



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: 8 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:** 8 April 2008

**THE PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON THE REQUEST FOR PROVISIONAL RELEASE OF THE  
ACCUSED ČORIĆ**

**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 Ćorić Request for Provisional Release, filed confidentially by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 25 March 2008 (“Request”), in which the Ćorić Defence requests, for humanitarian and medical reasons, the provision release of the Accused Ćorić in the Republic of Croatia for the longest possible part of the suspension of the hearings before the Chamber,

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

**NOTING** the oral Decision rendered in application of Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”), rendered by the Chamber on 20 February 2008 (“98 *bis* Decision”) in which it 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 appeal filed by the Office of the Prosecutor (“Prosecution”) against the Decision of 19 February 2008,

**NOTING** the Prosecution Consolidated Response to (1) Jadranko Prlić’s Motion for Provisional Release, filed 26 March 2008; (2) Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defense Case, filed 27 March 2008; and (3) Valentin Ćorić’s Request for Provisional Release, filed 25 March 2008, filed confidentially by the Prosecution on 4 April 2008 (“Response”), in which it objects to the release of the Accused Ćorić,

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<sup>1</sup> 98 *bis* Decision, Transcript in French, pp. 27201 to 27238.

**CONSIDERING** that in the Request, the Accused Čorić holds that the 98 *bis* Decision does not diminish his chances of acquittal and has a strictly procedural role; that the Chamber found in the Decision on the Motion for Provisional Release of the Accused Pušić, rendered 19 March 2008, that decisions under Rule 98 *bis* of the Rules have no impact on decisions on provisional release,<sup>2</sup>

**CONSIDERING** that in support of the Request, the Čorić Defence reiterates the arguments presented in Valentin Čorić's Request for Provisional Release, filed confidentially by the Čorić Defence on 29 January 2008 ("Request of 29 January 2008") that (1) the Accused Čorić surrendered voluntarily to the Tribunal; (2) he has been provisionally released on several occasions and fully complied with the conditions imposed by the Trial Chamber in its decisions in this regard; (3) he always showed respect for the Chamber; (4) the host country has no objections to his provisional release; (5) the authorities of the Republic of Croatia have provided written guarantees that he will return to the Tribunal; and finally (6) the Accused Čorić would like to undergo certain medical tests and visit his family, in particular his young daughter who has health problems,<sup>3</sup>

**CONSIDERING** that in support of the Request, the Čorić Defence also cites the appearance of new humanitarian considerations since the Appeals Chamber Decision: (1) a serious medical problem requiring urgent attention, (2) the need to undergo certain important medical tests and finally (3) the deteriorating state of his daughter's health,<sup>4</sup>

**CONSIDERING** finally that in the Request, the Čorić Defence submits that according to international human rights standards, and particularly in light of the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the Tribunal case-law, an innocent person should only be held in provisional detention as a last resort; that Valentin Čorić has been detained for almost three years and, bearing in mind the length of his detention, the presumption of innocence should be applied to the maximum extent possible,<sup>5</sup>

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<sup>2</sup> Request, paras. 13 and 14.

<sup>3</sup> Request, paras. 8 and 12.

<sup>4</sup> Request, para. 12.

<sup>5</sup> Request, paras. 10 and 11.

**CONSIDERING** that in the Response, the Prosecution submits that the 98 *bis* Decision is a circumstance that significantly increases the Accused's risk of flight, since the Chamber recognized that sufficient evidence had been presented to implicate all of the Accused in a joint criminal enterprise and that, in the specific case of the Accused Ćorić, the Chamber found that evidence had been presented to support each of the counts,<sup>6</sup>

**CONSIDERING** next that in support of the Response, the Prosecution holds that the new humanitarian circumstances put forward by the Accused Ćorić are insufficient to justify a departure from the Appeals Chamber Decision since he does not provide any medical certificates supporting his allegations or reasons why these medical problems could not be treated in the United National Detention Unit,<sup>7</sup>

**CONSIDERING** finally that in the Response, the Prosecution submits that the Accused Ćorić's continued detention is consistent with the Tribunal's jurisprudence and international human rights law where: (1) human rights standards regarding the reasonable nature of detention during trial must be interpreted against the specific circumstances of the cases before the Tribunal; (2) the complex nature of the trials before the Tribunal results in long proceedings; (3) the Prosecution has presented its case; (4) the delay in proceedings is due to motions by Counsel for the Accused; (5) pre-trial detention was short and (6) the flight risk of the Accused Ćorić has increased since the 98 *bis* Decision was pronounced,<sup>8</sup>

**CONSIDERING** that pursuant to Rule 65 (B) of the Rules, the Chamber may order provisional release "only 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 since the Appeals Chamber Decision, the Chamber must not limit itself to an examination of the flight risk based on the conduct of the Accused and guarantees that he will reappear, as it has in its previous decisions,<sup>9</sup> but must also take into account the 98 *bis* Decision,

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<sup>6</sup> Response, paras. 22 and 23.

<sup>7</sup> Response, paras. 14 and 21.

<sup>8</sup> Response, paras. 27-33.

<sup>9</sup> See in particular the Decision on the Motion for Provisional Release of the Accused Ćorić, 29 November 2007, in which the Chamber found that the Accused Ćorić had respected all the conditions

**CONSIDERING** that the Chamber recalls that in its 98 *bis* Decision it denied the motion for acquittal presented by the Accused Ćorić on the grounds that “the evidence led by the Prosecution allows for the purposes of Rule 98 bis, the finding that any reasonable trier of fact could make a finding of guilt [...] beyond all reasonable doubt, with regard to all the counts of the indictment under JCE 1 and 3”,<sup>10</sup>

**CONSIDERING** that the Chamber furthermore stated in its 98 *bis* Decision that “there is no contradiction between the dismissal of a 98 *bis* motion and a judgement of acquittal at the end of the trial,”<sup>11</sup> which well demonstrates that taking the Defence elements into account might lead a chamber to an acquittal at the end of the trial even if the motion for acquittal had been denied at the phase of the decision made pursuant to Rule 98 *bis* of the Rules,

**CONSIDERING** that the Chamber holds that its 98 *bis* Decision, in which it took care to note that the motions for acquittal were denied based solely on the evidence presented by the Prosecution and that the decision was only valid for the procedural needs of Rule 98 *bis* of the Rules, therefore cannot be considered a “prejudgement” increasing the flight risk of the Accused,

**CONSIDERING** that despite these recalls, the Chamber notes the Appeals Chamber’s willingness to obtain supplementary guarantees of reappearances, to offset the flight risk, and more compelling grounds for humanitarian considerations bearing in mind the 98 *bis* Decision,<sup>12</sup>

**CONSIDERING** that in order to evaluate whether the Accused Ćorić’s detention for almost three years constitutes an excessive measure, the Chamber recalls that, according to the Appeals Chamber’s established precedents, when interpreting Rules 65 (B) and (D) of the Rules, the general principle of proportionality must be taken into account and that in international public law, a measure is only proportionate

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set out during his previous provisional releases, that the host country did not object 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>10</sup> 98 *bis* Decision, Transcript in French, p. 27238 (our emphasis).

<sup>11</sup> *Ibid.*

<sup>12</sup> Appeals Chamber Decision, paras. 20 and 21. In paragraph 21, the Appeals Chamber noted in support of its decision setting aside the provisional releases: “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 the 98 *bis* Ruling (...).”

when it is (1) suitable, (2) necessary, and when (3) its degree and scope remain in a reasonable relationship to the envisaged target;<sup>13</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>14</sup>

**CONSIDERING** that, consequently, the Chamber recalls that according to the Appeals Chamber jurisprudence, 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>15</sup>

**CONSIDERING** that the Accused Ćorić has been in detention for almost three years but was granted provisional release during the court recess in the winter of 2007/2008;<sup>16</sup> that the Chamber finds that keeping him in detention does not constitute a disproportionate or excessive measure at this stage of the proceedings,

**CONSIDERING** further that the only new arguments regarding humanitarian considerations in the Request concern the appearance of medical problems requiring that the Accused Ćorić undergo medical tests and receive an urgent intervention, as well as the deteriorating health of the Accused Ćorić's daughter,<sup>17</sup>

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<sup>13</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>14</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>15</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, p. 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 65.1, Decision on Appeal Against Decision Denying Motion for Provisional Release, 17 October 2006, paras. 8 and 9.

<sup>16</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 Ćorić, 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.

<sup>17</sup> Request, para. 12.

**CONSIDERING** that since the Ćorić Defence did not produce a medical certificate in support of its allegations regarding the Accused's state of health,<sup>18</sup> the Chamber is consequently unable to evaluate the gravity of his state of health,

**CONSIDERING** that in any case, the Chamber finds that the medical tests cited in the Request can be carried out within the scope of the Accused Ćorić's detention in the United Nations Detention Unit,

**CONSIDERING** also that since the Ćorić Defence did not produce a medical certificate regarding the deteriorating health of Valentin Ćorić's daughter,<sup>19</sup> the Chamber is unable to evaluate whether this circumstance constitutes a sufficient humanitarian consideration warranting the Accused Ćorić's release,

**CONSIDERING** that in these conditions, the Chamber finds that the Ćorić Defence has not presented compelling humanitarian considerations in accordance with the Appeals Chamber Decision,

**FOR THE FOREGOING REASONS,**

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

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<sup>18</sup> Request, para. 12.

<sup>19</sup> Request, para. 12.

**DENIES** by a majority of the Judges the Accused Čorić's request for provisional release, the Presiding Judge attaching a dissenting opinion and Judge Trechsel attaching a concurring opinion.

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

*/signed/*

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Jean-Claude Antonetti  
Presiding Judge

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

**[Seal of the Tribunal]**