



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: 17 June 2009  
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:** 17 June 2009

**THE PROSECUTOR**

v.

Jadranko PRLIĆ  
Bruno STOJIC  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ĆORIĆ  
Berislav PUŠIĆ

***PUBLIC WITH CONFIDENTIAL ANNEX***

**DECISION ON THE ACCUSED PETKOVIĆ'S MOTION FOR PROVISIONAL  
RELEASE**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
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 Stojic  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

## I. INTRODUCTION

1. **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”) is seized of a motion for provisional release from the Accused Milivoj Petković (“Accused Petković”), filed confidentially by Counsel for the Accused Petković (“Petković Defence”) on 22 May 2009, to which four confidential annexes are attached.

## II. PROCEDURAL BACKGROUND

2. On 22 May 2009, the Petković Defence confidentially filed the “Motion of Milivoj Petković for Provisional Release During 2009 Summer Recess” (“Motion”), with four confidential annexes, in which it requests, for humanitarian reasons, the provisional release of the Accused Petković to the Republic of Croatia for as long a period as possible between 17 July 2009 and 16 August 2009.<sup>1</sup>

3. With the oral decision on 27 May 2009, the Chamber granted the Office of the Prosecutor (“Prosecution”) extended leave to reply by 5 June 2009.<sup>2</sup>

4. On 5 June 2009, the Prosecution confidentially filed the “Prosecution Consolidated Response to the Stojić, Petković and Pušić Applications for Provisional Release During the 2009 Summer Recess” (“Response”), in which the Prosecution objected, *inter alia*, to the provisional release of the Accused Petković and requested that, should the Chamber order the provisional release of the Accused Petković, the Chamber grant a stay of this decision until the Appeals Chamber rules on the appeal that the Prosecution intends to file against this decision.<sup>3</sup>

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<sup>1</sup> Motion, paras. 33 and 34.

<sup>2</sup> Transcript in French (“T(F)”), 27 May 2009, p. 40819, private session;

<sup>3</sup> Response, *see* notably paras. 44 and 45.

5. On 12 June 2009, the Minister of Foreign Affairs of the Kingdom of the Netherlands sent a letter to the Tribunal indicating that he did not object to the provisional release of Milivoj Petković.

### III. APPLICABLE LAW

6. Rule 65 (A) of the Rules of Procedure and Evidence ("Rules") stipulates that once detained, an accused may not be released except by an order of a Chamber. In accordance with Rule 65 (B) of the Rules, the Chamber may order a provisional release only after giving the host country, and the state to which the accused seeks to be released, the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will pose no danger to any victim, witness or other person.

7. In accordance with the established case-law of the Tribunal, the decision to grant or deny provisional release pursuant to Rule 65 of the Rules stems from the discretionary power of the Chamber.<sup>4</sup> In order to determine if the conditions laid out in Rule 65 (B) of the Rules have been met, the Chamber must take into consideration all the relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision.<sup>5</sup> The Chamber must then provide a reasoned opinion for its decision on this matter.<sup>6</sup> The relevance of the presented material and

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<sup>4</sup> *The Prosecution 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", 26 June 2008 ("*Jovica Stanišić* Decision"), para. 3; *The Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR65.2, "Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess", 14 December 2006 ("*Milutinović* Decision"), para. 3; *The Prosecutor v. Popović et al.*, Case No. IT-65-88-AR65.2, "Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release", 30 June 2006, para. 5; *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", 21 April 2008 ("*Petković* Decision"), para. 5; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.8, "Decision on Prosecution's Appeal from *Décision relative à la Demande de mise en liberté provisoire de l'Accusé Prlić* Dated 7 April 2008", 25 April 2008 ("*Prlić* Decision of 25 April 2008"), para. 7.

<sup>5</sup> *The Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, "Decision on Prosecution's Interlocutory Appeal of Mićo Stanišić's Provisional Release", 17 October 2005 ("*Miće Stanišić* Decision"), para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

<sup>6</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Miće Stanišić* Decision, para. 8.

the weight to be accorded to it are appraised on a case-by-case basis.<sup>7</sup> Because it relies first and foremost on the facts in the case, each request for provisional release is examined in the light of the particular circumstances of the accused, as the Appeals Chamber notably recalls in its decision of 5 July 2007.<sup>8</sup> The Chamber must examine these circumstances as they are at the time of reaching a decision on the provisional release, but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.<sup>9</sup>

8. In accordance with recent Appeals Chamber case-law, the close of the Prosecution case constitutes a significant enough change in circumstances to warrant a renewed and detailed assessment of the risk of flight by an accused.<sup>10</sup> In these circumstances, and even if the Trial Chamber is convinced that sufficient guarantees have been presented, it must only exercise its discretionary power to grant provisional release if sufficiently compelling humanitarian grounds tip the scales in its favour.<sup>11</sup> Consequently, provisional release will only be granted "at a late stage of proceedings, and in particular after the close of the Prosecution case, when sufficiently compelling humanitarian grounds exist to justify the release and, even when provisional release is found to be justified in light of the nature of the circumstances, the length of the release should nonetheless be proportional to these circumstances."<sup>12</sup>

9. Nevertheless, in accordance with Appeals Chamber case-law, the Chamber is uniquely suited to assess whether the procedural circumstances, such as, for example,

<sup>7</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

<sup>8</sup> *The Prosecutor v. Boškovski and Tarčulovski* Case No. IT-04-82-AR65.1, "Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release", 4 October 2005 ("*Tarčulovski* Decision"), para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8; *The Prosecutor v. Prlić et al.*, Case No. IT-04-074-AR65.14 "Decision on Jadranko Prlić's Appeal Against the 'Décision relative à la demande de mise en liberté provisoire de l'Accusé Prlić', 9 April 2009", 5 June 2009 ("*Prlić* Decision of 5 June 2009"), para. 13.

<sup>9</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

<sup>10</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-074-AR65.5, "Decision on Prosecution's Consolidated Appeal against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić", 11 March 2008 ("*Prlić* Decision of 11 March 2008"), para. 20.

<sup>11</sup> *Prlić* Decision of 11 March 2008, para. 21; *Prlić* Decision of 25 April 2008, para. 16; *Petković* Decision, para. 17.

<sup>12</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

the close of the Prosecution case, increase the risk of flight by the accused while on provisional release.<sup>13</sup>

#### IV. ARGUMENTS OF THE PARTIES

10. In support of its Motion, the Petković Defence maintains that (1) the Accused Petković has complied with all the conditions set out when his previous provisional releases were granted,<sup>14</sup> (2) that the flight risk of the Accused Petković has not increased following the Chamber's decision pursuant to Rule 98 *bis* of the Rules and that the principle of the presumption of innocence applies until the judgment is rendered;<sup>15</sup> (3) that the Accused Petković's personal situation and circumstances, set out in 13 points, notably the fact that he voluntarily surrendered to the Tribunal, and his conduct during the previous provisional releases, suggest that he did not and will not endanger a victim, witness or other person and that he is not a flight risk;<sup>16</sup> (4) that the Government of the Republic of Croatia has undertaken to ensure that the Accused Petković conforms to all conditions imposed by the Chamber should it decide to grant him provisional release and that the Government of Croatia has complied with its obligations in this respect during the previous provisional releases of the Accused Petković;<sup>17</sup> and (5) that finally, the Accused Petković pledges to abide by the conditions and restrictions imposed by the Chamber and proposes additional ones himself.<sup>18</sup>

11. On the basis of discrepancies related to the interpretation of criteria for "sufficiently compelling humanitarian reasons" in the case-law of the Appeals Chamber, notably in the decision rendered by the Chamber on 23 April 2008,<sup>19</sup> the Petković Defence submits that the existence of humanitarian reasons does not

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<sup>13</sup> *Milutinović* Decision, para. 15.

<sup>14</sup> Motion, paras. 3-7.

<sup>15</sup> Motion, paras. 9-10.

<sup>16</sup> Motion, paras. 11-13.

<sup>17</sup> Motion, paras. 29-30 and *see also* Letter of Guarantee from the Ministry of Justice of the Republic of Croatia dated 14 May 2009 in Confidential Annex 4 attached to the Motion.

<sup>18</sup> Motion, paras. 31-33.

<sup>19</sup> Motion, paras. 15-16 referring to *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T-AR65.6, "Reasons for Decision on Prosecution's Urgent Appeal against "Décision relative à la demande de mise en liberté provisoire de l'accusé Pušić", 23 April 2008.

constitute a requirement for the provisional release of an Accused once the Trial Chamber is satisfied that the conditions of Rule 65 (B) have been met.<sup>20</sup>

12. Nevertheless, in the event that the Chamber decides to follow the strict interpretation of the criteria set out in the Appeals Chamber's decision of 21 April 2008,<sup>21</sup> the Petković Defence submits that the health of the Accused Petković's spouse, Milka Petković, the Accused's mother, Zorka Petković, and of the Accused Petković himself, constitute sufficiently compelling humanitarian reasons to justify the provisional release of the Accused Petković during the summer 2009 court recess.<sup>22</sup> The Petković Defence points out that these grounds are similar to the compelling humanitarian reasons invoked in the previous motion for provisional release during the 2008/2009 winter recess, with the exception of certain changes.<sup>23</sup> Notable amongst these changes is that the Accused Petković must undergo a post-operative medical exam in the Republic of Croatia.<sup>24</sup>

13. The Petković Defence argues that due to the exceptional circumstances raised in its Motion, the provisional release of the Accused Petković to the Republic of Croatia during the summer 2009 court recess would be beneficial to the health of the Accused Petković's spouse, it would allow the Accused to visit his mother, whose health is equally precarious, and it would be beneficial to the health of the Accused Petković.<sup>25</sup>

14. In its Response, the Prosecution objects to the provisional release of the Accused Petković on the grounds, *inter alia*, that (1) the existence of court recess cannot be used as a reason to justify the provisional release of an accused;<sup>26</sup> (2) the risk of flight of the Accused Petković is too high due to the advanced stage of the proceedings and the past inadequacies of the surveillance provided by the Croatian authorities, notably the omission on the part of the Croatian authorities to transmit to the Chamber reports

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<sup>20</sup> Motion, paras. 15-16.

<sup>21</sup> Motion, paras. 15 and 17 referring to *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T-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", 21 April 2008, public.

<sup>22</sup> Motion, paras. 17 and 19; Medical certificate for Milka Petković dated 5 May 2009 in Confidential Annex 1 attached to the Motion; Medical Certificate for Zorka Petković dated 11 May 2009 and 6 March 2009 in Confidential Annex 2 attached to the Motion; Medical Certificate of Milivoj Petković dated 12 February 2009, in Confidential Annex 3 attached to the Motion.

<sup>23</sup> Motion, para. 18.

<sup>24</sup> Motion, paras. 27-28.

<sup>25</sup> Motion, paras. 22-25 and 27-28.

<sup>26</sup> Response, paras. 2-3 and 11-13.

testifying to the meeting between Witness Tomić and the Accused Prlić and Pušić during the previous provisional releases;<sup>27</sup> (3) finally, neither the considerations put forth by the Accused Petković, nor the documents supporting his provisional release constitute compelling humanitarian reasons that would justify the said Motion.<sup>28</sup>

15. With regards in particular to the humanitarian reasons submitted by the Accused Petković in support of the Motion, the Prosecution submits that two of those humanitarian grounds, namely the health of his spouse and his mother, are greatly similar to the reasons provided in the two previous requests for provisional release, which were denied by the Appeals Chamber for not being sufficiently compelling.<sup>29</sup> Consequently, according to the Prosecution, it is incumbent upon the Trial Chamber to determine whether the grounds of this Motion are of a “sufficiently different nature, or present a higher degree of gravity or a more acute level of urgency” than the reasons previously rejected by the Appeals Chamber.<sup>30</sup> Furthermore, the Prosecution adds that the Petković Defence did not provide any reasons or documents justifying that the post-operative medical exam, that the Accused Petković requests be performed in the Republic of Croatia, cannot be performed in The Netherlands.<sup>31</sup>

16. The Prosecution nevertheless argues that in the event that the Chamber decides to grant the Motion, the duration of the provisional release granted to the Accused Petković should be proportional and limited to the minimum period requested for the humanitarian reasons submitted by the said Accused in support of the Motion; that the provisional release of the Accused should be accompanied by strict conditions, similar or stricter than those imposed during the Accused’s preceding provisional releases and should notably include the requirement of home confinement.<sup>32</sup>

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<sup>27</sup> Response, paras. 3 and 14-19.

<sup>28</sup> Response, paras. 3, 20-21 and 29-35.

<sup>29</sup> Response, paras. 30-33. *See also The Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, “Decision on Prosecution’s Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković et Ćorić”, 11 March 2008 ; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T-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”, 21 April 2008, public.

<sup>30</sup> Response, para. 33.

<sup>31</sup> Response, para. 34.

<sup>32</sup> Response, paras. 4, 35, 37-43.

17. Finally, in the event that the Chamber decides to grant the Motion, the Prosecution requests a stay of its decision until the Appeals Chamber has ruled on the appeal that the Prosecution intends to file.<sup>33</sup>

## V. DISCUSSION

18. *In limine*, the Chamber notes that, in accordance with Rule 65 (B) of the Rules, the Government of the Kingdom of the Netherlands, the host country, informed the Chamber in its letter dated 12 June 2009 that it was not opposed to the procedure for a possible provisional release of the Accused Petković.<sup>34</sup>

19. In its letter of 14 May 2009, the Government of the Republic of Croatia supplied guarantees that the Accused Petković, should he be granted provisional release by the Chamber, will not influence or place in danger during his provisional release, victims, witnesses, or other persons, and will return to The Hague on the date ordered by the Chamber.<sup>35</sup> The Chamber notes that in its letter dated 14 May 2009, the Government of the Republic of Croatia notes that a joint departure and arrival of those Accused on provisional release would be more efficient for both economic and security reasons.<sup>36</sup> The Chamber notes the wish expressed by the Republic of Croatia, and, even though mindful to preserve the good co-operation between the Tribunal and the Government of the Republic of Croatia, it is of the opinion that the security requirements and the proper conduct of the trial require that the departure and return of the accused for whom the Chamber has ordered or will order provisional release be carried out in several phases.

20. The Chamber notes that the Accused Petković has respected all the conditions and guarantees imposed on him during his previous provisional release pursuant to the orders and decisions of the Trial Chambers rendered on 30 July 2004,<sup>37</sup> 26 June 2006,<sup>38</sup> 8 December 2006,<sup>39</sup> 11 June 2007,<sup>40</sup> 10 July 2007,<sup>41</sup> 29 November 2007,<sup>42</sup> 22

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<sup>33</sup> Response, par. 44.

<sup>34</sup> Letter from the Dutch Ministry of Foreign Affairs regarding the provisional release of Milivoj Petković dated 12 June 2009.

<sup>35</sup> Letter of Guarantee from the Ministry of Justice of the Republic of Croatia dated 14 May 2009 in Confidential Annex 4 attached to the Motion.

<sup>36</sup> *Ibid.*

<sup>37</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Milivoj Petković, 30 July 2004.

<sup>38</sup> Decision on Provisional Release of the Accused Petković, 26 June 2006, confidential.

<sup>39</sup> Decision on Provisional Release of the Accused Petković, 8 December 2006, partially confidential.



April 2008,<sup>43</sup> 17 July 2008,<sup>44</sup> 5 December 2008,<sup>45</sup> and 29 January 2009.<sup>46</sup> Contrary to what the Prosecution argues,<sup>47</sup> the Chamber points out that the allegations of violations of the terms and conditions of the provisional release by Milivoj Petković's two co-accused will not have a bearing on the flight risk of the Accused Petković and will not, in this case, pose a challenge to the guarantees provided by the Government of the Republic of Croatia. Furthermore, even though, according to the Appeals Chamber, the closing of the Prosecution case constitutes a significant change in circumstances to warrant a renewed and explicit consideration of the risk of flight posed by an accused,<sup>48</sup> the Chamber deems that the guarantees against the risk of flight that may be imposed upon the Accused Petković would neutralise any possible risk of flight. Regarding his respectful conduct during earlier provisional releases, the Chamber is assured that the Accused Petković, if released, will appear for the continuation of his trial.

21. For these same reasons, should the Accused Petković be granted provisional release to the Republic of Croatia, the Chamber is of the opinion that the Accused Petković will not pose a danger to victims, witnesses and other persons.<sup>49</sup>

22. The Chamber recalls that, in order to establish whether the requirements of Rule 65 (B) of the Rules have been met, it must consider all the relevant factors which a reasonable Trial Chamber would be expected to consider in order to come to a decision.<sup>50</sup> In this case, the Chamber must also consider the fact that the Accused

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<sup>40</sup> Decision on Provisional Release of the Accused Petković, 11 June 2007, public with Confidential Annex.

<sup>41</sup> Order to Amend the Decision on the Motion for Provisional Release of the Accused Petković, 10 July 2007, confidential.

<sup>42</sup> Decision on Provisional Release of the Accused Petković, 29 November 2007, public with confidential annexes.

<sup>43</sup> Further Decision to the Decision on Provisional Release of the Accused Petković, 22 April 2008, confidential.

<sup>44</sup> Decision on Provisional Release of the Accused Petković, 17 July 2008, public with confidential annex.

<sup>45</sup> Decision on Provisional Release of the Accused Petković, 5 December 2008, public with confidential annex.

<sup>46</sup> Decision on Urgent Motion for Provisional Release of the Accused Milivoj Petković to Undergo Major Surgery in Croatia, 29 January 2009, confidential and *ex parte* with confidential and *ex parte* annex.

<sup>47</sup> Response, paras. 14-19.

<sup>48</sup> *Prlić* Decision of 11 Mars 2008, para. 20.

<sup>49</sup> This risk is not assessed *in abstracto* – it has to be real. *Mičo Stanišić* Decision, para. 27.

<sup>50</sup> *Mičo Stanišić* Decision, para. 8; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10.

Petković surrendered to the Tribunal voluntarily and his exemplary conduct before and during the proceedings, even after the close of the Prosecution case. Furthermore, the Chamber will suspend hearings during the summer court recess. Consequently, during this period there will be no legal activity taking place that would require the presence of the Accused Petković.

23. Nevertheless, according to the Appeals Chamber, regarding the stage of the proceedings and the close of the Prosecution case, the Chamber has the duty to determine, in addition, if the humanitarian grounds put forth by the Petković Defence are sufficiently compelling to justify the provisional release of the Accused Petković.<sup>51</sup>

24. In this respect, as indicated notably by the Appeals Chamber in its decision dated 5 June 2009,<sup>52</sup> the Chamber recalls that it has the duty to consider each request for provisional release in light of the particular circumstances of the Accused,<sup>53</sup> and that such an assessment is made at the time when it reaches its decision on provisional release, but it must also envisage as far as possible how the circumstances will have changed when the accused is to reappear before the Tribunal.<sup>54</sup> Consequently, as long as the Chamber considers that a ground raised by an accused – in light of his current situation – is sufficiently compelling, it may justify the provisional release of an accused.

25. With regards to the recent medical certificates presented by the Petković Defence in support of the Motion, the Chamber notes a deterioration of the mental health of the Accuse Petković's spouse, and a deterioration of his mother's mental health. The Chamber proceeded with an in-depth examination, contained in the confidential annex attached to this Decision, of the documents submitted by the Accused Petković in support of his Motion, and considers that the presence of the Accused Petković at his spouse's side during a short period may help her overcome her hardship. Moreover, the Chamber deems that the possibility of the Accused Petković seeing his mother would be of help to her. The Chamber also considers that a brief provisional release

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<sup>51</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>52</sup> *Prlić* Decision of 5 June 2009, para. 13.

<sup>53</sup> *Tarčulovski* Decision, para. 7; *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

<sup>54</sup> *Jovica Stanišić* Decision, para. 35; *Petković* Decision, para. 8; *Prlić* Decision of 25 April 2008, para. 10; *Mičo Stanišić* Decision, para. 8.

for the Accused Petković in order to see his close family members who are ill would be beneficial for the emotional state of the Accused Petković. Therefore, the Chamber deems that the humanitarian grounds raised by the Petković Defence are sufficiently compelling to justify the provisional release of the Accused Petković. On the other hand, the Chamber does not consider that a post-operative medical exam in the Republic of Croatia constitutes sufficiently compelling humanitarian reasons to justify the provisional release of the said Accused unless it is demonstrated that such a check-up could not be performed in the Netherlands.

26. The Chamber also recalls that in keeping with the case-law of the Appeals Chamber, the length of provisional release at a late stage of the proceedings, and in particular after the close of the Prosecution case, must be proportional to the circumstances and to the sufficiently compelling humanitarian grounds that justify the provisional release.<sup>55</sup> Moreover, the Chamber recalls that the factors that it has to take into account affect not only the decision to grant or deny provisional release, but also, the length of the stay, if appropriate. The Chamber must also find, *inter alia*, the proper balance between the nature and the weight of the circumstances justifying provisional release on humanitarian grounds and its duration.<sup>56</sup>

27. In the present case, the Accused Petković is requesting provisional release for as long a period as possible between 17 July 2009 and 16 August 2009.<sup>57</sup> The Chamber considers it necessary to limit the duration of the provisional release to a period of time not exceeding the time required for the Accused Petković to visit his ill spouse and mother, which will also include waiting periods related to the outward and return journey. The Chamber therefore deems that a provisional release not exceeding 12 days is proportionate to the gravity of the health of the Accused Petković's spouse and mother.

## V. CONCLUSION

28. For these reasons, the Chamber is convinced that the Accused Petković offers sufficiently compelling humanitarian grounds and considers that a provisional release not exceeding 12 days (travel time included) is proportionate to the gravity of the

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<sup>55</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 16.

<sup>56</sup> *Petković* Decision, para. 17; *Prlić* Decision of 25 April 2008, para. 18.

health of the Accused Petković's spouse and mother. Consequently, in exercising its discretionary power, the Chamber decides to grant provisional release to the Accused Petković.

29. In view of the circumstance of the case and the advanced stage of the proceedings, the Chamber considers it necessary that the provisional release of the Accused Petković be limited to home confinement.<sup>58</sup> The Chamber decides that within these limits, the Croatian authorities are to carry out 24 hour surveillance of the Accused Petković during his stay and provide a situation report every three days.

30. As such, the Accused Petković will be released during these dates and according to the conditions set forth in the confidential annex attached to this Decision.

## VI. DISPOSITION

31. **FOR THE FOREGOING REASONS**, the Chamber,

**PURSUANT TO** Rules 65 (B) and 65 (E) of the Rules,

**PARTIALLY GRANTS** the Motion,

**ORDERS** the provisional release of the Accused Petković during the dates and under the conditions set forth in the confidential annex attached to this Decision, **AND**

**ORDERS** a stay of this Decision until the Appeals Chamber has ruled on the appeal that the Prosecution intends to file against this Decision.

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

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<sup>57</sup> Motion, paras. 33 and 34.

<sup>58</sup> See confidential annex attached to this Decision.

/signed/

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Jean-Claude Antonetti  
Presiding Judge

Done this seventeenth day of June 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**