



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: 8 March 2012
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

Registrar: Mr John Hocking

Decision of: 8 March 2012

THE PROSECUTOR

v.

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

PUBLIC

**PUBLIC REDACTED VERSION OF DECISION ON MOTION FOR
EXTENSION OF PROVISIONAL RELEASE OF ACCUSED SLOBODAN
PRALJAK AND MODIFICATION OF CONDITIONS**

The Office of the Prosecutor:

Mr Douglas Stringer

Counsel for the Accused Praljak:

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 Ms Natacha Fauveau-Ivanović 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

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”),

SEIZED of “Slobodan Praljak’s Motion for Extension of Provisional Release and Modification of Conditions” filed as a confidential and *ex parte* document by Counsel for the Accused Slobodan Praljak (“Praljak Defence”; “Accused Praljak”) on 24 February 2012, to which five confidential and *ex parte* annexes are attached (“Motion”) and in which the Praljak Defence asks the Chamber to: (1) extend the provisional release of the Accused Praljak by three months;¹ (2) allow him, [REDACTED], to stay [REDACTED];² (3) to reduce the 24-hour surveillance of the Accused Praljak and/or to replace this system of surveillance by the obligation to inform the police station nearest to his residence of all his movements on a weekly, or even daily basis,³ and to allow for [REDACTED] to guarantee respect for all the conditions of the provisional release,⁴ and (4) in the alternative, to extend the provisional release of the Accused Praljak under the same conditions as those defined in the decision authorising his initial provisional release,⁵

NOTING the “Prosecution Response to Slobodan Praljak’s Motion for Extension of Provisional Release and Modification of Conditions”, filed as a confidential and *ex parte* document by the Office of the Prosecutor (“Prosecution”) on 2 March 2012 (“Response”), in which it: (1) objects to extending the provisional release of the Accused Praljak for a duration of three months⁶ and modifying the conditions of his provisional release related to his place of residency and the system of surveillance imposed on the Accused Praljak;⁷ (2) asks for a stay of the Chamber’s decision should it decide to grant the Motion so that the Prosecution may lodge an appeal against the

¹ Motion, paras 3 and 23.

² Motion, paras 4, 9-15 and 23.

³ Motion, paras 4, 16-21 and 23; *see also* confidential and *ex parte* Annex 5 to the Motion (Letter from the Accused Slobodan Praljak addressed to the Judges of the Chamber, undated).

⁴ Motion, para. 22.

⁵ Motion, para. 24.

⁶ Response, paras 1, 8-13 and 21.

⁷ Response, paras 1, 3-7 and 21.

same⁸ and (3) asks the Chamber to order the Praljak Defence to file a public redacted version of its Motion and to render a public redacted version of the present Decision,⁹

NOTING the “Decision on Slobodan Praljak’s Motion for Provisional Release”, rendered as a confidential and *ex parte* document on 30 November 2011 (“Decision of 30 November 2011”), in which the Chamber granted provisional release of the Accused Praljak [REDACTED], Republic of Croatia, [REDACTED],¹⁰

NOTING the Decision of 20 December 2011 rendered by the Duty Judge, in which the latter upheld the Decision of 30 November 2011 and ordered the provisional release of the Accused Praljak [REDACTED],¹¹

CONSIDERING that in the Motion, the Praljak Defence asks for the provisional release of the Accused Praljak to be extended by 3 months and to be accompanied by the modifications it seeks or, in the alternative, the same conditions as those set out in the Decision of 30 November 2011,¹²

CONSIDERING that in support of the Motion, the Praljak Defence enclosed a letter from the Government of the Republic of Croatia dated 16 February 2012 in which the latter provides guarantees that the Accused Praljak, should the Chamber grant an extension of his provisional release, would not influence or endanger victims, witnesses or any other person and that he would return to The Hague on the date ordered by the Chamber,¹³

CONSIDERING that in the Motion, the Praljak Defence seeks two modifications to the conditions accompanying the provisional release of the Accused Praljak, namely: (1) to reduce the 24-hour surveillance imposed on the Accused Praljak and/or to replace this system of surveillance by the obligation to inform the police station

⁸ Response, para. 22.

⁹ Response, para. 23.

¹⁰ Confidential and *ex parte* Annex 2 to the Decision of 30 November 2011.

¹¹ *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A65.29, “Decision on Prosecution Appeal of Decision on Slobodan Praljak’s Provisional Release”, confidential and *ex parte*, 20 December 2011 (“Decision of 20 December 2011”), para. 21.

¹² Motion, paras 3 and 24.

¹³ Confidential and *ex parte* Annex 1 to the Motion (Letter from the Ministry of Justice of the Republic of Croatia dated 16 February 2012).

nearest to his residence of all his movements, or [REDACTED],¹⁴ and 2) to modify the location of the provisional release of the Accused Praljak [REDACTED], and permission to travel [REDACTED],¹⁵ and bases this request [REDACTED]¹⁶ and [REDACTED],¹⁷

CONSIDERING that the Praljak Defence seeks, in the alternative, an extension of the provisional release of the Accused Praljak for an additional period of three months under the same conditions as those set out in the Decision of 30 November 2011,¹⁸

CONSIDERING that in its Response, the Prosecution objects to modifying the conditions accompanying the provisional release of the Accused Praljak on the grounds that: (1) the Accused presents an increased flight risk – all the more so if the Chamber allows him [REDACTED]¹⁹ – and that his conduct towards the Croatian authorities in charge of his surveillance is inappropriate and shows his reluctance to return to the Tribunal;²⁰ (2) reducing the security measures and allowing the Accused Praljak [REDACTED] would considerably undermine the image of the Tribunal and (3) generally, the grounds raised by the Praljak Defence in support of its Motion to modify the terms of his provisional release border on the frivolous,²¹

CONSIDERING, furthermore, that the Prosecution submits that the Croatian authorities have issued the Accused Praljak with a new passport even though the Chamber requested the Croatian authorities not to issue any passports or other documents that would enable the Accused to travel,²²

CONSIDERING that in its Response, the Prosecution also objects to the alternative request on the grounds that the stage of the proceedings mitigates against extending the provisional release;²³ that extending the provisional release by three months would negatively impact the credibility of the Tribunal and the proper administration of

¹⁴ Motion, paras 4, 16-23; *see* also confidential and *ex parte* Annex 5 to the Motion (Letter from the Accused Slobodan Praljak to the Judges of the Chamber, undated).

¹⁵ Motion, paras 10-13 and confidential and *ex parte* Annex 2 to the Motion [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ Motion, paras 3 and 24.

¹⁹ Response, para. 3.

²⁰ Response, paras 4 and 5.

²¹ Response, para. 20.

²² Response, para. 6.

²³ Response, para. 8.

justice and, notably, the witnesses and the victims, and that this would not be assuaged by the Chamber's security measures,²⁴

CONSIDERING that the Prosecution argues that the principle of a presumption of innocence cannot exclusively serve as a basis for a decision on provisional release and that there is no right to a "court recess" provisional release,²⁵

CONSIDERING that the Prosecution submits, finally, that in its final trial brief it presented ample evidence against the Accused Praljak on the basis of which it sought a sentence of 40 years and that, in light of all of the evidence it must have analysed by now, the Chamber should be able to determine whether extending the Accused's release is justified,²⁶

CONSIDERING that, *in limine*, the Chamber notes that in the initial Motion for provisional release,²⁷ the Government of the Netherlands agreed to the initial provisional release of the Accused providing he leaves the territory of the host state;²⁸ that as the present Motion falls within the scope of the initial Motion for provisional release, the agreement of the Government of the Netherlands remains valid until the Accused returns to the United Nations Detention Unit on the date determined by the Chamber,

CONSIDERING, subsequently, that the Chamber recalls that to establish whether the requirements of Rule 65 (B) of the Rules of Procedure and Evidence ("Rules") have been met, the Chamber must take into account all the relevant factors that a reasonable Chamber would be expected to take into account in coming to its decision,²⁹

²⁴ Response, paras 9-10.

²⁵ Response, para. 13.

²⁶ Response, paras 11 and 12.

²⁷ "Slobodan Praljak's Motion for Provisional Release", confidential and *ex parte*, 2 November 2011, accompanied by a confidential and *ex parte* annex ("Initial Motion for Provisional Release").

²⁸ Letter from the Netherlands concerning the provisional release of Slobodan Praljak dated 8 November 2011 enclosed in the confidential and *ex parte* annex to the initial Motion for provisional release.

²⁹ *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, 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", public, 26 June 2008, para. 35; *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, para. 8; *The*

CONSIDERING that, in regard to the possible risk of flight and danger to victims, witnesses or any other persons, the Chamber refers to its relevant arguments in the Decision of 30 November 2011³⁰ and notes that the reports sent to the Chamber by the Croatian authorities since the provisional release of the Accused Praljak [REDACTED] reveal that he has respected the conditions of his provisional release imposed by the Chamber,³¹

CONSIDERING furthermore that, with regard to the issue of renewing the Accused Praljak's passport, the Chamber recalls that in its Decision of 30 November 2011, it required the authorities of the Republic of Croatia, including the local police, "not to issue any new passport or documents to the Accused Praljak that would enable him to travel",³²

CONSIDERING that it emerges from the report from the Croatian authorities for the period between 18 January and 1 February 2012 that the [REDACTED] police administration has indeed issued a new passport to the Accused Praljak on the grounds that his previous passport had expired, but notes that after this passport was issued, it was placed in a safe at the [REDACTED] police administration,³³

CONSIDERING that the Chamber notes that providing the Accused with a valid passport in place of an expired one and depositing the same in a safe with the Croatian authorities, as was done for the previous passport once the Accused arrived on Croatian territory,³⁴ does not constitute a violation of the conditions of the Accused's provisional release,

Prosecutor v. Prlić et al, Case No. IT-04-74-AR65.8, "Décision relative à l'appel interjeté par l'Accusation contre la décision relative à la demande de mise en liberté provisoire de l'Accusé Prlić rendue le 7 avril 2008", public, 25 April 2008, para. 10.

³⁰ Decision of 30 November 2011, paras 30-34.

³¹ Report from the Croatian authorities for the period between 21 December 2011 and 4 January 2012 disclosed to the Chamber on 16 January 2012; Report from the Croatian authorities for the period between 4 and 18 January 2012 disclosed to the Chamber on 26 January 2012; Report from the Croatian authorities for the period between 18 January and 1 February 2012 disclosed to the Chamber on 10 February 2012; Report from the Croatian authorities for the period between 1 and 15 February 2012 disclosed to the Chamber on 24 February 2012.

³² Decision of 30 November 2011, confidential and *ex parte* Annex 2 "Conditions of the provisional release and guarantees of return".

³³ Report from the Croatian authorities on the period between 18 January and 1 February 2012 disclosed to the Chamber on 10 February 2012, p. 3.

³⁴ Report from the Croatian authorities on the period between 21 December 2011 and 4 January 2012 disclosed to the Chamber on 16 January 2012, p. 2.

CONSIDERING that, with respect to the request for a modification of the conditions of the provisional release of the Accused Praljak, the Chamber recalls that it granted release to the various Accused in the present case, including the Accused Praljak, under very strict conditions – release confined to the city of [REDACTED], close and clearly defined 24-hour police escort and a requirement for the Croatian authorities to provide regular reports to the Chamber on the respect of the conditions of provisional release – in order to offset any risk of flight, but also to reduce any negative impacts that the release of a person accused of crimes as serious as those alleged in the present Indictment³⁵ may have on the victims and witnesses of these crimes,³⁶

CONSIDERING that the Appeals Chamber has upheld this approach and stated that the goal of these measures should be “to reduce any potential negative effect on victims and witnesses”,³⁷

CONSIDERING that the grounds argued by the Praljak Defence to modify the location where the Accused will reside during his provisional release, namely [REDACTED]³⁸ and [REDACTED],³⁹ are insufficient to justify modifying his place of residence,

CONSIDERING [REDACTED],

CONSIDERING, [REDACTED],

CONSIDERING, additionally, that the Chamber deems that the grounds argued by the Praljak Defence to modify the surveillance conditions imposed on the Accused Praljak cannot justify modifying the 24-hour surveillance by the police authorities of the Republic of Croatia, all the more so because this continuous surveillance has a considerable impact not only on the risk of flight of the Accused but also, as has already been recalled, on the victims and witnesses,

CONSIDERING, consequently, that the Chamber decides it is not appropriate to modify the conditions of the provisional release of the Accused Praljak,

³⁵ “Second Amended Indictment”, public, 11 June 2008 (“Indictment”).

³⁶ “Decision on Jadranko Prlić’s Motion for Provisional Release”, public with one confidential and one public annex, 24 November 2011, para. 39; Decision of 30 November 2011, para. 41.

³⁷ Decision of 20 December 2011, para. 13.

³⁸ [REDACTED].

³⁹ [REDACTED].

CONSIDERING that, with respect to the alternative request of extending the provisional release of the Accused Praljak by three months under the same conditions as those set out in the Decision of 30 November 2011, the Chamber recalls that the Accused Praljak has adhered to all the conditions accompanying the Decision of 30 November 2011 and that as the conditions of the provisional release of the Accused Praljak have not been modified, and bearing in mind the foregoing, the two requirements of Rule 65 (B) of the Rules have been met,

CONSIDERING that the Chamber deems, therefore, that extending the provisional release of the Accused Praljak for a period not exceeding three months under the same conditions as those set out in the Decision of 30 November 2011 will enable the Chamber to keep control over the said provisional release,

CONSIDERING that, concerning the Prosecution's request regarding the status of the Motion and the present Decision, the Chamber does not deem it necessary to order the Praljak Defence to file a public redacted version of the Motion and deems that a public redacted version of the present Decision is sufficient to meet the requirements of transparency and the public character of the proceedings,

CONSIDERING, finally, that bearing in mind that the present Decision only extends the provisional release of the Accused Praljak by three months under conditions strictly identical to those set out in the Decision of 30 November 2011 upheld by the Appeals Chamber,⁴⁰ the Chamber does not deem it necessary to stay execution of the present Decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules,

PARTIALLY GRANTS the Motion,

ORDERS an extension of the provisional release of the Accused Praljak until [REDACTED],

⁴⁰ See Decision of 20 December 2011.

ORDERS that the conditions renewing the present provisional release pursuant to Rule 65 (B) of the Rules set out in confidential and *ex parte* Annex 1 to the Decision of 30 November 2011 apply *mutatis mutandis* to all motions that the Accused Praljak may wish to make,

ORDERS that the conditions of the provisional release set out in confidential and *ex parte* Annex 2 to the Decision of 30 November 2011 apply *mutatis mutandis* to the present decision,

AND

DENIES the Prosecution's request for a stay of execution.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eighth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]