



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: 4 May 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Decision of: 4 May 2009

THE PROSECUTOR

v.

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

PUBLIC

**REDACTED VERSION OF "DECISION ON VALENTIN ĆORIĆ'S REQUEST FOR
PROVISIONAL RELEASE", FILED CONFIDENTIALLY AND *EX PARTE* ON 29
APRIL 2009**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

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 request for provisional release from the Accused Valentin Čorić (“Accused Čorić”), submitted pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”) and filed confidentially by Counsel for the Accused Čorić (“Čorić Defence”) on 6 April 2009.

II. PROCEDURAL BACKGROUND

2. On 6 April 2009, the Čorić Defence confidentially filed “Valentin Čorić’s Request for Provisional Release”, with two Annexes, in which it requests, for humanitarian reasons, the provisional release of the Accused Čorić to the Republic of Croatia (“Croatia”) for a period of six weeks from 15 April to 27 May 2009, so that the Accused may undergo intensive medical treatment for a herniated lumbar disk¹ (“Request”).

3. At an *ex parte* hearing on 7 April 2009, the Accused Čorić reiterated his desire to undergo appropriate medical treatment in Croatia rather than in the Kingdom of the Netherlands (“Netherlands”).²

4. On 8 April 2009, the Ministry of Foreign Affairs of the Netherlands wrote a letter to the Tribunal indicating that it did not object to the provisional release of the Accused Čorić, should he leave the territory of the Netherlands.³

5. On 9 April 2009, the Office of the Prosecutor (“Prosecution”) confidentially filed the “Prosecution Response to Request for Provisional Release on Behalf of Valentin Čorić” (“Response”), in which it objects to the provisional release of the Accused Čorić in Zagreb, considering that the Request is premature and that the Čorić Defence

¹ Request, paras 10 and 11; Annexes 1 and 2.

² *Ex parte* hearing of 7 April 2009.

³ Letter of 8 April 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands regarding the provisional release of Valentin Čorić.

has failed to establish that it is necessary for the Accused Čorić to be treated in Croatia instead of the Netherlands.⁴

6. Also on 9 April 2009, the Čorić Defence confidentially filed a “Supplement to Valentin Čorić’s Request for Provisional Release” with an Annex (“First Supplement”), in which it discloses the letter from the Croatian government providing guarantees that, should the Accused Čorić be granted provisional release by the Chamber, he will not influence or place in danger, during his provisional release, victims, witnesses or other persons, and will return to The Hague on the date ordered by the Chamber.⁵

7. On 15 April 2009, the Čorić Defence confidentially filed the “Second Supplement to Valentin Čorić’s Request for Provisional Release and Request for Leave to Reply and Proposed Reply to Prosecution Response to Request for Provisional Release on Behalf of Valentin Čorić”, with an Annex (“Second Supplement”), [redacted].⁶

8. On 16 April 2009, the Prosecution confidentially filed the “Prosecution Response to Second Supplement to Čorić Request for Provisional Release”, in which it maintains the position it set forth in its Response.

9. On 24 April 2009, the Registry disclosed a confidential and *ex parte* “Further Registry Submission Pursuant to Rule 33 Regarding the Medical Status of the Accused Valentin Čorić”, (“Letter from Dr Falke regarding the state of health of the Accused Čorić”), in which Dr Falke, Medical Officer at the United Nations Detention Unit (“Detention Unit”) provides an assessment of the state of health of the Accused Čorić.

10. On 24 April 2009, the Chamber informally requested that the Registry lift, with regard to the Prosecution, the *ex parte* status of the Letter from Dr Falke on the state of health of the Accused Čorić.

⁴ Response, para. 2.

⁵ Letter of 6 April 2009, from the Ministry of Justice of the Republic of Croatia attached in confidential Annex I to the First Supplement.

⁶ [redacted].

11. On 27 April 2009, the Prosecution filed a confidential and *ex parte* "Prosecution Response to Request for Provisional Release of Valentin Ćorić as supplemented by Further Registry Submission dated 24 April 2009" ("Second Response"), in which, in essence, it continues to oppose the provisional release of the Accused Ćorić and, in the alternative, should he be granted provisional release by the Chamber, requests that a number of conditions be imposed upon the Accused Ćorić in connection with his provisional release.

III. APPLICABLE LAW

12. Rule 65 (A) of the Rules of Procedure and Evidence ("Rules") stipulates that once detained, an accused may not be released except by an order of a Chamber. In compliance with Rule 65 (B) of the Rules, the Chamber may order a provisional release only after giving the host country and the state to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will pose no danger to any victim, witness or other person.

13. In accordance with the Tribunal established case-law, the decision to grant or deny provisional release pursuant to Rule 65 of the Rules stems from the discretionary power of the Chamber.⁷ In order to determine if the conditions laid out in Rule 65 (B) of the Rules have been met, the Chamber must take into consideration all the relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision.⁸ The Chamber must then provide a reasoned

⁷ *The Prosecution v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, "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.

⁸ *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 ("*Miće Stanišić* Decision"), para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

opinion for its decision on this matter.⁹ The relevance of the presented material and the weight to be accorded to it are appraised on a case-by-case basis.¹⁰ Because it relies first and foremost on the facts in the case, each request for provisional release is examined in the light of the particular circumstances of the accused.¹¹ The Chamber must examine these circumstances as they are at the time of reaching a decision on the provisional release, but also, as much as can be foreseen, on the circumstances at the time the accused is expected to return to the Tribunal.¹²

14. In accordance with recent Appeals Chamber case-law, the close of the Prosecution case constitutes a significant enough change in circumstance to warrant a renewed and detailed assessment of the risk of flight by the Accused.¹³ In these circumstances, and even if the Trial Chamber is convinced that sufficient guarantees have been presented, it must only exercise its discretionary power to grant provisional release if sufficiently compelling humanitarian grounds tip the scales in its favour.¹⁴ Consequently, provisional release will only be granted "at a late stage of proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian grounds 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."¹⁵

15. Nevertheless, in accordance with Appeals Chamber jurisprudence, the Chamber is uniquely suited to assess whether the procedural circumstances, such as, for

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

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

¹¹ *The Prosecutor v. Boškovski and Tarčulovski*, Case No. IT-04-82-AR65.1, "Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release", 4 October 2005 para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

¹² *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

¹³ *The Prosecutor v. Prlić et al.*, Case No. IT-04-074-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.

¹⁴ *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

¹⁵ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

example, the close of the Prosecution case, increase the risk of flight by the Accused while on provisional release.¹⁶

IV. ARGUMENTS OF THE PARTIES

16. In support of its Request, the Čorić Defence maintains, based on the Decision for provisional release of the Accused Čorić rendered by the Chamber on 17 July 2008,¹⁷ that (1) the Accused Čorić surrendered to the Tribunal voluntarily and has always complied in every respect with all the conditions set out when the previous provisional releases were granted,¹⁸ (2) that despite his health problems, the Accused Čorić has always taken care not to let his condition have a negative impact on the advancement of the trial,¹⁹ (3) that the authorities of the Republic of Croatia have undertaken to ensure that the Accused Čorić conforms to all conditions imposed by the Chamber if it decides to grant provisional release to the Accused Čorić,²⁰ (4) that the Government of the Kingdom of the Netherlands has always consented to the provisional release of the Accused Čorić,²¹ and that (5) [redacted].²²

17. The Čorić Defence contends that the Request respects current Appeals Chamber jurisprudence with respect to provisional release.²³ [Redacted].²⁴ The Čorić Defence maintains that this alone is a sufficiently strong humanitarian reason to grant provisional release to the Accused Čorić.²⁵

¹⁶ *Milutinović* Decision, para. 15.

¹⁷ "Decision on the Request for Provisional Release of the Accused Čorić", 17 July 2008, public document with confidential Annex.

¹⁸ Request, para. 7.

¹⁹ Request, para. 7.

²⁰ Request, para. 7; Letter of 6 April 2009, from the Ministry of Justice of the Republic of Croatia attached in Confidential Annex I to the First Supplement.

²¹ Request, para. 7; Letter of 8 April 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands regarding the provisional release of Valentin Čorić.

²² Request, para. 7.

²³ Request, paras. 8 and 9.

²⁴ Request, para. 9.

²⁵ Request, para. 9.

18. [Redacted].²⁶ [Redacted].²⁷

19. [Redacted].²⁸

20. [Redacted].²⁹

21. [Redacted].³⁰

22. [Redacted].³¹

23. In its Second Response, the Prosecution is not opposed to the Accused Ćorić undergoing medical treatment but is opposed to the granting of a provisional release outside of the Netherlands.³² The Prosecution contends that nothing is stopping the Accused Ćorić from receiving treatment in The Netherlands.³³ The Prosecution further maintains that the Ćorić Defence has not provided sufficient information as to the possible duration of the provisional release.³⁴

24. Should the Accused Ćorić nevertheless be granted provisional release by the Chamber, the Prosecution requests that (1) [redacted], (2) that the Chamber present all the necessary guarantees associated with the provisional release in order to reduce the risk of flight by the Accused Ćorić, (3) that the Chamber obtain from the Accused Ćorić personally an informed, voluntary and unconditioned waiver of his right to be present at trial, and his agreement that his counsel shall continue to represent him during his absence, and (4) that the Chamber stay the enforcement of this decision in order to give the Prosecution time to appeal, if it so wishes.³⁵

V. DISCUSSION

²⁶ Request, para.10; Letter [redacted], regarding the state of health of Valentin Ćorić, attached in Annex 1 to the Request; Letter of 3 April 2009, from Dr Falke, Medical Officer at the United Nations Detention Unit, attached in Annex 2 to the Request.

²⁷ Request, para.11.

²⁸ Request, paras 14 to 17.

²⁹ Second Supplement, para. 4.

³⁰ Second Supplement, para.6.

³¹ Letter of 24 April 2009, from Dr Falke, Medical Officer at the United Nations Detention Unit.

³² Second Response, para. 3.

³³ Second Response, para. 4.

³⁴ Second Response, para. 5.

³⁵ Second Response, paras. 6 and 7.

25. As a preliminary matter, the Chamber decides to authorise the reply filed by the Ćorić Defence in its Second Supplement to the extent that it specifically responds to the Prosecution's arguments and provides further information on the state of health of the Accused Ćorić.

26. The Chamber further notes that, in accordance with Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber, in its letter dated 8 April 2009, that it was not opposed to the procedure for a possible provisional release of the Accused Ćorić.³⁶

27. In its letter of 6 April 2009, the Chamber also notes that the Government of Croatia has supplied guarantees that the Accused Ćorić, should he be granted provisional release by the Chamber, will not influence or place in danger, during his provisional release, victims, witnesses, or other persons, and will return to The Hague on the date ordered by the Chamber.³⁷

28. The Chamber further notes that the Accused Ćorić has respected all the conditions and guarantees imposed when he was previously granted provisional release pursuant to the orders and decisions of the Trial Chambers rendered on: 30 July 2004,³⁸ 30 November 2004,³⁹ 9 March 2005,⁴⁰ 17 May 2005,⁴¹ 15 July 2005,⁴² 7 October 2005,⁴³ 13 June 2006,⁴⁴ 26 June 2006,⁴⁵ 8 December 2006,⁴⁶ 11 June 2007,⁴⁷ 29 November

³⁶ Letter of 8 April 2009, from the Ministry of Foreign Affairs of the Kingdom of the Netherlands regarding the provisional release of Valentin Ćorić.

³⁷ Letter of 6 April 2009 from the Ministry of Justice of the Republic of Croatia, attached in Confidential Annex I to the First Supplement.

³⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Provisional Release of Valentin Ćorić", 30 July 2004.

³⁹ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Valentin Ćorić's Application for Variation of Conditions of Provisional Release", 30 November 2004.

⁴⁰ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Valentin Ćorić's Second Application for Variation of Conditions of Provisional Release", 9 March 2005.

⁴¹ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Valentin Ćorić's Urgent Motion for Variation of Conditions of Provisional Release", 17 May 2005.

⁴² *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Valentin Ćorić's Fourth Revised Motion for Variation of Conditions of Provisional Release", 15 July 2005.

⁴³ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision to Grant Valentin Ćorić's Fifth Application for Variation of Conditions of Provisional Release", 7 October 2005.

⁴⁴ "Order on the Urgent Motion for Provisional Release of Valentin Ćorić", 13 June 2006.

⁴⁵ "Decision on Motion for Provisional Release of the Accused Ćorić", 26 June 2006.

⁴⁶ "Decision on Motion for Provisional Release of the Accused Ćorić", 8 December 2006.

⁴⁷ "Decision on Motion for Provisional Release of the Accused Ćorić", 11 June 2007.

2007,⁴⁸ 17 July 2008,⁴⁹ and 2 December 2008.⁵⁰ With regard to the closing of the Prosecution case, which, according to the Appeals Chamber, constitutes an important change in the circumstances which requires a new and detailed assessment of the risk of flight of an accused,⁵¹ the Chamber holds that the guarantees to reappear in order to offset the risk of flight, such as those that might be imposed on the Accused Čorić, neutralise all possible risk of flight. Regarding his respectful conduct during his earlier provisional releases, the Chamber is assured that the Accused Čorić, if released, will appear for the continuation of his trial.

29. For these same reasons, and should the Accused Čorić be granted provisional release to the Republic of Croatia, the Chamber is of the opinion that the Accused Čorić will not pose a danger to victims, witnesses and other persons.⁵²

30. The Chamber recalls that, in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, it must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a decision.⁵³ In this instance, the Chamber must also consider that the Accused Čorić surrendered voluntarily to the Tribunal and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case.

31. 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 Čorić Defence are sufficiently compelling to justify the provisional release of the Accused Čorić.⁵⁴

32. In this respect, the Chamber recalls that it has the duty to consider each request for provisional release in the light of the particular circumstances of the Accused,⁵⁵ and that such an assessment is made at the time when it reaches its decision on provisional

⁴⁸ "Decision on Motion for Provisional Release of the Accused Čorić", 29 November 2007.

⁴⁹ "Decision on Motion for Provisional Release of the Accused Čorić", 17 July 2008.

⁵⁰ "Decision on Motion for Provisional Release of the Accused Čorić", 2 December 2008.

⁵¹ *Prlić* Decision of 11 March 2008, para. 20.

⁵² This danger is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

⁵³ *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

⁵⁴ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁵⁵ *Tarčulovski* Decision, para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

release, but it must also envisage as far as possible how the circumstances will have changed when the accused is to reappear before the Tribunal.⁵⁶ Consequently, as long as the Chamber considers that a ground raised by an accused – in light of his current situation – is sufficiently compelling, it may justify the provisional release of an accused.

33. The Chamber notes the submission of the Ćorić Defence regarding the state of health of the Accused Ćorić as a humanitarian reason justifying the urgent provisional release of the Accused to Croatia [redacted]. In support of these arguments regarding the state of the health of the Accused Ćorić, the Ćorić Defence has submitted - in the confidential annexes attached to the Request, as well as in the Second Supplement – two recent medical certificates regarding the state of health of the Accused, from a Dutch doctor who has examined him and a Croatian doctor [redacted].

34. [Redacted].

35. [Redacted].

36. [Redacted].

37. [Redacted].

38. Having analysed the arguments and documents, the Chamber characterises the humanitarian grounds raised by the Ćorić Defence in support of its Request as sufficiently compelling to justify the provisional release of the Accused Ćorić to Croatia, [redacted].

39. The Chamber also recalls that in keeping with the case-law of the Appeals Chamber, the length of provisional release at this late stage of the proceedings, and in particular after the close of the Prosecution case, must be proportional to the circumstances and to the sufficiently compelling humanitarian grounds that justify the provisional release.⁵⁷ Moreover, the Chamber recalls that the factors that it has to take into account affect not only the decision to grant or deny provisional release, but also,

⁵⁶ *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

⁵⁷ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

the length of the stay, if appropriate. The Chamber must also find, *inter alia*, the proper balance between the nature and the weight of the circumstances justifying provisional release for humanitarian reasons and its duration.⁵⁸

40. [Redacted].⁵⁹ The Chamber finds that a provisional release for a duration of seven weeks, which also includes the time of the round trip journey, corresponds to the time required for the Accused Čorić [redacted]. The Chamber therefore deems that a provisional release not exceeding seven weeks is proportionate to the gravity of the state of health of the Accused Čorić.

VI. CONCLUSION

41. For these reasons, the Chamber is convinced that the Accused Čorić offers sufficiently compelling humanitarian grounds and holds that provisional release not exceeding seven weeks (including travel) is proportionate to the gravity of the state of health of the Accused Čorić. Consequently, in exercising its discretionary power, the Chamber decides to grant provisional release to the Accused Čorić to Croatia, to the Municipality of Zagreb, [redacted].

42. In view of the circumstance of the case and the advanced stage of the proceedings, the Chamber decides to impose upon the Accused Čorić the following guarantees: that the Accused Čorić remain within the confines set forth by the Chamber.⁶⁰ The Chamber also decides to order the Croatian authorities to carry out 24-hour surveillance of the Accused Čorić during his stay and to provide a situation report every three days.

43. As such, the Accused Čorić will be released from 1 May to 19 June 2009, according to the conditions set forth in the Confidential and *Ex Parte* Annex attached to the present Decision. [Annex Redacted]

44. [Redacted]. The Chamber deems that, under the circumstances, the Accused Čorić's Request for Provisional Release should be granted as soon as possible and that

⁵⁸ *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

⁵⁹ Annex 1 to the Second Supplement: [redacted].

this Decision should not be stayed. The Chamber therefore denies the Prosecution's request to stay the enforcement of the present Decision.

VII. DISPOSITION

FOR THE FOREGOING REASONS, the Chamber,

PURSUANT TO Rules 65 (B) and 65 (E) of the Rules,

AUTHORISES the reply introduced by the Second Supplement,

PARTIALLY GRANTS the Request,

ORDERS the provisional release of the Accused Ćorić from 1 May to 19 June 2009, and according to the conditions set forth below [Annex redacted],

AND,

DENIES the Request to stay the enforcement of the present Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶⁰ See in this regard the conditions to be imposed upon the Accused Ćorić in connection with his provisional release as described in the Confidential *Ex Parte* Annex attached to this Decision. [Annex Redacted].