



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: 17 June 2009  
Original: ENGLISH  
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 John Hocking

**Decision of:** 17 June 2009

**THE PROSECUTOR**

v.

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

***PUBLIC WITH CONFIDENTIAL ANNEX***

**DECISION ON BRUNO STOJIĆ'S MOTION FOR PROVISIONAL RELEASE**

**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 Ćorić  
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 motion for provisional release from the Accused Bruno Stojić (“Accused Stojić”), with six confidential annexes (“Confidential Annexes A to G”), filed confidentially by Counsel for the Accused Stojić (“Stojić Defence”) on 15 May 2009.

## II. PROCEDURAL BACKGROUND

2. On 15 May 2009, the Stojić Defence confidentially filed the “Motion of Bruno Stojić for Provisional Release on Humanitarian Grounds during Summer Judicial Recess” (“Motion”), in which it requests, on humanitarian grounds, the provisional release of the Accused Stojić to Komarna, Republic of Croatia, between 27 July and 14 August 2009, for the maximum allowable time, to be determined by the Chamber,<sup>1</sup>

3. On 19 May 2009, the Ministry of Foreign Affairs of the Netherlands wrote a letter to the Tribunal indicating that it did not object to the provisional release of the Accused Stojić.<sup>2</sup>

4. On 27 May 2009, the Chamber issued an oral ruling setting a time limit of 5 June 2009 for the Office of the Prosecutor (“Prosecution”) to reply to the Motion,<sup>3</sup>

5. On 5 June 2009, the Prosecution confidentially filed the “Prosecution Consolidated Response to the Stojić, Petković and Pušić Applications for Provisional Release During the 2009 Summer Recess” (“Response”), in which it objects, *inter alia*, to the provisional release of the Accused Stojić and requests that the Chamber order a stay of this Decision, in the event that the Chamber orders the provisional release of Bruno

---

<sup>1</sup> Motion, para. 1.

<sup>2</sup> Letter of consent to the provisional release of Bruno Stojić from the Ministry of Foreign Affairs of the Kingdom of the Netherlands, dated 19 May 2009.

<sup>3</sup> Transcript in French, (“T(F)”) 27 May 2009, p. 40819, private session.

Stojić and until the Appeals Chamber has ruled on the appeal the Prosecution intends to lodge against this Decision.<sup>4</sup>

### III. APPLICABLE LAW

6. 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.

7. In accordance with 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.<sup>5</sup> In order to determine if the conditions laid out in Rule 65 (B) 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.<sup>6</sup> The Chamber must then provide a reasoned opinion for its decision on this matter.<sup>7</sup> The relevance of the presented material and the weight to be accorded to it are appraised on a case-by-case basis.<sup>8</sup> Because it relies

---

<sup>4</sup> Response, see in particular paras 44 and 45.

<sup>5</sup> *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 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.

<sup>6</sup> *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 ("*Mićo Stanišić* Decision"), para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

<sup>7</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mićo Stanišić* Decision, para. 8.

<sup>8</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

first and foremost on the facts in the case, each request for provisional release, as the Appeals Chamber recalls notably in its Decision of 5 June 2009, is examined in the light of the particular circumstances of the accused.<sup>9</sup> 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.<sup>10</sup>

8. In accordance with recent Appeals Chamber case-law, the close of the Prosecution case constitutes a significant enough change in circumstance to warrant a renewed and detailed assessment of the risk of flight by the Accused.<sup>11</sup> 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.<sup>12</sup> 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 found to be justified in light of the nature of the circumstances, the length of the release should nonetheless be proportional to these circumstances."<sup>13</sup>

9. Nevertheless, in accordance with 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.<sup>14</sup>

---

<sup>9</sup> *The Prosecutor v. Boškovski and Tarčulovski* Case No. IT-04-82-AR65.1, "Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release", 4 October 2005 ("*Tarčulovski* 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. *The Prosecutor v. Prlić et al.*, Case No. IT-04-074-AR65.14, Decision on "Jadranko Prlić's Appeal Against the *Décision Relative a la Demande de Mise en Liberté Provisoire de l'Accusé Prlić*, of 9 April 2009", 5 June 2009, para. 13 ("*Prlić* Decision of 5 June 2009").

<sup>10</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10, *Mičo Stanišić* Decision, para. 8.

<sup>11</sup> *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.

<sup>12</sup> *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

<sup>13</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>14</sup> *Milutinović* Decision, para. 15.

#### IV. ARGUMENTS OF THE PARTIES

10. In support of its Motion, the Stojić Defence maintains that (1) the Accused Stojić has always complied with all the conditions set out when the previous provisional releases were granted,<sup>15</sup> (2) that the authorities of the Republic of Croatia have, once again, undertaken to ensure that the Accused Stojić conforms to all conditions imposed by the Chamber if it decides to grant provisional release to the Accused and that the Government of the Republic of Croatia honoured its commitments in this regard when the Accused Stojić was previously granted provisional release;<sup>16</sup> (3) that the Accused Stojić surrendered to the Tribunal voluntarily.<sup>17</sup> Lastly, the Accused Stojić undertakes to comply with the conditions and limitations imposed by the Chamber, and adds that he agrees to be placed under home confinement in the event that the Chamber were to grant him a lengthier period of provisional release than previously.<sup>18</sup>

11. With regard to the humanitarian grounds which it deems sufficiently compelling to justify the provisional release of the Accused Stojić, the Stojić Defence raises the state of health of the brother, wife, mother-in-law and sister-in-law of the Accused Stojić.<sup>19</sup> It also contends that the parents of the Accused Stojić are not able to travel to The Hague due to serious physical and psychological problems.<sup>20</sup> In this regard, the Stojić Defence has transmitted, to the Chamber, medical certificates dated 18 April 2009, 28 April 2009, 29 April 2009, 8 May 2009 and 14 May 2009 indicating the physical problems of the wife, mother-in-law, father, sister-in-law and brother of the Accused Stojić.<sup>21</sup> The Stojić Defence further contends that the humanitarian grounds

---

<sup>15</sup> Motion, para.18.

<sup>16</sup> Motion, para. 15; Confidential Annex F.

<sup>17</sup> Motion, para. 16.

<sup>18</sup> Motion, para. 18.

<sup>19</sup> Motion, paras 5 to 14.

<sup>20</sup> Motion, para. 9.

<sup>21</sup> Motion, paras 5 to 14. Medical certificate of the wife of the Accused Stojić, attached in Confidential Annex A to the Motion, dated 18 April 2008; Medical certificate of the mother-in-law of the Accused Stojić, attached in Confidential Annex D to the Motion, dated 28 April 2009; Medical certificate of the father of the Accused Stojić, attached in Confidential Annex B to the Motion, dated 29 April 2009; Medical certificate of the sister-in-law of the Accused Stojić, attached in Confidential Annex E to the

raised in previous requests for the provisional release of the Accused Stojić are still valid.<sup>22</sup>

12. The Stojić Defence submits that, on account of the exceptional circumstances raised in its Motion, the provisional release of the Accused Stojić to the Republic of Croatia during the 2009 summer judicial recess would have, as was the case for previous provisional releases he has benefited from, positive implications for the physical and emotional health of his wife.<sup>23</sup> The Stojić Defence further submits that the provisional release of the Accused Stojić to the Republic of Croatia during the 2009 summer judicial recess would allow him to spend time with his three children.<sup>24</sup> Lastly, the Stojić Defence contends that the state of health of several family members of the Accused Stojić is cause for concern as it has an effect on his wellbeing, both physical and psychological, and that it is in the interest of justice for him to be able to withstand the stress generated by a long and exhausting trial.<sup>25</sup> In this regard, the Stojić Defence notes that a provisional release to the Republic of Croatia for the period of the 2009 summer judicial recess would allow him to help his family members to overcome their difficulties, thereby alleviating his own anxiety.<sup>26</sup>

13. In its Response, the Prosecution objects to the provisional release of the Accused Stojić on the grounds, *inter alia*, that the existence of a judicial recess cannot be a basis to justify the provisional release of the Accused Stojić;<sup>27</sup> that the risk of flight of the said Accused is too considerable at this stage of the proceedings, even if the Stojić Defence has nearly completed the presentation of its case, and that the surveillance of the Croatian authorities, whose aim is to prevent and reduce the risk of flight, proved inadequate, and that they omitted to transmit to the Chamber reports attesting to the meetings between witness Tomić and the Accused Prlić and Pušić during previous provisional releases;<sup>28</sup> lastly, that neither the considerations advanced by the Accused Stojić, nor the documents provided in support of the Motion, constitute sufficiently

---

Motion, dated 8 May 2009; Medical certificate of the brother of the Accused Stojić, attached in Confidential Annex C to the Motion, dated 14 May 2009.

<sup>22</sup> Motion, para. 5.

<sup>23</sup> Motion, para. 7.

<sup>24</sup> Motion, para. 8.

<sup>25</sup> Motion, para. 12.

<sup>26</sup> Motion, para. 12.

<sup>27</sup> Motion, paras 2 and 11 to 13.

<sup>28</sup> Response, paras 3 and 14 to 19.

compelling humanitarian grounds to justify the Motion.<sup>29</sup> In this regard, the Prosecution notes that no document has been provided to indicate the impossibility for certain family members of the Accused Stojić - notably his children, his brother, his sister-in-law and his mother-in-law – to travel to The Hague in order to visit him.<sup>30</sup> The Prosecution further notes that the Accused Stojić specifically confirmed that the state of health of his wife did enable her to travel to The Hague to visit the Accused Stojić.<sup>31</sup> Furthermore, the Prosecution notes that the negative implications for the mental state of health of the Accused Stojić, on account of the precarious state of health of his family members, have not been substantiated.<sup>32</sup> If these were confirmed, the Prosecution submits that the Accused Stojić could undergo medical and psychological treatment within the territory of the Kingdom of the Netherlands.<sup>33</sup>

14. The Prosecution contends, however, that were the Chamber to grant the Motion, the duration of the provisional release of the Accused Stojić should be proportional and limited to the minimum period required by the compelling circumstances claimed by the said Accused, and that his provisional release should be subject to strict conditions which are similar or stricter than those imposed during his previous provisional release, and that they should apply within the context of a home confinement.<sup>34</sup>

15. Finally, were the Chamber to grant the Motion, the Prosecution requests that the Chamber stay the enforcement of this decision until the appeal it intends to lodge has been ruled upon.<sup>35</sup>

#### IV. DISCUSSION

16. The Chamber notes, *in limine*, that in accordance with Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the

---

<sup>29</sup> Response, paras 3 and 20 to 22.

<sup>30</sup> Response, para. 25.

<sup>31</sup> Response, para. 25.

<sup>32</sup> Response, paras 26 to 28.

<sup>33</sup> Response, para. 26.

<sup>34</sup> Response, paras 4 and 37 to 43.

<sup>35</sup> Response, para. 44.

Chamber, in its letter dated 19 May 2009, that it was not opposed to the procedure for a possible provisional release.<sup>36</sup>

17. In its letter of 21 April 2009, the Government of the Republic of Croatia supplied guarantees that the Accused Stojić, 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.<sup>37</sup>

18. The Chamber also notes the indication from the Government of the Republic of Croatia, in its letter of 21 April 2009, that the simultaneous departure and return of the Accused on provisional release would be more efficient from an economic and security standpoint.<sup>38</sup> The Chamber takes note of the desire expressed by the Republic of Croatia, and, despite its wish to preserve effective co-operation between the Tribunal and the Government of the Republic of Croatia, finds that constraints associated with security and the proper conduct of the trial require that the departures and returns of those granted provisional release by the Chamber take place in several phases.

19. The Chamber further notes that the Accused Stojić 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,<sup>39</sup> 15 July 2005,<sup>40</sup> 26 June 2006,<sup>41</sup> 8 December 2006,<sup>42</sup> 26 June 2006,<sup>43</sup> 8 December 2006,<sup>44</sup> 11 June 2007,<sup>45</sup> 29 November 2007,<sup>46</sup> 29 April 2008,<sup>47</sup> 17 July 2008,<sup>48</sup> and 2 December

<sup>36</sup> Letter of 19 May 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

<sup>37</sup> Letter from the Ministry of Justice of the Republic of Croatia, attached in Confidential Annex F

<sup>38</sup> Letter of 21 April 2009 from the Ministry of Justice of the Republic of Croatia, attached in Confidential Annex F.

<sup>39</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Provisional Release of Bruno Stojić", 30 July 2004.

<sup>40</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Bruno Stojić's Motion for Variation of Conditions of Provisional Release", 15 July 2005.

<sup>41</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 26 June 2006.

<sup>42</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 8 December 2006.

<sup>43</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 26 June 2006, confidential.

<sup>44</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 8 December 2006, partially confidential.

<sup>45</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 11 June 2007, with Confidential Annex.

<sup>46</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 29 November 2007, with Confidential Annex.

<sup>47</sup> Further Decision to the Decision on Provisional Release of the Accused Stojić, 29 April 2008.



2008.<sup>49</sup> Contrary to the Prosecution's submissions,<sup>50</sup> the Chamber notes that the allegations of violation of the terms of the orders on provisional release by two of Bruno Stojić's co-accused have no bearing on the risk of flight by the Accused Stojić, and, in this case, do not affect the guarantees provided by the Government of the Republic of Croatia. Furthermore, even if, according to the Appeals Chamber, the closing of the Prosecution case constitutes an important change in the circumstances requiring a new and detailed assessment of the risk of flight of an accused,<sup>51</sup> and even if the Stojić Defence has nearly finished the presentation of its case, the Chamber holds that the guarantees to reappear in order to offset the risk of flight, such as those that might be imposed on the Accused Stojić, neutralise all possible risk of flight. Regarding his respectful conduct during his earlier provisional releases, the Chamber is assured that the Accused Stojić, if released, will appear for the continuation of his trial.

20. For these same reasons, and should the Accused Stojić be granted provisional release to the Republic of Croatia, the Chamber is of the opinion that the Accused Stojić will not pose a danger to victims, witnesses and other persons.<sup>52</sup>

21. Nevertheless, according to the Appeals Chamber, regarding the advanced 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 Stojić Defence are sufficiently compelling to justify the provisional release of the Accused Stojić.<sup>53</sup>

22. The Prosecution contends that the submissions of the defence teams, notably that of the Accused Stojić, do not constitute compelling humanitarian grounds under Tribunal jurisprudence.<sup>54</sup> In particular, the Prosecution notes that the allegations of the Stojić Defence regarding the negative effect of the medical situation of the Accused Stojić's family members on the said Accused and the impossibility for his wife, brother, mother-in-law, sister-in-law and children to come to The Hague to visit him,

---

<sup>48</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 17 July 2008, with Confidential Annex.

<sup>49</sup> "Decision on Motion for Provisional Release of the Accused Stojić", 2 December 2008, with Confidential Annex.

<sup>50</sup> Response, para. 18.

<sup>51</sup> *Prlić* Decision of 11 March 2008, para. 20.

<sup>52</sup> This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

<sup>53</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>54</sup> Response, para. 20.

have not been substantiated.<sup>55</sup> In this respect, the Chamber recalls that it has the duty to consider each request for provisional release in the light of the particular circumstances of the Accused,<sup>56</sup> 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.<sup>57</sup> 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.

23. From the medical certificates presented by the Stojić Defence, the Chamber notes the psychological ailments that the wife of the Accused Stojić is experiencing, in addition to the precarious physical state of health of several of his family members. The Chamber undertook an in-depth assessment, as detailed in the Confidential Annex attached to this Decision, of the documents submitted by the Accused Stojić in support of his Motion, and holds that the presence of the Accused Stojić during a short period could help his wife and other family members to overcome their difficulties, whilst alleviating his own anxiety. The Chamber therefore characterises the humanitarian grounds raised by the Stojić Defence as sufficiently compelling to justify the provisional release of the Accused Stojić.

24. 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, in light of the current particular circumstances of the accused.<sup>58</sup> In this instance, the Chamber must also consider that the Accused Stojić surrendered voluntarily to the Tribunal and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case. Moreover, the Chamber will suspend the hearings during the 2009 summer judicial recess. As a result, there

---

<sup>55</sup> Response, paras 25 and 26.

<sup>56</sup> *Tarčulovski* 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.

<sup>57</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

<sup>58</sup> *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; Decision on Jadranko Prlić Appeal Against the *Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Prlić*, 9 April 2009, 5 June 2009 (“Decision of 5 June 2009”), para. 13.

will be no judicial activity requiring the presence of the Accused Stojić during this period.

25. 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 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.<sup>59</sup> 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.<sup>60</sup>

26. In the present case, the Accused Stojić is requesting provisional release for an unspecified period between 27 July and 14 August 2009, during the 2009 summer judicial recess.<sup>61</sup> The Chamber deems it necessary to limit the duration of the provisional release to a period of time not exceeding that required for the Accused Stojić to visit his ailing family members, which would also include the time of the round trip journey. The Chamber therefore deems that a provisional release not exceeding twelve days is proportionate to the gravity of the state of health of the Accused Stojić.

## V. CONCLUSION

27. For these reasons, the Chamber is convinced that the Accused Stojić offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding twelve days (including travel) is proportionate to the gravity of the state of health of the wife and several family members of the Accused Stojić. Consequently, in exercising its discretionary power, the Chamber decides to grant provisional release to the Accused Stojić.

28. In view of the circumstances of the case and advanced stage of the proceedings, the Chamber deems it necessary for the provisional release of the Accused Stojić to

---

<sup>59</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>60</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

<sup>61</sup> Motion, para. 1.

take place under home confinement.<sup>62</sup> The Chamber decides that, in this context, the Croatian authorities shall maintain around-the-clock surveillance of the Accused Stojić during his stay, and submit a situation report every three days.

29. As such, the Accused Stojić will be released during the period and according to the conditions set forth in the Confidential Annex attached to the present Decision.

30. Nevertheless, the Chamber decides to stay the enforcement of the Decision to release the Accused Stojić until a ruling has been made on the appeal the Prosecution intends to lodge.<sup>63</sup>

## **VI. DISPOSITION**

**FOR THE FOREGOING REASONS**, the Chamber,

**PURSUANT TO** Rules 65 (B) and 65 (E) of the Rules,

**PARTIALLY GRANTS** the Motion,

**ORDERS** the provisional release of the Accused Stojić during the period and according to the conditions set forth in the Confidential Annex attached to the present Decision,

**AND**,

**ORDERS** the stay of this Decision until the Appeals Chamber has ruled on the appeal the Prosecution intends to lodge against this Decision.

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

---

<sup>62</sup> See in this regard the Confidential Annex attached to this Decision.

<sup>63</sup> Response, paras 44 and 45.

/signed/

---

Jean-Claude Antonetti  
Presiding Judge

Done this seventeenth of June 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**