



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: 21 April 2011
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 21 April 2011

THE PROSECUTOR

v.

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

PUBLIC

**DECISION ON JADRANKO PRLIĆ'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 Zoran Ivanišević 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 “Jadranko Prlić’s Motion for Provisional Release” filed confidentially by Counsel for the Accused Prlić (“Prlić Defence”) on 31 March 2011 (“Motion”), along with two annexes, whereby the Prlić Defence requests the provisional release of the Accused Prlić until judgement is pronounced in the case.¹

II. PROCEDURAL BACKGROUND

2. In a letter included with the Confidential Annex to the Motion, the Ministry of Justice of the Republic of Croatia provided guarantees to the Chamber that the Accused Prlić, were the Motion granted, would comply with the conditions required for provisional release and would return to The Hague on the date ordered by the Chamber.²

3. On 4 April 2011, the Ministry of Foreign Affairs of the Kingdom of the Netherlands (“Netherlands”) wrote a letter to the Tribunal indicating that it did not object to the provisional release of the Accused Prlić.³

4. On 13 April 2011, the Office of the Prosecutor (“Prosecution”) confidentially filed the “Prosecution Combined Response to Jadranko Prlić’s Motion for Provisional Release and Slobodan Praljak’s Motion for Provisional Release” (“Response”), wherein the Prosecution contests the said Motion.⁴

III. ARGUMENTS OF THE PARTIES

5. In support of its Motion, the Prlić Defence submits that the Accused Prlić does not present a risk of flight, insofar as he has returned after every provisional release granted.⁵ According to the Prlić Defence, there is no evidence that the risk of flight

¹ Motion, pp. 1 and 9.

² Letter from the Ministry of Justice of the Republic of Croatia dated 26 March 2011, attached with the Confidential Annex to the Request.

³ Letter from the Ministry of Foreign Affairs of the Kingdom of the Netherlands concerning the provisional release of Jadranko Prlić of 4 April 2011, filed by the Registry on 4 April 2011.

⁴ Response, paras 1 and 8.

⁵ Motion, para. 11.

has increased during this time of deliberations.⁶ The Prlić Defence adds that the Accused Prlić does not now and has not ever posed a risk to any victim, witness or other person.⁷

6. The Prlić Defence argues moreover that, inasmuch as the Chamber is no longer in session, the Accused need not be present.⁸

7. The Prlić Defence questions the need to show that there are “sufficiently compelling humanitarian reasons” for granting provisional release to an accused and argues that the Appeals Chamber is relying on an erroneous interpretation of the Tribunal’s case-law, not contained in either “the letter or the spirit of Rule 65 (B)”.⁹

8. The Prlić Defence nonetheless asserts that there exist sufficiently compelling humanitarian reasons for granting provisional release to the Accused Prlić until judgement is pronounced. It contends, firstly, that keeping the Accused Prlić in detention is contrary to the presumption of innocence and violates the right to a fair trial.¹⁰ Secondly, it argues that due to his lengthy detention, the Accused Prlić has been deprived of his family and his support network, which has exacted a serious physical as well as psychological toll.¹¹

9. In the Response, the Prosecution argues that the heightened risk of flight, as the trial is nearing its end, as it has been recognized by the Appeals Chamber, applies all the more weighty once the evidence has concluded. It contends that granting an extended period of provisional release increases the risk of flight, renders the prospect of a return to detention less likely and places a substantial burden on the jurisdiction implementing the measures necessary for provisional release.¹²

10. The Prosecution submits moreover that the Accused Prlić has submitted no valid humanitarian reasons in support of its motion for provisional release. It contends that the Chamber is bound to follow the case-law of the Appeals Chamber in this matter, as it has done previously.¹³ The Prosecution thereby underscores that the mere

⁶ Motion, para. 11.

⁷ Motion, para. 12.

⁸ Motion, para. 13.

⁹ Motion, paras 14 to 17.

¹⁰ Motion, paras 18 to 21.

¹¹ Motion, paras 22 and 23.

¹² Response, para. 2.

¹³ Response, paras 3 and 4.

fact that ongoing detention of an accused may negatively affect his health does not constitute an adequate ground for granting provisional release.¹⁴ The Prosecution observes that the Prlić Defence has produced no material supporting its assertion that the prolonged detention of the Accused Prlić pending judgement will exact a “serious physical and psychological toll”.¹⁵

11. In closing, should the Chamber grant release to the Accused Prlić, the Prosecution has requested that it stay its decision pending any appeal the Prosecution might intend to lodge against it.¹⁶

IV. APPLICABLE LAW

12. The Chamber wishes to draw the attention of the Prosecution and the Prlić Defence to developments in the law applicable to Rule 65 of the Rules for decisions relating to requests for provisional release which it has previously rendered,¹⁷ and incorporates them in full here by reference, including their contents and references, particularly insofar as they concern: (1) the conditions required by Rules 65 (A) and (B) of the Rules for granting provisional release;¹⁸ and (2) the established jurisprudence of the Tribunal relating to the criteria for assessing provisional

¹⁴ Response, paras 5 and 6.

¹⁵ Response, para. 7.

¹⁶ Response, para. 9.

¹⁷ See “Decision on Accused Stojić’s Motion for Provisional Release”, confidential with confidential Annex, 9 December 2009 (“*Stojić* Decision of 9 December 2009”), paras 6-9; “Decision on Motion for Provisional Release of the Accused Petković”, confidential with confidential Annex, 9 December 2009 (“*Petković* Decision of 9 December 2009”), paras 5-8; “Decision on the Motion for Provisional Release Filed by the Accused Stojić”, confidential with confidential Annex, 3 September 2009 (“*Stojić* Decision of 3 September 2009”), paras 7-10; “Decision on Valentin Ćorić’s Request for Provisional Release”, confidential, 17 June 2009 (“*Ćorić* Decision of 17 June 2009”), paras 9-12; “*Décision relative à la demande de mise en liberté de l’Accusé Prlić*”, confidential with a confidential Annex, 29 May 2009, paras 10-13.

¹⁸ See *Stojić* Decision of 9 December 2009 para. 6; *Petković* Decision of 9 December 2009, para. 5; *Stojić* Decision of 3 September 2009, para. 7; *Ćorić* Decision of 17 June 2009, para. 9.

release,¹⁹ including those pertaining to consideration of the requests in light of the particular circumstances of the Accused.²⁰

V. DISCUSSION

13. The Chamber observes that, in accordance with Rule 65 (B) of the Rules, the government of the Netherlands, the host state, informed it by letter of 4 April 2011 that it did not object to proceedings for a possible provisional release of the Accused Prlić.²¹

14. In a letter on 26 March 2011, the government of the Republic of Croatia provided assurances to guarantee that the Accused Prlić, were the request for provisional release granted by the Chamber, would not influence or endanger victims, witnesses or any other person during his provisional release and would return to The Hague on the date ordered by the Chamber.²²

15. The Chamber recalls that, to assess whether the requirements of Rule 65 (B) of the Rules have been met, it must consider all of the relevant factors which a reasonable trial chamber would have been expected to take into account before coming to a decision.²³

¹⁹ See *Stojić* Decision of 9 December 2009, para. 7; *Petković* Decision of 9 December 2009, para. 6; *Ćorić* Decision of 17 June 2009, para. 10; *The Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, “Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić’s Provisional Release”, public, 17 October 2005 (“*Miće Stanišić* Decision”), para. 8; *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”, public, 21 April 2008 (“*Petković* Decision of 21 April 2008”), para. 8; *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”, public, 25 April 2008 (“*Prlić* Decision of 25 April 2008”), para. 10.

²⁰ *The Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-AR65.1, “Decision on Johan Tarčulovski’s Interlocutory Appeal on Provisional Release”, public, 4 October 2005, para. 7; *Petković* Decision of 21 April 2008, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.14, “Decision on Jadranko Prlić’s Appeal Against the ‘*Décision relative à la demande de mise en liberté provisoire de l’Accusé Prlić*’, 9 April 2009”, public, 5 June 2009 (“*Prlić* Decision of 5 June 2009”), para. 13.

²¹ Letter from the Ministry of Foreign Affairs of the Kingdom of the Netherlands dated 4 April 2011, filed by the Registry on 4 April 2011.

²² Letter of Guarantee of the Ministry of Justice of the Republic of Croatia, dated 26 March 2011, attached in the Confidential Annex to the Request.

²³ *Miće Stanišić* Decision, para. 8; *The Prosecutor 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, para. 35; *Petković* Decision of 21 April 2008, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

16. Regarding the flight risk of the Accused Prlić, the Chamber observes that the said Accused, besides willingly surrendering to the Tribunal on 5 April 2004, complied with the conditions and guarantees of his previous provisional releases, pursuant to the orders and decisions of the Chamber,²⁴ except for the incidents during his provisional release from 28 July to 8 August 2008.²⁵

17. On this point, the Chamber notes that the Appeals Chamber, in the *Prlić* Decision of 5 June 2009, held that previous breaches of the conditions, although they must be considered by the Trial Chamber, do not logically entail denial of the request for provisional release and do not in any case relieve the Trial Chamber from assessing whether the requirements of Rule 65 (B) are fulfilled in that instance.²⁶

18. Furthermore, although the close of the Prosecution's case constitutes, in the view of the Appeals Chamber, a significant change of circumstances warranting renewed and explicit consideration of the risk of flight by an accused,²⁷ the Chamber notes, despite the weighty significance of the Defence cases being closed since 17

²⁴ See *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Decision on Motion for Provisional Release of the Accused Prlić", confidential with confidential Annex, 10 December 2008, para. 32-34 and *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Decision on the Accused Prlić's Motion for Provisional Release", confidential with confidential Annex, 17 July 2008.

²⁵ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Provisional Release of Jadranko Prlić", public, 30 July 2004; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Order on Jadranko Prlić's Motion for Variation of Conditions of Provisional Release", public, 1 July 2005; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Décision relative à la demande de mise en liberté provisoire de l'Accusé Prlić", partially confidential, 8 December 2006; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Motion for Provisional Release of the Accused Prlić", confidential, 26 June 2006; the dates for release of the Accused Prlić announced in this decision were amended by the "Order Amending the Decision on the Accused Prlić's Request for Provisional Release", confidential, 4 July 2006; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on the Accused Prlić's Motion for Provisional Release", public with confidential Annex, 17 July 2008; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on the Motion for Provisional Release of the Accused Prlić", 11 June 2007, public with confidential Annex; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on the Motion for Provisional Release of the Accused Prlić", 29 November 2007, public with confidential Annex; *Prlić* Decision of 25 April 2008; the dates for provisional release of the Accused Prlić announced in this decision were amended by the "Decision Amending the Further Decision Regarding the Decision on Provisional Release of the Accused Prlić", 28 April 2008, confidential; *Prlić* Decision of 29 May 2009; *Prlić* Decision of 29 June 2009; *Prlić* Decision of 9 December 2009; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Motion for Provisional Release of the Accused Prlić", 9 July 2010, confidential with confidential Annex ("Decision of 9 July 2010"); *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Motion for Provisional Release by the Accused Prlić", 8 December 2010, confidential with confidential Annex; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, "Decision on Motion for Provisional Release of the Accused Prlić", 16 February 2011, confidential with confidential Annex.

²⁶ *Prlić* Decision of 5 June 2009, para. 12.

²⁷ *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", public, 11 March 2008 ("*Prlić* Decision of 11 March 2008"), para. 20.

May 2010²⁸ and the hearings for closing arguments by the Prosecution and the Defence having been held in February and March 2011²⁹ that these events do not enable one to posit a heightened risk of flight for the Accused Prlić.³⁰ Moreover, the Chamber finds that, in the event it decides to grant the Motion, assurances of return to counter the risk of flight, which would likely be required of the Accused Prlić, such as ongoing surveillance by the police authorities in Croatia, would offset any potential risk of flight.

19. For these reasons, the Chamber is persuaded that the Accused Prlić, if released, would return to the United Nations Detention Unit (“UNDU”).

20. For these very same reasons, the Chamber opines that the Accused Prlić, were he released to Croatia, would not endanger any victims, witnesses or other persons³¹ and recalls moreover in this regard that inasmuch as the trial has entered its final phase, witnesses will no longer be heard by the Chamber.³²

21. Finally, the Chamber observes that closing arguments ended on 2 March 2011 and that, on that same day, the Presiding Judge pronounced the hearing closed.³³ Therefore, nothing will happen in the courtroom until the reading of the judgement that requires the Accused Prlić’s presence.

22. The Chamber decides therefore that the requirements of Rule 65 (B) of the Rules have been satisfied in this instance.

23. The Chamber notes that since April 2008, the Appeals Chamber has assigned to the Trial Chambers the duty of evaluating, over and above the requirements of Rule 65 (B) of the Rules, whether the humanitarian grounds submitted by the Accused are sufficiently compelling to justify their provisional release at a late stage of the

²⁸ “Order Regarding the Closure of the Presentation of the Defence Cases”, public, 17 May 2010.

²⁹ Hearings of 7 February 2011 and 2 March 2011.

³⁰ For the Tribunal’s case-law regarding the fresh and detailed assessment of the risk of flight once argument has closed and while awaiting delivery of judgement, see *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88, “Decision on Miletic’s Motion for Provisional Release”, confidential, 11 February 2010, paras 11 and 14 and *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.11, “Decision on Prosecution’s Appeal against ‘Decision on Gvero’s Further Motion for Provisional Release’”, confidential, 25 January 2010, paras 13-16.

³¹ This danger cannot be assessed *in abstracto* – it must be concrete. *Mičo Stanišić* Decision, para. 27.

³² Scheduling Order, p. 11.

³³ Hearing of 2 March 2011, transcript in French (“T(F)”), p. 52976.

proceedings,³⁴ the length of which must remain proportionate to the said humanitarian circumstances.³⁵

24. The Chamber has previously expressed reservations in relation to whether this new criterion deemed necessary by the Appeals Chamber can be applied after the trial chambers have rendered decisions pursuant to Rule 98 *bis* of the Rules. The Chamber has considered, in particular, that “[the 98 *bis* Decision] was valid solely for the purposes of the procedure under Rule 98 *bis* of the Rules, [and] may not be considered as a ‘pre-judgement’ increasing the flight risk of the Accused”, as justification for mandating a further criterion when granting provisional release.³⁶ The Chamber, however, “[took note] of the Appeals Chamber’s desire to obtain additional guarantees for future appearance to offset the flight risk as well as more compelling reasons as regards the humanitarian grounds, in light of the Rule 98 *bis* Decision”.³⁷ Since then, the Chamber has had to evaluate fifty requests for provisional release in accordance with this new further criterion.

25. The Chamber recalls as well that the judges of the Appeals Chamber³⁸ as well as the trial judges and chambers and duty judges have likewise voiced their objections to this criterion of sufficiently compelling humanitarian reasons mandated by the Appeals Chamber.³⁹

³⁴ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para 16.

³⁵ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para. 16; *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.4, “Decision on Consolidated Appeal Against Decision on Borovčanin’s Motion for a Custodial Visit and Decisions on Gvero’s and Miletić’s Motions for Provisional Release during the Break in the Proceedings,” public, 15 May 2008 (“*Popović* Decision of 15 May 2008”), para. 24.

³⁶ “Decision on the Application for Provisional Release of the Accused Pušić”, public with confidential Annex, 19 March 2008 (“*Pušić* Decision of 19 March 2008”), p. 6, citing the “Oral Decision Rendered Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, 20 February 2008, T(F), pp. 27201-27238 (“98 *bis* Decision”).

³⁷ *Pušić* Decision of 19 March 2008, p. 7.

³⁸ See the opinions in partial dissent of Judge Güney and/or Judge Liu annexed to these decisions: *Petković* Decision of 21 April 2008, *Prlić* Decision of 25 April 2008, *Popović* Decision of 15 May 2008.

³⁹ See *The Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, “Decision denying Mićo Stanišić’s Request for Provisional Release during the Break after the Close of the Prosecution Case with Separate Declaration of Judge Guy Delvoie”, public, 25 February 2011 (“*Stanišić and Župljanin* Decision of 25 February 2011”), paras 14-26 and the separate opinion of Judge Delvoie, paras 4-7; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.23, “Decision on Valentin Ćorić’s Appeal Against the Trial Chamber’s ‘*Décision relative à la demande de mise en liberté provisoire de l’Accusé Valentin Ćorić*’”, confidential, 24 December 2009 (before the duty judge), para. 15-17; *The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, “Decision on Miletić’s Motion for Provisional Release”, confidential with public dissenting opinion by Judge Prost, 15 October 2009, dissenting opinion by Judge Prost.

26. As it was put in the grounds submitted by the Prlić Defence, the Chamber believes that the close of arguments constitutes a significant change of circumstance compared with that at the time of the *Prlić* Decision of 11 March 2008 and the *Petković* Decision of 21 April 2008, both rendered by the Appeals Chamber, and that justifies reconsideration of the relevance of maintaining this further criterion at this stage of the proceedings.

27. Thus, the Chamber finds that the following question arises when evaluating any request for provisional release after the close of arguments: is applying the criterion of compelling humanitarian circumstances, analysed in light of applicable principles of human rights and the circumstances of the case, still justified at this stage of the proceedings?

28. The Chamber does acknowledge that under the structure of the Statute and the Rules, detention appears to be the rule and provisional release the exception. The Statute is in fact silent as to the option for granting provisional release and simply provides, in Article 20(2) that “[a] person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal”. The Rules affirm, in Rule 65 (A), that release is only possible “by order of a Chamber”.

29. The Chamber nonetheless finds it necessary, given the weightiness of this issue as well as its controversial character,⁴⁰ to refer to the principles outlined in other jurisdictions and in European and international legal instruments.

30. In this regard, the Chamber recalls, moreover, that the principles of human rights taken from the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) are, as put by the Appeals Chamber, a part of international law⁴¹ and that the provisions of Rule 65 (B) of the Rules must be construed in light of these principles.⁴²

31. The Appeals Chamber itself has found when implementing these principles that “[i]f it is sufficient to use a more lenient measure than mandatory detention, it

⁴⁰ To this effect, see paragraphs 24 and 25 of this Decision.

⁴¹ *The Prosecutor v. Limaj et al.*, Case No. IT-03-66-AR65, “Decision on Fatmir Limaj’s Request for Provisional Release”, public, 31 October 2003 (“*Limaj* Decision”), para. 10.

must be applied”.⁴³ In this regard, the Chamber recalls that other measures, which have, moreover, already been implemented successfully, are entirely conceivable, such as ongoing monitoring by the police authorities in Croatia, monitored home confinement, or even requiring bail.

32. The Chamber also wishes to recall that the jurisprudence of the European Court of Human Rights (“EHR Court”) has spoken to the circumstances where measures of lengthy provisional detention may be enforced:

“According to the settled jurisprudence of the Court, it falls first to national judicial authorities to ensure that in any given case, the length of provisional detention of an accused does not exceed the bounds of what is reasonable. For this purpose, they must examine all of the circumstances likely to reveal or to rule out whether the requirements of the public interest regarding the presumption of innocence, would warrant making an exception to the rule of respect for individual liberties and to take this into consideration in their decisions with respect to any release. It is principally on the basis of the grounds appearing in these decisions, as well as of uncontested facts signalled by the appellant in his appeals that the Court must determine whether or not there has been a violation of Article 5 § 3 of the Convention.” /Registry translation/⁴⁴

33. Furthermore, the Chamber wishes to refer to the principles of the ICCPR and in particular to Article 14 (2) regarding the presumption of innocence and to Article 9 (3), which provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial [...]”.⁴⁵

34. The EHR Court has likewise specified that “[t]he persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty”.⁴⁶

⁴² *Limaj* Decision, para. 12.

⁴³ *Limaj* Decision, para. 13.

⁴⁴ European Court of Human Rights, *Prencipe v. Monaco* Judgment (No. 43376/06), 16 July 2009, paras 74 and 75, directly citing the judgments in *Letellier v. France*, 26 June 1991, para. 35; *I.A. v. France*, 23 September 1998 (Reports of Judgments and Decisions 1998-VII), para. 102; *Bouchet v. France* (No. 33591/96), 20 March 2001, para. 40 and *Zannouti v. France* (No. 42211/98), 31 July 2001, para. 43.

⁴⁵ See to this effect General Comment No. 8 regarding Article 9 of the ICCPR (16th Session, 1982), paras 2-4 and the jurisprudence of the Human Rights Committee, specifically CCPR/CO/79/LVA (Latvia) (HRC, 2003), para. 10 and CCPR/C/ESP/CO/5 (HCR, 2009), para. 15.

⁴⁶ European Court of Human Rights, Judgment in *Prencipe v. Monaco* (No. 43376/06), 16 July 2009, paras 74 and 75 directly citing the judgments in *Letellier v. France*, 26 June 1991, para. 35; *I.A. v. France*, 23 September 1998 (Reports of Judgments and Decisions 1998-VII), para. 102; *Bouchet v.*

35. As regards this case, the Chamber recalls that oral argument is now completed. Unlike the procedural stage during which the *Prlić* Decision of 11 March 2008 was rendered, the Accused Prlić's presence in the courtroom is no longer required. Furthermore, the Accused Prlić is no longer required to assist his counsel, who are no longer needed in The Hague to prepare his defence, as his defence, like the other defences in fact, has now ended.

36. Additionally, save for short periods of release, the Accused Prlić has remained in provisional detention for more than five years. The complexity and the scope of the case also render conceivable a lengthy period of deliberation prior to the delivery of judgement. It is therefore reasonable to presume that the Accused Prlić will continue to face a lengthy period of provisional detention.

37. The Appeals Chamber had justified introducing the further criterion concerning the increased risk of flight produced by the 98 *bis* Decision. Suspicion of the Accused's guilt was, for the Appeals Chamber, more important due to this decision. Since this new criterion was introduced, the Accused Prlić has been in provisional detention for yet another three years, which, as recalled, amounts to an overall period in provisional detention of more than five years. Concerning the overall time, from the standpoint of the requirements of Rule 65 (B) of the Rules, as mentioned in paragraph 22 of this very Decision, the possibility of granting provisional release with measures of strict monitoring, and the jurisprudence of the EHR Court, whereby the longer provisional detention lasts, the more the grounds in support of continued provisional detention lose currency, the Chamber finds that the fact that an accused does not offer humanitarian grounds in support of his request for provisional release does not justify denying provisional release. Put differently, the Chamber finds that the Accused, given the stage of the proceedings and given the length of provisional detention past and future, is no longer obliged to argue humanitarian grounds when requesting provisional release.

38. In this instance, the Chamber has reached the conviction that the Accused Prlić, if provisionally released, would return to the UNDU when requested and would not pose a risk to victims, witnesses or other persons. The Chamber has likewise concluded that the length of detention already served by the Accused removed all

France (No. 33591/96), 20 March 2001, para. 40 and *Zannouti v. France* (No. 42211/98), 31 July

justification for the further criterion of compelling humanitarian circumstances. In fact, continuing to hold the Accused Prlić in detention without any activity in the courtroom, even though the requirements of Rule 65 (B) have been met, may therefore be perceived as an anticipatory sentence difficult to reconcile with the principle of the presumption of innocence.

39. Despite this, the Chamber considers itself constrained in its analysis by the legal framework of the Tribunal, namely, the Statute of the Tribunal and the Rules, as interpreted by the Appeals Chamber, and therefore, by the duty to establish sufficiently compelling humanitarian reasons warranting provisional release late in the proceedings.⁴⁷ Thus, it is for this reason that the Chamber will use that basis to examine the Motion on the merits hereinafter.

40. In this instance, the Chamber acknowledges that the length of provisional detention of an Accused is a factor to be taken into account in assessing the requests for provisional release and emphasizes, as the Prlić Defence reminds us,⁴⁸ that the Chamber has factored this into its various decisions on the subject.⁴⁹ Nevertheless, the Chamber finds that, in light of the criteria introduced by the Appeals Chamber concerning the specific and urgent character of the humanitarian reasons raised,⁵⁰ this overall factor cannot independently constitute a sufficiently compelling humanitarian ground as meant by the Appeals Chamber's jurisprudence.

41. The Chamber next points out the complete absence of specific, up-to-date information involving the deleterious effects of continued provisional detention for the Accused Prlić and the loss of his family ties and his support network, particularly through medical reports. The Chamber is forced to conclude that such broad desiderata lacking documentation and/or currency are inadequate to authorize a new provisional release for the Accused Prlić for a period as lengthy as that requested.

42. The Chamber therefore finds that, with regard to the specific circumstances in this instance, the humanitarian grounds raised by the Prlić Defence are not sufficiently compelling to warrant provisional release let alone for a period as long as that envisaged in this Motion.

2001, para. 43.

⁴⁷ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁴⁸ Motion, para. 20.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules,

DENIES the Motion, by a majority of the Judges.

The Presiding Judge in the Chamber, Judge Jean-Claude Antonetti, intends to attach a dissenting opinion to this Decision.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of April 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴⁹ “Decision on Motion for Provisional Release of the Accused Prlić”, 17 July 2008, para. 24.

⁵⁰ *Prlić* Decision of 11 March 2008, para. 21; *Petković* Decision of 21 April 2008, paras 19-20.