



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-AR65.34
Date: 11 June 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Arlette Ramaroson, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz

Registrar: Mr. John Hocking

Decision of: 11 June 2012

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON THE PROSECUTION'S APPEAL OF THE
DECISION ON FURTHER EXTENSION OF SLOBODAN
PRALJAK'S PROVISIONAL RELEASE**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Nataša Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Zoran Ivanišević for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of an appeal filed by the Office of the Prosecutor (“Prosecution”) on 15 March 2012¹ against a decision issued confidentially and *ex parte* by Trial Chamber III of the Tribunal (“Trial Chamber”) on 8 March 2012 (“Impugned Decision”), which extends the provisional release of Slobodan Praljak (“Praljak”) until 21 June 2012.² Praljak responded on 19 March 2012.³ The Prosecution did not file a reply.

I. BACKGROUND

2. On 30 November 2011, the Trial Chamber found that the criteria of Rule 65(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) were satisfied and exercised its discretion to grant Praljak provisional release for three months.⁴ The Trial Chamber also decided that, before the expiry of the three-month period, Praljak could apply for an extension of his provisional release and established the procedure to be followed in this respect.⁵ On 20 December 2011 the Duty Judge dismissed an appeal lodged by the Prosecution against the Decision Granting Provisional Release.⁶ On 8 March 2012, the Trial Chamber extended Praljak’s provisional release until 21 June 2012 but denied his request to modify the conditions of his provisional release.⁷

¹ Prosecution Appeal of *Décision portant sur la demande de prolongation de la mise en liberté provisoire et de modifications des conditions assorties à la mise en liberté provisoire de l'accusé Slobodan Praljak*, 15 March 2012 (“Appeal”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Extension of Provisional Release of Accused Slobodan Praljak and Modification of Conditions, 8 March 2012 (confidential and *ex parte*; public redacted version filed on 9 March 2012) (the English translations of the French originals were filed on 14 March 2012 (confidential and *ex parte* version) and 15 March 2012 (public redacted version)).

³ Slobodan Praljak’s Response to Prosecution Appeal of Decision on Slobodan Praljak’s Motion for Extension of Provisional Release, 19 March 2012 (confidential and *ex parte*) (“Response”).

⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Slobodan Praljak’s Motion for Provisional Release, 30 November 2011 (confidential and *ex parte* with two confidential and *ex parte* annexes) (the English translation of the French original was filed on 6 December 2011) (“Decision Granting Provisional Release”), paras 43-44, p. 14.

⁵ Decision Granting Provisional Release, paras 44-45, Annex 1.

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.29, Decision on Prosecution Appeal of Decision on Slobodan Praljak’s Provisional Release, 20 December 2011 (confidential and *ex parte*) (“Decision of 20 December 2011”), para. 21.

⁷ Impugned Decision, pp. 8-9. Although the date until which the provisional release of Praljak has been extended was considered as confidential, the Appeals Chamber does not find that this information warrants giving the present decision confidential status. Cf. *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vinko Pandurević’s Urgent Motion for Provisional Release on Compassionate Grounds, 11 January 2012 (“Decision of 11 January 2012”), para. 18; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber’s Decision on Vinko Pandurević’s Provisional Release of 11 January 2012, 17 January 2012 (confidential), pp. 2-3.

II. STANDARD OF REVIEW

3. The Appeals Chamber recalls that an interlocutory appeal is not a *de novo* review of the Trial Chamber's decision.⁸ The Appeals Chamber has previously held that a decision on provisional release by the Trial Chamber under Rule 65 of the Rules is a discretionary one.⁹ Accordingly, the relevant inquiry is not whether the Appeals Chamber agrees with that discretionary decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision.¹⁰

4. In order to successfully challenge a discretionary decision on provisional release, a party must demonstrate that the Trial Chamber has committed a "discernible error".¹¹ The Appeals Chamber will only overturn a Trial Chamber's decision on provisional release where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.¹² The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.¹³

III. APPLICABLE LAW

5. Under Rule 65(B) of the Rules, a Chamber may grant provisional release only if it is satisfied that, if released, the accused will appear for trial and will not pose a danger to any victim, witness, or other person; and after having given both the host country and the State to which the accused seeks to be released the opportunity to be heard.¹⁴ Provisional release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement, and a Trial Chamber, in granting such a release, may consider the existence of sufficiently compelling humanitarian grounds.¹⁵

6. In deciding whether the requirements of Rule 65(B) of the Rules have been met, a Trial Chamber must consider all of those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision. It must then provide a reasoned

⁸ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.26, Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić, 15 December 2011 ("Decision of 15 December 2011"), para. 3 and references cited therein.

⁹ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹⁰ See, e.g., Decision of 15 December 2011, para. 3 and references cited therein.

¹¹ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹² See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹³ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹⁴ See, e.g., Decision of 15 December 2011, para. 4 and references cited therein.

¹⁵ Rule 65(B) of the Rules. See also Decision of 15 December 2011, para. 5.

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opinion indicating its view on those relevant factors.¹⁶ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.¹⁷ This is because decisions on motions for provisional release are fact-intensive and cases are considered on an individual basis in light of the particular circumstances of the individual accused.¹⁸ The Trial Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.¹⁹

IV. DISCUSSION

A. Preliminary Matter

7. The Prosecution argues that the Trial Chamber committed an error of law in not ordering Praljak to file a public redacted version of his Original Motion because, in the Trial Chamber's view, the filing of the public redacted version of the Impugned Decision satisfied the requirement of transparency and public nature of the proceedings.²⁰ In the interests of justice, the Prosecution further requests the Appeals Chamber to order Praljak to file a public redacted version of his Original Motion.²¹ Praljak responds that the Trial Chamber did not abuse its discretion by failing to order the filing of a public redacted version of his Original Motion and acted in accordance with the Appeals Chamber's jurisprudence, which confirms that a public redacted version of a decision is sufficient to meet the requirements of transparency and public nature of the proceedings.²² The Appeals Chamber notes that the confidential and *ex parte* status of the Original Motion was due to the inclusion of information concerning medical conditions of the Accused as well as his place of residence.²³ The Appeals Chamber finds that the Prosecution, in this case, has not demonstrated that the Trial Chamber's issuance of a public redacted version of its Impugned Decision was insufficient to satisfy the requirement of public proceedings. Therefore, the Appeals Chamber dismisses this argument.

¹⁶ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁷ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁸ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

¹⁹ See, e.g., Decision of 15 December 2011, para. 6 and references cited therein.

²⁰ Appeal, paras 4, 22-23, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak's Motion for Extension of Provisional Release and Modification of Conditions, 24 February 2012 (confidential and *ex parte* with five confidential and *ex parte* annexes) ("Original Motion").

²¹ Appeal, paras 4, 24.

²² Response, para. 27, referring to Decision of 11 January 2012, para. 18 and *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution's Motion for Order Issuing Public Redacted Version of the Appeals Chamber's Reconsideration Decision of 17 January 2012, 22 February 2012, pp. 2-3. Praljak further responds that the Prosecution's argument is not relevant to an extension of his provisional release. See Response, para. 28.

²³ Original Motion, paras 9-15.

B. Analysis

8. The Prosecution submits that the Impugned Decision should be reversed.²⁴ It argues that, when granting the extension of the provisional release of Praljak, the Trial Chamber committed a discernible error by failing to properly exercise its discretion by: (i) failing to properly assess Praljak's flight risk and ignoring that the Republic of Croatia ("Croatia") failed to report his admitted breaches of his conditions of detention; (ii) ignoring "the principle of detention"; (iii) failing to consider other important factors such as the gravity of the crimes charged; (iv) failing to consider the impact of further provisional release on the international public's confidence in the proper administration of justice; and (v) failing to address the insufficiency of Praljak's request for provisional release.²⁵ Praljak responds that the Prosecution fails to demonstrate that the Trial Chamber committed a discernible error in the exercise of its discretion and that, accordingly, the Appeal should be dismissed.²⁶

1. Alleged abuse of discretion by failing to properly assess Praljak's flight risk

9. The Prosecution submits that the Trial Chamber abused its discretion by failing to properly address factors establishing that Praljak is a flight risk and by failing to consider the Prosecution's submissions in this regard.²⁷ In particular, the Prosecution argues that the Trial Chamber did not consider the following factors: (i) Praljak's self-described breaches of the conditions of his provisional release; (ii) Praljak's ability to vary the conditions of his surveillance depending on the guards on duty; and (iii) Praljak's requests for lower surveillance and transfer to a location where potential for flight is heightened.²⁸ The Prosecution further submits that the Trial Chamber erred in relying on reports submitted by Croatia, which did not report Praljak's admitted breaches of the conditions of his provisional release.²⁹

10. Praljak responds that the Trial Chamber took all relevant factors into account when assessing his flight risk and did not commit any error in its assessment.³⁰ He submits that the Prosecution merely refers to his Statement attached to his Original Motion but fails to identify any action, which would be in breach of the conditions of his provisional release.³¹ In particular, Praljak argues that he scrupulously respected all the conditions imposed by the Trial Chamber.³² He adds

²⁴ Appeal, paras 1, 24.

²⁵ Appeal, paras 2-3, 5-21.

²⁶ Response, paras 29-30.

²⁷ Appeal, paras 2, 5-6.

²⁸ Appeal, paras 5-6.

²⁹ Appeal, para. 7. See also Appeal, para. 6.

³⁰ Response, para. 14. See also Response, para. 11.

³¹ Response, para. 8, referring to Original Motion, Annex 5 ("Statement").

³² Response, paras 9-10. See also Response, para. 13.

that his “kind and polite relationship with the guards” as described in his Statement “does not alter his compliance with the imposed conditions” nor does it “impact on proper and professional fulfilment of duty by Croatian guards”.³³ Furthermore, he argues that the Trial Chamber properly understood that his request for transfer to another location on the coast does not demonstrate any flight risk as he already stayed there on provisional release on two occasions in 2005 and that, at that time, the Prosecution did not oppose his request.³⁴ Finally, Praljak submits that the Trial Chamber did not err in considering regular reports submitted by Croatia, which demonstrate that he was complying with the conditions imposed on him.³⁵

11. After careful consideration of Praljak’s Statement alongside his Original Motion, the Appeals Chamber does not find that Praljak admitted to committing breaches of the terms of his provisional release but rather complained about these conditions and their strict nature. Contrary to the Prosecution’s argument, the Appeals Chamber finds that the reports submitted by Croatia up to the time the Impugned Decision was issued show that Praljak complied with the conditions of his provisional release.³⁶ Since the Prosecution does not provide evidence of Praljak’s alleged breaches, the Appeals Chamber finds no reason to doubt the validity and truthfulness of the reports submitted by Croatia. The Appeals Chamber therefore finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in assessing Praljak’s flight risk. Nonetheless, the Appeals Chamber recalls that any breach committed by Praljak of the conditions of his provisional release would be immediately sanctioned by a termination of his provisional release and his return to the United Nations Detention Unit.

2. Alleged abuse of discretion by ignoring the “principle of detention”

12. The Prosecution submits that the Trial Chamber failed to exercise its discretion by not considering Rules 64 and 65(A) of the Rules and the Tribunal’s unique jurisdiction, “which favours detention as the rule and not the exception.”³⁷

³³ Response, para. 10. See also Response, para. 8.

³⁴ Response, para. 12 and references cited therein.

³⁵ Response, para. 13.

³⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 16 January 2012 (confidential and *ex parte*), p. 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 26 January 2012 (confidential and *ex parte*), p. 3; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 10 February 2012 (confidential and *ex parte*), p. 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 24 February 2012 (confidential and *ex parte*), p. 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 12 March 2012 (confidential and *ex parte*), p. 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Report from the Republic of Croatia regarding the Provisional Release of Slobodan Praljak, 26 March 2012 (confidential and *ex parte*), p. 2.

³⁷ Appeal, para. 11. See also Appeal, paras 3, 9, 12.

13. Praljak responds that the Trial Chamber did not abuse its discretion as Rules 64 and 65 of the Rules must be read and understood in light of international human rights standards, which establish that detention is an exceptional measure that should only be enforced when strictly necessary.³⁸ He argues that the Trial Chamber correctly interpreted the Rules in accordance with these standards and the Tribunal's jurisprudence.³⁹ Praljak further argues that the Trial Chamber properly considered the requirements of Rule 65(B) of the Rules and found that they were met.⁴⁰

14. As a preliminary remark, the Appeals Chamber notes that the Prosecution did not advance this argument in its Response to Praljak's Original Motion and raises it for the first time on appeal.⁴¹ The Appeals Chamber recalls that a trial chamber "is generally not required to deal with matters which the parties have not raised before it, unless it considers those matters to be vital to the issues it has to decide upon" and that "the appeal's process is not meant to offer the parties a remedy to their previous failings at trial."⁴² Nonetheless, the Appeals Chamber finds that this argument merits consideration.

15. The Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber erred by ignoring the basic premise of the rule-based framework of detention, favouring detention as the rule and not the exception. In this context, the Appeals Chamber recalls that Rules 64 and 65(A) of the Rules provide that an accused, upon being transferred to the seat of the Tribunal, shall be detained and that he may not be released except upon an order of a Chamber. Rule 65(B) of the Rules sets out the cumulative requirements to be met for a trial chamber to grant provisional release.⁴³ Contrary to the Prosecution's argument, the Trial Chamber was not required to consider Rules 64 and 65(A) of the Rules but needed only to determine whether the requirements of Rule 65(B) of the Rules were met. The Trial Chamber was satisfied that Praljak met the requirements of Rule 65(B) of the Rules before ordering the extension of his provisional release.⁴⁴ Thus, the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

³⁸ Response, paras 16-18, 26.

³⁹ Response, para. 19.

⁴⁰ Response, paras 15, 20.

⁴¹ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Response to Slobodan Praljak's Motion for Extension of Provisional Release and Modification of Conditions, 2 March 2012 (confidential and *ex parte*) ("Response to Praljak's Original Motion").

⁴² See, e.g., *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal Against Trial Chamber's Decisions Granting Provisional Release, 19 October 2005 ("Decision of 19 October 2005"), para. 32 and references cited therein.

⁴³ See, e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.13, Decision on Prosecution's Appeal of the Trial Chamber's 10 December 2008 Decision on Prlić Provisional Release During Winter Recess, 18 December 2008 (confidential), para. 7. See also *supra*, para. 5.

⁴⁴ Impugned Decision, pp. 6, 8.

3. Alleged abuse of discretion by failing to consider other important factors, such as the gravity and scale of the crimes charged

16. The Prosecution submits that the Trial Chamber erred in failing to consider other relevant factors such as the gravity and scale of the crimes charged, Praljak’s involvement in those crimes, and the advanced stage of the proceedings.⁴⁵ With respect to the latter factor, the Prosecution argues that it has been acknowledged as relevant by the Appeals Chamber and should be taken into account when assessing Praljak’s flight risk.⁴⁶

17. Praljak responds that the Trial Chamber did not abuse its discretion as it properly considered the requirements of Rule 65(B) of the Rules and found that they were met.⁴⁷ He adds that the Trial Chamber also duly considered the relevant factors which a reasonable trial chamber would have been expected to take into account.⁴⁸ Praljak argues that the gravity of the crimes charged and the advanced stage of the proceedings were previously considered by the Trial Chamber in its Decision Granting Provisional Release and that the Prosecution has advanced no argument that warrants re-litigation of these matters.⁴⁹

18. While the Trial Chamber did not dwell upon the seriousness and the scale of the crimes charged and Praljak’s role in them, it was not required to do so.⁵⁰ The Trial Chamber’s concern was to ensure that, if granted an extension of his provisional release, Praljak would not be a flight risk and would not pose a danger to any victim, witness or other person. In so doing, the Trial Chamber considered that Praljak respected the conditions of his provisional release and that Croatia provided further guarantees for Praljak’s extension of provisional release.⁵¹ Moreover, the Trial Chamber decided that the strict security measures of provisional release should apply *mutatis mutandis* to the extension of the provisional release.⁵² On this basis, the Trial Chamber concluded that Praljak met the requirements of Rule 65(B) of the Rules.⁵³ In these circumstances, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion.

⁴⁵ Appeal, paras 3, 9, 13-16.

⁴⁶ Appeal, paras 15-16.

⁴⁷ Response, paras 15, 20, 26.

⁴⁸ Response, paras 15, 20.

⁴⁹ Response, para. 22, referring to Decision Granting Provisional Release, paras 30, 35, 39, 41.

⁵⁰ *Prosecutor v. Jadranko Prlić et al.*, Case Nos. IT-04-74-AR65.1, IT-04-74-AR65.2 & IT-04-74-AR65.3, Decision on Motions for Re-Consideration, Clarification, Request for Release and Applications for Leave to Appeal, 8 September 2004 (“Decision of 8 September 2004”), para. 31. The Appeals Chamber notes that, contrary to Praljak’s argument, in the Decision Granting Provisional Release, the Trial Chamber only mentioned the potential effect that the release of a person accused of serious crimes could have on the victims of those crimes. See Decision Granting Provisional Release, para. 41.

⁵¹ Impugned Decision, pp. 3, 6, 8.

⁵² Impugned Decision, pp. 8-9.

⁵³ Impugned Decision, p. 8.

4. Alleged abuse of discretion by failing to consider the impact of further provisional release on the international public's confidence in the proper administration of the justice

19. The Prosecution submits that the Trial Chamber erred in failing to consider the “obvious” negative impact of Praljak’s continued provisional release “on the international public’s confidence in the proper administration of justice”, as recognised by domestic courts.⁵⁴ In addition, the Prosecution argues that the Trial Chamber abused its discretion in not considering the Prosecution’s argument that Praljak’s ability to move freely around Zagreb, albeit under surveillance, would affect the public perception of the Tribunal’s administration of justice.⁵⁵

20. Praljak responds that the Trial Chamber did not abuse its discretion as it was not required to address this “speculative”, “erroneous”, and “misconceived” argument.⁵⁶ He further argues that the Impugned Decision reinforces the public confidence in the Tribunal’s administration of justice as it is “justified”, “legally correct”, “well reasoned” as well as in compliance with international human rights standards.⁵⁷

21. The Appeals Chamber notes that the Trial Chamber did not consider the Prosecution’s argument in this regard.⁵⁸ Although the Trial Chamber should have responded to the Prosecution’s argument, the Appeals Chamber finds that the Prosecution has failed to articulate a concrete basis tied to the circumstances of the extension of Praljak’s provisional release to substantiate its argument that this extension would negatively impact the international public’s confidence in the proper administration of justice.⁵⁹ In the view of the Appeals Chamber, it is irrelevant that some domestic jurisdictions – such as the Supreme Court of Canada – recognise the possibility of such negative effects on the community as a whole when releasing individuals charged with serious crimes.⁶⁰ Accordingly, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in this regard.

⁵⁴ Appeal, paras 3, 9, 17-19.

⁵⁵ Appeal, para. 20.

⁵⁶ Response, paras 23, 26.

⁵⁷ Response, para. 23.

⁵⁸ See Impugned Decision.

⁵⁹ See Decision of 15 December 2011, para. 11. In the view of the Appeals Chamber, the Prosecution seems to concede that it did not substantiate its argument in this respect as it stated that it “is not required to produce evidence of this impact” because it is “obvious”. See Appeal, para. 18.

⁶⁰ Cf. Decision of 8 September 2004, para. 31.

5. Alleged abuse of discretion by failing to address the insufficiency of Praljak's request for extending his provisional release

22. The Prosecution argues that Praljak's submissions for extending his provisional release were unsubstantiated and that the Trial Chamber's failure to consider this insufficiency is an abuse of discretion.⁶¹

23. Praljak responds that the Trial Chamber was not required to consider the alleged insufficiency of his Original Motion as it was filed in accordance with the procedure to apply for an extension of his provisional release set out in the Decision Granting Provisional Release.⁶² Praljak further responds that he "incorporated in its [Original] Motion all relevant elements from its previous motion".⁶³ He submits that, since all the relevant factors were identical to those that existed when his previous motion was filed, his approach was in the interest of justice to save the Tribunal's and parties' time and resources.⁶⁴

24. The Appeals Chamber notes that the Prosecution did not advance this argument in its Response to Praljak's Original Motion and raises it for the first time on appeal.⁶⁵ The Appeals Chamber recalls its finding above that an interlocutory appeal is not meant to offer the parties a remedy to their previous failings at trial.⁶⁶ Therefore, the Appeals Chamber will not deal with the Prosecution's cursory argument.⁶⁷

V. DISPOSITION

25. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal.

Judge Güney appends a partially dissenting opinion.

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

Done this 11th day of June 2012,
At The Hague,
The Netherlands.



Judge Arlette Ramaroson
Presiding

[Seal of the Tribunal]

⁶¹ Appeal, paras 3, 10, 21.

⁶² Response, paras 24-25, referring to Decision Granting Provisional Release, Annex 1.

⁶³ Response, para. 24.

⁶⁴ Response, para. 24.

⁶⁵ See Response to Praljak's Original Motion.

⁶⁶ See *supra*, para. 14.

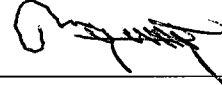
⁶⁷ *Cf.* Decision of 19 October 2005, para. 32.

PARTIALLY DISSENTING OPINION OF JUDGE GÜNEY

1. As per my previous partially dissenting opinions appended to recent provisional release decisions in the *Prlić* case¹, I still believe that the Trial Chamber erred in not granting Prosecution's request to order a public redacted version of Praljak's Original Motion.

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

Done this 11th day of June 2012,
At The Hague,
The Netherlands.



Judge Mehmet Güney

[Seal of the Tribunal]

¹ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.33, Partially Dissenting Opinion of Judge Güney on the "Decision on Prosecution's Appeal of the Decision on Further Extension of Bruno Stojić's Provisional Release", 16 May 2012; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.32, Partially Dissenting Opinion of Judge Güney on the "Decision on the Prosecution's Appeal of the Decision on Further Extension of Valentin Ćorić's Provisional Release", 25 May 2012.