



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: 29 November 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 29 November 2007

THE PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

**DECISION ON THE MOTION FOR PROVISIONAL RELEASE OF THE
ACCUSED PETKOVIĆ**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković

The Republic of Croatia

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”),

SEIZED of the “Motion of Milivoj Petković for Provisional Release Under Rule 65 During the Forthcoming Recess (beginning 14 December 2007)” and its three annexes, filed confidentially by Counsel for the Accused Milivoj Petković (“Defence for the Accused Petković”) on 13 November 2007 (“Accused Petković’s Motion”), wherein the Defence for the Accused Petković requests, for humanitarian reasons, first, his provisional release to the Republic of Croatia during the winter judicial recess and, second, his provisional release between 21 January 2008 and 13 March 2008,

NOTING the “Prosecution Consolidated Response to Defence Applications for Provisional Release During Winter Recess”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 15 November 2007 (“Response”),

CONSIDERING that in support of its Motion, the Defence for the Accused Petković submits that: (1) while on earlier release the Accused Petković fully complied with the conditions imposed by the Trial Chamber in its decisions on provisional release; (2) in a letter of 8 November 2007, the Government of the Republic of Croatia pledged that the Accused Petković would comply with the conditions imposed by the Tribunal should the application for provisional release be granted by the Chamber and guaranteed that the Accused Petković would return to The Hague at the request of the Chamber,¹ (3) the Accused Petković and his wife suffer from ill health, and (4) the Accused Petković personally pledged to fully comply with all the conditions of provisional release imposed by the Chamber,

CONSIDERING that in support of the request for provisional release from 21 January 2008 until 13 March 2008, the Defence for the Accused Petković refers to the “Scheduling Order” rendered by the Chamber on 22 October 2007 and argues that the Chamber will not be sitting during that period,

¹ Accused Petković’s Motion, para. 13; Annex to the Accused Petković’s Motion.

CONSIDERING that in the Response, the Prosecution again opposes the provisional release of all the Accused because none of the reasons given by the Accused in support of their motions for provisional release constitute humanitarian grounds for release,

CONSIDERING alternatively that should the Chamber grant the Accused Petković's Motion, the Prosecution requests that: (1) the Accused Petković be prohibited from setting foot or travelling in Bosnia and Herzegovina; (2) the Accused Petković be prohibited from having any contact with any witness, potential witness (be it a witness called by the Prosecution, Defence or Chamber) or victim; (3) the Accused Petković be prohibited from discussing the case with anyone other than his Counsel and (4) from having any contact with the media,

CONSIDERING that pursuant to Rule 65 (B) of the Rules of Procedure and Evidence ("Rules") the Chamber may order provisional release "only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person",

CONSIDERING that the Accused Petković, while on earlier releases, complied with all the conditions imposed by the Trial Chambers in their orders and decisions dated 30 July 2004,² 7 October 2005,³ 26 June 2006,⁴ 8 December 2006,⁵ and 11 June 2007,⁶

CONSIDERING that the host country has not objected to any provisional release proceedings,⁷

CONSIDERING that in its letter of 8 November 2007 the Government of the Republic of Croatia provided guarantees to the effect that the Accused Petković would return to The Hague and would not abscond,

² *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004.

³ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision to Grant Milivoj Petković's Application for Variation of Conditions of Provisional Release, 7 October 2005.

⁴ Decision on Motion for Provisional Release of the Accused Petković, 26 June 2006.

⁵ Decision on the Motion for Provisional Release of the Accused Petković, 8 December 2006.

⁶ Decision on the Motion for Provisional Release of the Accused Petković, 11 June 2007.

⁷ See letter from the Ministry of Foreign Affairs dated 15 November 2007.

CONSIDERING in addition that, given his appropriate behaviour on previous occasions, the Chamber is satisfied that, if released, the Accused Petković will return for the resumption of his trial and not pose a danger to any victim, witness or other person,

CONSIDERING therefore that the conditions set out in Rule 65 of the Rules have been met,

CONSIDERING that the Chamber will adjourn proceedings for the winter 2007/2008 judicial recess and that the presence of the Accused Petković will therefore not be required in court during this period,

CONSIDERING moreover that in the annexes to the Accused Petković's Motion, the Defence for the Accused Petković submitted medical certificates confirming that the Accused Petković suffers from a chronic spinal affection and that the Chamber notes that he wishes to consult a specialist who has treated him in the past,

CONSIDERING moreover that the health of the Accused Petković's spouse is failing, as the annexes to the Motion attest,

CONSIDERING that a visit by the Accused Petković to be at his spouse's side might help them in their hour of need,

CONSIDERING that, accordingly, the application for provisional release submitted by the Accused Petković is justified based on humanitarian grounds and that the Chamber decides to grant the Accused Petković provisional release during the winter 2007/2008 judicial recess,

CONSIDERING that as regards the request for provisional release between 21 January 2008 and 13 March 2008, the Chamber notes that the "Scheduling Order" rendered by the Chamber on 22 October 2007 has since been amended,⁸ that the Chamber will be sitting until 6 February 2008⁹ and that, consequently, the request in this respect is moot,

⁸ Second Modified Scheduling Order, 22 November 2007.

⁹ *Ibid.*

CONSIDERING, however, that the provisional release should be limited to a short period, including return travel,

CONSIDERING that such a short visit will enable the police authorities of the Republic of Croatia to carry out effective surveillance of the Accused Petković, thereby providing an additional guarantee that he will appear for the resumption of trial after the judicial recess,

CONSIDERING that the Chamber is of the opinion that during his stay in the Republic of Croatia the Accused Petković must be under continuous surveillance by the authorities of the Republic of Croatia in order to guarantee his safety and appearance for the resumption of trial,

CONSIDERING therefore that the Accused Petković will be provisionally released during the dates and subject to the conditions set out in the confidential annex to this decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules,

DISMISSES as moot the application for provisional release between 21 January 2008 and 13 March 2008,

PARTIALLY GRANTS the Accused Petković's Motion, **AND**

ORDERS the provisional release of the Accused Petković during the dates and subject to the conditions set out in the confidential annex to this decision,

DENIES the Accused Petković's Motion in all other respects,

JUDGE ANTONETTI appending a partially dissenting opinion as regards the public nature of the present decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]