

**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-04-74-AR65.11
Date: 4 February 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrézia Vaz
Judge Theodor Meron

Acting Registrar: Mr. John Hocking

Decision of: 4 February 2009

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
and BERISLAV PUŠIĆ**

PUBLIC

**PARTLY DISSENTING OPINION OF JUDGE GÜNEY TO DECISION ON
PRALJAK'S APPEAL OF THE TRIAL CHAMBER'S
2 DECEMBER 2008 DECISION ON PROVISIONAL RELEASE**

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 Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicolas 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

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PARTLY DISSENTING OPINION OF JUDGE GÜNEY

1. In my Partly Dissenting Opinions to the *Popović* and *Prlić et al.* Decisions¹ I expressed my disagreement with the majority's interpretation of the *Prlić* Decision of 11 March 2008² which results in imposing, in post-Rule 98bis proceedings, an additional requirement of "sufficiently compelling humanitarian reasons" to the two criteria listed in Rule 65(B) of the Rules, contrary to both the Rules and the continuing presumption of innocence, and effectively suspending the grant of discretion to the Trial Chamber by the Rules.
2. In the present instance, the Trial Chamber denied Praljak's Request for provisional release on the sole basis that the humanitarian grounds raised by his Defence did not constitute "sufficiently compelling humanitarian reasons in terms of the Tribunal's case-law".³ The majority endorsed the Trial Chamber's holding. It found "no error in this approach" and "decline[d] to exercise its authority to depart from precedent."⁴
3. For the reasons developed in my Partly Dissenting Opinions, I respectfully dissent from the majority's finding. Should I decide to remain silent on this matter in future cases, my silence should not in any way be construed as an approval of the additional requirement adopted by the majority of the Judges of the Appeals Chamber.

¹ *Prosecutor v. Jadranko 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; *Prosecutor v. Jadranko 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; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.9, Decision on "Prosecution's Appeal from Décision Relative à la Demande de Mise en Liberté Provisoire de l'Accusé Stojić Dated 8 April 2008", 29 April 2008; *Prosecutor v. Juvadin Popović et al.*, Case Nos. IT-05-88-AR65.4, IT-05-88-AR65.5, IT-05-88-AR65.6, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional release during the Break in the Proceedings, 15 May 2008.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 21. I wish to specify that I was not part of the Bench that ruled on this decision.

³ Impugned Decision, para. 31.

⁴ Majority Decision, para. 15.



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



Judge Mehmet Güney
Presiding Judge

Done this 4th day of February 2009,
At The Hague,
The Netherlands.

[Seal of the Tribunal]