



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: 31 March 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: 31 March 2008

THE PROSECUTOR

v.

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

PUBLIC
CONFIDENTIAL ANNEX

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

The 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 A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas 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

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 the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case” filed on 17 March 2008 (“Motion”) by Counsel for the Accused Petković (“Petković Defence”), wherein the Petković Defence requests the provisional release of the Accused Petković until the beginning of the defence case and to which 4 confidential annexes are attached (“Confidential Annexes 1 to 4 of the Motion”);

NOTING the confidential “Prosecution Consolidated Response to 1) Slobodan Praljak’s Motion for Provisional Release, 2) Motion of Milivoj Petković for Provisional Release During the Remainder of the Period Between Close of Prosecution Case and Beginning of Defence Case and 3) Supplemental Material in Support of Jadranko Prlić’s Motion for Renewed & Explicit Consideration of his Previously Granted Request for Provisional Release & Request Leave to Modify Conditions of Provisional Release” filed on 20 March 2008 (“Response”) by the Office of the Prosecutor (“Prosecution”) wherein the Prosecution objects to the Motion;

NOTING the confidential “Addendum to the Annex of the Motion of Milivoj Petković for Provisional Release during the Remainder of the Period between Close of Prosecution Case and Beginning of Defence Case” filed on 21 March 2008 (“Addendum”) by the Petković Defence to which additional documents in support of the Motion are annexed (“Annexes 1 and 2 to the Addendum”);¹

NOTING the partly confidential “Decision on the Motion for Provisional Release of the Accused Petković” rendered on 19 February 2008 by the Chamber (“Decision of 19 February 2008”) wherein it ordered the provisional release of the Accused Petković;

¹ Confidential Annexes 1 and 2 to the Addendum.

NOTING the “Decision on Prosecution’s Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Ćorić” rendered on 11 March 2008 by the Appeals Chamber (“Decision of 11 March 2008”) wherein it reversed the Decision of 19 February 2008;

CONSIDERING that in support of its Motion, the Petković Defence recalls that it has decided not to file a motion requesting a judgement of acquittal of the Accused Petković pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”), as this Rule sets a very low threshold for assessment of evidence and the Prosecution raised a great number of allegations in support of the 26 counts in the Amended Indictment of 16 November 2005 (“Indictment”);²

CONSIDERING consequently that, according to the Petković Defence, the Decision rendered on 20 February 2008 pursuant to Rule 98 *bis* of the Rules³ dismissing the judgement of acquittal submitted by two of the six accused was foreseeable and therefore does not constitute a heightened risk of flight;⁴

CONSIDERING that the Petković Defence further maintains that a decision pursuant to Rule 98 *bis* of the Rules would not override the presumption of innocence provided for in Article 21(3) of the Statute of the Tribunal and that the burden of proof rests on the Prosecution until the end of the trial and not until a decision pursuant to Rule 98 *bis* of the Rules has been rendered;⁵

CONSIDERING that the Petković Defence recalls that the personal circumstances of the Accused Petković, such as the fact that he has always acknowledged the authority of the Tribunal; that he surrendered voluntarily to the Tribunal on 5 April 2004 after having been served the Indictment; that he has always complied with the conditions established by the Chamber during his previous provisional releases, which demonstrates that were he provisionally released, he would not pose any danger to victims or witnesses;⁶

² Motion, para. 7.

³ Oral Decision rendered on 20 February 2008 pursuant to Rule 98 *bis* of the Rules; Court Transcript in French (“CT (F)”) 27201-27238 (“Rule 98 *bis* Decision”).

⁴ Motion, para. 7.

⁵ Motion, para. 8.

⁶ Motion, paras. 10 to 30.

CONSIDERING that the Petković Defence also recalls the humanitarian grounds it raised in support of its motion for provisional release filed on 30 January 2008⁷ and further elaborates them;⁸

CONSIDERING that the Petković Defence further maintains that the wife of the Accused is suffering severe depression and attaches a medical certificate attesting to this fact;⁹

CONSIDERING that the Accused Petković provides a new letter of guarantee by the Government of the Republic of Croatia and recalls that, to date, the Government of the Republic of Croatia has always discharged the obligations imposed by the Chamber in its previous decisions on provisional release and that there is no reason to believe that it will do otherwise if the Chamber were to decide to grant the Motion;¹⁰

CONSIDERING that the Motion contains the personal undertaking of the Accused Petković to comply with the conditions the Chamber would lay down if it granted provisional release;¹¹

CONSIDERING that the Petković Defence requests that the Accused Petković be on provisional release in Split and proposes that, alternatively, the Chamber order that he be held in home confinement in the Republic of Croatia and/or be subjected to electronic surveillance;¹²

CONSIDERING that, in support the Response, the Prosecution recalls *inter alia* that the Rule 98 *bis* Decision establishes that the Prosecution adduced sufficient evidence for a Trial Chamber to be able to find all the Accused guilty beyond a reasonable doubt;¹³

CONSIDERING that, according to the Prosecution, the Appeals Chamber, in its Decision of 11 March 2008, found that all the Accused might interpret the Rule 98 *bis*

⁷ “Motion of Milivoj Petković for Provisional Release During Forthcoming Period between Close of Prosecution Case and Beginning of Defence Case”, submitted by Milivoj Petković on 30 January 2008 (“Motion of 30 January 2008”). On this occasion the Accused Petković referred to the poor health of his wife and mother as well as his own health problems.

⁸ Motion, paras. 31 to 34.

⁹ Motion, para. 31, and Confidential Annex 2 to the Addendum.

¹⁰ Motion, paras. 37 and 38, and Confidential Annex 4 to the Motion.

¹¹ Motion, paras. 39 and 40.

¹² Motion, para. 41.

¹³ Response, para. 29.

Decision as an argument against their chance of acquittal at the end of the trial, which could increase their motivation to flee;¹⁴

CONSIDERING that the Prosecution further maintains that the Motion does not provide any additional information to support his provisional release since all the arguments submitted in the same Motion were already considered by the Appeals Chamber in its Decision of 11 March 2008;¹⁵

CONSIDERING that, according to the Prosecution, the delicate state of health of the wife of the Accused Petković does not constitute a circumstance different from those the Appeals Chamber considered in its Decision of 11 March 2008 and, consequently, does not justify the provisional release of the Accused;¹⁶

CONSIDERING that the Prosecution submits that the letter of guarantee from the Republic of Croatia in annex to the Motion does not provide any additional guarantee with respect to the guarantee annexed to the Motion of 30 January 2008;¹⁷

CONSIDERING that according to the Prosecution, the personal undertaking of the Accused Petković is an insufficient guarantee that he will appear for trial;¹⁸

CONSIDERING that should the Chamber grant the Motion, the Prosecution requests a stay of the Chamber's decision until a ruling on the appeal, which the Prosecution will file, is issued;¹⁹

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 following the Decision of 11 March 2008, the Chamber need not limit itself to an examination of the risk of flight based on the conduct of the

¹⁴ Response, para. 29.

¹⁵ Response, paras. 31 and 32.

¹⁶ Response, para. 32.

¹⁷ Response, para. 33.

¹⁸ Response, para. 34.

¹⁹ Response, para. 39.

Accused and the guarantees that he will appear for trial since it did so in its previous decisions including its Rule 98 *bis* Decision;²⁰

CONSIDERING that the Chamber recalls that it notes the Appeals Chamber's desire to obtain additional guarantees for future appearance to offset the flight risk and a more compelling reason regarding the humanitarian grounds in light of the Rule 98 *bis* Decision;²¹

CONSIDERING that the Appeals Chamber finds that the Rule 98 *bis* Decision would constitute a significant enough change in circumstances to warrant an in-depth consideration of the risk of flight of each of the co-accused including the accused who have not filed requests for a judgement of acquittal pursuant to Rule 98 *bis* of the Rules;²²

CONSIDERING that, consequently, the Chamber must ensure that there are additional guarantees to appear for trial to offset the risk of flight and that the Motion provides more developed humanitarian considerations before it grants provisional release;

CONSIDERING that, first regarding humanitarian considerations, the Chamber finds that the Motion recalls the circumstances already invoked in the Motion of 30 January 2008 which were taken into account and dismissed by the Appeals Chamber in its Decision of 11 March 2008;

CONSIDERING that regarding the depressed state of the Accused Petković's wife, the Chamber first notes that since this circumstance was not raised before, neither the Chamber nor the Appeals Chamber had knowledge of it and it was therefore not taken into consideration in the Decision of 19 February 2008 and the Decision of 11 March 2008;

CONSIDERING that the Chamber notes that the medical certificate on the health of the wife of the Accused Petković dated 18 March 2008 concludes that the medical condition of Mrs Petković has deteriorated in the past several months partly due to the

²⁰ See the "Decision on the Application for Provisional Release of the Accused Pušić", 19 March 2008, p. 5.

²¹ "Decision on the Application for Provisional Release of the Accused Pušić", 19 March 2008,

²² Decision of the Appeals Chamber, paras. 19 and 20.

separation from her husband, that she also suffers from psychomotor inhibitions, anxiety, insomnia and that she is under psychiatric treatment;²³

CONSIDERING that the Chamber also further notes that the new medical certificate on the health of the mother of the Accused Petković dated 17 March 2008 establishes that her condition is extremely serious; that she suffers from a coronary disease which prevents her from travelling; that this condition is accompanied by periods of anxiety and depression and that the patient is undergoing treatment for this;²⁴

CONSIDERING that the Chamber considers that the extremely delicate state of health of the wife and the mother of the Accused Petković are factors in favour of provisional release;

CONSIDERING that, regarding the guarantees to appear for trial, the Chamber first recalls that the Appeals Chamber considered in the Decision of 11 March 2008 that the guarantees put forward by the Chamber in its Decision of 19 February 2008 against the risk of flight were insufficient in light of the Rule 98 *bis* Decision;²⁵

CONSIDERING that in its Decision of 19 February 2008, the Chamber ordered *inter alia* that the Accused Petković remain within the confines of Split, Vrpolje and Zagreb in the Republic of Croatia and that during his stay continuous physical surveillance be maintained for the Accused Petković;

CONSIDERING that the Chamber notes that additional guarantees can be provided and that the Accused Petković himself proposed that the Chamber order his home confinement under surveillance;

CONSIDERING that the measure proposed by the Accused Petković himself, that is home confinement under surveillance, is an additional guarantee to appear for trial since it permits permanent surveillance of the Accused and limits his movements, thus offsetting the risk of flight;

²³ Annex 2 of the Addendum.

²⁴ Annex 2 of the Addendum.

²⁵ Decision of the Appeals Chamber, paras. 20 and 21.

CONSIDERING that in the light of serious humanitarian circumstances and the additional guarantees to appear for trial, the Chamber is in the position to order the provisional release of the Accused Petković;

CONSIDERING further that the Chamber is certain that when on provisional release the Accused Petković will not pose a danger to any victim, witness or other person;

CONSIDERING however that in the interests of judicial economy, the Chamber considers there is cause to order the stay of this decision until the Appeals Chamber rules on the appeal which the Prosecution intends to file against the present decision;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 (B) of the Rules,

HEREBY GRANTS IN PART the Motion and provides for the provisional release of the Accused Petković during the dates and under the conditions set out in the confidential annex attached to the present Decision,

AND,

ORDERS the stay of the present Decision until the Appeals Chamber rules on the appeal the Prosecution will file against this Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]