



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: 2 December 2008
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French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 2 December 2008

THE PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON VALENTIN ČORIĆ'S REQUEST FOR PROVISIONAL RELEASE

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Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
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Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION

1. 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") is seized of a request for provisional release by the Accused Valentin Ćorić ("Accused Ćorić") filed confidentially by Counsel for the Accused Ćorić ("Ćorić Defence") on 27 October 2008.

II. PROCEDURAL BACKGROUND

2. On 28 October 2008, the Ćorić Defence file confidentially "Valentin Ćorić's Request for Provisional Release" ("Request"), in which it asks for the Accuse Ćorić to be granted provisional release on humanitarian grounds in order to go to the Republic of Bosnia and Herzegovina or, alternatively, to the Republic of Croatia during the court winter recess 2008-2009.¹

3. On 29 October 2008, the Chamber rendered an oral decision in which it specified the deadline of 14 November 2008² for the Office of the Prosecutor ("Prosecution") to file a response to the Request.

4. On 30 October 2008, the Ministry of Foreign Affairs of the Kingdom of the Netherlands wrote a letter to the Tribunal stating that it did not object to Valentin Ćorić being granted provisional release.

5. On 11 November 2008, the Chamber rendered an oral decision allowing the Prosecution to file a joint consolidated response of 12,000 words to the requests for provisional release by the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Ćorić.³

¹ Request, p. 27.

² Transcript in French ("T(F)"), 29 October 2008, hearing in private session.

³ T(F), 11 November 2008, p. 34462, hearing in private session.

6. On 14 November 2008, the Prosecution filed a confidential joint response "Prosecution Consolidated Response to Prlić, Stojić, Petković, Praljak and Čorić Applications for Provisional Release During the Winter Recess 2008-2009" ("Response"), in which the Prosecution objects, among others, to granting release to the Accused Čorić.⁴

7. On 17 November 2008, the Chamber rendered an oral decision authorising the defence counsels of the Accused Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković and Valentin Čorić to file a reply to the Prosecution Response by 19 November 2008.⁵

8. On 19 November 2008, the Čorić Defence filed confidentially "Valentin Čorić's Reply to Prosecution's Response to his Request for Provisional Release" ("Reply").

III. APPLICABLE LAW

9. Rule 65 (A) of the Rules of Procedure and Evidence ("Rules") stipulates that once detained, an accused may not be released except by an order of a Chamber. In compliance with Rule 65 (B) of the Rules, the Chamber may order a provisional release only after giving the host country and the state to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will pose no danger to any victim, witness or other person.

10. In accordance with the Tribunal established case-law, the decision to grant or deny provisional release pursuant to Rule 65 of the Rules stems from the discretionary power of the Chamber.⁶ In order to determine if the conditions laid out in Rule 65 (B)

⁴ Response, paras. 1, 46-55 and 61.

⁵ F(T), 17 November 2008, pp. 34632 and 34633, hearing in private session.

⁶ *The Prosecution 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 ("*Jovica Stanišić Decision*"), para. 3; *The Prosecutor v. Milutinović et al.*, case no. IT-05-87-AR65.2, "Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess", 14 December 2006 ("*Milutinović Decision*"), para. 3; *The Prosecutor v. Popović et al.*, case no. IT-65-88-AR65.2, "Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release", 30 June 2006, para. 5; *The Prosecutor v. 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

of the Rules have been met, the Chamber must take into consideration all the relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision.⁷ The Chamber must then provide a reasoned opinion for its decision on this matter.⁸ The relevance of the presented material and the weight accorded to it are appraised on a case-by-case basis.⁹ Because it relies first and foremost on the facts in the case, each request for provisional release is examined in the light of the particular circumstances of the accused.¹⁰ The Chamber must examine these circumstances as they are at the time of reaching a decision on the provisional release, but also, as much as can be foreseen, on the circumstances at the time the accused is expected to return to the Tribunal.¹¹

11. In accordance with the recent Appeals Chamber case law, the close of the Prosecution case constitutes a significant enough change in circumstance to warrant renewed and detailed assessment of the risk of flight by the Accused.¹² In these circumstances, and even if the Trial Chamber is convinced that sufficient guarantees have been presented, it must only exercise its discretionary power to grant provisional release if sufficiently compelling humanitarian grounds tip the scales in its favour.¹³ Consequently, provisional release will only be granted "at a late stage of proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian grounds exist to justify the release and, even when provisional release is

31 March 2008", 21 April 2008 ("*Petković Decision*"), para. 5; *The Prosecutor v. 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 ("*Prlić Decision of 25 April 2008*"), para. 7.

⁷ *The Prosecutor v. Mićo Stanišić*, case no. IT-04-79-AR65.1, "Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release", 17 October 2005 ("*Miće Stanišić Decision*"), para. 8; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

⁸ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

⁹ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

¹⁰ *The Prosecutor v. Boškovski and Tarkulovski*, case no. IT-04-82-AR65.1, "Decision on Johan Tarkulovski's Interlocutory Appeal on Provisional Release", 4 October 2005 ("*Tarkulovski Decision*"), para. 7; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

¹¹ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Miće Stanišić Decision*, para. 8.

¹² *The Prosecutor v. Prlić et al.*, case no. IT-04-074-AR65.5, "Decision on Prosecution's Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008 ("*Prlić Decision of 11 March 2008*"), para. 20.

¹³ *Prlić Decision of 11 March 2008*, para. 21; *Prlić Decision of 25 April 2008*, para. 16; *Petković Decision*, para. 17.

found to be justified in light of the nature of the circumstances, the length of the release should nonetheless be proportional to these circumstances."¹⁴

12. Nevertheless, in accordance with the Appeals Chamber jurisprudence, the Chamber is uniquely suited to assess whether the procedural circumstances, such as, for example, the close of the Prosecution case, increase the risk of flight by the Accused while on provisional release.¹⁵

IV. ARGUMENTS OF THE PARTIES

13. In support of its Request, the Čorić Defence maintains that (1) the Accused Čorić complied in every respect with all the conditions set out when the previous provisional releases were granted and that his behaviour was exemplary while on provisional release during the summer recess 2008;¹⁶ (2) the authorities of the Republic of Croatia and the Republic of Bosnia and Herzegovina are prepared to ensure that the Accused Čorić conforms to all conditions imposed by the Chamber if it decides to grant provisional release to the Accused Čorić and recalls that the Croatian Government has honoured its responsibilities in this respect when provisional release was previously granted to the Accused Čorić;¹⁷ (3) the authorities of the Republic of Croatia and the Republic of Bosnia and Herzegovina have provided guarantees that, once released, the Accused Čorić will (a) appear at The Hague on the date specified by the Chamber, and (b) will not intimidate witnesses, victims and any other persons,¹⁸ and (c) are ready to take all measures ordered by the Chamber;¹⁹ (4) the Accused Čorić surrendered to the Tribunal voluntarily and has always behaved respectfully towards the Chamber;²⁰ (5) the Government of the Kingdom of the Netherlands has always consented to the provisional release of the Accused Čorić;²¹ and (6) the risk of flight by the Accused Čorić has not increased following the

¹⁴ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

¹⁵ *Milutinović* Decision, para. 15.

¹⁶ Request, paras. 4, 8, and 26.

¹⁷ Request, paras. 3, 5 and 8, confidential Annexes I and II.

¹⁸ Request, para. 5, confidential Annexes I and II.

¹⁹ Request, paras. 5 and 8, confidential Annexes I and II.

²⁰ Request, paras. 1, 4 and 8.

²¹ Request, para. 8; Letter from the Kingdom of the Netherlands consenting to the provisional release of Valentin Čorić, 30 October 2008.

decision adopted by the Chamber pursuant to Rule 98 *bis* of the Rules and is non-existent, in particular in view of the state of health of the Accused Ćorić's wife and daughter.²² Finally, the Accused Ćorić states that he submits to the conditions and limitations imposed by the Chamber and also proposes others.²³

14. With regard to sufficiently compelling humanitarian grounds which justify granting provisional release to the Accused Ćorić, the Ćorić Defence notes the state of health of the Accused Ćorić's daughter, his wife and his own.²⁴ In this regard, the Ćorić Defence has provided the Chamber with medical certificates dated 18 September 2008, 29 September 2008, 10 October 2008 and 16 October 2008 confirming the psychological problems of the Accused Ćorić's daughter and the psychological and physical health problems of the Accused Ćorić's wife.²⁵ It has also submitted a report from the United Nations Detention Unit, by Dr Paulus Falke, on the state of health of Valentin Ćorić dated 17 October 2008.²⁶

15. The Ćorić Defence argues that due to the exceptional circumstances raised in the Request, the provisional release of the Accused to a familiar environment in the Republic of Bosnia and Herzegovina for part of the period of the provisional release granted to him by the Chamber, in the event the Chamber decides to grant the Accused Ćorić provisional release, would be appropriate in the light of the circumstances.²⁷ Relying on the recommendations of the physicians who examined his daughter and wife and those of Dr Paulus Falke, the Defence Ćorić argues that it would be appropriate to grant the Accused Ćorić provisional release to a familiar environment and would have beneficial effects on the health of his daughter, his wife and his own.²⁸ Moreover, granting provisional release to the Accused Ćorić to the Republic of Bosnia and Herzegovina will also allow him to visit his parents' graves.²⁹ In the alternative, the Ćorić Defence requests that the Chamber grant provisional

²² Request, paras. 8 and 26.

²³ Request, para. 27.

²⁴ Request, paras. 9-26.

²⁵ Request, paras. 10-19 and 26; Medical certificate for the daughter of the Accused Ćorić attached in confidential Annex III to the Request and dated 18 September 2008; Medical reports on the health of the wife of the Accused Ćorić attached in confidential Annex IV to the Request and dated 26 August 2008, 29 September 2008 and 16 October 2008; Medical report on the health of the wife of the Accused Ćorić attached in confidential Annex V to the Request and dated 10 October 2008.

²⁶ Request, paras. 15-19 and 26; Letter by Dr Paulus Falke on the state of health of Valentin Ćorić attached in the confidential Annex VI dated 17 October 2008.

²⁷ Request, paras. 20 and 27.

²⁸ Request, paras. 21-24; confidential Annexes III, IV and V.

release to the Accused Ćorić to the Republic of Croatia during the winter recess 2008-2009.³⁰

16. In its Response, the Prosecution opposes the provisional release of the Accused Ćorić because, *inter alia*, none of the reasons offered by the Accused in support of his request for provisional release constitute sufficiently compelling humanitarian grounds to justify it.³¹ The Prosecution also submits that the Accused Ćorić has not provided a guarantee from the Government of Bosnia and Herzegovina, as required by Rule 65 of the Rules, in support of his Request³² and notes its opposition to the provisional release of an accused to the area where crime with which he is charged in the Amended Indictment of 11 June 2008 ("Indictment") were committed, because of the proximity to the victims and witnesses.³³

17. The Prosecution also notes that the Appeals Chamber decided in its Decision of 28 July 2008 that the claims relating to the negative effects of the length of the proceedings on the Accused's health do not constitute compelling humanitarian grounds to grant the provisional release of an accused.³⁴ The Prosecution claims that the arguments of the Ćorić Defence relating to the mental health of the daughter of the Accused Ćorić and the health of the Accused himself are based on similar grounds to those raised by the Ćorić Defence in the last request for provisional release dated 29 January 2008, which were dismissed by the Appeals Chamber in its decision of 11 March 2008.³⁵

18. The Prosecution claims that the late stage of the proceedings, and the imminent close of the Defence case of the first defence team, indicate a risk of flight of the accused and, also, the alleged contact between two of the co-accused and a witness

²⁹ Request, para. 23.

³⁰ Request, paras. 25 and 27.

³¹ Response, paras. 1 and 3 and 45-55 and 61.

³² Response, paras. 53-54.

³³ Response, paras. 51 and 55.

³⁴ Response, paras. 3 and 50; "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, confidential, para. 16.

³⁵ Response, paras. 47 and 50; "Decision on Prosecution's Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić, 11 March 2008.

during their previous provisional release reveal inadequacies in the surveillance system provided by the Croatian authorities.³⁶

19. The Prosecution maintains, moreover, that the period of provisional release asked for by the Ćorić Defence is excessive.³⁷ Nevertheless, should the Chamber decide to grant the request by the Accused Ćorić, the Prosecution claims that the period of provisional release should be proportional to the minimum period necessary for Accused to settle the humanitarian reasons presented in support of his request for the said provisional release,³⁸ and recalls that provisional release should be linked to strict conditions, similar to those imposed in previous decisions.³⁹ More specifically, the Prosecution seeks that special attention be accorded to 24-hour surveillance by the relevant authorities.⁴⁰ The Prosecution maintains that without the assurance that an infallible surveillance system will be available to implement the terms of the Chamber's order, the Chamber should deny the provisional release of the Accused Ćorić.⁴¹

20. Finally, should the Chamber decide to grant the Request, the Prosecution requests a stay of its the Decision until a decision has been taken on the appeal it intends to file.⁴²

21. In its Reply, the Ćorić Defence holds that the medical certificates submitted in support of its Request show a deterioration in the health of his wife, his daughter and his own, and that they demonstrate compelling humanitarian grounds justifying the provisional release of the Accused Ćorić.⁴³

22. The Ćorić Defence also maintains that the guarantees provided by the Ministry of Internal Affairs of a Federation of Bosnia and Herzegovina canton are in accordance with the laws in force in the Republic of Bosnia and Herzegovina and that the

³⁶ Response, paras. 4, 5 and 17-23.

³⁷ Response, para. 6.

³⁸ Response, paras. 6, 56 and 57.

³⁹ Response, paras. 58 and 59.

⁴⁰ Response, para. 59.

⁴¹ Response, paras. 58 and 59.

⁴² Response, para. 60.

⁴³ Reply, paras. 1 and 2.

Chamber has accepted in the past a letter of guarantee from the same government organ in support of a request for provisional release.⁴⁴

23. Finally, the Ćorić Defence recalls that the guarantees provided by an accused are subject to consideration on a case-by-case basis and that the alleged meetings in Zagreb between two of Valentin Ćorić's co-accused and a witness should not have an effect on the reliability of guarantees provided by the Croatian Government in support of the Request of the Accused Ćorić and/or on the risk of flight of the latter.⁴⁵

V. DISCUSSION

24. Firstly, the Chamber finds that, pursuant to Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber in its letter of 30 October 2008 that it did not have any objections to the procedure for a possible provisional release.⁴⁶

25. In a letter dated 15 October 2008, the Government of the Republic of Croatia supplied guarantees that the Accused Ćorić, should he be granted provisional release by the Chamber, will not influence or place in danger during his provisional release victims, witnesses or other persons and will return to The Hague on the date ordered by the Chamber.⁴⁷

26. In a letter dated 27 October 2008, the Ministry of Internal Affairs of a Federation of Bosnia and Herzegovina canton guaranteed that the Accused Ćorić will be under surveillance, should the request for release be granted by the Chamber, that he will return to the Croatian border on the date ordered by the Chamber and that all other conditions imposed by the Chamber will be respected.⁴⁸

27. The Chamber notes the requests by the Accused Ćorić and the letters of guarantee supplied by the Ćorić Defence in support of the Request. Firstly, the Chamber will consider the request for provisional release by the Accused Ćorić to the Republic of

⁴⁴ Reply, paras. 3-7.

⁴⁵ Reply, para. 8-12.

⁴⁶ Letter from the Ministry of Foreign Affairs of the Netherlands dated 30 October 2008.

⁴⁷ Letter from the Ministry of Justice of the Republic of Croatia attached in confidential Annex I to the Request, and dated 15 October 2008.

⁴⁸ Letter from the Ministry of Internal Affairs of a Federation of Bosnia and Herzegovina canton attached in confidential Annex II to the Request, dated 27 October 2008.

Croatia. Secondly, the Chamber will consider the request by the Accused Ćorić to be granted provisional release during the court winter recess 2008-2009 to the Republic of Bosnia and Herzegovina.

28. The Chamber finds that the Accused Ćorić has respected all the conditions and guarantees imposed when he was previously granted provisional release pursuant to the orders and decisions of the Trial Chambers rendered on 30 July 2004,⁴⁹ 30 November 2004,⁵⁰ 9 March 2005,⁵¹ 17 May 2005,⁵² 15 July 2005,⁵³ 7 October 2005,⁵⁴ 13 June 2006,⁵⁵ 26 June 2006,⁵⁶ 8 December 2006,⁵⁷ 11 June 2007,⁵⁸ 29 November 2007,⁵⁹ 17 July 2008.⁶⁰ Contrary to the allegations of the Prosecution,⁶¹ the Chamber holds that the allegations of a violation of the terms of the orders for provisional release by two of the co-accused of Valentin Ćorić, should not have an effect on the risk of flight of the Accused Ćorić and do not bring into question, in this instance, the guarantees supplied by the Government of the Republic of Croatia. Moreover, even if the close of the Prosecution case constitutes, according to the Appeals Chamber, an important change in the circumstances which requires a new and detailed assessment of the risk of flight of an accused,⁶² the Chamber holds that the guarantees to reappear in order to offset the risk of flight, such as those imposed on the Accused Ćorić, neutralise all possible risk of flight. Regarding his respectful conduct during his earlier provisional releases, the Chamber is assured that the Accused Ćorić, if released, will appear for the continuation of his trial.

⁴⁹ *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Order on Provisional Release of Valentin Ćorić", 30 July 2004.

⁵⁰ *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Order on Valentin Ćorić Application for Variation of Conditions of Provisional Release", 30 November 2004.

⁵¹ *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Decision on Valentin Ćorić's Second Application for Variation of Conditions of Provisional Release", 9 March 2005.

⁵² *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Decision on Valentin Ćorić's Urgent Motion for Variations of Conditions of Provisional Release", 17 May 2005.

⁵³ *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Decision of Valentin Ćorić's Fourth Revised Motion for Variation of Conditions of Provisional Release", 15 July 2005.

⁵⁴ *The Prosecutor v. Prlić et al.*, case no. IT-04-74-PT, "Decision of Valentin Ćorić's Fifth Application for Variation of Conditions of Provisional Release", 7 October 2005.

⁵⁵ "Order on the Urgent Motion for Provisional Release of Valentin Ćorić", 13 June 2006.

⁵⁶ "Decision on the Motion for Provisional Release of the Accused Ćorić", 26 June 2006.

⁵⁷ "Decision on the Motion for Provisional Release of the Accused Ćorić", 8 December 2006.

⁵⁸ "Decision on the Motion for Provisional Release of the Accused Ćorić", 11 June 2007.

⁵⁹ "Decision on the Motion for Provisional Release of the Accused Ćorić", 29 November 2007.

⁶⁰ "Decision on the Motion for Provisional Release of the Accused Ćorić", 17 July 2008.

⁶¹ Response, paras. 17 and 20-23.

⁶² *Prlić* Decision of 11 March 2008, para. 20.

29. For these same reasons, and should the Accused Čorić be granted provisional release to the Republic of Croatia, the Chamber is of the opinion that the Accused Čorić will not pose a danger to victims, witnesses and other persons.⁶³

31. Nevertheless, according to the Appeals Chamber, regarding the stage of the proceedings and the close of the Prosecution case, the Chamber has the duty to determine, in addition, if the humanitarian grounds put forward by the Čorić Defence are sufficiently compelling to justify the provisional release of the Accused Čorić.⁶⁴

32. The Čorić Defence argues that the criteria established by the Appeals Chamber in the matter of provisional release in its decision of 11 July 2008 are questionable with regard to the standards applied in matters of human rights, on the principle of presumed innocence and the amendment to Rule 65 of the Rules.⁶⁵ The Čorić Defence alleges, in particular, that in view of the strict nature of the condition imposed by the Appeals Chamber and the grounds put forward above, the adjective "compelling" should be interpreted more widely by the Chamber.⁶⁶ The Chamber however bows before the position of the Appeals Chamber and considers it necessary to examine the humanitarian grounds raised by the Čorić Defence in order to assess whether they are sufficiently compelling to justify the provisional release of the Accused Čorić.

33. The Prosecution argues that the submissions of the Čorić Defence, and those relating to the psychological condition of his daughter in particular, are based on similar grounds to those raised by the Čorić Defence in the previous request dated 29 January 2008 denied by the Appeals Chamber in its Decision of 11 March 2008 and in the Request for Provisional Release dated 25 March 2008, denied by the Trial Chamber in its decision rendered on 8 April 2008.⁶⁷ The Prosecution also argues that the allegations relating to the negative effect of prolonged detention on the health of the Accused Čorić resemble the arguments rejected by the Appeals Chamber in its decision of 28 July 2008.⁶⁸ In this respect, the Chamber recalls that it has the duty to

⁶³ This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

⁶⁴ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁶⁵ Response, para. 9.

⁶⁶ Response, para. 9.

⁶⁷ Response, paras. 47 and 50; "Decision on Prosecution's Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić", 11 March 2008; "Decision on the Request for Provisional Release of the Accused Čorić", 8 April 2008.

⁶⁸ Reply, para. 50; "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, confidential.

consider each request for provisional release in the light of the particular circumstances of the Accused,⁶⁹ and that such an assessment is made at the time when it reaches its decision on provisional release, but it must also envisage as far as possible how the circumstances will have changed when the accused is to reappear before the Tribunal.⁷⁰ Consequently, as long as the Chamber considers that a ground raised by an accused – in light of his current situation – is sufficiently compelling, it may justify the provisional release of an accused.

34. Regarding the medical certificates submitted by the Ćorić Defence, the Chamber finds the state of health of his daughter of the Accused Ćorić very serious and the psychological and physical health of the wife of the Accused Ćorić precarious. The Chamber proceeded with an in-depth assessment, given in the confidential annex attached to this decision, of the documents submitted by the Accused Ćorić in support of his Request and holds that the presence of the Accused Ćorić at the side of his daughter and of his wife for a short period could assist them in overcoming their hardships. The Chamber characterises the humanitarian grounds raised by the Ćorić Defence as sufficiently compelling to justify the provisional release of the Accused Ćorić.

35. The Chamber recalls that in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, it must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a decision.⁷¹ In this instance, the Chamber must also consider that the Accused Ćorić surrendered voluntarily to the Tribunal and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case. Furthermore, the Chamber will suspend hearings during the winter court recess. Consequently, during that period, there will be no court activity which will require the presence of the Accused Ćorić.

36. The Chamber also recalls that in keeping with the case-law of the Appeals Chamber, the length of provisional release at this late stage of the proceedings, and in

⁶⁹ *Tarkulovski* Decision, para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

⁷⁰ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

particular after the close of the Prosecution case, must be proportional to the circumstances and to the sufficiently compelling humanitarian grounds that justify the provisional release.⁷² Moreover, the Chamber recalls that the factors that it has to take into account affect not only the decision to grant or deny provisional release, but also, the length of the stay, if appropriate. The Chamber must also find, *inter alia*, the proper balance between the nature and the weight of the circumstances justifying provisional release for humanitarian reasons and its duration.⁷³

37. In this case, the Accused Ćorić seeks provisional release for an unspecified period of time during the court winter recess 2008-2009.⁷⁴ The Chamber, for its part, finds it necessary to limit the duration of provisional release to a period not exceeding the time necessary for the Accused Ćorić to visit his ill family members and to recuperate, but which also includes the time of the round trip journey. Consequently, and owing to the similarity humanitarian grounds cited here and those cited by the Accused in support of his request for provisional release during the court summer recess 2008, the Chamber finds that provisional release not exceeding 14 days is proportionate to the gravity of the illness of the wife and daughter of the Accused Ćorić and to the need to allow the Accused Ćorić to improve his physical and psychological health in a short stay with those near and dear to him.

38. With regard to the request by the Accused Ćorić to spend part of his provisional release in the Republic of Bosnia and Herzegovina, the Chamber finds that the Ćorić Defence has not submitted in support of his Request the necessary guarantees pursuant to Rule 65 (B), that is, approval from the country to which the Accused wishes to be released. Indeed, the Chamber recalls that while the Federation of Bosnia and Herzegovina constitutes one State in the sense of Rule 2 of the Rules, a letter of guarantee from a governmental body of a canton of the Federation would not constitute a sufficient guarantee pursuant to Rule 65 (B) of the Rules.⁷⁵ Moreover, the situation in the present case is not comparable to the situation faced by the Chamber at the time of death of the Accused Ćorić's father in June 2006. At the time, the

⁷¹ *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

⁷² *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁷³ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

⁷⁴ Request, para. 27.

⁷⁵ Letter from the Ministry of Internal Affairs of a canton of the Federation of Bosnia and Herzegovina attached in confidential Annex II to the Request and dated 27 October 2008.

Chamber accepted a similar letter of guarantee, exceptionally, because of the urgent nature of the request presented to the Chamber.⁷⁶

39. Moreover, the Chamber finds that any potential provisional release of the Accused Ćorić to the Republic of Bosnia and Herzegovina, in a zone where crimes were committed as charged in the Indictment, could potentially have negative psychological consequences on the victims and/or witnesses who may find themselves in the vicinity of this village.

VI. CONCLUSION

39. For these reasons, the Chamber is convinced that the Accused Ćorić offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding 14 days (including travel) is proportionate to the gravity of the illness of his daughter and wife and to the need to safeguard the health of the Accused himself. Consequently, the Chamber decides to grant provisional release to the Accused Ćorić.

40. In view of the circumstance of the case and the stage of the proceedings, the Chamber decides to impose upon the Accused Ćorić the following guarantees: that the Accused Ćorić remain within the confines set forth by the Chamber⁷⁷ and report daily to the police authorities. The Chamber also decides to order the Croatian authorities to carry out 24-hour surveillance of the Accused Ćorić during his stay and to provide a situation report every three days.

41. As such, the Accused Ćorić will be released for the dates and according to the conditions set forth in the confidential Annex attached to the present Decision.

42. Nonetheless, the Chamber decides to stay execution of its decision to release the Accused Ćorić until a ruling has been made on the appeal the Prosecution intends to lodge.⁷⁸

VI. DISPOSITION

⁷⁶ "Order on the Urgent Motion for Provisional Release of Valentin Ćorić", 13 June 2006.

⁷⁷ See in this regard the confidential Annex attached to this Decision.

⁷⁸ Response, para. 60.

42. FOR THE FOREGOING REASONS, the Chamber,

PURSUANT TO Rules 65 (B) et 65 (E) of the Rules,

PARTIALLY GRANTS the Request,

ORDERS the provisional release of the Accused Ćorić during the dates and under the conditions set out in the confidential Annex attached to the decision

AND,

ORDERS to stay execution of the present Decision until the Appeal Chamber has ruled on the appeal the Prosecution intends to lodge.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this second day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]