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26 August 2010

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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-06-90-T
Date: 26 August 2010
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Kinis
Judge Elisabeth Gwaunza

Registrar: Mr John Hocking

Order of: 26 August 2010

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

ORDER ISSUING A PUBLIC REDACTED VERSION OF THE
CONFIDENTIAL "DECISION ON IVAN ČERMAK'S MOTION FOR
PROVISIONAL RELEASE PURSUANT TO RULES 54 AND 65" OF 9 JULY 2010

Office of the Prosecutor

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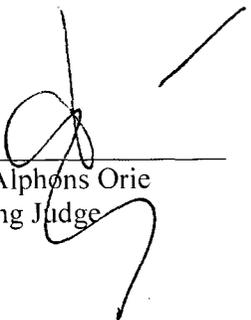
TRIAL CHAMBER I of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

RECALLING the Decision on Ivan Čermak's Motion for Provisional Release Pursuant to Rules 54 and 65 ("Decision"), issued confidentially on 9 July 2010;

CONSIDERING that some of the information contained in the Decision is to remain confidential;

HEREBY ISSUES a public redacted version of the Decision.

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



Judge Alphons Orié
Presiding Judge

Dated this 26 day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]



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ANTE GOTOVINA
IVAN ČERMAK
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PUBLIC REDACTED VERSION

DECISION ON IVAN ČERMAK'S MOTION FOR PROVISIONAL RELEASE
PURSUANT TO RULES 54 AND 65

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PROCEDURAL HISTORY

1. Mr Čermak has been granted provisional release on various occasions since 2 December 2004.¹ Most recently, on 24 March 2010, the Chamber granted a motion by the Čermak Defence for provisional release, holding that the requirements of Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) for granting provisional release had been met and that the need to ensure [REDACTED] constituted a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release (“March 2010 Decision”).² On 17 June 2010, the Čermak Defence filed a new motion for provisional release.³ The Čermak Defence requested that the Accused be provisionally released on a day after 10 July 2010 until a date in August 2010 for a period that the Chamber deems appropriate and proportionate.⁴ On 1 July 2010, the Prosecution filed its Response, in which it did not oppose the Motion.⁵ On 6 July 2010, the Čermak Defence filed a letter from the Government of the Republic of Croatia (“Croatia”) dated 18 June 2010, providing guarantees with respect to the requested provisional release.⁶ Also on 6 July 2010, the Tribunal’s host state filed a letter pursuant to Rule 65 (B) of the Rules stating that it had no objection to the Motion being granted.⁷

SUBMISSIONS OF THE PARTIES

2. The Čermak Defence submits, in support of its motion, that Mr Čermak surrendered to the Tribunal voluntarily, co-operated with the Prosecution prior to trial, and that his conduct during trial has been proper and co-operative.⁸ Further, the Čermak Defence notes that the Chamber has been satisfied in the past that Mr Čermak does not pose a flight risk if granted provisional release, and that in the post-Rule 98 *bis* stage of the proceedings, the Chamber was satisfied that Mr Čermak would return if provisionally released.⁹ In addition, Mr Čermak agrees to be bound by the same conditions as those ordered by the Chamber in its March 2010 Decision, as well as any other measures the Chamber deems appropriate.¹⁰ The

¹ For the full procedural history, see Decision on Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 24 March 2010, para. 1.

² March 2010 Decision, paras 10-12.

³ Ivan Čermak’s Motion for Provisional Release Pursuant to Rules 54 and 65, 17 June 2010 (“Motion”).

⁴ Motion, paras 2-3, 19.

⁵ Prosecution’s Response to Čermak’s Request for Provisional Release, 1 July 2010 (“Response”).

⁶ Ivan Čermak’s Submission of the Guarantees of the Republic of Croatia for Provisional Release, 6 July 2010, (“Croatian Guarantees”).

⁷ Letter by the Ministry of Foreign Affairs, The Netherlands, 6 July 2010.

⁸ Motion, para. 5.

⁹ Motion, para. 6.

¹⁰ Motion, para. 7.

Čermak Defence submits that the Chamber has recognized that a relevant factor in determining whether provisional release would be appropriate is [REDACTED].¹¹ The Čermak Defence further submits that [REDACTED] presents a sufficiently compelling humanitarian ground to warrant provisional release.¹² In this regard, the Čermak Defence submits that [REDACTED].¹³ The Čermak Defence further submits that Mr Čermak never posed a danger to victims, witnesses, or other persons in the case, and notes that because the parties have concluded their cases, any remote risk to the Prosecution witnesses has ceased to exist.¹⁴ The Čermak Defence and Mr Čermak also offer to take all reasonable steps to eliminate media coverage of Mr Čermak's departure from and return to the UNDU.¹⁵ The Čermak Defence additionally submits that [REDACTED].¹⁶

3. In its Response, the Prosecution notes that both the Appeals Chamber and the Trial Chamber have previously ruled [REDACTED] to be a sufficiently compelling humanitarian ground warranting Mr Čermak's provisional release [REDACTED].¹⁷ The Prosecution observes that the Čermak Defence relies on the same rationale in support of the current motion for provisional release.¹⁸ In light of the previous decisions by the Appeals Chamber and the Trial Chamber, the Prosecution does not oppose the Motion to the extent that the period of provisional release ends before the commencement of closing arguments.¹⁹

¹¹ Motion, paras 8-10.

¹² Motion, paras 11-14.

¹³ Motion, paras 9-14, Confidential and Ex Parte (Except OTP) Annex A.

¹⁴ Motion, para. 15.

¹⁵ Motion, para. 16.

¹⁶ Motion, para. 2.

¹⁷ Response, para. 1.

¹⁸ Ibid.

¹⁹ Response, para. 2.

APPLICABLE LAW

4. The Chamber recalls the applicable law on provisional release as previously set out.²⁰

DISCUSSION

5. In its March 2010 Decision, the Chamber found that Mr Čermak did not pose a risk of flight if provisionally released, and since that time there have been no developments that would impact negatively on this assessment.²¹ On the basis of the renewed Croatian Guarantees, the Chamber is satisfied that Croatia would be willing and able to secure Mr Čermak's attendance before the Tribunal and his compliance with any conditions that may be imposed by the Chamber.²² In addition, the fact that Mr Čermak surrendered voluntarily to the Tribunal indicates that he would not pose a flight risk.²³ Furthermore, Mr Čermak's in-court attitude and behaviour do not provide any indication to the contrary.²⁴ For these reasons, having considered that the proceedings are in the post-Rule 98 *bis* stage, the Chamber remains satisfied that, if provisionally released, Mr Čermak would return for trial.

6. As was the case in previous decisions on provisional release for Mr Čermak, the Chamber has received no indication that if released, Mr Čermak would pose a danger to witnesses, victims, or other persons.²⁵ Moreover, nothing arose during his prior periods of provisional release that would suggest that Mr Čermak did not abide by all conditions set by the Chamber.²⁶ In conclusion, the Chamber finds that the requirements set out in Rule 65 (B) of the Rules for granting provisional release have been met.

7. In previous decisions, the Chamber considered [REDACTED] a relevant factor in favour of provisional release.²⁷ However, as the proceedings are now in the post-Rule 98 *bis*

²⁰ See March 2010 Decision, paras 5-6.

²¹ March 2010 Decision, para. 7.

²² Croatian Guarantees.

²³ See Decision on Motion for Provisional Release of Ivan Čermak, 14 March 2008 ("March 2008 Decision"), para. 8; Decision on Ivan Čermak's Motion for Provisional Release, 18 July 2008 ("July 2008 Decision"), para. 19; Decision on Motion for Provisional Release of Ivan Čermak, 2 December 2008 ("December 2008 Decision"), para. 11; Decision on Motion for Provisional Release of Ivan Čermak, 27 February 2009 ("February 2009 Decision"), para. 7; Decision on Motion for Provisional Release of Ivan Čermak's, 14 July 2009 ("July 2009 Decision"), para. 9; Decision on Motion for Provisional Release of Ivan Čermak, 14 December 2009 ("December 2009 Decision"), para. 7; March 2010 Decision, para. 7.

²⁴ See *Ibid.*

²⁵ See March 2008 Decision, para. 9; July 2008 Decision, para. 20; December 2008 Decision, para. 12; February 2009 Decision, para. 8; July 2009 Decision, para. 10; December 2009 Decision, para. 8; March 2010 Decision, para. 8.

²⁶ See *Ibid.*

²⁷ See July 2008 Decision, para. 22; December 2008 Decision, para. 14.

stage, the Čermak Defence must demonstrate the existence of compelling humanitarian grounds which tip the balance in favour of provisional release. The Čermak Defence has submitted [REDACTED].²⁸ The requested provisional release would aim to [REDACTED].

8. The Chamber has previously held that [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].³¹ The Chamber notes [REDACTED].³² Considering [REDACTED], the Chamber finds that [REDACTED]. For these reasons, the Chamber is satisfied that [REDACTED] constitutes a sufficiently compelling humanitarian ground to tip the balance in favour of provisional release.

9. The Čermak Defence requested provisional release from a date after 10 July 2010 until a date in August 2010, for a period that the Chamber deems appropriate and proportionate.³³ The Chamber considers that the compelling humanitarian ground in this case is best served by [REDACTED] for the longest practicable period. Considering the practical aspects of organizing provisional release, the fact that [REDACTED], and the fact that no hearings are scheduled in the present case until 30 August 2010,³⁴ the Chamber finds that provisional release from 11 July until 26 August 2010 is proportionate to the circumstances of the Motion.

DISPOSITION

10. For the foregoing reasons and pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 65 of the Rules, the Chamber hereby **GRANTS** the Motion, and **ORDERS** as follows:

- (a) On the first practicable date after the filing of the present decision but not earlier than **11 July 2010**, Mr Čermak shall be transported to the appropriate airport in The Netherlands by the appropriate Dutch authorities;
- (b) At the appropriate airport, Mr Čermak shall be provisionally released by the Dutch authorities into the custody of an official of Croatia to be designated prior to his release in accordance with subparagraph (e)(4), below, who shall accompany Mr

²⁸ Motion, Confidential and Ex-Parte (Except OTP) Annex A.

²⁹ December 2009 Decision, para. 10.

³⁰ Motion, Confidential and Ex-Parte (Except OTP) Annex A.

³¹ Ibid.

³² Ibid.

³³ Motion, paras 2-3, 19.

³⁴ Scheduling Order, 16 June 2010; Scheduling Order, 7 July 2010.

Čermak for the remainder of his travel to and from the address listed in Annex B of the Motion;

- (c) On his return, Mr Čermak shall be accompanied by the same designated official of Croatia, who shall deliver him into the custody of the Dutch authorities at the appropriate airport, and the Dutch authorities shall then transport him back to the UNDU in The Hague;
- (d) During the provisional release, Mr Čermak shall:
- 1) surrender his passport and any other valid travel documents to the Ministry of Interior of Croatia;
 - 2) remain within the confines of his private residence in Croatia, at the address listed in Annex B of the Motion;
 - 3) report once a week to the local police station;
 - 4) consent to having his presence checked, including checking by occasional, unannounced visits by the Ministry of Interior, officials of Croatia, the local police, or by a person designated by the Registrar of the International Tribunal;
 - 5) not have any contact or in any way interfere with victims or potential witnesses or otherwise interfere with the proceedings or the administration of justice;
 - 6) not seek direct access to documents or archives nor destroy evidence;
 - 7) not discuss or speak about the case with anyone, including the media, other than his counsel;
 - 8) not engage in any activity that is not in accordance with the private nature of the provisional release, including any contact with public officials or public figures not relating to the administration of the provisional release;
 - 9) comply strictly with any requirements of the Croatian authorities necessary to enable such authorities to comply with their obligations pursuant to the present decision;
 - 10) return to the custody of the Tribunal by **26 August 2010**, or at such time and date as the Chamber may order;

11) comply strictly with any order issued by the Chamber varying the terms of, or terminating, the provisional release;

(e) The Chamber requires Croatia, to assume responsibility for:

- 1) the personal security and safety of Mr Čermak while on provisional release;
- 2) ensuring compliance with the conditions imposed on Mr Čermak under the present decision;
- 3) all expenses concerning the transport of Mr Čermak from the airport in The Netherlands to his place of residence in Croatia, and back to The Netherlands;
- 4) ensuring that upon release of Mr Čermak at the airport in The Netherlands, designated officials of Croatia (whose names shall be provided in advance to the Chamber and the Registry) take custody of Mr Čermak from the Dutch authorities and accompany him as detailed in subparagraphs (b) and (c), above;
- 5) not issuing any new passports or other documents which would enable Mr Čermak to travel;
- 6) monitoring on a regular basis the presence of Mr Čermak at the address detailed in Annex B of the Motion, and maintaining a log of such reports;
- 7) submitting a written report every week to the Chamber and the Registry as to the presence of Mr Čermak and his compliance with the terms of the present decision;
- 8) reporting immediately to the Registrar of the Tribunal the substance of any threats to the security of Mr Čermak, including full reports of investigations related to such threats;
- 9) immediately detaining Mr Čermak should he breach any of the terms and conditions of his provisional release and reporting immediately any such breach to the Registry and the Chamber.

12. The Chamber further **INSTRUCTS** the Registrar of the Tribunal to consult with the Ministry of Justice of The Netherlands as to the practical arrangements for the provisional release of Mr Čermak, and to continue to detain Mr Čermak at the UNDU in The Hague until

such time as the Chamber and the Registrar has been notified of the name of the designated official of Croatia into whose custody Mr Čermak is to be provisionally released.

13. Finally, the Chamber **REQUESTS** the authorities of all states through which Mr Čermak will travel:

- (a) to hold him in custody for any time that he will spend in transit at an airport in their territories; and
- (b) to arrest and detain him pending his return to the UNDU in The Hague, should he attempt to escape.

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

Judge Alphons Orie
Presiding Judge

Dated this ninth day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]