



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: 14 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: 14 March 2012

THE PROSECUTOR

v.

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

PUBLIC

**REDACTED VERSION OF DECISION ON MOTION FOR EXTENSION OF
PROVISIONAL RELEASE OF ACCUSED MILIVOJ PETKOVIĆ AND
MODIFICATION OF CONDITIONS**

The Office of the Prosecutor:

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 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 the “Motion of Milivoj Petković for Extension of Provisional Release”, filed as a public document by Counsel for the Accused Milivoj Petković (“Petković Defence”; “Accused Petković”) on 1 March 2012, to which a public annex is attached (“Motion”) and in which the Petković Defence seeks (1) an extension of the provisional release of the Accused Petković for three months or longer¹ and (2) modification of the conditions of his provisional release relating to the frequency and duration of his visits to his mother in Vrpolje,²

NOTING the “Prosecution Response to Motion of Milivoj Petković for Extension of Provisional Release” filed as a public document by the Office of the Prosecutor (“Prosecution”) on 8 March 2012 (“Response”), in which the Prosecution objects to extending the provisional release of the Accused Petković for a duration of three months or more and objects to modifying the conditions of the provisional release should the Chamber grant an extension,³

NOTING the “Corrigendum to Prosecution Response to Motion of Milivoj Petković for Extension of Provisional Release” filed as a public document by the Prosecution on 9 March 2012,

NOTING the “Decision on Motion for Provisional Release of the Accused Milivoj Petković” rendered as a public document on 30 November 2011 (“Decision of 30 November 2011”), in which the Chamber granted the provisional release of the Accused Petković [REDACTED], Republic of Croatia, [REDACTED],⁴

¹ Motion, para. 4.

² Motion, paras 4, 23- 27.

³ Response, para. 1.

⁴ Confidential Annex 2 to the Decision of 30 November 2011.

NOTING the Decision of 20 December 2011 rendered by the Duty Judge in which he upheld on appeal the Decision of 30 November 2011 and ordered the provisional release of the Accused Petković [REDACTED],⁵

CONSIDERING that, in support of the Motion to extend provisional release, the Petković Defence argues that during his previous provisional releases, the Accused Petković has always met the conditions set forth under Rule 65 of the Rules of Procedure and Evidence (“Rules”) and all the conditions imposed by the Chamber;⁶ that his personal and family circumstances, in addition to his exemplary behaviour, show that if released once again, Milivoj Petković would not interfere with or endanger victims, witnesses or any other person,⁷

CONSIDERING that the Petković Defence also attached a letter from the Government of the Republic of Croatia dated 1 March 2012 in which it provides guarantees that, should the Motion for the extension of his provisional release be granted by the Chamber, the Accused Petković would not influence or endanger victims, witnesses or any other person and that he would return to The Hague on a date ordered by the Chamber,⁸

CONSIDERING, moreover, that in the Motion, the Petković Defence seeks modification of certain conditions accompanying the provisional release of the Accused Petković and requests that he be allowed [REDACTED] as is the case with the current provisional release,⁹

CONSIDERING that in the Response, the Prosecution objects to extending the provisional release of the Accused Petković by three months or more on the grounds that this extension goes against “the Tribunal’s preference for detention” (*sic*),¹⁰

CONSIDERING that the Prosecution also submits that the Chamber should deny an extension of the provisional release of the Accused Petković in light of the gravity of

⁵ *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A65.29, “Decision on Prosecution Appeal of Decision on Milivoj Petković’s Provisional Release”, confidential, 20 December 2011 (“Decision of 20 December 2011”), para. 21.

⁶ Motion, paras 18-20 and 23.

⁷ Motion, paras 21 and 22.

⁸ Public Annex to the Motion (Letter from the Ministry of Justice of the Republic of Croatia dated 1 March 2012).

⁹ Motion, paras 23 -27 and 30.

¹⁰ Response, paras 2-6.

the crimes alleged in the present case, his alleged involvement in the perpetration of these crimes and the advanced stage in the proceedings,¹¹

CONSIDERING that the Prosecution submits furthermore that this extension should be denied because of its impact on the “international public’s confidence in the proper administration of justice”, on the local community and on the victims and witnesses,¹²

CONSIDERING, finally, that, should the Chamber decide to extend the provisional release of the Accused Petković, the Prosecution objects to the request for modification of the conditions of the provisional release [REDACTED] on the ground that the Accused Petković has not demonstrated a change [REDACTED] requiring such a modification;¹³ that, furthermore, this modification constitutes, in fact, a request for reconsideration of the Decision of 30 November 2011 and that in that respect, the Petković Defence has not provided reasons for this request that meet the criteria governing requests for reconsideration,

CONSIDERING that, *in limine*, the Chamber notes that in the Initial Motion for Provisional Release,¹⁴ the Government of the Netherlands agreed to the provisional release of the Accused Petković as long as he leaves the territory of the host state;¹⁵ that, since 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 (“UNDU”) at a date to be determined by the Chamber,

CONSIDERING, moreover, that the Chamber recalls that in order to establish whether the other requirements of Rule 65 (B) of the Rules have been met, it must take into account all the relevant factors which a reasonable Trial Chamber would be expected to take into account before coming to a decision,¹⁶

¹¹ Response, paras 7 to 10.

¹² Response, paras 11- 13.

¹³ Response, paras 14 and 15.

¹⁴ “Motion of Milivoj Petković for Release Pending Judgement”, public, 14 November 2011, accompanied by a public annex (“Initial Motion for Provisional Release”).

¹⁵ Letter from the Netherlands concerning the provisional release of Milivoj Petković dated 16 November 2011 and filed with the Registry on 18 November 2011.

¹⁶ *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

CONSIDERING that the Chamber notes that in the letter of 1 March 2012, the Government of the Republic of Croatia provided, on the one hand, guarantees that, should his provisional release be extended by the Chamber, the Accused Petković would not influence or endanger any victims, witnesses or any other person during his provisional release and that he would return to The Hague on a date ordered by the Chamber and, on the other, assured that it would provide any additional assistance or guarantees needed,¹⁷

CONSIDERING that, with respect to possible risks of flight and endangerment of victims, witnesses or any other persons, the Chamber refers to its relevant arguments in the Decision of 30 November 2011¹⁸ and notes that the reports sent to the Chamber by the Croatian authorities since the provisional release of the Accused Petković [REDACTED] reveal that he has respected the conditions of his provisional release imposed by the Chamber,¹⁹

CONSIDERING that, in light of the foregoing, the Chamber is satisfied that if his provisional release is extended, the Accused Petković would return to the UNDU, that he would not endanger victims, witnesses or any other persons and that, consequently, the requirements of Rule 65 (B) of the Rules have been met.

CONSIDERING that with respect to the arguments of the Prosecution that extending the provisional release of the Accused Petković goes against the “Tribunal’s preference for detention”,²⁰ and does not take into account the gravity of the crimes alleged in the present case, the alleged involvement of the Accused Petković in the

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 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.

¹⁷ Public Annex.

¹⁸ Decision of 30 November 2011, paras 29-32.

¹⁹ Confidential report from the Croatian authorities for the period between 21 December 2011 and 2 January 2012 disclosed to the Chamber on 13 January 2012; Confidential report from the Croatian authorities for the period between 2 and 16 January 2012 disclosed to the Chamber on 25 January 2012; Confidential report from the Croatian authorities for the period between 16 and 30 January 2012 disclosed to the Chamber on 10 February 2012; Confidential report from the Croatian authorities for the period between 30 January and 13 February 2012 disclosed to the Chamber on 20 February 2012; Confidential report from the Croatian authorities for the period between 13 and 27 February 2012 disclosed to the Chamber on 2 March 2012.

²⁰ Response, paras 2 -6.

perpetration of these crimes, the advanced stage in the proceedings²¹ and the impact that this extension would have on the “international public’s confidence in the proper administration of justice”, the local community and the victims and witnesses,²² the Chamber reminds the Prosecution in particular of the Decision of 21 April 2011²³ and the Order of 29 February 2012,²⁴ in which the Chamber declared that the decision on whether or not to extend the provisional release must respect the provisions of the Statute, the Rules and the case-law of the Appeals Chamber guaranteeing a fair trial,²⁵

CONSIDERING, furthermore, that the Chamber deems that the Prosecution has not provided evidence in support of its argument that the provisional release of the Accused Petković could negatively impact victims and witnesses despite there being no indications that this could have occurred during the previous provisional releases of the Accused Petković or within the present case in general,

CONSIDERING, moreover, that with respect to the request for modification of the conditions accompanying the provisional release of the Accused, the Chamber recalls that it allowed the Accused Petković [REDACTED],²⁶

CONSIDERING that the Chamber recalls, furthermore, that it granted release to all the Accused in this case, including the Accused Petković, under very strict conditions – release within the confines [REDACTED]; close and clearly identifiable 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 Indictment²⁷ may have on the victims and witnesses of these crimes,²⁸

²¹ Response, paras 7 to 10.

²² Response, paras 11- 13.

²³ “Decision on Jadranko Prlić’s Motion for Provisional Release”, public, 21 April 2011, para. 31 in which the Chamber refers to the findings of the Appeals Chamber in *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, para. 13 according to which “[i]f it is sufficient to use a more lenient measure than mandatory detention, it must be applied”.

²⁴ “Order on Jadranko Prlić’s Motion to Extend his Provisional Release”, public, 29 February 2012 (“Order of 29 February 2012”).

²⁵ Order of 29 February 2012, p. 4.

²⁶ Decision of 30 November 2011, para. 44.

²⁷ “Second Amended Indictment”, public, 11 June 2008.

²⁸ “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.

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”,²⁹

CONSIDERING that the grounds argued by the Petković Defence to modify one of the conditions of his provisional release, namely [REDACTED] the security guarantees provided by the Government of Croatia,

CONSIDERING that the Chamber deems that allowing the Accused Petković [REDACTED] under clearly identifiable 24-hour police escort provided by the Croatian authorities as part of his provisional release will continue to satisfy the need to reduce the risk of flight of the Accused but also, as has already been recalled, considerably reduces the impact of such a measure on the victims and witnesses,

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

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 of the Rules,

PARTIALLY GRANTS the Motion,

DECIDES to extend the provisional release of the Accused Petković [REDACTED],

ORDERS that the conditions set out in confidential Annex 2 to the Decision of 30 November 2011 continue to apply to the present decision with the exception of item 2 on page 14 of the said Annex, which should henceforth read as follows:

[REDACTED];

²⁹ Decision of 20 December 2011, para. 13.

ORDERS that the conditions renewing the present provisional release pursuant to Rule 65 (B) of the Rules set out in public Annex 1 to the Decision of 30 November 2011 apply *mutatis mutandis* to any new motion that the Accused Petković wishes to make,

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]