



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 WITH CONFIDENTIAL ANNEX

**DECISION ON SECOND MOTION FOR PROVISIONAL RELEASE OF THE
ACCUSED STOJIĆ**

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 “Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case”, filed confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 27 March 2008 (“Motion”), in which the Stojić Defence requests the provisional release of the Accused Stojić until the beginning of the Defence case, to which a confidential annex is attached (“Confidential Annex to the Motion”),

NOTING the “Corrigendum to Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case with Confidential Annexes A and B”, filed confidentially by the Stojić Defence on 28 March 2008 (“Corrigendum”), in which the Stojić Defence transmits two new documents to the Chamber (“Confidential Annexes 1 and 2 to the Corrigendum”),

NOTING the “Addendum to Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case Filed 27 March 2008 with Confidential Annexes A and B”, filed confidentially by the Stojić Defence on 3 April 2008 (“Addendum”), in which the Stojić Defence informs the Chamber of a recent medical development affecting his family and to which a confidential annex is attached (“Confidential Annex to the Addendum”),

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 Defence Case, Filed 27 March 2008, and (3) Valentin Ćorić’s Request for Provisional Release, filed March 25, 2008”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 4 April 2008 (“Response”), in which the Prosecution objects to the provisional release of the Accused Stojić,

NOTING the “Second Corrigendum to Motion of Bruno Stojić for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case, Filed 27 March 2008, with Confidential Annexes 1 and 2”, filed confidentially by the Stojić Defence on 8 April 2008 (“Second Corrigendum”), in which the Stojić Defence makes a correction to the Motion and to which two confidential annexes are attached (“Annexes 1 and 2 to the Second Corrigendum”),

NOTING the “Decision on the Motion for Provisional Release of the Accused Stojić”, rendered partly confidentially by the Chamber on 19 February 2008 (“Decision of 19 February 2008”), in which the Chamber ordered the provisional release of the Accused Stojić,

NOTING the “Decision on Prosecution’s Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić”, rendered by the Appeals Chamber on 11 March 2008 (“Decision of 11 March 2008”), in which it set aside the Decision of 19 February 2008,

CONSIDERING that in support of the Motion, the Stojić Defence first reiterates the humanitarian arguments raised in the “Motion of Bruno Stojić for Provisional Release on Humanitarian Grounds”, filed confidentially by the Stojić Defence on 30 January 2008 (“Motion of 30 January 2008”), namely that his spouse, brother and parents suffer from ill health and that the presence of the Accused Stojić would be beneficial to them,¹

CONSIDERING that the Stojić Defence further argues that the health of the Accused Stojić’s mother has recently seriously deteriorated as a result of new medical complications, and has attached a medical certificate to that effect,²

CONSIDERING that the Defence also submits that the failing health of the Accused Stojić’s close relatives and his inability to be at their bedside constitute a source of additional stress which affects his mental well-being,³

¹ Motion, paras. 5 and 6.

² Motion, para. 5 and Confidential Annex to the Motion.

³ Motion, paras. 7 and 8.

CONSIDERING that the Defence adds that the stress brought about by the lengthy trial days is a source of both mental and physical suffering for the Accused Stojić,⁴

CONSIDERING that in support of the Motion, the Stojić Defence next states that the argument that the Decision rendered by the Chamber on 20 February 2008 pursuant to Rule 98 *bis* of the Rules (“98 *bis* Decision”) could be a factor increasing the flight risk of the Accused does not apply to the Accused Stojić, since he did not file a Rule 98 *bis* motion,⁵

CONSIDERING that the Stojić Defence thus infers that the situation of the Accused Stojić with regard to which criteria to apply to provisional release after delivery of the 98 *bis* Decision is similar to the situation he was in following confirmation of the Indictment on 4 April 2004,⁶

CONSIDERING that according to the Stojić Defence, the only notable difference between the situation of the Accused soon after confirmation of the Indictment and their situation following the pronouncement of the 98 *bis* Decision lies in the fact that, in the meanwhile, the Chamber has heard the cross-examination of Prosecution witnesses; that by electing not to present a Rule 98 *bis* motion, the Stojić Defence has not made any conclusions as to the effect of this cross-examination, such that it would be unreasonable to attach significant weight to it in the context of a decision for provisional release,⁷

CONSIDERING that the Stojić Defence concludes that the delivery of the 98 *bis* Decision is not sufficient to increase the flight risk of the Accused,⁸

CONSIDERING that the Stojić Defence has provided a fresh letter of guarantee from the Republic of Croatia, recalling that to date the Government of the Republic of Croatia has always respected the obligations imposed by the Chamber in previous decisions on provisional release, such that there is no reason to believe that it would not do the same should the Chamber decide to grant the Motion,⁹

⁴ Motion, para. 8.

⁵ Motions, paras. 9 to 11.

⁶ Motion, para. 11.

⁷ Motion, para. 12.

⁸ Motion, para. 13.

⁹ Motion, para. 14 and Confidential Annex 2 to the Corrigendum.

CONSIDERING finally that the Stojić Defence recalls that the Accused Stojić voluntarily surrendered to the Tribunal on 5 April 2004¹⁰ and that he always respected all of the conditions set by the Chamber on previous occasions of provisional release; that these personal circumstances demonstrate that if the Chamber were to grant the Motion, the Accused Stojić would not attempt to escape, would not pose a danger to victims or witnesses and would return to the United Nations Detention Unit at the time deemed appropriate by the Chamber,¹¹

CONSIDERING that in the Addendum, the Stojić Defence informs the Chamber that his spouse's mother was recently diagnosed with a relapse of a cancerous tumour, which requires immediate hospitalization,¹²

CONSIDERING that the Stojić Defence has attached a medical certificate to that effect,¹³

CONSIDERING that as a result of the old age and failing health of the Accused Stojić's mother-in-law, he fears that she may not survive such an operation,¹⁴

CONSIDERING that the Stojić Defence adds that although the relapse was diagnosed on 18 March 2008, the Accused Stojić was not informed until 2 April 2008,¹⁵

CONSIDERING that consequently the Stojić Defence requests the Chamber to grant the request for the Accused Stojić's provisional release on the basis of the grounds set out in the Motion and the new humanitarian circumstances stated in the Addendum,

CONSIDERING that in the Second Corrigendum, the Stojić Defence states that the new medical documentation, mentioned in paragraph 5 of the Motion, concerns the Accused Stojić's eldest daughter, Ana Stojić, aged 26, and not the Accused Stojić's mother, as erroneously indicated in the Motion,¹⁶

¹⁰ Motion, para. 7.

¹¹ Motion, paras. 15 to 17.

¹² Addendum, paras. 1 and 2.

¹³ Confidential Annex to the Addendum.

¹⁴ Addendum, para. 3.

¹⁵ Addendum, para. 4.

¹⁶ Second Corrigendum, paras. 2 and 3.

CONSIDERING that the Stojić Defence submits that this situation constitutes a new humanitarian circumstance that was never brought to the Chamber's attention in the Accused Stojić's previous motions for provisional release,¹⁷

CONSIDERING that the Stojić Defence has attached Ana Stojić's birth certificate, indicating her identity and age, to the Second Corrigendum,¹⁸

CONSIDERING that in support of the Response, the Prosecution considers that the humanitarian concerns raised by the Accused Stojić are not new and are not sufficient to justify a departure from the Decision of 11 March 2008,¹⁹

CONSIDERING that in the Response, the Prosecution further submits that the 98 *bis* Decision is a circumstance which significantly increases the flight risk of the Accused, since it establishes that the Prosecution has adduced sufficient evidence for a Trial Chamber to enter a finding of guilt beyond a reasonable doubt for all of the Accused,²⁰ even though some Accused did not file motions in accordance with Rule 98 *bis* of the Rules,²¹

CONSIDERING that the Prosecution also submits that the letter of guarantee from the Government of the Republic of Croatia attached to the Motion provides no additional guarantee in relation to the letter attached to the Motion of 30 January 2008,²²

CONSIDERING finally that, should the Chamber grant the Motion, the Prosecution requests the Chamber to stay the execution of its decision pending the outcome of the appeal it intends to file,²³

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",

¹⁷ Second Corrigendum, para. 4.

¹⁸ Second Corrigendum, para. 5 and Confidential Annex 1 to the Second Corrigendum.

¹⁹ Response, para. 20.

²⁰ Response, paras. 22-23.

²¹ Response, para. 24.

²² Response, paras. 25-26.

²³ Response, para. 35.

CONSIDERING that since the Decision of 11 March 2008, 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 for trial, as it has in its previous decisions, but must also take into account the 98 *bis* Decision,²⁴

CONSIDERING that the Chamber recalls that it takes note of the Appeals Chamber's desire to obtain additional guarantees for future appearance to offset the risk of flight, as well as more compelling reasons as regards the humanitarian grounds, in light of the 98 *bis* Decision,²⁵

CONSIDERING that the Appeals Chamber held that the 98 *bis* Decision constituted a significant change in circumstance to warrant a renewed and thorough evaluation of the risk of flight of each of the Co-Accused, including the Accused who did not file motions for acquittal pursuant to Rule 98 *bis* of the Rules,²⁶

CONSIDERING that consequently the Chamber holds, with the Presiding Judge dissenting, that before granting provisional release, it must be satisfied that there are additional guarantees for future appearance to offset the risk of flight and that the Motion provides more compelling humanitarian grounds,

CONSIDERING first that as regards the humanitarian grounds, the Chamber finds that the Motion repeats the circumstances that were already mentioned in the Motion of 30 January 2008, which were taken into account and rejected by the Appeals Chamber in the Decision of 11 March 2008,

CONSIDERING that with respect to the existence of medical complications affecting the Accused Stojić's daughter and mother-in-law, the Chamber first notes that since these circumstances were not raised previously, neither the Chamber nor the Appeals Chamber was aware of them and that as a result, they were not taken into account in the Decision of 19 February 2008 or in the Decision of 11 March 2008,

CONSIDERING that the Chamber notes that the medical certificate dated 21 March 2008 regarding the Accused Stojić's daughter shows that the state of health of Ana

²⁴ See Decision on the Application for Provisional Release of the Accused Pušić, 19 March 2008, p. 5.

²⁵ Decision on the Application for Provisional Release of the Accused Pušić, 19 March 2008.

²⁶ Appeals Chamber Decision, paras. 19 and 20.

Stojić has recently deteriorated and that she is currently undergoing hospital treatment for the recently observed medical complications,²⁷

CONSIDERING that the Chamber further notes that the new medical certificate dated 18 March 2008 regarding the health of the Accused Stojić's mother-in-law establishes that her condition is extremely serious; that the patient, aged 83, has a tumour on her face, which has required 12 previous operations; that there has been a recent relapse of the tumour, located above her right eye; and that this condition requires immediate hospitalization,²⁸

CONSIDERING that the Chamber believes that the extremely fragile state of health of the Accused Stojić's daughter and mother-in-law are factors which argue in favour of provisional release, especially since the presence of the Accused Stojić at his wife's side becomes particularly beneficial in this difficult situation,

CONSIDERING that as regards the guarantees for future appearance, the Chamber first recalls that the Appeals Chamber held, in its Decision of 11 March 2008, that the guarantees put forth by the Chamber in its Decision of 19 February 2008 against the risk of flight were not sufficiently compelling in light of the 98 *bis* Decision,²⁹

CONSIDERING that in its Decision of 19 February 2008, the Chamber ordered in particular that the Accused Stojić remain within the confines of Zagreb in the Republic of Croatia and that there be constant physical surveillance of the Accused Stojić during his stay,

CONSIDERING that Chamber notes that guarantees for future appearance, in addition to 24-hour surveillance, may be provided; that in this regard it ordered the Accused Stojić to check in with the police authorities each day at a set time,³⁰ and that the Croatian authorities are required to submit a situation report every three days,

CONSIDERING that the Chamber deems that the imposition of these measures is sufficient to offset the flight risk of the Accused Stojić,

²⁷ Confidential Annex to the Motion.

²⁸ Confidential Annex to the Addendum.

²⁹ Decision of 11 March 2008, paras. 20 and 21.

³⁰ See in this regard the confidential annex to this decision.

CONSIDERING that in view of the serious humanitarian circumstances and the additional guarantees for future appearance, the Chamber decides, with Judge Prandler dissenting, that it is in a position to order the provisional release of the Accused Stojić,

CONSIDERING moreover that the Chamber is satisfied that while on provisional release, the Accused Stojić will not pose a danger to any victim, witness or other person,

CONSIDERING nonetheless that in the interests of judicial economy, the Chamber deems, with the Presiding Judge dissenting, that it is appropriate to stay the execution of this decision pending the ruling of the Appeals Chamber on the appeal the Prosecution intends to file against this decision,

FOR THESE REASONS,

PURSUANT TO Rule 65 (B) of the Rules,

PARTIALLY GRANTS the Motion, by a majority of the Judges with Judge Prandler dissenting, and schedules the provisional release of the Accused Stojić during the dates and subject to the conditions set out in the confidential annex attached to this decision, **AND**

ORDERS, by a majority of the Judges, with the Presiding Judge appending a partially dissenting opinion, a stay of this decision pending the Appeals Chamber ruling on the appeal the Prosecution intends to file against this decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]