



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
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IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
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 SLOBODAN 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
Ms Nika Pinter and Mr Božidar Kovačić 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 “Slobodan Praljak’s Motion for Provisional Release” filed by Counsel for the Accused Slobodan Praljak (“Praljak Defence”; “Accused Praljak”) as a confidential document, with a confidential annex, on 7 April 2011 (“Motion”; “Confidential Annex to the Motion”).

II. PROCEDURAL BACKGROUND

2. On 7 April 2011, the Praljak Defence filed the Motion, whereby it seeks provisional release of the Accused Praljak until the delivery of the judgement.¹

3. In a letter enclosed in the Confidential Annex to the Motion, the Ministry of Justice of the Republic of Croatia provided guarantees to the Chamber that, in case the Motion is granted, the Accused Praljak would comply with the conditions accompanying provisional release and would return to The Hague on the date ordered by the Chamber.²

4. The Chamber ordered the parties, in an e-mail sent on 7 April 2011, to file their responses to the Motion by no later than 14 April 2011.

5. In a letter dated 8 April 2011, filed with the Registry on 11 April 2011, the Ministry of Foreign Affairs of the Kingdom of the Netherlands (“The Netherlands”) indicated to the Tribunal that it did not object to the provisional release of the Accused Praljak.³

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

¹ Motion, p. 1 and para. 37.

² Letter from the Ministry of Justice of the Republic of Croatia dated 4 April 2011, enclosed in the Confidential Annex to the Motion.

³ Letter from the Ministry of Foreign Affairs of the Kingdom of the Netherlands regarding the provisional release of Slobodan Praljak, dated 8 April 2011, filed with the Registry on 11 April 2011.

(“Response”), in which it opposes the Motion⁴ and requests, in the event the Chamber grants the Motion, a stay of the execution of its decision pending a ruling on the appeal pursuant to Rule 65 (E) of the Rules of Procedure and Evidence (“Rules”).⁵

III. ARGUMENTS OF THE PARTIES

7. In support of the Motion, the Praljak Defence refers to arguments and background information presented in its previous motions for provisional release⁶ and supplements them submitting that (1) the estimated date of the delivery of the judgement is February 2012 at the earliest;⁷ (2) the Accused Praljak has actively participated in the trial⁸ and has been in provisional detention for about seven years;⁹ (3) the Accused Praljak has been provisionally released many times since the commencement of the trial in 2006 and has always complied with all the conditions imposed by the Chamber;¹⁰ (4) the Government of the Republic of Croatia has always implemented the measures requested by the Chamber, in accordance with the co-operation agreement between the Republic of Croatia and the Tribunal;¹¹ (5) the Accused Praljak meets the requirements imposed by Rule 65 (B) of the Rules since he does not pose any danger to victims, witnesses or other persons¹² and, if released, he will appear before the Tribunal,¹³ as he has done during his previous provisional releases¹⁴ and (6) in that respect, the state of health of the Accused Praljak significantly reduces the risk of flight.¹⁵

8. The Praljak Defence argues furthermore that the requirement of “sufficiently compelling humanitarian reasons” imposed by the Appeals Chamber is flawed at this stage of the proceedings¹⁶ and that it is sufficient to satisfy the conditions set out in Rule 65 (B) of the Rules to justify provisional release.¹⁷

⁴ Response, paras 1 and 8.

⁵ Response, para. 9.

⁶ Motion, p. 1.

⁷ Motion, para. 2.

⁸ Motion, para. 16.

⁹ Motion, para. 5.

¹⁰ Motion, paras 3, 14 and 15.

¹¹ Motion, para. 15.

¹² Motion, paras 11 and 18.

¹³ Motion, paras 11, 14, 15 and 17.

¹⁴ Motion, paras 3, 4, 14 and 15.

¹⁵ Motion, para. 15.

¹⁶ Motion, paras 19-21.

¹⁷ Motion, para 21.

9. Nevertheless, the Praljak Defence puts forward the humanitarian reasons that it considers sufficiently compelling to justify the provisional release of the Accused Praljak until the delivery of the judgement.¹⁸ It maintains that prolonged provisional detention is a factor to be taken into account when granting provisional release and constitutes a sufficiently compelling humanitarian reason in the case in point since this detention, which is not justified,¹⁹ has harmful consequences on the physical and psychological well-being of the Accused and his close family.²⁰ Thus, the Praljak Defence concludes that the estimated length of the Chamber's deliberations and therefore the provisional detention of the Accused Praljak, coupled with the guarantees of the Government of the Republic of Croatia, constitutes a sufficiently compelling humanitarian ground justifying provisional release until the delivery of the judgement.²¹

10. In the Response, the Prosecution opposes the Motion on the main grounds that (1) the risk of flight increases when the case has come to an end and the evidence has concluded;²² 2) granting an extended period of provisional release increases the risk of flight,²³ making the idea of return to detention more difficult and imposing a heavy burden on the jurisdiction in charge of implementing the measures necessary for the provisional release;²⁴ (3) the Chamber must follow the Appeals Chamber jurisprudence concerning the "sufficiently compelling humanitarian reasons" as it has done previously;²⁵ (4) the simple fact that continued detention of an accused may have a negative impact on his health does not constitute a sufficient reason for granting provisional release²⁶ and (5) the Accused Praljak provides no valid humanitarian reason in support of his request for provisional release and no document to substantiate his argument.²⁷

¹⁸ Motion, paras 22-29.

¹⁹ Motion, para. 23.

²⁰ Motion, paras 23-26.

²¹ Motion, para. 28.

²² Response, paras 2 and 8.

²³ Response, paras 1-2 and 8.

²⁴ Response, para. 2.

²⁵ Response, paras 3 and 4.

²⁶ Response, paras 5 and 6.

²⁷ Response, para. 7.

11. Finally, in the event the Chamber decides to grant the Motion, the Prosecution respectfully asks the Chamber to stay the execution of its decision pending a ruling on the appeal the Prosecution might lodge.²⁸

IV. APPLICABLE LAW

12. The Chamber refers the Prosecution and the Praljak Defence to developments in the applicable law regarding Rule 65 of the Rules in the decisions relating to requests for provisional release which it previously rendered,²⁹ and, without necessarily restating these decisions, fully incorporates them, their contents and references, especially insofar as they concern: (1) the conditions required by Rule 65 (A) and (B) of the Rules for granting provisional release,³⁰ (2) the established case-law of the Tribunal regarding the criteria for the assessment of provisional release,³¹ including the one pertaining to consideration of the requests in light of the particular circumstances of the Accused.³²

V. DISCUSSION

²⁸ Response, para. 9.

²⁹ See notably "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; "Decision on the Motion for Provisional Release of the Accused Prlić", confidential with confidential Annex, 29 May 2009, paras 10-13.

³⁰ See notably Stojić Decision of 9 November 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.

³¹ See notably 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 ("Mićo 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.

³² *The Prosecutor v. Boškoski 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.

13. The Chamber notes that, in keeping with Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber in a letter dated 8 April 2011 and filed with the Registry on 11 April 2011, that it did not object to a procedure for the possible provisional release of the Accused Praljak.³³

14. Moreover, in a letter of 4 April 2011, the Government of the Republic of Croatia provided assurances to guarantee that the Accused Praljak, in case a motion for provisional release were granted by the Chamber, would not influence or pose a danger, during his provisional release, to victims, witnesses or any other person, and would return to The Hague on the date ordered by the Chamber.³⁴

15. The Chamber recalls that, in order to assess whether the requirements set forth in Rule 65 (B) of the Rules have been met, it must consider all of the relevant factors that a Trial Chamber would reasonably be expected to take into account before coming to a decision.³⁵

16. With regard to the risk of flight of the Accused Praljak, the Chamber notes that, in addition to having surrendered voluntarily to the Tribunal, the said Accused complied with all of the conditions imposed during his previous provisional releases pursuant to the orders and decisions of the Trial Chambers rendered on 30 July 2004,³⁶ 1 July 2005,³⁷ 14 October 2005,³⁸ 26 June 2006,³⁹ 8 December 2006,⁴⁰ 11

³³ Letter from the Ministry of Foreign Affairs of the Netherlands dated 8 April 2011 and filed with the Registry of the Tribunal on 11 April 2011.

³⁴ Letter from the Minister of Justice of the Republic of Croatia dated 4 April 2011, enclosed in the Confidential Annex to the Motion.

³⁵ *Mičo 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.

³⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Order on Provisional Release of Slobodan Praljak", 30 July 2004.

³⁷ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Order on Jadranko Prlić's Motion for Variation of Conditions of Provisional Release", 1 July 2005.

³⁸ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, "Decision to Grant Accused Slobodan Praljak's Supplemental Application for Variation of Conditions of Provisional Release", 14 October 2005.

³⁹ "Decision on Motion for Provisional Release of the Accused Praljak", confidential, 26 June 2006.

⁴⁰ "*Décision relative à la demande de mise en liberté provisoire de l'Accusé Praljak*", partially confidential, 8 December 2006.

June 2007,⁴¹ 29 November 2007,⁴² 4 December 2009,⁴³ 12 July 2010,⁴⁴ 9 December 2010⁴⁵ and 11 February 2011.⁴⁶

17. Furthermore, although the close of the Prosecution case constitutes, according to the Appeals Chamber, a significant change of circumstances warranting a renewed and explicit consideration of the risk of flight of the accused,⁴⁷ the Chamber notes, despite the importance of the close of the Defence case as of 17 May 2010⁴⁸ and of the hearings for closing arguments by the Prosecution and the Defence held in February and March 2011⁴⁹, that these events do not suggest that there is an increased risk of flight of the Accused Praljak.⁵⁰ Furthermore, the Chamber deems that, should it decide to grant the Motion, any guarantees of return against the risk of flight that might be placed upon the Accused Praljak, such as ongoing surveillance by the police authorities of the Republic of Croatia, would offset any risk of flight.

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

19. For the same reasons, the Chamber is of the opinion that, were he to be released to Croatia, the Accused Praljak would not pose a danger to victims, witnesses

⁴¹ “Decision on the Motion for Provisional Release of the Accused Praljak”, public with confidential annex, 11 June 2007.

⁴² “Decision on the Motion for Provisional Release of the Accused Praljak”, public with confidential annex, 29 November 2007.

⁴³ “Decision on Accused Praljak’s Motion for Provisional Release”, confidential with confidential annex, 4 December 2009 (“Decision of 4 December 2009”).

⁴⁴ “Decision on Motion for Provisional Release of the Accused Praljak”, confidential with confidential annex, 12 July 2010; amended by the “Second Decision on Motion for Provisional Release of the Accused Praljak”, confidential with confidential annex, 15 July 2010; amended by the “Decision on Extension of Provisional Release of the Accused Praljak”, confidential with confidential annex, 12 August 2010, accompanied by the “Corrigendum to the Decision on Extension of Provisional Release of the Accused Praljak”, confidential, 13 August 2010; amended by the “Second Decision on Extension of Provisional Release for the Accused Praljak”, confidential with confidential annex, 19 August 2010.

⁴⁵ “Decision on Slobodan Praljak’s Motion for Provisional Release”, confidential with confidential annex, 9 December 2010.

⁴⁶ “Decision on Motion for Provisional Release Filed by the Accused Praljak”, confidential and *ex parte* with confidential and *ex parte* annex, 11 February 2011.

⁴⁷ *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 Ćorić”, public, 11 March 2008 (“Prlić Decision of 11 March 2008”), para. 20.

⁴⁸ “Order Regarding the Closure of the Presentation of the Defence Cases”, public, 17 May 2010.

⁴⁹ Hearings of 7 February 2011 and 2 March 2011.

⁵⁰ For the Tribunal’s case-law in respect of the renewed and explicit consideration of the risk of flight after closing arguments and during the pendency of judgement, see *The Prosecutor v. Popović et al.*, Case No. IT-05-88, “Decision on Miletić’s Motion for Provisional Release”, confidential, 11 February 2010, paras 11 and 14 and *The Prosecutor v. 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.

or other persons⁵¹ and recalls furthermore in this respect, since the trial has entered its final phase, that there are no more witnesses to be heard by the Chamber.⁵²

20. Finally, the Chamber notes that closing arguments ended on 2 March 2011 and that, on that same day, the Presiding Judge declared the hearing closed.⁵³ Therefore, until the pronouncement of judgement there will be no judicial activity requiring the presence of the Accused Praljak in court.

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

22. The Chamber notes that, since April 2008, the Appeals Chamber has imposed a duty on the Trial Chambers to determine, in addition to the requirements set forth in Rule 65 (B) of the Rules, whether the humanitarian reasons put forward by the Accused are sufficiently compelling to justify their provisional release at an advanced stage of the proceedings,⁵⁴ the length of which must remain proportionate to the said humanitarian circumstances.⁵⁵

23. 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.⁵⁶ 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

⁵¹ This danger is not assessed *in abstracto* – it must be real. *Mičo Stanišić* Decision, para. 27.

⁵² Amended Scheduling Order, p. 11.

⁵³ Hearing of 2 March 2011, T(F) p. 52976.

⁵⁴ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁵⁵ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para. 16; *The Prosecutor v. 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.

⁵⁶ “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”).

reasons as regards the humanitarian grounds, in light of the Rule 98 *bis* Decision”.⁵⁷ Since then, the Chamber has had to evaluate around fifty requests for provisional release in accordance with this new further criterion.

24. The Chamber recalls as well that the judges of the Appeals Chamber⁵⁸ 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.⁵⁹

25. As it was put in the grounds submitted by the Praljak 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, that justifies a new analysis of the relevance of maintaining this further criterion at this stage of the proceedings.

26. 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 the applicable principles of human rights and the circumstances of the case, still justified at this stage of the proceedings?

27. 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

⁵⁷ *Pušić* Decision of 19 March 2008, p. 7.

⁵⁸ 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.

⁵⁹ 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.

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".

28. The Chamber nonetheless finds it necessary, given the weightiness of this issue as well as its controversial character,⁶⁰ to refer to the principles outlined in other jurisdictions and in European and international legal instruments.

29. 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 law⁶¹ and that the provisions of Rule 65 (B) of the Rules must be construed in light of these principles.⁶²

30. 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 must be applied".⁶³ 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.

31. 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

⁶⁰ To this effect, see paragraphs 24 and 25 of this Decision.

⁶¹ *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.

⁶² *Limaj Decision*, para. 12.

⁶³ *Limaj Decision*, para. 13.

Court must determine whether or not there has been a violation of Article 5 § 3 of the Convention. /Registry translation/⁶⁴

32. Furthermore, the Chamber would 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 [...]”.⁶⁵

33. 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”.⁶⁶

34. 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 Praljak’s presence in the courtroom is no longer required. Furthermore, the Accused Praljak 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.

35. Additionally, save for short periods of release, the Accused Prlić has remained in provisional detention for more than five years – and not seven years as the Praljak Defence alleges. The complexity and the scope of the case also render conceivable a lengthy period of deliberation prior to delivery of judgement. It is therefore reasonable to presume that the Accused Praljak will continue to face a lengthy period of provisional detention.

⁶⁴ 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 (*Recueil des arrêts et décisions* 1998-VII), para. 102; *Bouchet v. France* (n° 33591/96), 20 March 2001, para. 40 and *Zannouti v. France* (n° 42211/98), 31 July 2001, para. 43.

⁶⁵ 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,

⁶⁶ 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 (*Recueil des arrêts et décisions* 1998-VII), para. 102; *Bouchet v.*

36. 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 Praljak 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 21 of this 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.

37. In this instance, the Chamber has reached the conviction that the Accused Praljak, 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 justification for the further criterion of compelling humanitarian circumstances. In fact, continuing to hold the Accused Praljak 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.

38. 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

France (No. 33591/96), 20 March 2001, para. 40 and *Zannouti v. France* (No. 42211/98), 31 July 2001, para. 43.

the proceedings.⁶⁷ Thus, it is for this reason that the Chamber will use that basis to examine the Motion on the merits hereinafter.

39. 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 Praljak Defence reminds us, that the Chamber has factored this into its various decisions on the subject.⁶⁸ 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,⁶⁹ this overall factor cannot independently constitute a sufficiently compelling humanitarian ground as meant by the Appeals Chamber's jurisprudence.

40. The Chamber next points out the complete absence of (1) specific and up-to-date information involving the harmful effects of continued provisional detention for the Accused and his close family and (2) documents on the physical and psychological well-being of the Accused and his close family to support the Motion, particularly through medical reports. The Chamber deems that such broad considerations that are lacking documentation and are not up-to-date, are inadequate to authorize a new provisional release for the Accused Praljak, especially so soon after the previous provisional release granted in March 2011 and for a period as lengthy as that requested.

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

42. Consequently, in light of the strict criteria imposed by the Appeals Chamber in this case and the conclusions of the Chamber about the absence of sufficiently compelling humanitarian reasons in the Motion, the Chamber deems that it is not able to bypass the criteria of the Appeals Chamber, as suggested by the Praljak Defence in the Motion, and denies the Motion.

⁶⁷ *Petković* Decision of 21 April 2008, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

⁶⁸ "Decision on Motion for Provisional Release of the Accused Prlić", 17 July 2008, para. 24.

⁶⁹ *Prlić* Decision of 11 March 2008, para. 21; *Petković* Decision of 21 April 2008, paras 19-20.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 (B) of the Rules

DENIES by a majority of the Judges the Motion for Provisional Release of the Accused Praljak,

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

Presiding Judge Jean-Claude Antonetti will append a dissenting opinion to this Decision.

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]