

IT-06-90-T
D37871-D37862
17 March 2011

37871
SMS

UNITED
NATIONS



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-06-90-T
Date: 17 March 2011
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza
Registrar: Mr John Hocking
Order of: 17 March 2011

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

ORDER ISSUING A PUBLIC REDACTED VERSION OF THE CONFIDENTIAL
“DECISION ON IVAN ČERMAK’S MOTION FOR PROVISIONAL RELEASE
PURSUANT TO RULES 54 AND 65” OF 10 FEBRUARY 2011

Office of the Prosecutor

Mr Alan Tieger

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

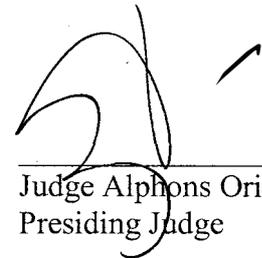
TRIAL CHAMBER I of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

RECALLING the Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65 ("Decision"), issued confidentially on 10 February 2011;

CONSIDERING that some of the information contained in the Decision is to remain confidential;

HEREBY ISSUES a public redacted version of the Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this 17th day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]



**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-06-90-T
Date: 10 February 2011
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 10 February 2011

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC REDACTED VERSION

**DECISION ON IVAN ČERMAK'S MOTION FOR PROVISIONAL RELEASE
PURSUANT TO RULES 54 AND 65**

Office of the Prosecutor

Mr Alan Tieger

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

PROCEDURAL HISTORY

1. Čermak has been granted provisional release on various occasions since 2 December 2004.¹ Most recently, on 10 December 2010 the Chamber granted Čermak provisional release holding that the requirements of Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) had been met and that the need to ensure [REDACTED] constituted a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release (“December 2010 Decision”).² On 10 February 2011, the Čermak Defence filed a new motion, requesting that Čermak be provisionally released from 12 February 2011 until 25 February 2011 (“Motion”).³ The Čermak Defence also requested that the Chamber, pursuant to Rule 126 *bis* of the Rules, shorten the time limits for responses and deal with the motion urgently.⁴ On the same day, the Chamber informally contacted the Prosecution and shortened the time limit for responding to the Motion to 2 p.m. that day. On the same date, the Čermak Defence filed a letter from the Government of the Republic of Croatia (“Croatia”) dated 10 February 2011, providing guarantees with respect to the requested provisional release.⁵ On 10 February 2011, the Prosecution responded to the Motion, indicating that it did not oppose the requested provisional release (“Response”).⁶

SUBMISSIONS OF THE PARTIES

2. The Čermak Defence requests that Čermak be granted provisional release from 12 to 25 February 2011 in order to attend his father-in-law’s funeral, which will be held in Zagreb at 3:50 p.m. on 14 February 2011 [REDACTED].⁷ The Čermak Defence submits, in support of the Motion, that Čermak surrendered to the Tribunal voluntarily, co-operated with the Prosecution prior to trial, and that his conduct during trial has been proper and co-operative.⁸ Further, the Čermak Defence notes that the Chamber has been satisfied in the past that Čermak does not pose a flight risk and, if granted provisional release, will not pose a danger

¹ For a detailed procedural history, see Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 24 March 2010 (“March 2010 Decision”), para. 1; see also Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 9 July 2010.

² Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 10 December 2010, paras 8-9.

³ Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 13 November 2010, para. 17.

⁴ Motion, para. 18.

⁵ Ivan Čermak’s Submission of the Guarantees of the Republic of Croatia for Provisional Release, 11 February 2011 (“Croatian Guarantees”).

⁶ Prosecution’s Response to Čermak’s Request for Provisional Release, 10 February 2011 (“Response”).

⁷ Motion, para. 3.

to witnesses, victims or other persons.⁹ The Čermak Defence also notes that in the post-Rule 98 *bis* stage of the proceedings, the Chamber was satisfied that Čermak would return if provisionally released.¹⁰ In addition, Čermak agrees to be bound by the same conditions as those ordered by the Chamber in its December 2010 Decision, as well as any other measures the Chamber deems appropriate.¹¹ The Čermak Defence also submits that the Chamber has always been satisfied that Croatia would be able to secure Čermak's attendance before the Tribunal and the compliance with the conditions imposed on his provisional release, and that based on Čermak's behaviour during the most recent period of provisional release, the Chamber can continue to be satisfied that he does not pose a flight risk.¹² It further submits that Čermak never posed a danger to victims, witnesses, or other persons in the case, and notes that because the parties have concluded their cases, any remote risk to the Prosecution witnesses has ceased to exist.¹³ The Čermak Defence also undertakes not to contact the media during any period of provisional release, and to take all reasonable steps to eliminate media coverage of Čermak's departure from and return to the United Nations Detention Unit ("UNDU").¹⁴

3. The Čermak Defence further submits, as a humanitarian ground, that the death of Čermak's father-in-law is a significant family event on the basis of which Čermak should be provisionally released, thus allowing him to pay his last respects to the deceased and provide necessary support to his son, wife, and mother-in-law.¹⁵ [REDACTED]

4. [REDACTED] The Čermak Defence submits that the family circumstances set out in paragraphs 9, 10 and 11 of the Motion and the issues concerning the impact of the family bereavement are sufficiently compelling to warrant a period of temporary provisional release, so that Čermak will be able to attend the funeral and support his immediate family [REDACTED].¹⁶

5. In its Response, the Prosecution notes that both the Appeals Chamber and the Trial Chamber have previously ruled that [REDACTED] constitutes a sufficiently compelling

⁸ Motion, para. 6.

⁹ Motion, para. 7.

¹⁰ Motion, para. 7.

¹¹ Motion, para. 8.

¹² Motion, para. 8.

¹³ Motion, para. 13.

¹⁴ Motion, para. 14.

¹⁵ Motion, para. 9.

¹⁶ Motion, para. 12.

humanitarian ground warranting Čermak's provisional release [REDACTED].¹⁷ It also recalls that the Appeals Chamber has previously considered that the attendance at a memorial or funeral for a close loved one provides an acute justification for a limited release.¹⁸ On this basis, and in light of the particular circumstances of the case, the Prosecution does not oppose the granting of provisional release for a period commencing no earlier than 12 February 2011 and terminating no later than 25 February 2011.¹⁹

APPLICABLE LAW

6. The Chamber recalls the applicable law on provisional release as previously set out and refers to it.²⁰

DISCUSSION

7. In its December 2010 Decision, the Chamber found that Čermak did not pose a risk of flight if provisionally released, and since that time there have been no developments that would impact negatively on this assessment.²¹ On the basis of the renewed Croatian Guarantees, the Chamber is satisfied that Croatia would be willing and able to secure Čermak's attendance before the Tribunal and his compliance with any conditions that may be imposed by the Chamber.²² For these reasons, and having considered that the proceedings are in the post-Rule 98 *bis* stage, the Chamber remains satisfied that, if provisionally released, Čermak would return for trial.

8. As was the case in previous decisions on provisional release for Čermak, the Chamber has received no indication that if released, Čermak would pose a danger to witnesses, victims, or other persons.²³ Moreover, nothing arose during his prior periods of provisional release that would suggest that Čermak did not abide by all conditions set by the Chamber.²⁴ In conclusion, the Chamber finds that the requirements set out in Rule 65 (B) of

¹⁷ Response, para. 2.

¹⁸ Response, para. 2.

¹⁹ Response, paras 1, 3.

²⁰ See December 2010 Decision, para. 6.

²¹ July 2010 Decision, para. 5.

²² Croatian Guarantees.

²³ See December 2010 Decision, para. 7; March 2008 Decision, para. 9; July 2008 Decision, para. 20; December 2008 Decision, para. 12; February 2009 Decision, para. 8; July 2009 Decision, para. 10; December 2009 Decision, para. 8; March 2010 Decision, para. 8; July 2010 Decision, para. 6.

²⁴ See *Ibid.*

the Rules for granting provisional release have been met. However, as the proceedings are now in the post-Rule 98 *bis* stage, the Čermak Defence must demonstrate, as a further requirement, the existence of compelling humanitarian grounds which tip the balance in favour of provisional release.

9. The Čermak Defence has submitted two humanitarian grounds in support of the Motion: the first one is to allow Čermak to attend his father-in-law's funeral on 14 February 2011, and the second one is to allow him to support his immediate family [REDACTED], by spending time [REDACTED] at the family residence until 25 February 2010. With regard to the first ground, the Chamber is satisfied that it constitutes a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release. With regard to the second ground, [REDACTED] it is satisfied that [REDACTED] constitutes a sufficiently compelling humanitarian ground [REDACTED]. The Chamber has considered its previous findings [REDACTED].²⁵ On this basis, the Chamber considers a period of provisional release from 12 February 2011 until 21 February 2011 proportionate to the circumstances of the Motion.

DISPOSITION

10. For the foregoing reasons and pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules, the Chamber hereby **GRANTS** the Motion in part, and **ORDERS** as follows:

- (a) On **12 February 2011**, or on the first practicable day after this date, Čermak shall be transported to the appropriate airport in The Netherlands by the appropriate Dutch authorities, provided that, pursuant to Rule 65 (B) of the Rules, by that date the host state has filed a letter stating that it has no objection to the Motion being granted;
- (b) At the appropriate airport, Čermak shall be provisionally released by the Dutch authorities into the custody of an official of Croatia to be designated prior to his release in accordance with subparagraph (f)(4), below, who shall accompany Čermak for the remainder of his travel to and from the address listed in Annex B of the Motion;

²⁵ See December 2010 Decision, para. 9; Report on the Provisional Release of ICTY Accused Ivan Čermak, 5 January 2011; Report on the Provisional Release of ICTY Accused Ivan Čermak, 13 January 2011.

- (c) On **14 February 2011**, an official of Croatia will escort Čermak to the Mirogoj Cemetery in Zagreb to attend his father-in-law's funeral at 3:50 p.m., and then he or she will escort him back to the address listed in Annex B of the Motion immediately after the end of the service;
- (d) On his return to the Tribunal, Čermak shall be accompanied by the same designated official of Croatia, who shall deliver him into the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport him back to the UNDU in The Hague;
- (e) During the provisional release, Čermak shall:
- 1) surrender his passport and any other valid travel documents to the Ministry of Interior of Croatia;
 - 2) remain within the confines of his private residence in Croatia, at the address listed in Annex B of the Motion, with the exception of what ordered under point c) above;
 - 3) report once a week to the local police station;
 - 4) consent to having his presence checked, including checking by occasional, unannounced visits by the Ministry of Interior officials of Croatia, the local police, or by a person designated by the Registrar of the International Tribunal;
 - 5) not have any contact or in any way interfere with victims or potential witnesses or otherwise interfere with the proceedings or the administration of justice;
 - 6) not seek direct access to documents or archives nor destroy evidence;
 - 7) not discuss or speak about the case with anyone, including the media, other than his counsel;
 - 8) not engage in any activity that is not in accordance with the private nature of the provisional release, including any contact with public officials or public figures not relating to the administration of the provisional release;

- 9) comply strictly with any requirements of the Croatian authorities necessary to enable such authorities to comply with their obligations pursuant to the present decision;
 - 10) return to the custody of the Tribunal by **21 February 2011**, or at such time and date as the Chamber may order;
 - 11) comply strictly with any order issued by the Chamber varying the terms of, or terminating, the provisional release;
- (f) The Chamber requires Croatia, to assume responsibility for:
- 1) the personal security and safety of Čermak while on provisional release;
 - 2) ensuring compliance with the conditions imposed on Čermak under the present decision;
 - 3) all expenses concerning the transport of Čermak from the airport in The Netherlands to his place of residence in Croatia, and back to The Netherlands;
 - 4) ensuring that upon release of Čermak at the airport in The Netherlands, designated officials of Croatia (whose names shall be provided in advance to the Chamber and the Registry) take custody of Čermak from the Dutch authorities and accompany him as detailed in subparagraphs (b), (c) and (d) above;
 - 5) not issuing any new passports or other documents which would enable Čermak to travel;
 - 6) monitoring on a regular basis the presence of Čermak at the address detailed in Annex B of the Motion, and maintaining a log of such reports;
 - 7) submitting a report to the Chamber and the Registry as to the presence of Čermak and his compliance with the terms of the present decision;
 - 8) reporting immediately to the Registrar of the Tribunal the substance of any threats to the security of Čermak, including full reports of investigations related to such threats;

- 9) immediately detaining Čermak should he breach any of the terms and conditions of his provisional release and reporting immediately any such breach to the Registry and the Chamber.

12. The Chamber further **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice of The Netherlands as to the practical arrangements for the provisional release of Čermak, and to continue to detain Čermak at the UNDU in The Hague until such time as the Chamber and the Registrar has been notified of the name of the designated official of Croatia into whose custody Čermak is to be provisionally released; and has received communication from the host state, pursuant to Rule 65 (B) of the Rules, that it does not object to the provisional release.

13. Finally, the Chamber **REQUESTS** the authorities of all states through which Čermak will travel:

- (a) to hold him in custody for any time that he will spend in transit at an airport in their territories; and
- (b) to arrest and detain him pending his return to the UNDU in The Hague, should he attempt to escape.

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

Judge Alphons Orie
Presiding Judge

Dated this 10th day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]