



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: 19 February 2008
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: 19 February 2008

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
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 during Forthcoming Period Between Close of Prosecution Case and Beginning of Defence Case”, filed confidentially by Counsel for the Accused Milivoj Petković (“Defence for the Accused Petković”) on 30 January 2008 (“Motion”), to which an annex is attached, and of the “Addendum to the Annex of Motion of Milivoj Petković for Provisional Release during Forthcoming Period Between Close of Prosecution Case and Beginning of Defence Case”, filed confidentially by the Defence for the Accused Petković on 6 February 2008 (“Milivoj Petković’s *Addendum*”), to which an annex is also attached, in which the Defence for the Accused Petković requests, for humanitarian reasons, his provisional release to the Republic of Croatia for the period between the end of the hearings on the motions for acquittal and 20 April 2008,

NOTING the “Prosecution Consolidated Response to Defence Applications for Provisional Release of the Accused Prlić, Stojić, Praljak, Petković and Čorić Prior to the Defence Case”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 5 February 2008 (“Response”),

NOTING the “Joint Notice of Waiver of Right to Attend Status Conferences”, filed confidentially by Counsel for the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković and Valentin Čorić (“Accused”) on 11 February 2008, in which the Accused renounce their right to be present at two meetings scheduled by the Chamber pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules”),

CONSIDERING that in support of the Motion, the Defence for the Accused Petković submits that: (1) the Accused Petković has been granted provisional release on five occasions and fully complied with the conditions imposed by the Trial Chamber in its decisions on provisional release; (2) the Government of the Republic of Croatia pledges that the Accused Petković will comply with the conditions imposed by the Tribunal should the application for provisional release be granted by the Chamber and

guarantees that the Accused Petković will return to The Hague at the request of the Chamber; (3) the Accused Petković pledges to fully comply with the conditions of provisional release imposed by the Chamber; (4) the Accused Petković wishes to see his spouse and the families of his two adult daughters and visit his mother, and finally (5) the Accused Petković and his spouse suffer from ill health and that he would like to consult with some physicians,

CONSIDERING that in the Response, the Prosecution opposes the provisional release of all the Accused on the ground that the periods they have requested are excessive and 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 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 witnesses or victims; (3) the Accused Petković be prohibited from discussing the case with anyone other than his Counsel; (4) the Accused Petković be prohibited from having any contact with the media, and finally (5) the provisional release not be granted prior to the oral decision rendered pursuant to Rule 98 *bis*,

CONSIDERING that pursuant to Rule 65 (B) of the 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 2004,¹ 7 October 2005,² 26 June 2006,³ 8 December 2006,⁴ 11 June 2007,⁵ and 29 November 2007,⁶

¹ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004.

² *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.

³ Decision on Motion for Provisional Release of the Accused Petković, 26 June 2006.

⁴ Decision on the Motion for Provisional Release of the Accused Petković, 8 December 2006.

⁵ Decision on the Motion for Provisional Release of the Accused Petković, 11 June 2007.

⁶ Decision on the Motion for Provisional Release of the Accused Petković, 29 November 2007.

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

CONSIDERING that in a letter dated 22 January 2008, the Government of the Republic of Croatia provided guarantees that should the application for provisional release be granted by the Chamber, the Accused Petković would not influence or pose a danger to any victim, witness or other person while on provisional release and would return to The Hague on the date ordered by the Chamber,⁸

CONSIDERING in addition that, given his appropriate behaviour while on earlier provisional release, 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 provisional release of the Accused Petković in the Republic of Croatia could facilitate the preparation of the defence case with his Counsel, who are also expected to be there,

CONSIDERING furthermore that in the annex to Milivoj Petković's *Addendum*, the Defence for the Accused Petković has provided a medical certificate attesting to the fact that the Accused Petković suffers from ill health and that he wishes to consult his own dentist,

CONSIDERING moreover that the Accused Petković's spouse suffers from ill health,

CONSIDERING that the application for provisional release submitted by the Accused Petković to visit both his ailing spouse and his close family may be considered as a request based on humanitarian grounds and may justify the granting of a short period of provisional release,

⁷ See the letter from the Dutch Ministry of Foreign Affairs dated 31 January 2008.

⁸ See the letter from the Ministry of Justice of the Republic of Croatia in the annex to the Motion, dated 22 January 2008.

CONSIDERING furthermore that the Chamber will adjourn proceedings from 21 February 2008 to 4 May 2008 and that during this period, the presence of the Accused Petković will be required only to attend, should the need arise, the two meetings on 17 and 26 March 2008, which were scheduled by the Chamber pursuant to Rule 65 *ter* of the Rules, and the pre-Defence conference pursuant to Rule 73 *ter* of the Rules, scheduled for 21 April 2008,⁹

CONSIDERING as a result that in the exercise of its discretionary power, the Chamber authorizes the provisional release of the Accused Petković,

CONSIDERING that his 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,

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 THESE REASONS,

IN ACCORDANCE with Rule 65 of the Rules,

⁹ Decision on Motion for Extension of Time for the Commencement of the Defence Case and Adopting

PARTIALLY GRANTS the Motion,

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, **AND**

DENIES the Motion in all other respects,

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

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

a New Schedule, 28 January 2008 and Scheduling Order, 14 February 2008.