 February 2012 (confidential and *ex parte*) (“Response to Ćorić’s Original Motion”).

³² See, e.g., *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber’s Decisions Granting Provisional Release, 19 October 2005 (“Decision of 19 October 2005”), para. 32 and references cited therein.

Rules 64 and 65(A) of the Rules provide that an accused, upon being transferred to the seat of the Tribunal, shall be detained and that he may not be released except upon an order of a Chamber. Rule 65(B) of the Rules sets out the cumulative requirements to be met for a trial chamber to grant provisional release.³³ Contrary to the Prosecution's argument, the Trial Chamber was not required to consider Rules 64 and 65(A) of the Rules but needed only to determine whether the requirements of Rule 65(B) of the Rules were met. The Trial Chamber was satisfied that Ćorić met the requirements of Rule 65(B) of the Rules before ordering the extension of his provisional release.³⁴ Thus, the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

2. Alleged abuse of discretion by failing to consider other important factors such as the gravity and scale of the crimes charged

13. The Prosecution submits that the Trial Chamber erred in failing to consider other relevant factors such as the gravity and scale of the crimes charged, Ćorić's involvement in those crimes, and the advanced stage of the proceedings.³⁵ With respect to the latter factor, the Prosecution argues that it has been acknowledged as relevant by the Appeals Chamber and should be taken into account when assessing Ćorić's flight risk.³⁶ Moreover, the Prosecution submits that the Trial Chamber's focus on the presumption of innocence ignores the jurisprudence of the Tribunal that such factor is not determinative.³⁷

14. Ćorić responds that the Trial Chamber was mindful of the scale and gravity of the crimes charged but correctly concluded that these factors do not outweigh his presumption of innocence.³⁸ With respect to the advanced stage of the proceedings, Ćorić argues that the Trial Chamber correctly imposed strict security measures to comply with the Appeals Chamber's jurisprudence that provisional release at an advanced stage of the proceedings could have a prejudicial effect on victims and witnesses.³⁹ He further argues that, in its Decision of 20 December 2011, the Duty

³³ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. 04-74-AR65.13, Decision on Prosecution's Appeal of the Trial Chamber's 10 December 2008 Decision on Prlić Provisional Release During Winter Recess, 18 December 2008 (confidential), para. 7. See also *supra*, para. 5.

³⁴ Impugned Decision, p. 5.

³⁵ Appeal, paras 1, 3, 6-9.

³⁶ Appeal, paras 8-9.

³⁷ Appeal, para. 3, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During Winter Recess, 14 December 2006, para. 12.

³⁸ Response, paras 14-15.

³⁹ Response, para. 16, referring to Decision of 15 December 2011, para. 10. See also Response, paras 19-20.

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Judge rejected a similar arguments raised by the Prosecution with respect to the advanced stage of the proceedings.⁴⁰

15. The Appeals Chamber notes that the Prosecution did not advance the gravity and scale of the crimes charged or Čorić's involvement in those crimes in its Response to Čorić's Original Motion and raised this argument for the first time on appeal.⁴¹ The Appeals Chamber recalls its finding above that an interlocutory appeal is not meant to offer the parties a remedy to their previous failings at trial.⁴² Nonetheless, the Appeals Chamber finds that this argument merits consideration.

16. While the Trial Chamber did not dwell upon the seriousness and the scale of the crimes charged, Čorić's role in them and the advanced stage of proceedings, it was not required to do so.⁴³ The Trial Chamber's concern was to ensure that, if granted an extension of his provisional release, Čorić would return to the United Nations Detention Unit ("UNDU") and would not pose a danger to any victim, witness or other person. In so doing, the Trial Chamber considered that Čorić respected the conditions of his provisional release and that the Government of the Republic of Croatia provided further guarantees for Čorić's extension of provisional release.⁴⁴ Moreover, the Trial Chamber decided that the strict security measures of provisional release should apply *mutatis mutandis* to the extension of the provisional release.⁴⁵ On this basis, the Trial Chamber concluded that Čorić met the requirements of Rule 65(B) of the Rules.⁴⁶ In these circumstances, the Appeals Chamber dismisses this argument.

17. The Appeals Chamber further dismisses the Prosecution's argument that the Trial Chamber's focus on the presumption of innocence ignores the jurisprudence of the Tribunal that such factor is not determinative. While the presumption of innocence was one of the factors that the Trial Chamber considered, it did not find that this factor was a determinative one in assessing whether Čorić satisfied the requirements of Rule 65(B) of the Rules.⁴⁷ The Appeals Chamber therefore dismisses this argument.

⁴⁰ Response, paras 8, 16. Čorić argues that the Prosecution's arguments should therefore be summarily dismissed. See Response, para. 8.

⁴¹ See Response to Čorić's Original Motion.

⁴² See *supra*, para. 11.

⁴³ *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 ("Decision of 8 September 2004"), para. 31. The Appeals Chamber notes that, in the Decision Granting Provisional Release, the Trial Chamber mentioned the potential effect that the release of a person accused of serious crimes could have on the victims of those crimes. See Decision Granting Provisional Release, para. 33.

⁴⁴ Impugned Decision, pp. 4-5.

⁴⁵ Impugned Decision, p. 7.

⁴⁶ Impugned Decision, p. 5.

⁴⁷ Impugned Decision, p. 5.

18. Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion.

3. Alleged abuse of discretion by failing to consider the impact of further provisional release on the international public's confidence in the proper administration of justice

19. The Prosecution submits that the Trial Chamber erred in failing to consider the “obvious” negative impact of Čorić’s continued provisional release “on the international public’s confidence in the proper administration of justice”, as recognised by domestic courts.⁴⁸ In particular, the Prosecution argues that the Trial Chamber abused its discretion in not considering the Prosecution’s argument that Čorić’s ability to move freely around Zagreb, albeit under surveillance, would affect public perception of the Tribunal’s administration of justice.⁴⁹

20. Čorić responds that the Prosecution fails to provide any evidence supporting its allegation that his release would endanger victims and witnesses or that the Trial Chamber erred in failing to give sufficient weight to the impact of his provisional release on the region and the credibility of the Tribunal.⁵⁰ He further argues that, in its Decision of 20 December 2011, the Duty Judge rejected a similar argument raised by the Prosecution regarding the alleged impact of his provisional release on the region.⁵¹

21. The Appeals Chamber notes that the Trial Chamber explicitly considered whether the extension of Čorić’s provisional release would have a negative impact on the Tribunal’s goal of promoting stability in the former Yugoslavia.⁵² In this regard, the Trial Chamber found that “the Tribunal contributed to stability in the former Yugoslavia by prosecuting persons accused of having committed crimes in the region”.⁵³ The Appeals Chamber finds that the Prosecution has failed to articulate a concrete basis tied to the circumstances of the extension of Čorić’s provisional release to substantiate its argument that the extension of Čorić’s provisional release would negatively impact the international public’s confidence in the proper administration of justice.⁵⁴ In the view of the Appeals Chamber, it is irrelevant that some domestic jurisdictions – such as the Supreme Court of Canada – recognise such negative effects on the community as a whole when releasing

⁴⁸ Appeal, paras 1, 3, 10-12.

⁴⁹ Appeal, para. 13.

⁵⁰ Response, para. 21.

⁵¹ Response, paras 8-9. Čorić argues that the Prosecution’s arguments should therefore be summarily dismissed. See Response, para. 8.

⁵² Impugned Decision, p. 5, referring to Response to Čorić’s Original Motion, para. 5.

⁵³ Impugned Decision, p. 5, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Jadranko Prlić’s Motion to Extend His Provisional Release, 29 February 2012 (confidential; public redacted version filed on 1 March 2012) (the English translations of the French originals were filed on 9 March 2012), p. 4.

individuals charged with serious crimes.⁵⁵ Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

4. Alleged abuse of discretion by failing to address the insufficiency of Ćorić's request for extending his provisional release

22. The Prosecution argues that Ćorić's submissions regarding the alleged compelling humanitarian grounds warranting an extension of his provisional release were unsubstantiated and that the Trial Chamber's failure to address the Prosecution's arguments in this respect is an abuse of discretion.⁵⁶

23. Ćorić responds that, under Rule 65(B) of the Rules, the Trial Chamber was not required to take into account the existence of compelling humanitarian grounds before ordering an extension of his provisional.⁵⁷ Ćorić further responds that his Original Motion was adequately developed and that, in extending his provisional release, the Trial Chamber gave sufficient weight to all relevant considerations under Rule 65(B) of the Rules.⁵⁸

24. When granting provisional release to Ćorić on 29 November 2011, the Trial Chamber decided to fix the period of provisional release to three months and further decided that this period could be extended if it was satisfied that the requirements set forth in Rule 65(B) of the Rules continued to be fulfilled.⁵⁹ The Appeals Chamber recalls that the same legal principles applicable to a motion for provisional release apply *mutatis mutandis* to a motion for extension of provisional release.⁶⁰ In extending Ćorić's provisional release, the Trial Chamber noted the Prosecution's arguments⁶¹ but nonetheless found that Ćorić respected the conditions of his provisional release and that the Government of the Republic of Croatia provided further guarantees in support of Ćorić's extension of provisional release.⁶² In addition, the Trial Chamber found that, should the provisional release be extended, Ćorić would return to the UNDU and would not pose a danger to any victim, witness or other person, thus satisfying the requirements of Rule 65(B) of the Rules.⁶³ While the Trial Chamber noted the Prosecution's argument that Ćorić's submissions regarding the alleged

⁵⁴ See Decision of 15 December 2011, para. 11. In the view of the Appeals Chamber, the Prosecution seems to concede that it did not substantiate its argument in this respect as it stated that it "is not required to produce evidence of this impact" because it is "obvious". See Appeal, para. 11.

⁵⁵ Cf. Decision of 8 September 2004, para. 31.

⁵⁶ Appeal, paras 1, 14 and fn. 17, referring to Response to Ćorić's Original Motion, para. 2.

⁵⁷ Response, para. 17.

⁵⁸ Response, paras 17-22.

⁵⁹ Decision Granting Provisional Release, para. 36.

⁶⁰ See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on the Third Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 4 August 2009 (public redacted version), para. 5 and reference cited therein.

⁶¹ Impugned Decision, p. 3.

⁶² Impugned Decision, pp. 4-5.

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compelling humanitarian grounds warranting an extension of his provisional release were unsubstantiated,⁶⁴ the Trial Chamber decided not to consider it.⁶⁵ The Appeals Chamber recalls that the newly amended Rule 65(B) of the Rules provides that a Trial Chamber, in deciding whether to grant provisional release, *may* consider the existence of sufficiently compelling humanitarian grounds. Therefore, there is no absolute requirement for a trial chamber to take into account the existence of such grounds before ordering a release.⁶⁶ In these circumstances, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

V. DISPOSITION

25. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal and **DIRECTS** the Registry to lift the confidential and *ex parte* status of the Response.

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

Done this twenty-fifth day of May 2012,
At The Hague,
The Netherlands.



Judge Arlette Ramaroson
Presiding

[Seal of the Tribunal]

⁶³ Impugned Decision, p. 5.

⁶⁴ Impugned Decision, p. 3.

⁶⁵ Impugned decision, p. 6.

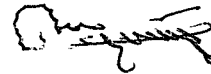
⁶⁶ Decision of 15 December 2011, para. 12.

PARTIALLY DISSENTING OPINION OF JUDGE GÜNEY

1. I maintain my position previously stated in *Stojić Decision*¹ in which I opposed the majority position regarding the confidential status of the Original Motion of Stojić. In my view, the Trial Chamber also erred in the present case by basing its refusal to order the filing of a public redacted version of the Original Motion on the rationale that the public redacted version of the Trial Chamber's decision would satisfy the requirements for transparency.² As illustrated in this current decision of the Appeals Chamber³, the standard requires the Chamber to analyze the content of the document in question to evaluate whether exceptional circumstances warrant the confidential status of that document.⁴ I believe that when a party specifically requests that the confidentiality of a submission be lifted, or a public redacted version be filed, a chamber must examine the relevant material in accordance with this standard. I believe therefore that the submission of the Prosecution should have been granted and that Čorić should have been ordered to file a public redacted version of his Original Motion.

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

Done this twenty-fifth day of May 2012,
At The Hague,
The Netherlands.



Judge Mehmet Güney

[Seal of the Tribunal]

¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.33, Decision on Prosecution's Appeal of the Decision on Further Extension of Bruno Stojić's Provisional Release, 16 May 2012 ("*Stojić Decision*"), Partially dissenting Opinion of Judge Güney.

² Impugned Decision, p. 6.

³ See fnns. 3 and 7.

⁴ Cf. *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A; Decision on Vinko Pandurević's Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012, para. 18; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber's Decision on Vinko Pandurević's Provisional Release of 11 January 2012, 17 January 2012, pp. 2-3; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj's Application for Provisional Release, 25 May 2009, para. 5; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 6.