



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

**REDACTED AND PUBLIC VERSION OF ORDER ON BRUNO STOJIĆ'S
MOTION FOR EXTENSION OF HIS PROVISIONAL RELEASE**

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 “Bruno Stojić’s Motion for Extension of His Provisional Release” filed as a confidential and *ex parte* document by Counsel for the Accused Bruno Stojić (“Stojić Defence” and “Accused”) on 27 February 2012 and with a confidential and *ex parte* annex (“Motion”), in which the Stojić Defence requests that the Chamber extend the provisional release of the Accused Stojić until a judgement is rendered in the present case or, in the alternative, for a period to be determined by the Chamber,¹

NOTING the “Prosecution Response to Bruno Stojić’s Motion for Extension of His Provisional Release” filed by the Office of the Prosecutor (“Prosecution”) as a confidential and *ex parte* document on 5 March 2012 (“Response”), in which the Prosecution (1) opposes the Motion, (2) requests that an order be issued for a redacted public version of the Motion, and (3) request that the decision of the Chamber be rendered as a redacted public version,²

NOTING that the “Decision on Bruno Stojić’s Motion for Provisional Release” rendered by the Chamber as a confidential and *ex parte* document with two confidential and *ex parte* annexes on 1 December 2011, in which the Chamber ordered the provisional release of the Accused Stojić to [REDACTED] for a limited period and established the procedure to be followed in respect of any request to extend the said provisional release (“Decision of 1 December 2011”),³

NOTING the “Decision on Prosecution Appeal of Decision on Bruno Stojić’s Provisional Release” rendered as a confidential and *ex parte* document by the Duty Judge on 20 December 2011, in which the Judge upheld the Decision of 1 December 2011 and ordered the provisional release of the Accused Stojić [REDACTED] (“Decision of 20 December 2011”),⁴

¹ Motion, para. 1 and p. 6.

² Response, paras 1, 10 and 11.

³ Decision of 1 December 2011, para. 40, p. 13, and confidential and *ex parte* annexes 1 and 2 to the Decision of 1 December 2011.

⁴ Decision of 20 December 2011, para. 22.

CONSIDERING that the Stojić Defence submits in its Motion that the requirements set out in Rule 65 (B) of the Rules of Procedure and Evidence ("Rules") have been met and in particular that (1) the Government of Croatia has once more provided guarantees that the Accused Stojić will return;⁵ (2) that the Accused Stojić complied with the conditions imposed during previous provisional releases,⁶ and (3) that there is no flight risk or threat to victims and witnesses,⁷

CONSIDERING that, in support of its Response, the Prosecution maintains that the Chamber cannot grant provisional release to the Accused Stojić until the judgement is rendered or an extension for an indefinite period; that it recalls in this respect that the Chamber has already ruled that to grant provisional release for an indefinite period was impossible because it would then not be able to assess the flight risk and that, consequently, the Motion on this point amounts to a request for reconsideration, which is not reasoned,⁸

CONSIDERING that the Prosecution equally submits that an extension of the provisional release would negatively affect the credibility of the Tribunal and the proper administration of justice and, in particular, the witnesses and victims, in view of the advanced stage of the proceedings and the serious nature of the alleged crimes,⁹

CONSIDERING, moreover, that the Prosecution maintains that in its Final Brief and Closing Argument, the Prosecution presented ample evidence against the Accused Stojić, on the basis of which it sought a sentence of 40 your imprisonment; that, in light of the assessment that the Chamber has already made of all the evidence, the Chamber should have established whether it is justified to extend the provisional release of the Accused and that, in this respect, the principle of the presumption of innocence cannot serve as the exclusive basis for a decision to grant provisional release,¹⁰

⁵ Motion, para. 4.

⁶ Motion, paras 5 to 7.

⁷ Motion, paras 8 to 10.

⁸ Response, paras 2 and 3.

⁹ Response, paras 4 and 5.

¹⁰ Response, paras 7 to 9.

CONSIDERING that the Prosecution ends by claiming that there is no right to “recess release” and that there are no circumstances justifying the extension of the provisional release of the Accused Stojić at this time,¹¹

CONSIDERING that, *in limine*, the Chamber notes that at the time of the Initial Motion for provisional release of the Accused Stojić,¹² the Government of the Netherlands agreed to the provisional release of the Accused as long as he leaves the territory of the host country;¹³ that insofar as this present Motion falls within the scope of the Initial Motion, the agreement of the Government of the Netherlands continues to be valid until the return of the Accused to the United Nations Detention Unit (“UNDU”) on the date to be determined by the Chamber,

CONSIDERING, furthermore, that the Chamber deems that in its letter of 16 February 2012, the Government of the Republic of Croatia provided guarantees that, should the Accused Stojić be granted an extension of his provisional release by the Chamber, he would not influence or pose a danger to victims, witnesses or any other persons during his provisional release and would return to The Hague on the date ordered by the Chamber,¹⁴

CONSIDERING that the Chamber finds, in light of the reports submitted by the Croatian authorities pursuant to the Decision of 1 December 2011, that the Accused Stojić has complied with the conditions of his provisional release,

CONSIDERING that, in light of what has preceded, the Chamber is satisfied that, should the provisional release of the Accused Stojić be extended, he would return to the UNDU; that he would not pose a threat to victims, witnesses or any other persons and, consequently, that requirements under Rule 65 (B) of the Rules are met,

CONSIDERING that, with respect to the argument of the Prosecution that an extended provisional release of the Accused would have a negative effect on the credibility of the Tribunal and the proper administration of justice,¹⁵ the Chamber recalls once more that the task of the Tribunal is to try those who have been accused

¹¹ Response, para. 9.

¹² “Bruno Stojić’s Motion for Provisional Release”, confidential and *ex parte*, 22 November 2011 (“Initial Motion”).

¹³ Letter from the Netherlands on the provisional release of Bruno Stojić, dated 25 November 2011 and filed with the Registry on 28 November 2011.

¹⁴ Confidential and *ex parte* annex to the Motion.

of serious crimes committed in the region and to render justice to victims of these crimes through just and fair trials; that, for this reason, the Chamber must ensure that the present trial is proceeding, while strictly respecting the Statute, the Rules and the case law of the Appeals Chamber, which guarantee the fairness of the trial; that, consequently, its decision whether or not to extend the provisional release of the Accused shall be made in line with these provisions,¹⁶

CONSIDERING that, with respect to the argument that the Prosecution seems to be raising that the Chamber must take into account the evidence, which it already assessed during its period of deliberation, to establish whether or not to extend the provisional release of the Accused,¹⁷ the Chamber deems it necessary to refer to the Order of 1 March 2012, in which it recalled, in particular, that an accused is presumed innocent from the beginning of the trial until the day of the judgement and “[i]f it is sufficient to use a more lenient measure than mandatory detention, it must be applied”;¹⁸ that provisional detention meets the security needs and cannot in any way be envisaged as an early enforcement of a possible sentence, as the Prosecution seems to think,¹⁹

CONSIDERING that the Chamber finds that the Prosecution does not provide evidence in support of its argument that an extended provisional release could have a negative effect on the victims and witnesses, while there is no indication that this could have happened during the previous provisional releases of the Accused Stojić or, more generally, in the present case,

CONSIDERING, moreover, that the Chamber recalls that it is especially sensitive to the possible negative effect on the victims and witnesses and, in order to diminish this effect, it accompanied the periods of release with strict measures, such as 24-hour surveillance by clearly defined authorities and has confined the release of the accused to Croatia,²⁰

¹⁵ Response, paras 4 and 5.

¹⁶ See in this sense the “Redacted and Public Version of the Order on Jadranko Prlić’s Motion to Extend His Provisional Release” of 1 March 2012 (“Order of 1 March 2012”), p. 4.

¹⁷ Response, paras 8 and 9.

¹⁸ “Decision on Jadranko Prlić’s Motion for Provisional Release”, public, 21 April 2011, para. 31.

¹⁹ Order of 1 March 2012, pp. 4 and 5.

²⁰ *Ibid.*, p. 5.

CONSIDERING that, in view of the above, the Chamber deems that an extension of the provisional release of the Accused Stojić for a limited period and with the same conditions as those imposed in the Decision of 1 December 2011 would allow the Chamber to keep control of the progress of the said provisional release,

CONSIDERING that, in view of the elements in the present decision, the Chamber deems that there is no need to render this decision *ex parte*,

CONSIDERING, finally, that the Chamber will file a redacted and public version of the present Order and, consequently, does not deem it necessary to order the Stojić Defence to file a redacted and public version of the Motion in order to satisfy the requirements of transparency and public nature of the proceedings,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 (B) of the Rules,

GRANTS IN PART the Motion,

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

AND,

DECIDES that the conditions of the provisional release set out in confidential and *ex parte* annexes 1 and 2 to the Decision of 1 December 2011 apply *mutatis mutandis* to the present order.

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]