



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-AR65.35

Date: 12 June 2012

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IN THE APPEALS CHAMBER

Before: Judge Arlette Ramaroson, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andrézia Vaz

Registrar: Mr. John Hocking

Decision of: 12 June 2012

PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PROSECUTION'S APPEAL OF THE
DECISION ON FURTHER EXTENSION OF MILIVOJ
PETKOVIĆ'S PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Douglas Stringer

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Ms. Nika Pinter and Ms. Nataša Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Zoran Ivanišević for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of an appeal filed by the Office of the Prosecutor (“Prosecution”) on 21 March 2012¹ against a decision issued confidentially by Trial Chamber III of the Tribunal (“Trial Chamber”) on 14 March 2012 (“Impugned Decision”), which extends the provisional release of Milivoj Petković (“Petković”) until 21 June 2012 and modifies one of the conditions of his provisional release.² Petković responded on 27 March 2012.³ The Prosecution did not file a reply.

I. BACKGROUND

2. On 30 November 2011, the Trial Chamber found that the criteria set out in Rule 65(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) were satisfied and exercised its discretion to grant Petković provisional release for three months.⁴ The Trial Chamber also decided that, before the expiry of the three-month period, Petković could apply for an extension of his provisional release and established the procedure to be followed in this respect.⁵ On 20 December 2011, the Duty Judge dismissed an appeal lodged by the Prosecution against the Decision Granting Provisional Release.⁶ On 14 March 2012, the Trial Chamber extended Petković’s provisional release until 21 June 2012 and granted his request for modification of the conditions of his provisional release to increase the frequency of his visits to his mother in Vrpolje.⁷

¹ Prosecution Appeal of *Décision portant sur la demande de prolongation de la mise en liberté provisoire et de modifications des conditions assorties à la mise en liberté provisoire de l'accusé Milivoj Petković*, 21 March 2012 (confidential; public redacted version filed on the same day) (“Appeal”). A review of the Appeal demonstrates that it does not contain information which raises confidentiality concerns. The Appeals Chamber, therefore, sees no rationale that justifies maintaining its confidential status.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Extension of Provisional Release of Accused Milivoj Petković and Modification of Conditions, 14 March 2012 (confidential; public redacted version filed on the same day) (the English translations of the French originals were filed on 20 March 2012 (confidential version) and 21 March 2012 (public redacted version)), p. 8.

³ Response of Milivoj Petkovic [*sic*] to Prosecution Appeal of Decision on Motion for Extension of Provisional Release of [*sic*] Accused Milivoj Petkovic [*sic*] and Modification of Conditions, 27 March 2012 (confidential) (“Response”). A review of the Response demonstrates that it does not contain information which raises confidentiality concerns. The Appeals Chamber, therefore, sees no rationale that justifies maintaining its confidential status.

⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Milivoj Petković, 30 November 2011 (public with one public annex and one confidential annex) (the English translation of the French original was filed on 6 December 2011) (“Decision Granting Provisional Release”), paras 41-42, p. 12.

⁵ Decision Granting Provisional Release, paras 42-43, Annex 1.

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.28, Decision on Prosecution Appeal of Decision on Milivoj Petković’s Provisional Release, 20 December 2011 (confidential), para. 21.

⁷ Impugned Decision, p. 8. Although the date until which the provisional release of Petković has been extended was confidential, the Appeals Chamber does not find that this information warrants giving the present decision confidential status. Cf. *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012, para. 18; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber’s Decision on Vinko Pandurević’s Provisional Release of 11 January 2012, 17 January 2012 (confidential), pp. 2-3.

II. STANDARD OF REVIEW

3. The Appeals Chamber recalls that an interlocutory appeal is not a *de novo* review of the Trial Chamber's decision.⁸ The Appeals Chamber has previously held that a decision on provisional release by the Trial Chamber under Rule 65 of the Rules is a discretionary one.⁹ Accordingly, the relevant inquiry is not whether the Appeals Chamber agrees with that discretionary decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision.¹⁰

4. In order to successfully challenge a discretionary decision on provisional release, a party must demonstrate that the Trial Chamber has committed a "discernible error".¹¹ The Appeals Chamber will only overturn a Trial Chamber's decision on provisional release where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.¹² The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.¹³

III. APPLICABLE LAW

5. Under Rule 65(B) of the Rules, a Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person; and after having given both the host country and the State to which the accused seeks to be released the opportunity to be heard.¹⁴ Provisional release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement, and a Trial Chamber in granting such a release, may consider the existence of sufficiently compelling humanitarian grounds.¹⁵

6. In deciding whether the requirements of Rule 65(B) of the Rules have been met, a Trial Chamber must consider all of those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned

⁸ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.26, Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, 15 December 2011 ("Decision of 15 December 2011"), para. 3 and references cited therein.

⁹ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹⁰ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹¹ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹² See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹³ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹⁴ See, e.g., Decision of 15 December 2011, para. 5 and references cited therein.

¹⁵ Rule 65(B) of the Rules. See also Decision of 15 December 2011, para. 5.

opinion indicating its view on those relevant factors.¹⁶ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.¹⁷ This is because decisions on motions for provisional release are fact-intensive and cases are considered on an individual basis in light of the particular circumstances of the individual accused.¹⁸ The Trial Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.¹⁹

IV. DISCUSSION

7. The Prosecution submits that the Impugned Decision should be reversed or in the alternative, the modification granted to the terms of provisional release be quashed.²⁰ It argues that, when granting Petković an extension of his provisional release, the Trial Chamber committed a discernible error by: (i) failing to provide reasoning for its rejection of the Prosecution's submissions; and (ii) misconstruing its one of the Prosecution's arguments and giving it undue weight.²¹ It further argues that the Trial Chamber failed to properly exercise its discretion by: (i) ignoring "the principle of detention"; (ii) failing to consider other important factors such as the gravity of the crimes charged; and (iii) modifying the conditions of Petković's provisional release.²² Petković responds that the Prosecution fails to demonstrate that the Trial Chamber committed a discernible error in the exercise of its discretion and that, accordingly, the Appeal should be dismissed.²³

A. Alleged error in failing to provide reasoning for the rejection of the Prosecution's submissions

8. The Prosecution submits that the Trial Chamber erred in law by failing to provide reasoning for its rejection of the Prosecution's arguments setting out relevant factors that the Trial Chamber must have considered.²⁴ In particular, the Prosecution argues that the Trial Chamber did not address its arguments that an extension of Petković's provisional release should be denied in light of: (i) the Tribunal's preference for detention; (ii) the gravity of the crimes charged, Petković's involvement in those crimes, and the advanced stage of the proceedings; and (iii) its impact on the international

¹⁶ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁷ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁸ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁹ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

²⁰ Appeal, paras 1, 23.

²¹ Appeal, paras 2-3, 6-12.

²² Appeal, paras 4-5, 13-22.

²³ Response, paras 31, 44, 50, 62, 66, 71-72.

²⁴ Appeal, paras 2, 6.

public's confidence in the proper administration of justice, the local community, and the victims and witnesses.²⁵ The Prosecution submits that the Trial Chamber's "dismissive overarching sentence" that it "must respect the provisions of the Statute, the Rules and the case-law of the Appeals Chamber guaranteeing a fair trial" does not amount to providing sufficient reasoning.²⁶

9. Petković responds that the Trial Chamber duly noted and properly addressed all relevant submissions made by the Prosecution and then gave sufficient reasons for their rejection.²⁷ Petković adds that the Trial Chamber explicitly referred to and, consequently, incorporated the relevant arguments from its previous decisions and that the Impugned Decision must be viewed in conjunction with these decisions.²⁸ Petković further argues that more than 100 decisions on provisional release have been issued on the various accused in the *Prlić* case, including 15 in relation to him and that the Trial Chamber, therefore, does not need to repeat *in extenso* its views on the same arguments the Prosecution is presenting in the same context.²⁹ Finally, Petković submits that the Prosecution did not invoke a lack of reasoning in its appeals on the decisions recently issued by the Trial Chamber on his co-accused and that this fact "diminish[es] the persuasiveness of the Prosecution's argument on the Trial Chamber's alleged lack of reasoning concerning those same general submissions/argument" in his case.³⁰

10. The Appeals Chamber notes that the Trial Chamber held the following:

CONSIDERING that with respect to the arguments of the Prosecution that extending the provisional release of the Accused Petković goes against the "Tribunal's preference for detention", and does not take into account the gravity of the crimes alleged in the present case, the alleged involvement of the Accused Petković in the perpetration of these crimes, the advanced stage in the proceedings and the impact that this extension would have on the "international public's confidence in the proper administration of justice", the local community and the victims and witnesses, the Chamber reminds the Prosecution in particular of the Decision of 21 April 2011 and the Order of 29 February 2012, in which the Chamber declared that the decision on whether or not to extend the provisional release must respect the provisions of the Statute, the Rule and the case-law of the Appeals Chamber guaranteeing a fair trial[.]³¹

11. The Appeals Chamber recalls that a trial chamber "is not obliged to deal with all possible factors when deciding whether it is satisfied that the requirements of Rule 65(B) are fulfilled, but at a minimum, must provide reasoning to support its findings regarding the substantive considerations

²⁵ Appeal, paras 2, 8, 15, 19, fn. 4.

²⁶ Appeal, para. 7, quoting Impugned Decision, p. 6. See also, Appeal, para. 2, fn. 5.

²⁷ Response, paras 17, 19-20, 29-30.

²⁸ Response, paras 21, 23, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Jadranko Prlić's Motion for Provisional Release, 21 April 2011 (the English translation of the French original was filed on 23 May 2011), para. 31 and *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Jadranko Prlić's Motion to Extend His Provisional Release, 29 February 2012 (confidential; public redacted version filed on 1 March 2012) (the English translation of the French originals were filed on 9 March 2012).

²⁹ Response, paras 24-26, 28.

³⁰ Response, para. 27.

³¹ Impugned Decision, p. 6 (internal references omitted).

relevant to its decision.”³² When granting provisional release to Petković on 30 November 2011, the Trial Chamber decided to fix the period of provisional release to three months and further decided that this period could be extended if it was satisfied that the requirements set forth in Rule 65(B) of the Rules continued to be fulfilled.³³ The Appeals Chamber recalls that the same legal principles applicable to a motion for provisional release apply *mutatis mutandis* to a motion for extension of provisional release.³⁴ In extending Petković’s provisional release, the Trial Chamber noted and dismissed the Prosecution’s arguments³⁵ and took into account that Petković respected the conditions of his provisional release and that the Government of the Republic of Croatia (“Croatia”) provided further guarantees for Petković’s extension of provisional release.³⁶ In addition, the Trial Chamber also took into account that, should the provisional release be extended, Petković would return to the United Nations Detention Unit (“UNDU”) and would not pose a danger to any victim, witness or other person, thus satisfying the requirements of Rule 65(B) of the Rules.³⁷

12. In light of the foregoing, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in failing to provide reasoning to support its findings regarding the substantive considerations relevant to its decision. Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

B. Alleged error in misconstruing one of the Prosecution’s arguments and giving it undue weight

13. The Prosecution submits that the Trial Chamber erred in misattributing or misconstruing one of the Prosecution’s arguments and in giving it undue weight.³⁸ In particular, the Prosecution argues that, contrary to the Trial Chamber’s finding, it did not raise that “the provisional release of [...]”

³² *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj’s Interlocutory Appeal Against the Trial Chamber’s Decision Denying his Provisional Release, 9 March 2006, para. 10. See also, e.g., *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 7, in which the Appeals Chamber examined whether the Trial Chamber considered appropriate factors in sufficient measure, and determined that the Trial Chamber had an obligation to provide reasons for its decision, although the Trial Chamber is not required to articulate its reasoning in detail; *Prosecutor v. Dragoljub Kunarac et al.*, Case Nos. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, para. 42, which stated that a Chamber has an obligation to give reasoned opinions for its decisions but this obligation does not require it to spell out every step in its reasoning.

³³ Decision Granting Provisional Release, para. 42.

³⁴ See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on the Third Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 4 August 2009 (public redacted version), para. 5 and reference cited therein.

³⁵ Impugned Decision, p. 6. See also *supra*, para. 10.

³⁶ Impugned Decision, p. 5.

³⁷ Impugned Decision, p. 5.

³⁸ Appeal, paras 3, 9.

Petković could negatively impact victims and witnesses”.³⁹ The Prosecution clarifies that it argued that “the public perception of the administration of justice is at risk when high-level accused such as Petković are permitted to engage with public life whilst awaiting judgement for the most heinous crimes.”⁴⁰ With respect to this argument, the Prosecution submits that: (i) it did not need to substantiate its contention as the said impact is “obvious”; and (ii) the Trial Chamber erred in not considering it.⁴¹

14. Petković responds that the Prosecution’s submission in this regard is “unfounded” and “unfair to the Trial Chamber”⁴² as the Prosecution really asserted, in its Response to Petković’s Original Motion, that his extended provisional release could negatively impact both on the international public’s confidence in the proper administration of justice as well as on victims and witnesses.⁴³ Petković argues that the Trial Chamber did not misinterpret the Prosecution’s submission but rather quoted “the Prosecution’s own words”.⁴⁴ With respect to the Prosecution’s argument that his extended provisional release could negatively impact victims and witnesses, Petković responds that the Trial Chamber considered that strict security measures imposed on him reduce such negative effect.⁴⁵ Petković further responds that the Trial Chamber considered the Prosecution’s argument that his extended provisional release could negatively impact the proper administration of justice and that the Trial Chamber found that it contributes to the international public’s confidence in the proper administration of justice in respecting “the provisions of the Statute, the Rules and the case-law of the Appeals Chamber guaranteeing a fair trial”.⁴⁶

15. The Appeals Chamber notes that, contrary to its submissions, the Prosecution argued in its Response to Petković’s Original Motion that Petković’s extended provisional release would have a negative impact on both the “international public’s confidence in the proper administration of justice” and “victims and witnesses”.⁴⁷ Thus, the Appeals Chamber dismisses the Prosecution’s argument that the Trial Chamber misconstrued its arguments. The Appeals Chamber further notes that the Trial Chamber took into account the Prosecution’s submission that Petković’s extended provisional release could negatively impact the international public’s confidence in the proper administration of justice when it recalled that “the decision on whether or not to extend the

³⁹ Appeal, fn. 7; quoting Impugned Decision, p. 6. See also Appeal, paras 9-10, fn. 15.

⁴⁰ Appeal, para. 10.

⁴¹ Appeal, paras 3, 9, 11-12.

⁴² Response, para. 33.

⁴³ Response, paras 33-34, 36-37, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Response to Motion of Miivoj Petković for Extension of Provisional Release, 8 March 2012 (“Response to Petković’s Original Motion”).

⁴⁴ Response, para. 36. Petković further submits that it is the Prosecution that misattributes findings to the Trial Chamber. See Response, para. 38.

⁴⁵ Response, para. 41, referring to Impugned Decision, pp. 6-7.

⁴⁶ Response, para. 39, quoting Impugned Decision, p. 6. See also Response, para. 40.

⁴⁷ See Response to Petković’s Original Motion, para. 11.

provisional release must respect the provisions of the Statute, the Rules and the case-law of the Appeals Chamber guaranteeing a fair trial”.⁴⁸ The Appeals Chamber therefore does not consider that the Trial Chamber erred in not responding to the Prosecution’s argument since this sentence constitutes an answer to the Prosecution’s argument.

16. In addition, the Appeals Chamber finds that the Prosecution has failed to articulate a concrete basis tied to the circumstances of the extension of Petković’s provisional release to substantiate its argument that Petković’s extension of provisional release would negatively impact the international public’s confidence in the proper administration of justice.⁴⁹ Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

C. Alleged abuse of discretion by ignoring the “principle of detention”

17. The Prosecution submits that the Trial Chamber failed to exercise its discretion by not considering Rules 64 and 65(A) of the Rules and the Tribunal’s unique jurisdiction, which favours detention.⁵⁰

18. Petković responds that the Trial Chamber addressed the Prosecution’s argument by asserting that it “must respect the provisions of the Statute, the Rules and the case-law of the Appeals Chamber guaranteeing a fair trial”.⁵¹ Moreover, Petković argues that the Trial Chamber did not abuse its discretion as Rule 65(B) of the Rules constitutes the *lex specialis* and, therefore, overrides Rule 64 of the Rules.⁵² Petković further argues that the Trial Chamber correctly interpreted the Rules in accordance with international human rights standards with respect to detention.⁵³

19. The Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred by ignoring the basic premise of the rule-based framework of detention, favouring detention as the rule and not the exception. In this context, the Appeals Chamber recalls that Rules 64 and 65(A) of the Rules provide that an accused, upon being transferred to the seat of the Tribunal, shall be detained and that he may not be released except upon an order of a chamber. Rule 65(B) of the Rules sets out the cumulative requirements to be met for a trial chamber to grant

⁴⁸ Impugned Decision, p. 6.

⁴⁹ See Decision of 15 December 2011, para. 11.

⁵⁰ Appeal, para. 16. See also paras 4, 13-15, 17.

⁵¹ Response, paras 52-53, quoting Impugned Decision, p. 6. See also Response, paras 20-21, 30.

⁵² Response, para. 54.

⁵³ Response, paras 54-61.

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provisional release.⁵⁴ Contrary to the Prosecution’s argument, the Trial Chamber was not required to consider Rules 64 and 65(A) of the Rules but needed only to determine whether the requirements of Rule 65(B) of the Rules were met. The Trial Chamber was satisfied that Petković met the requirements of Rule 65(B) of the Rules before ordering the extension of his provisional release.⁵⁵ Thus, the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

D. Alleged abuse of discretion by failing to consider other important factors, such as the gravity and scale of the crimes charged

20. The Prosecution submits that the Trial Chamber erred in failing to consider other relevant factors such as the gravity and scale of the crimes charged, Petković’s involvement in those crimes, and the advanced stage of the proceedings.⁵⁶

21. Petković responds that the Trial Chamber considered the gravity of the alleged crimes, his alleged involvement in those crimes, as well as the advanced stage of the proceedings and that it provided sufficient reasons for rejecting these factors.⁵⁷ With respect to the advanced stage of the proceedings, Petković argues that the Trial Chamber imposed strict security measures to reduce any prejudicial effects on victims and witnesses.⁵⁸

22. While the Trial Chamber did not dwell upon the seriousness and the scale of the crimes charged,⁵⁹ Petković’s role in them and the advanced stage of proceedings, it was not required to do so.⁶⁰ The Trial Chamber’s concern was to ensure that, if granted an extension of his provisional release, Petković would return to the UNDU and would not pose a danger to any victim, witness or other person. In so doing, the Trial Chamber considered that Petković respected the conditions of his provisional release and that Croatia provided further guarantees for Petković’s extension of provisional release.⁶¹ Moreover, the Trial Chamber recalled it was sensitive to the potential negative effect on victims and witnesses and, therefore, decided that the strict security measures of

⁵⁴ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. 04-74-AR65.13, Decision on Prosecution’s Appeal of the Trial Chamber’s 10 December 2008 Decision on Prlić Provisional Release During Winter Recess, 18 December 2008 (confidential), para. 7. See also *supra*, para. 5.

⁵⁵ Impugned Decision, p. 5.

⁵⁶ Appeal, paras 4, 13-15, 18-19.

⁵⁷ Response, paras 64-65. See also Response, paras 25-26, 29-30, 46-48.

⁵⁸ Response, para. 65.

⁵⁹ See Impugned Decision, p. 6. The Appeals Chamber also notes that, in the Decision Granting Provisional Release, the Trial Chamber mentioned the potential effect that the release of a person accused of serious crimes could have on the victims of those crimes. See Decision Granting Provisional Release, para. 39.

⁶⁰ *Prosecutor v. Jadranko Prlić et al.*, Case Nos. IT-04-74-AR65.1, IT-04-74-AR65.2 & IT-04-74-AR65.3, Decision on Motions for Re-Consideration, Clarification, Request for Release and Applications for Leave to Appeal, 8 September 2004, para. 31.

⁶¹ Impugned Decision, p. 5.

provisional release should apply *mutatis mutandis* to the extension of the provisional release.⁶² On this basis, the Trial Chamber concluded that Petković met the requirements of Rule 65(B) of the Rules.⁶³ In these circumstances, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion.

E. Alleged abuse of discretion by modifying the conditions of Petković's provisional release

23. The Prosecution submits that the Trial Chamber erred in modifying the conditions of Petković's provisional release despite his failure to demonstrate any change in circumstance warranting such modification.⁶⁴ In particular, the Prosecution argues that the Trial Chamber committed an error in considering "the advanced age of Petković's mother to be a legitimate reason to increase the frequency of his visits" to her while the only change of circumstance was, in fact, that his mother was three months older than when the Trial Chamber set Petković's conditions of provisional release in the Decision Granting Provisional Release.⁶⁵

24. Petković responds that the Trial Chamber properly exercised its discretion, pursuant to Rules 65(B) and 65(C) of the Rules, in granting his request for slight modification of the conditions of his provisional release.⁶⁶

25. In its Impugned Decision, the Trial Chamber granted Petković's request for modification of the conditions of his provisional release to increase the frequency of his visits to his mother in Vrpolje from one 24-hour visit per month – as originally granted in its Decision Granting Provisional Release – to four 12-hour visits per month.⁶⁷

26. The Appeals Chamber recalls that Rule 65(C) of the Rules provides that a trial chamber may impose such conditions upon the provisional release of an accused as it may determine appropriate. In this regard, the Appeals Chamber notes that, in granting Petković's request for a slight modification of the conditions of his provisional release, the Trial Chamber took several factors into account, i.e. the advanced age of his mother, the short distance between his residence and Vrpolje, and the security guarantees provided by Croatia.⁶⁸ The Appeals Chamber further notes that, in granting the requested modification, the Trial Chamber established that it remained satisfied, notwithstanding the change in conditions, that the requirements of Rule 65(B) of the Rules were

⁶² Impugned Decision, pp. 7-8.

⁶³ Impugned Decision, p. 5.

⁶⁴ Appeal, paras 5, 20-22.

⁶⁵ Appeal para. 21.

⁶⁶ Response, paras 68, 70. See also Response, para. 69.

⁶⁷ Impugned Decision, p. 8; Decision Granting Provisional Release, para. 44, Annex 2, p. 1.

⁶⁸ Impugned Decision, p. 7.

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met.⁶⁹ In these circumstances,⁷⁰ the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber committed a “discernible error” in allowing a modification of Petković’s provisional release.

V. DISPOSITION

27. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal and **DIRECTS** the Registry to lift the confidential status of the Appeal and the Response.

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

Done this 12th day of June 2012,
At The Hague,
The Netherlands.



Judge Arlette Ramaroson
Presiding

[Seal of the Tribunal]

⁶⁹ Impugned Decision, p. 7.

⁷⁰ Cf. *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.1, Decision on Ramush Haradinaj’s Modified Provisional Release, 10 March 2006, paras 42-44.