



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-AR65.19  
Date: 11 February 2010  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Andrézia Vaz  
Judge Theodor Meron

**Registrar:** Mr. John Hocking

**Order of:** 11 February 2010

**PROSECUTOR**

v.

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

**PUBLIC**

**ORDER ISSUING A PUBLIC REDACTED VERSION OF THE  
“DECISION ON PROSECUTION’S APPEAL OF THE TRIAL  
CHAMBER’S DECISION TO PROVISIONALLY RELEASE  
ACCUSED PRALJAK” ISSUED 17 DECEMBER 2009**

**The Office of the Prosecutor:**

Mr. Kenneth Scott  
Mr. Douglas Stringer

**Counsel for the Accused:**

Mr. Michael Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić  
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić  
Mr. Božidar Kovačić and Ms. Nika Pinter for Mr. Slobodan Praljak  
Ms. Vesna Alaburić and Mr. Nicholas Stewart for Mr. Milivoj Petković  
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić  
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

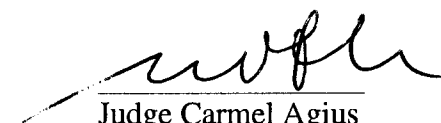
**THE APPEALS CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

**NOTING** the “Decision on Prosecution’s Appeal of the Trial Chamber’s Decision to Provisionally Release Accused Praljak”, issued confidentially on 17 December 2009 (“Decision”);

**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 text being authoritative.



Judge Carmel Agius  
Presiding

Dated this eleventh day of February 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

**UNITED  
NATIONS**



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Prosecution of Persons  
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**Before:** Judge Carmel Agius, Presiding  
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**PUBLIC REDACTED VERSION**

**DECISION ON PROSECUTION'S APPEAL OF THE TRIAL  
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Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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 seized of the “Prosecution Appeal of the Trial Chamber’s 4 December 2009 Decision to Provisionally Release Accused Praljak During the Winter Recess 2009-2010” (“Appeal”) filed confidentially on 7 December 2009 against the “*Décision relative à la demande de mise en liberté provisoire déposée par l’accusé Praljak*” (“Impugned Decision”) issued confidentially by Trial Chamber III (“Trial Chamber”) on 4 December 2009.<sup>1</sup> Slobodan Praljak (“Praljak”) filed a confidential response on 11 December 2009 (“Response”).<sup>2</sup> The Office of the Prosecutor (“Prosecution”) filed a confidential reply on 15 December 2009 (“Reply”).<sup>3</sup>

## I. BACKGROUND

2. On 3 November 2009, Praljak filed a confidential motion, with seven confidential annexes, requesting provisional release on humanitarian grounds (“Motion”).<sup>4</sup> On 12 November 2009, the Prosecution filed a confidential response opposing the Motion and requesting a stay of the decision in case the Trial Chamber granted the Motion.<sup>5</sup> Pursuant to a request from the Trial Chamber,<sup>6</sup> the Registry filed a confidential submission on 12 November 2009 transmitting a report from the United Nations Detention Unit (“UNDU”) Medical Officer concerning the state of Praljak’s health (“Medical Report”).<sup>7</sup>

3. On 4 December 2009, the Trial Chamber granted the Motion, finding that Praljak did not pose a flight risk or threat to any victims, witnesses or other persons and that there were sufficiently

<sup>1</sup> The English translation was filed on 11 December 2009.

<sup>2</sup> Slobodan Praljak’s Response to the Prosecution Appeal of the Trial Chamber’s 4 December 2009 Decision to Provisionally Release Slobodan Praljak, filed confidentially on 11 December 2009.

<sup>3</sup> Prosecution Reply to the Praljak Response in Respect of the Prosecution Appeal of the Trial Chamber’s 4 December 2009 Decision to Provisionally Release Accused Praljak During the Winter Recess 2009-2010, filed confidentially on 15 December 2009. *See also* Corrigendum to Prosecution Reply to the Praljak Response in Respect of the Prosecution Appeal of the Trial Chamber’s 4 December 2008 [sic] Decision to Provisionally Release Accused Praljak During the Winter Recess 2009-2010, filed confidentially on 16 December 2009.

<sup>4</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Motion for Provisional Release, filed confidentially on 3 November 2009. *See also* Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s Response to Slobodan Praljak’s Motion for Provisional Release dated 3 November 2009 and Slobodan Praljak’s Reply to the Prosecution Response”, filed confidentially on 13 November 2009. The Appeals Chamber notes that leave to reply was denied by the Trial Chamber, *see* Impugned Decision, para. 28, disposition.

<sup>5</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Response to Slobodan Praljak’s Motion for Provisional Release dated 3 November 2009, filed confidentially on 12 November 2009. *See also* Supplement to the Prosecution’s Response to Slobodan Praljak’s Motion for Provisional Release dated 3 November 2009, filed confidentially on 13 November 2009.

<sup>6</sup> Impugned Decision, para. 4.

<sup>7</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Rule 33 (B) Concerning Medical Report, filed confidentially on 12 November 2009.

compelling humanitarian reasons to justify his provisional release.<sup>8</sup> The Trial Chamber also granted the Prosecution's request for a stay of the execution of the Impugned Decision pending appeal.<sup>9</sup>

## II. STANDARD OF REVIEW

4. The Appeals Chamber recalls that an interlocutory appeal is not a *de novo* review of the Trial Chamber's decision.<sup>10</sup> The Appeals Chamber has previously held that a decision on provisional release by the Trial Chamber under Rule 65 of the Rules of Procedure and Evidence ("Rules") is a discretionary one.<sup>11</sup> Accordingly, the relevant inquiry is not whether the Appeals Chamber agrees with that discretionary decision but whether the Trial Chamber has correctly exercised its discretion in reaching that decision.<sup>12</sup>

5. In order to successfully challenge a discretionary decision on provisional release, a party must demonstrate that the Trial Chamber has committed a "discernible error".<sup>13</sup> The Appeals Chamber will only overturn a Trial Chamber's decision on provisional release where it is found to be (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.<sup>14</sup> 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.<sup>15</sup>

## III. APPLICABLE LAW

6. Pursuant to Rule 65(A) of the Rules, once detained, an accused may not be provisionally released except upon an order of a Chamber. Under Rule 65(B), 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 the host country and the State to which the accused seeks to be released the opportunity to be heard.<sup>16</sup>

<sup>8</sup> Impugned Decision, paras 33-35, 42, 45.

<sup>9</sup> Impugned Decision, para. 48.

<sup>10</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.10, Decision on Radivoje Miletić's Appeal Against Decision on Miletić's Motion for Provisional Release, 19 November 2009 (public redacted version) ("*Popović* 19 November Decision"), para. 4 and references cited therein; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.17, Decision on Prosecution's Appeal Against Decision on Prlić's Motion for Provisional Release, 23 July 2009 (public redacted version) ("*Prlić* 23 July Decision"), para. 3 and references cited therein.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Popović* 19 November Decision, para. 5; *Prlić* 23 July Decision, para. 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Popović* 19 November Decision, para. 6; *Prlić* 23 July Decision, para. 5.

7. In deciding whether the requirements of Rule 65(B) of the Rules have been met, a Trial Chamber must consider all relevant factors that a reasonable Trial Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned opinion indicating its view on those relevant factors.<sup>17</sup> What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> If the Trial Chamber is satisfied that the requirements of Rule 65(B) have been met, it has discretion as to whether or not to grant provisional release to an accused.<sup>21</sup> Finally, an application for provisional release brought at a late stage of proceedings, and in particular after the close of the Prosecution case, should only be granted when sufficiently compelling humanitarian reasons exist,<sup>22</sup> Judge Güney dissenting.

#### IV. DISCUSSION

8. At the core of this appeal is whether there are sufficiently compelling humanitarian reasons to justify granting Praljak provisional release at this stage of the proceedings. The humanitarian grounds advanced by Praljak concern the [REDACTED]. [REDACTED].<sup>23</sup>

9. In considering the humanitarian reasons offered by Praljak underlying his request for provisional release, the Trial Chamber noted the opinion of the Medical Officer of the UNDU, based on the examination of a consulting [REDACTED] that additional tests are needed within three months.<sup>24</sup> The Trial Chamber further noted the opinion of the reporting Medical Officer of the UNDU that (i) treatment in the Netherlands poses no medical problems; (ii) [REDACTED]; and (iii) that treatment in Zagreb presented advantages [REDACTED].<sup>25</sup>

<sup>17</sup> *Popović* 19 November Decision, para. 7; *Prlić* 23 July Decision, para. 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR65.3, Decision on Ivan Čermak's Appeal Against Decision on His Motion for Provisional Release, 3 August 2009, para. 6; *Prlić* 23 July Decision, para. 6.

<sup>22</sup> *Popović* 19 November Decision, para. 7; *Prlić* 23 July Decision, para. 6.

<sup>23</sup> Impugned Decision, para. 37; Appeal, para. 16; Reply, para. 4 g); Medical Report, items 1, 3.

<sup>24</sup> Impugned Decision, paras 38-39, referring to the Medical Report, item 3.

<sup>25</sup> Impugned Decision, paras 39-40, referring to Confidential Annex F to the Motion, items 6 and 7.

10. The Trial Chamber also considered a report concerning Praljak's [REDACTED].<sup>26</sup> The Trial Chamber concluded that Praljak's [REDACTED] constituted sufficiently compelling humanitarian reasons to justify his provisional release.<sup>27</sup>

11. The Prosecution submits that the Trial Chamber committed four discernible errors in the Impugned Decision.<sup>28</sup>

### A. Ground of Appeal 1

12. First, the Prosecution argues that the Trial Chamber failed to correctly interpret and apply applicable law regarding obtaining medical treatment outside of The Netherlands.<sup>29</sup> The Prosecution submits that, in order to be released, an accused has the burden of showing that appropriate medical treatment is not available in The Netherlands.<sup>30</sup> By finding that treatment in Zagreb was medically preferable and advantageous, despite acknowledging that the necessary medical treatment is available in The Netherlands, the Prosecution argues that the Trial Chamber committed an error of law.<sup>31</sup>

13. Praljak responds that the Prosecution's submission effectively eviscerates the Trial Chamber's discretion to grant provisional release.<sup>32</sup> Praljak submits that the Trial Chamber's finding that the medically preferable treatment was available in Zagreb was based on documented fact, not incorrect interpretation of governing law.<sup>33</sup> Praljak argues that if an accused is required to demonstrate that medical care in his or her home country is superior to that available in The Netherlands, as alleged by the Prosecution, provisional release for medical concerns could rarely be granted.<sup>34</sup> Further, Praljak asserts that the jurisprudence of the Tribunal indicates that continuation of care in the home country of an accused and the effect of detention on health can support provisional release.<sup>35</sup> Finally, Praljak submits that the deprivation of medical care of an unconvicted detainee [REDACTED] would be a violation of his right to health.<sup>36</sup>

<sup>26</sup> Impugned Decision, para. 41, referring to Confidential Annex D to the Motion.

<sup>27</sup> Impugned Decision, para. 42.

<sup>28</sup> Appeal, para. 2.

<sup>29</sup> Appeal, paras 2(i), 15; Reply, paras 13-14.

<sup>30</sup> Appeal, paras 2(i), 15; Reply, paras 9-10; relying on *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008 (confidential) ("*Stanišić Appeal Decision*"), para. 68.

<sup>31</sup> Appeal, paras 17-20; Reply, paras 12-13.

<sup>32</sup> Response, para. 9.

<sup>33</sup> Response, para. 8.

<sup>34</sup> Response, paras 16-17.

<sup>35</sup> Response, paras 12-13, 18.

<sup>36</sup> Response, paras 22-23.

14. The Appeals Chamber recalls that in the context of an application for provisional release on medical grounds, the availability of medical care in The Netherlands is a relevant factor in establishing whether sufficiently compelling humanitarian grounds exist for the release.<sup>37</sup> At issue is not simply the availability of treatment, but of appropriate treatment.<sup>38</sup> In the present circumstances, the Trial Chamber did not incorrectly interpret governing law when it considered a variety of factors in order to determine the most appropriate treatment; namely, the availability of testing in The Netherlands as well as the opinion of two doctors from the UNDU. The Appeals Chamber notes that the Medical Officer of the UNDU opined that [REDACTED].<sup>39</sup> In light of this opinion, it was well within the Trial Chamber's discretion to determine that the most appropriate treatment was available in Zagreb.

### **B. Ground of Appeal 2**

15. The Prosecution next argues that the Trial Chamber erroneously relied on the medical recommendation that Praljak's treatment should be provided within three months to justify release to Croatia, rather than ordering that treatment begin immediately in The Netherlands.<sup>40</sup> The Prosecution submits that the Trial Chamber was concerned with granting provisional release in time for the judicial recess, despite the fact that trial recess is not, standing alone, a sufficient ground to grant provisional release.<sup>41</sup> The Prosecution further notes that Praljak did not seek to have an examination immediately in The Hague after having discovered [REDACTED] in August 2009.<sup>42</sup> Rather, that Praljak waited until November 2009 to file the Motion, which the Prosecution maintains was a tactical decision designed to ensure that his medical treatment was part of a holiday package and in order to gain a longer period of provisional release.<sup>43</sup>

16. Praljak responds that it is established law that the judicial calendar may be taken into consideration when assessing a request for provisional release.<sup>44</sup> Praljak notes that the Motion did not seek provisional release within any particular period, and argues that the assertion that the Trial Chamber abused its discretion by seeking to ensure a fair and expeditious trial by taking note of the judicial calendar is without merit.<sup>45</sup>

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<sup>37</sup> See *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.8, Decision on Prosecution's Appeal Against Decision on Gvero's Motion for Provisional Release, 20 July 2009 ("*Popović* 20 July Decision"), para. 11.

<sup>38</sup> *Stanišić* Appeal Decision, para. 68; *Popović* 20 July Decision, para. 13.

<sup>39</sup> Medical Report, items 4 and 5.

<sup>40</sup> Appeal, paras 2(ii), 21.

<sup>41</sup> Appeal, paras 25-26.

<sup>42</sup> Reply, paras 4 a) – e).

<sup>43</sup> Reply, paras 4 f), 6.

<sup>44</sup> Response, para. 26.

<sup>45</sup> Response, paras 27-29.



17. The Appeals Chamber notes that the Trial Chamber requested, and was refused, the report of the [REDACTED] who examined Praljak on 14 October 2009 by the Medical Officer of the UNDU.<sup>46</sup> The Trial Chamber found that in light of the “relatively short period of time it [had] to rule on the Motion”, the content of the medical documents already available and the prejudice that might accrue to Praljak from the resulting delay, it was unnecessary to order the UNDU physician to transmit the [REDACTED] report.<sup>47</sup>

18. The Appeals Chamber notes that it is not clear that the Trial Chamber was referring to the upcoming judicial break when noting that time was short; given that the Impugned Decision was issued on 4 December 2009, it is possible that the Trial Chamber was concerned that Praljak receive further treatment within the three months recommended by [REDACTED] on 14 October 2009.<sup>48</sup> In any event, the Appeals Chamber notes that “the judicial activity calendar may be a relevant factor when assessing a request for provisional release, notably to avoid unwarranted disruptions or undue delays in the proceedings.”<sup>49</sup> The Appeals Chamber further notes that the Medical Officer of the UNDU opined that [REDACTED].<sup>50</sup> In light of [REDACTED], and the medical evidence already on record, the Appeals Chamber finds that the Trial Chamber would not have abused its discretion even if it indeed took into account the upcoming judicial recess in deciding to rule on the merits of the Motion, rather than waiting for a copy of the [REDACTED] report.

19. Finally, the Appeals Chamber notes that, prior to filing his request for provisional release, [REDACTED],<sup>51</sup> and was examined by [REDACTED].<sup>52</sup> Consequently, the Appeals Chamber cannot infer that Praljak was tactically delaying the Motion, nor would such a finding support a conclusion that the Trial Chamber committed a discernible error in the Impugned Decision.

### **C. Ground of Appeal 3**

20. The Prosecution argues that the Trial Chamber failed to correctly interpret and apply governing law when determining that Praljak could be released in order to [REDACTED].<sup>53</sup> The

<sup>46</sup> Impugned Decision, para. 38.

<sup>47</sup> *Id.*

<sup>48</sup> See Medical Report, item 3.

<sup>49</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.15, Decision on Prosecution’s Appeal Against the Trial Chamber’s Decision on Slobodan Praljak’s Motion for Provisional Release, 8 July 2009 (public redacted version) (“Prlić 8 July Decision”), para. 10.

<sup>50</sup> Medical Report, item 5.

<sup>51</sup> See Motion, Confidential Annex E.

<sup>52</sup> See Motion, Confidential Annex F, item 5.

<sup>53</sup> Appeal, paras 2(iii), 28; Reply, para. 20.

Prosecution submits that an overall health benefit resulting from provisional release does not constitute so compelling a humanitarian reason as to justify such release.<sup>54</sup>

21. In response, Praljak argues that it is within a Trial Chamber's discretion to consider the overall health benefits accruing from provisional release as part of its analysis of sufficiently compelling humanitarian circumstances.<sup>55</sup> Given that the Appeals Chamber has indicated that his previous requests for provisional release were defective due to lack of medical documentation, Praljak argues that the Trial Chamber was entitled to rely on the newly provided documentation and the diagnosis contained therein.<sup>56</sup> Further, Praljak contends that because the Trial Chamber determined that the [REDACTED] would be beneficial to his continued participation in the proceedings, the Appeals Chamber should not usurp the Trial Chamber's ability to control its courtroom.<sup>57</sup>

22. The Appeals Chamber recalls that in and of itself a consideration of the overall health benefit does not constitute a humanitarian circumstance so sufficiently compelling as to justify provisional release.<sup>58</sup> However, unlike Praljak's earlier requests for provisional release,<sup>59</sup> the Trial Chamber was provided with medical documentation concerning the state of Praljak's [REDACTED].<sup>60</sup> In light of this report, the Trial Chamber held that [REDACTED] was one of the humanitarian reasons justifying provisional release.<sup>61</sup>

23. Consequently, it is plain that the Trial Chamber did not grant provisional release on the basis of an overall health benefit, but rather considered [REDACTED]. The Appeals Chamber finds that the Trial Chamber did not incorrectly interpret governing law in concluding that Praljak's [REDACTED] was a relevant factor to take into account in its assessment of whether there were humanitarian circumstances so sufficiently compelling as to justify provisional release.

#### **D. Ground of Appeal 4**

24. The Prosecution argues that the Trial Chamber abused its discretion in concluding that the two bases for provisional release advanced, though insufficient on their own, gave rise to

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<sup>54</sup> Appeal, paras 29-30; Reply, paras 15-16.

<sup>55</sup> Response, paras 30, 32.

<sup>56</sup> Response, para. 31.

<sup>57</sup> Response, para. 32.

<sup>58</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.10, Decision on Prosecution's Appeal of the Trial Chamber's Decision to Provisionally Release the Accused Praljak During the 2008 Summer Recess, 28 July 2008, para. 16.

<sup>59</sup> See *Prlić* 8 July Decision, para. 20.

<sup>60</sup> Impugned Decision, para. 41, referring to Confidential Annex D of the Motion.

<sup>61</sup> Impugned Decision, paras 42, 44.

compelling humanitarian reasons justifying provisional release when considered in combination.<sup>62</sup> Although the Prosecution concedes that there may be circumstances where individually insufficient factors can satisfy the required standard, it maintains that they do not do so in the present case.<sup>63</sup>

25. Praljak asserts that the Trial Chamber did not combine two insufficient humanitarian reasons into one sufficient reason, and that in fact the correct reading of the Impugned Decision is that the states of Praljak's [REDACTED] were each considered sufficiently compelling by the Trial Chamber.<sup>64</sup> Praljak further argues that the Prosecution's mere assertion that his particular circumstances in combination do not justify humanitarian release is insufficient to show that no reasonable trier of fact could come to the determination made by the Trial Chamber.<sup>65</sup>

26. The Appeals Chamber considers that the Prosecution misconstrues the Impugned Decision. The Trial Chamber did not make a finding regarding the sufficiency of each humanitarian ground offered by Praljak in support of his provisional release. Rather, the Trial Chamber analyzed each factor in turn before making its determination that the humanitarian circumstances, in their totality, justified a short period of provisional release.<sup>66</sup> The Appeals Chamber recalls that a Trial Chamber must consider all relevant factors before coming to its decision and consequently finds no error in the Trial Chamber's approach.

## V. DISPOSITION

27. For the foregoing reasons, the Appeals is **DISMISSED**.

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<sup>62</sup> Appeal, paras 32-34.

<sup>63</sup> Appeal, para. 34.

<sup>64</sup> Response, para. 35.

<sup>65</sup> Response, para. 34.

<sup>66</sup> Impugned Decision, para. 42.

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

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Judge Carmel Agius  
Presiding

Judge Mehmet Güney appends a partly dissenting opinion.

Dated this seventeenth day of December 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

**PARTLY DISSENTING OPINION OF JUDGE GÜNEY**

1. In a number of previous decisions<sup>1</sup> I expressed my disagreement with the majority of the Judges' interpretation of Rule 65(B) of the Rules of Procedure and Evidence ("Rules")<sup>2</sup> adopted in the 11 March 2008 Decision in the case of *Prosecutor v. Prlić et al.* («*Petković* Decision»)<sup>3</sup>. When assessing a motion for provisional release after trial proceedings have passed the stage of a Rule 98bis decision, the interpretation of the majority imposes an additional requirement of "sufficiently compelling humanitarian reasons" to the enumerated criteria of Rule 65(B) of the Rules.<sup>4</sup>
2. For the same reasons, I face difficulties to follow the Judges' majority opinion in the instant case, which requires the Accused Slobodan Praljak to demonstrate "sufficiently compelling humanitarian reasons" for his motion for provisional release to be considered.
3. However, I concur with the disposition of the Majority Decision in the present case and therefore I support the dismissal of the Appeal.

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<sup>1</sup> *Prosecutor v. Radivoje Miletić*, Case No. IT-05-88-AR65.10, Joint Dissenting Opinion of Judges Güney and Liu, 19 November 2009; *Prosecutor v. Ivan Čermak*, Case No IT-06-90-AR65.3, Decision on Ivan Čermak's Appeal against Decision on His Motion for Provisional Release, 3 August 2009; *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.16, Decision on Prosecution's Appeal Against Decision on Pušić's Motion for Provisional Release, 20 July 2009; *Prosecutor v. Vujadin Popović et al.*, Case No IT-05-88-AR65.8, Decision on Prosecution's Appeal Against Decision on Gvero's Motion for Provisional Release, 20 July 2009; *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.14, Decision on Jadranko Prlić's Appeal Against the *Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Prlić*, 9 April 2009, 5 June 2009, Partly Dissenting Opinion of Judge Güney; *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.7, Decision on "Prosecution's Appeal from *Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Petković* Dated 31 March 2008", 21 April 2008, Partly Dissenting Opinion of Judge Güney; *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.8, Decision on "Prosecution's Appeal from *Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Prlić* Dated 7 April 2008", 25 April 2008, Partly Dissenting Opinion of Judge Güney; *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.6, Reasons for Decision on "Prosecution's Urgent Appeal Against *Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Pušić* Issued on 14 April 2008", 23 April 2008; *Prosecutor v. Vujadin Popović et al.*, Case No IT-05-88-AR65.4, Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release During the Break in the Proceedings, 15 May 2008, Partly Dissenting Opinion of Judges Liu et Güney.

<sup>2</sup> Rules of Procedure and Evidence, as amended on 4<sup>th</sup> November 2008.

<sup>3</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković et Ćorić, 11 March 2008.

<sup>4</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić, 11 March 2008. I would like to precise that I was not member of the Bench that rendered this decision.

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

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Judge Mehmet Güney

Dated this seventeenth day of December 2009  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**