



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: 17 July 2008
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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: 17 July 2008

THE PROSECUTOR

v.

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

PUBLIC WITH CONFIDENTIAL ANNEX

**DECISION ON THE ACCUSED PRALJAK'S MOTION
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

I. INTRODUCTION

1 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”) is seized of a motion by the Accused Slobodan Praljak (“Accused Praljak”) for provisional release, filed confidentially by Counsel for the Accused Praljak (“Praljak Defence”) on 30 June 2008.

II. PROCEDURAL BACKGROUND

2. On 30 June 2008, the Praljak Defence filed the confidential “Slobodan Praljak’s Motion for Provisional Release During the 2008 Summer Recess” (“Motion”) in which it requests, for humanitarian reasons, the provisional release of the Accused Praljak in the Republic of Croatia during the court’s 2008 summer recess.¹

3. On 10 July 2008, the Office of the Prosecutor (“Prosecution”) filed the Prosecution Consolidated Response to Defence Applications for Provisional Release During the Summer Recess (“Response”), in which the Prosecution objects to the provisional release of the Accused Praljak.²

4. On 15 July 2008, the Praljak Defence filed a confidential request for leave to reply and the reply, Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s Response to Praljak’s Motion for Provisional Release & Praljak’s Reply to the Prosecution’s Response (“Request for Leave to Reply”) in which the Praljak Defence requests the Chamber’s leave to reply to the Response.³

III. APPLICABLE LAW

5. Under Rule 65 (A) of the Rules of Procedure and Evidence (“Rules”), once detained, an accused may not be released except upon an order of a Chamber. According to Rule 65 (B), release may be ordered by the Chamber only after giving the host country and the State to which the accused seeks to be released the

¹ Motion, pp. 1, 33.

² Response, paras. 2, 20-29, 49.

³ Request for Leave to Reply, para. 1.

opportunity to be heard and 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.

6. According to the Tribunal's jurisprudence, the Chamber has discretionary power over the decision to grant or deny provisional release pursuant to Rule 65 of the Rules.⁴ To understand whether the conditions set forth in Rule 65 (B) of the Rules have been met, the Chamber must take into account all the relevant factors that a reasonable Chamber would take into account in order to make its decision.⁵ The Chamber must then give reasons for its decision on these points.⁶ The relevance of the factors referred to and the weight to be ascribed to them is decided on a case-by-case basis.⁷ Because they depend primarily on the facts of the case in question, all requests for provisional release are examined in the light of the particular situation of the accused.⁸ The Chamber must examine this situation when deciding on provisional release, but, as far as it is able, must foresee what this situation will be like when the accused is to return to the Tribunal.⁹

7. According to recent rulings by the Appeals Chamber, the close of the Prosecution case constitutes an important change of situation that requires a new and detailed

⁴ *The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.A, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008 ("*Jovica Stanišić Decision*"), para. 3; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006 ("*Milutinović Decision*"), para. 3; *The Prosecutor v. Popović et al.*, Case No. IT-65-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006, para. 5; *The Prosecutor v. 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 ("Petković Decision"), para. 5; *The Prosecutor v. 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 ("*Prlić Decision of 25 April 2008*"), para. 7.

⁵ *The Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release, 17 October 2005 ("*Mićo Stanišić Decision*"), para. 8; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

⁶ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

⁷ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10.

⁸ *The Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release, 4 October 2005 ("*Tarčulovski Decision*"), para. 7; *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

⁹ *Jovica Stanišić Decision*, para. 35; *Petković Decision*, para. 8; *Prlić Decision of 25 April 2008*, para. 10; *Mićo Stanišić Decision*, para. 8.

evaluation of an accused's risk of flight.¹⁰ Under these conditions, even if the Trial Chamber is convinced that sufficient guarantees have been given, it may not exercise its discretionary power to grant provisional release unless sufficiently compelling humanitarian reasons cause the scales to tip in this direction.¹¹ Consequently, provisional release may only be granted "at a late stage of the proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian reasons exist to justify the release and, even when provisional release is found to be justified in light of the nature of the circumstances, the length of the release should nonetheless be proportional to these circumstances."¹²

8. Nonetheless, according to Appeals Chamber precedents, the Chamber can best assess these matters if procedural circumstances, such as the close of the Prosecution case, increase the flight risk during provisional release.¹³

IV. ARGUMENTS OF THE PARTIES

9. In support of its Motion, the Praljak Defence maintains that the Accused Praljak fulfils the two conditions set out in Rule 65 (B) of the Rules,¹⁴ in particular due to his past conduct¹⁵ and because he (1) surrendered voluntarily to the Tribunal;¹⁶ (2) the Chamber has already concluded five times that the Accused Praljak would return and granted him provisional release as a result;¹⁷ (3) the Accused has always strictly complied with all the conditions imposed on him;¹⁸ (4) the authorities of the Republic of Croatia have always respected their obligations and pledge to undertake all measures to guarantee that the Accused will return, if released;¹⁹ (5) the Accused Praljak has appeared for trial after each of his provisional releases;²⁰ (6) the Accused Praljak unconditionally accepts to return to the United Nations Detention Unit

¹⁰ *The Prosecutor v. 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 ("*Prlić* Decision of 11 March 2008"), para. 20.

¹¹ *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

¹² *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

¹³ *Milutinović* Decision, para. 15.

¹⁴ Motion, paras. 7-17, 29.

¹⁵ Motion, paras. 10, 16.

¹⁶ Motion, paras. 10, 16.

¹⁷ Motion, paras. 10, 16.

¹⁸ Motion, paras. 10, 16.

¹⁹ Motion, paras. 10, 12.

²⁰ Motion, paras. 10, 16.

("Detention Unit") on the date set by the Chamber;²¹ (7) his personal conditions and other reasons, such as his character and honour, reduce the risk of flight;²² and even if doubt remains regarding the risk of flight, the guarantees offered by the Republic of Croatia would allay them;²³ (8) the end of the presentation of the Prosecution case has no relevance with regard to the Accused Praljak's flight risk²⁴ and (9) owing to the Accused Praljak's current state of health, it would be completely improbable that he would take flight.²⁵ The Praljak Defence finally holds that an extended provisional release would not increase the risk of flight.²⁶

10. Regarding the compelling humanitarian grounds that the Praljak Defence considers sufficient to justify the provisional release of the Accused Praljak, it notes in particular grounds related to the Accused's state of health.²⁷ In this regard, the Praljak Defence sent the Chamber three medical certificates dated 7 February 2006, 27 February 2006 and 20 April 2006, as well as a letter from a medical expert dated 27 March 2006.²⁸ Furthermore, the Praljak Defence argues that the long-term stress from the Accused Praljak's detention in the Detention Unit negatively affects the Accused's health.²⁹

11. The Praljak Defence furthermore refers to the reasons in the *Pušić* Decision, filed by the Appeals Chamber on 23 April 2008,³⁰ in which the Appeals Chamber stated that a Trial Chamber may take into consideration sufficiently compelling humanitarian reasons to compensate for any incertitude regarding whether an accused fulfills the conditions set out in Rule 65 (B) of the Rules and thus justify his provisional release.³¹ The Praljak Defence argues that Rule 65 (B) of the Rules does

²¹ Motion, para. 11.

²² Motion, paras. 11, 16.

²³ Motion, paras. 11-12.

²⁴ Motion, para. 13.

²⁵ Motion, paras. 14, 16.

²⁶ Motion, para. 30.

²⁷ Motion, paras. 19-21, 24-28.

²⁸ Motion, para. 19 Medical certificate of the Accused Praljak dated 7 February 2006 and attached to the Motion in annex; Medical certificate of the Accused Praljak dated 27 February 2006 and attached to the Motion in annex; Medical certificate of the Accused Praljak dated 20 April 2006 and attached to the Motion in annex; Letter from a medical expert dated 27 March 2006 and attached to the Motion in annex.

²⁹ Motion, paras. 22-23.

³⁰ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.6, Reasons for Decision on Prosecution's Urgent Appeal Against *Décision relative à la mise en liberté de l'Accusé Pušić* issued on 14 April 2008, Case No. IT-04-74-AR65.6, 23 April 2008 I ("Reasons for *Pušić* Decision").

³¹ Motion, para. 5; Reasons for *Pušić* Decision, paras. 14-15.

not require for there to be humanitarian grounds for provisional release.³² It furthermore submits that the requirement of compelling humanitarian grounds is inconsistent with the fact that an amendment dated 17 November 1999 removed the condition of “exceptional circumstances” from Rule 65 (B) of the Rules.³³

12. In its Response, the Prosecution objects to provisional release for the Accused Praljak because, *inter alia*, the period he requested is excessive and because none of the reasons offered by the Accused in support of his request for release constitute sufficiently compelling humanitarian grounds to justify it.³⁴

13. The Prosecution considers that the grounds presented by the Praljak Defence do not reach a sufficiently compelling humanitarian level.³⁵ According to the Prosecution, the grounds raised are centred on the Accused himself and not on the needs or the situation of his family members, and that the primary reason put forward for his provisional release is the Accused’s need to rest.³⁶ The Prosecution holds that these grounds were already raised by the Accused Praljak in his previous application for provisional release and were subsequently rejected by the Chamber.³⁷

14. In the alternative, should the Chamber grant the Motion, the Prosecution requests that provisional release not exceed seven days, which would be sufficient time for him to visit the members of his family (including travel),³⁸ and that it be subject to strict terms and conditions.³⁹ In particular, the Prosecution requests that the Chamber prohibit the Accused (1) from any and all travel to or presence in Bosnia and Herzegovina; (2) from having any contact with any victims; (3) from discussing the case with anyone except with his counsel, and (4) from any and all contact with the media.⁴⁰

³² Motion, paras. 7-8, 18; Reasons for *Pušić* Decision, paras. 14-15.

³³ Motion, paras. 7-8, 18; (IT/32/REV.17) Compare to the previous text of 2 July 1999 (IT/32/REV.16).

³⁴ Response, paras. 2, 21-28, 49.

³⁵ Response, para. 21.

³⁶ Response, para. 21.

³⁷ Response, para. 21; Decision on the Accused Praljak’s Motion for Provisional Release, 1 April 2008, para. 8.

³⁸ Response, paras 29, 50.

³⁹ Response, paras 2, 47, 50.

⁴⁰ Response, para. 47.

15. Finally, should the Trial Chamber grant the Motion, the Prosecution requests a stay of the Trial Chamber's decision until a decision has been taken on the appeal it intends to lodge.⁴¹

V. DISCUSSION

16. First, the Chamber recalls the "Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings" rendered on 28 April 2006, in which replies are only accepted if compelling circumstances arise.⁴² The Chamber holds that the Request for Leave to Reply does not provide any new element and does not make a showing of how the circumstances are sufficiently compelling for the Chamber to grant such leave.⁴³ Consequently, the Chamber decides to deny the Request for Leave Reply.

17. Next, the Chamber finds that, pursuant to Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber in its letter dated 2 July 2008 that it did not have any objections to the procedure for a possible provisional release.⁴⁴

18. In its letter of 10 June 2008 the Government of the Republic of Croatia provided guarantees that the Accused Praljak, if a motion for provisional release were to be granted by the Chamber, would not influence or pose a danger, during his provisional release, to any victim, witness or any other person and would return to The Hague on the date ordered by the Chamber.⁴⁵

19. The Chamber notes that the Accused respected all the conditions imposed on him during his previous provisional releases pursuant to the orders and decisions of the Trial Chamber dated 30 July 2004,⁴⁶ 1 July 2005,⁴⁷ 14 October 2005,⁴⁸ 26 June

⁴¹ Response, para. 48.

⁴² Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings, 28 April 2006, Chapter III, para. p.

⁴³ Request for Leave to Reply.

⁴⁴ Letter from the Ministry of Foreign Affairs of the Netherlands dated 2 July 2008.

⁴⁵ Letter from the Ministry of Justice of the Republic of Croatia in annex to the Motion, dated 10 June 2008.

⁴⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Slobodan Praljak, 30 July 2004.

⁴⁷ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Slobodan Praljak's Motion for Variation of the Conditions of Provisional Release, 1 July 2005.

⁴⁸ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision to Grant Accused Slobodan Praljak's Supplemental Application for Variation of Conditions of Provisional Release, 14 October 2005.

2006,⁴⁹ 8 December 2006,⁵⁰ 11 June 2007⁵¹ and 29 November 2007.⁵² Even if, according to the Appeals Chamber, the close of the Prosecution case constitutes an important change in the situation that requires a new, detailed evaluation of an accused's flight risk,⁵³ the Chamber considers that the guarantees to reappear in order to offset the flight risk, as imposed upon the Accused Praljak, neutralise all possible flight risk. Regarding his respectful conduct during his earlier provisional releases, the Chamber is assured that the Accused Praljak, if released, will appear for the continuation of his trial.

20. Furthermore, for these same reasons, the Chamber is of the opinion that the Accused Praljak, if released, will not pose a danger to any victim, witness or any other person, which, again, is not challenged by the Prosecution.⁵⁴

21. Nevertheless, according to the Appeals Chamber, regarding the stage of the proceedings and the close of the Prosecution case, the Chamber has the duty to determine, in addition, if the humanitarian grounds put forward by the Praljak Defence are sufficiently compelling to justify the provisional release of the Accused Praljak.⁵⁵

22. The Praljak Defence submits that Rule 65 (B) does not mention humanitarian grounds for provisional release to be granted and, with respect to this, refers to the position of the Appeals Chamber in the Reasons for the *Pušić* Decision.⁵⁶ Nevertheless, this position goes against the position adopted by the Appeals Chamber in the *Petković* Decision⁵⁷ that was subsequently confirmed by the majority of the Appeals Chamber in the *Prlić* Decision of 25 April 2008⁵⁸ and the *Stojić* Decision.⁵⁹ Owing to this, and in accordance with the majority position of the Appeals Chamber, the Chamber therefore considers it necessary to examine the humanitarian grounds

⁴⁹ Decision on Motion for Provisional Release of the Accused Praljak, 26 June 2006.

⁵⁰ Decision on Motion for Provisional Release of the Accused Praljak, 8 December 2006.

⁵¹ Decision on Motion for Provisional Release of the Accused Praljak, 11 June 2007.

⁵² Decision on Motion for Provisional Release of the Accused Praljak, 29 November 2007.

⁵³ *Prlić* Decision of 11 March, para. 20.

⁵⁴ Response. This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

⁵⁵ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁵⁶ Motion, paras. 5, 7-8, 18.

⁵⁷ *Petković* Decision, para. 17.

⁵⁸ *Prlić* Decision of 25 April 2008, para. 16.

raised by the Praljak Defence in order to assess if they are sufficiently compelling to justify the Accused Praljak's provisional release.⁶⁰

23. The Prosecution contests the fact that the grounds presented by the Praljak Defence reach a sufficiently compelling humanitarian level that would justify his provisional release.⁶¹ According to the Prosecution, the grounds raised are centred on the Accused himself and not on the needs or the situation of his relatives, and that the primary reason put forward for his provisional release is the Accused's need to rest.⁶² The Prosecution holds that these grounds were already raised by the Accused Praljak in his previous application for provisional release and were subsequently rejected by the Chamber.⁶³

24. The Chamber has evaluated in detail the humanitarian grounds related to the Accused Praljak's current state of health, given in the confidential annex attached to the present decision. The Chamber considers these arguments alone insufficient to justify the Accused Praljak's provisional release.

25. Nevertheless, the Praljak Defence argues that a state of prolonged stress linked to the Accused Praljak's detention in the Detention Unit has a negative affect on the Accused's health.⁶⁴ The Praljak Defence considers that depriving the Accused Praljak, who is a husband, father and grandfather, of familial contact is to subject him to the increasing risk of detriment to his physical, mental and emotional well-being, and could weaken his ability to continue actively participating in his defence.⁶⁵ In this regard, the Praljak Defence refers to a report the Registrar of the Tribunal submitted at a Diplomatic Seminar organised by the Tribunal on 10 June 2008 ("Registrar's Report"), in which he recognized that the detention conditions in the Detention Unit inevitably affect the accuseds' state of health.⁶⁶

⁵⁹ *The Prosecutor v. 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 ("*Stojić* Decision"), para. 19.

⁶⁰ Motion, paras. 21-26.

⁶¹ Response, para. 21.

⁶² Response, para. 21.

⁶³ Response, para. 21.

⁶⁴ Motion, para. 23.

⁶⁵ Motion, para. 23.

⁶⁶ Motion, paras. 22-23.

26. The Prosecution considers that detention alone cannot constitute a humanitarian ground that justifies the provisional release of an accused.⁶⁷ Consequently, the Prosecution considers that the effects of detention on an accused's health must be determined with objective medical proof.⁶⁸ The fact that the Accused Praljak suffers from stress that has a negative impact is, according to the Prosecution, his subjective opinion that has not been proven medically or otherwise.⁶⁹

27. The Chamber recalls that, in keeping with the case-law of the Appeals Chamber, the excessive length of actual or likely detention is an additional discretionary consideration which can be taken into account in determining provisional release if all the requirements of Rule 65 (B) of the Rules have been met.⁷⁰ The Chamber observes that in the Registrar's report, he discussed the "unique status of the UNDU detainee population" and noted that:

"Whilst the UNDU is a remand institution, the average period of detention is significantly longer than the one of national jurisdictions and possibly even closer to many penitentiary institutions. This inevitably has a detrimental affect upon the mental state of the detainees as they are awaiting or undergoing complex trials and appeals over an extended period of time, causing long term stress which is well-known to induce or exacerbate health conditions."⁷¹

The Registrar also discussed the question of the impact of lengthy detentions and hearings on the health of the detainees:

"In addition, the prolonged pre-trial and trial detention, the stress of the trial, the geographical distance from their relatives are circumstances which contribute to exacerbate their overall health condition, both physical and psychological."⁷²

With respect to the separation of the detainees from their families, the Registrar considered that:

⁶⁷ Response, para. 27.

⁶⁸ Response, para. 27.

⁶⁹ Response, para. 27.

⁷⁰ *The Prosecutor v. 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. 23; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-PT, Decision on Third Motion for Provisional Release, 16 August 2006, p. 3. It is to be noted that this Decision was confirmed by the Appeals Chamber, *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR65.1, Decision on Appeal Against Decision Denying Motion for Provisional Release, 17 October 2006, paras 8-9.

⁷¹ Registrar's Report, pp. 3-4.

⁷² Registrar's Report, p. 7.

“The distance from the detainees’ family and the familial social support network, as well as the detainees’ lack of familiarity with the surroundings, inevitably impact on the health condition of the detainees.”⁷³

The Registrar ended his report with the following conclusion:

“Despite the measures in place at the UNDU as mentioned, in view of the statistics of the present population of the UNDU (*i.e.*, advanced average age, adverse personal circumstances and existence of serious medical conditions), the risk of the occurrence of a life threatening incident can be described as relatively high. Whilst I do not wish to sound alarmist, I do wish to present a realistic picture and share with you our concerns in this respect.”⁷⁴

28. The Chamber recalls that in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, the Chamber must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a decision.⁷⁵

29. As such, even if detention as such does not constitute a humanitarian ground, the duration of this detention is a factor that the Chamber must bear in mind when deciding on a motion for provisional release. The Chamber finds that the present case is particularly lengthy because of its scale, complexity and the large number of accused. Except for several short periods of provisional release, the Accused Praljak has been detained in the Detention Unit since the commencement of the proceedings on 25 April 2006,⁷⁶ that is for more than two years. The Chamber further notes that the trial will not be terminated before 2010. The Tribunal is responsible for the health of the accused who are under its authority and custody. Concerned for the well-being of the accused, the Chamber thus holds that the possibility that the Accused Praljak might suffer seriously from his lengthy detention in the Detention Unit, such as described in the Registrar’s Report, is a humanitarian factor that the Chamber may

⁷³ Registrar’s Report, p. 3.

⁷⁴ Registrar’s Report, p. 8.

⁷⁵ *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

⁷⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Slobodan Praljak, 30 July 2004; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Slobodan Praljak’s Motion for Variation of Conditions of Provisional Release, 1 July 2005; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT Decision to Grant Accused Slobodan Praljak’s Supplemental Application for Variation of Conditions of Provisional Release, 14 October 2005; Decision on Motion for Provisional Release of the Accused Praljak, 26 June 2006; Decision on the Accused Praljak’s Motion for Provisional Release, 8 December 2006; Decision on the Motion for Provisional Release of the Accused Praljak, 11 June 2007; Decision on the Motion for Provisional Release of the Accused Praljak 29 November 2007.

take into account in the exercise of its discretionary power pursuant to Rule 65 (B) of the Rules. The Chamber considers that a certain period outside the Detention Unit and in a family environment during the court recess will allow the Accused Praljak to recuperate. In this manner, the Chamber hopes to prevent a possible deterioration of the physical and mental state of the Accused, as discussed in the Registrar's Report.

30. In the present case, the Chamber must also bear in mind the fact that the Accused Praljak surrendered voluntarily to the Tribunal and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case. Furthermore, the Chamber will suspend hearings during the summer court recess. Consequently, during this period, there will be no court activity which will require the presence of the Accused Praljak.

31. The Chamber further recalls that pursuant to the case-law of the Appeals Chamber, the length of provisional release at a late stage of the proceedings, and in particular after the close of the Prosecution case, is to be proportionate to the circumstances and the sufficiently compelling humanitarian reasons justifying provisional release.⁷⁷ In addition, the Chamber recalls that the factors it has to take into account influence not only the decision on whether or not to grant provisional release, but also its duration, if any. Thus, *inter alia*, the Chamber must find a balance between the nature and weight of the circumstances justifying provisional release for humanitarian reasons and its duration.⁷⁸

32. In the present case, the Accused Praljak considers that provisional release for the entire duration of the court summer recess would be appropriate.⁷⁹ The Chamber, for its part, holds it necessary to limit the duration of provisional release to a period not in excess of the time necessary for the Accused Praljak to be examined by his attending physician, visit his family and recuperate, but which includes the time of the round-trip journey. Consequently the Chamber holds that a provisional release not in excess of 10 days is proportionate to the Accused Praljak's circumstances and need to regain his forces after two years of detention.

V. CONCLUSION

⁷⁷ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁷⁸ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

⁷⁹ Motion, 29.

33. For these reasons, and in light of the Registrar's Report, the Chamber finds that provisional release of the Accused Praljak not exceeding 10 days (including travel) is proportionate to the need to safeguard the health of the Accused and to prevent any repercussions on his health from the length of his detention. Consequently, in the exercise of its discretionary power, the Trial Chamber decides to grant brief provisional release to the Accused Praljak.

34. In view of the circumstances of the case and the stage of the proceedings, the Chamber decides to impose upon the Accused Praljak the following guarantees: that the Accused Praljak remain within the confines set forth by the Trial Chamber⁸⁰ and report daily to the police. The Chamber also decides to order the Croatian authorities to keep watch over the Accused Praljak twenty-four hours a day during his stay and to provide a situation report every three days.

35. As such, the Accused Praljak will be released for the dates and according to the conditions set forth in the confidential annex attached to the present Decision.

36. Nonetheless, the Chamber decides to stay execution of its decision to release the Accused Praljak until a ruling has been made on the Appeal the Prosecution intends to lodge.⁸¹

VI. DISPOSITION

37. FOR THE FOREGOING REASONS, the Chamber,

PURSUANT TO Rule 65 (B) of the Rules,

GRANTS the Motion,

DENIES the Request for Leave to Reply,

⁸⁰ See in this regard the confidential Annex attached to this Decision.

⁸¹ Response, para. 48.

ORDERS the provisional release of the Accused Praljak for the dates and according to the conditions set forth in the confidential annex attached to the present Decision,

AND

ORDERS a stay of execution of the present decision until the Appeals Chamber has ruled on the Appeal the Prosecution intends to lodge against this Decision.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this seventeenth day of July 2008

At The Hague

The Netherlands

[Seal of the Tribunal]