



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: 1 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: 1 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 JADRANKO PRLIĆ'S
MOTION TO EXTEND 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 “Jadranko Prlić’s Motion to Extend His Provisional Release” filed as a public document by Counsel for the Accused Jadranko Prlić (“Accused” and “Prlić Defence”) on 17 February 2012 (“Motion”), in which the Prlić Defence requests that the Chamber extend the provisional release of the Accused Prlić by three months,¹

NOTING the “Addendum to Jadranko Prlić’s Motion to Extend His Provisional Release” filed by the Prlić Defence as a public document on 22 February 2012 (“Addendum”), in which it submits to the Chamber a letter from the Ministry of Justice of the Republic of Croatia, dated 16 February 2012, providing guarantees from the Croatian Government that, should the extension of provisional release be granted to the Accused Prlić by the Chamber, he would not influence or pose a threat to any victims, witnesses or any other person during his provisional release and that he would return to The Hague on the date ordered by the Chamber.

NOTING the “Prosecution Response to Jadranko Prlić’s Motion to Extend His Provisional Release” filed by the Office of the Prosecutor (“Prosecution”) as a public document on 24 February 2012 (“Response”), in which the Prosecution opposes the Motion,²

NOTING the “Decision on Jadranko Prlić’s Motion for Provisional Release” rendered by the Chamber as a public document with one confidential annex and one public annex on 24 November 2011 (“Decision of 24 November 2011”), in which the Chamber ordered the provisional release of the Accused Prlić to Zagreb for a limited period, and established the procedure to be followed in respect of any request to extend the said provisional release,³

NOTING the “Order on Jadranko Prlić’s Motion for Provisional Release” rendered as a confidential document by the Chamber on 15 December 2011 (“Order of 15

¹ Motion, p. 2.

² Response, para. 10.

³ Decision of 24 November 2011, p. 13 and public Annex 2 to the Decision of 24 November 2011.

December 2011”), in which the Chamber specified the dates and the length of provisional release of the Accused Prlić;⁴

CONSIDERING that in the Motion, the Prlić Defence argues that, while on release, the Accused Prlić complied with the conditions imposed by the Chamber in the Decision of 24 November 2011; that the Government of Croatia has provided a new guarantee that the Accused will return, and that there are no new circumstances militating against extending the provisional release of the Accused,⁵

CONSIDERING that in support of the Response, the Prosecution submits, in particular, that since the Prlić Defence is not presenting any arguments to substantiate the reasons why the Chamber should extend the provisional release of the Accused Prlić, the Chamber is not in a position to exercise its discretion in this respect,⁶

CONSIDERING, moreover, that the Prosecution advances that to extend the provisional release of the Accused for a period of three months would have a prejudicial effect on the victims and witnesses, which could not even be diminished by the security measures imposed by the Chamber;⁷ that this prolonged extension would be contrary to the goal of the Tribunal to contribute to the stability in the former Yugoslavia,⁸

CONSIDERING, moreover, that the Prosecution deems that the Chamber should indicate when it anticipates rendering the judgement in this case in order to justify an extension of the Accused’s provisional release,⁹

CONSIDERING that the Prosecution maintains that in its Final Brief and Closing Argument the Prosecution presented ample important evidence against the Accused Prlić, on the basis of it sought a sentence of 40 years of imprisonment, and that the Chamber must, in light of the assessment the Chamber has already made of all the evidence, establish whether it is justified to extend the provisional release of the

⁴ Order of 15 December 2011, p. 3.

⁵ Motion, pp. 1 and 2 and Annex 1 in the Addendum.

⁶ Response, paras. 2 and 3.

⁷ Response, paras. 4 and 7.

⁸ Response, para. 5.

⁹ Response, para. 7.

Accused; that, should the Accused Prlić be convicted by the Chamber, bringing him back to the Detention Unit would not cause him any prejudice,¹⁰

CONSIDERING that the Chamber finds that in the letter of 16 February 2012, the Government of the Republic of Croatia has provided guarantees that, should the Chamber extend the provisional release of the Accused Prlić, he would not influence or pose a threat to victims, witnesses or any other person during his provisional release and would return to The Hague on the date ordered by the Chamber,¹¹

CONSIDERING that the Chamber finds, in light of the reports submitted by the Croatian authorities pursuant to the Decision of 24 November 2011, that the Accused Prlić has respected 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 Prlić be extended, the Accused Prlić would return to the United Nations Detention Unit (“UNDU”); he would not pose a threat to victims, witnesses or any other person and, consequently, the requirements under Rule 65 (B) of the Rules of Procedure and Evidence (“Rules”) are met,

CONSIDERING that, with respect to the argument of the Prosecution that an extended provisional release for the Accused would have a negative effect on the goal of the Tribunal to contribute to the stability of the former Yugoslavia,¹² the Chamber deems that the Tribunal contributes to this goal by trying those accused of having committed the most serious crimes in the region and by delivering justice to the victims of these crimes through just and fair trials; that for this reason, the Chamber has a duty to ensure that the present trial is proceeding, while strictly respecting the Statue, Rules and the case-law of the Appeals Chamber, which guarantee the fairness of the trial; that, consequently, its decision whether to extend the provisional release of the Accused shall be made in line with these provisions,

CONSIDERING, moreover, that with respect to the argument that the Prosecution seems to be raising that the Chamber must already know, after a year of deliberation, whether or not the Accused Prlić is guilty and should base its decision on whether to

¹⁰ Response, para. 9.

¹¹ Annex 1 in the Addendum.

¹² Response, para. 5.

extend the provisional release of the Accused on those findings,¹³ the Chamber reminds the Prosecution 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”;¹⁴ 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,

CONSIDERING that, with respect to a possible effect of extended provisional releases of the accused on the victims and witnesses, the Chamber notes that there is no indication that this could occur 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,¹⁵

CONSIDERING that, in response to the Prosecution argument that the Chamber should indicate when it anticipates rendering the judgement in the present case, the Chamber recalls that, following the Tribunal practice, it will issue a scheduling order as soon as it is ready, in which it will indicate the date of the judgement,

CONSIDERING that, in view of the above, the Chamber deems that an extension of the provisional release of the Accused Prlić for a limited period and with the same conditions as those imposed in the Decision of 24 November 2011 would allow the Chamber to keep control of the progress of the said provisional release,

¹³ Response, para. 9.

¹⁴ “Decision on Jadranko Prlić’s Motion for Provisional Release”, public, 21 April 2011, para. 31.

¹⁵ See in this sense the Decision of 24 November 2011, para. 39.

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 65 (B) of the Rules,

DECIDES to extend the provisional release of the Accused Prlić until [redacted],

AND

DECIDES that the conditions of the provisional release set out in confidential Annex 1 to the Decision of 24 November 2011 apply *mutatis mutandis* to the present decision.

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

Presiding Judge Jean-Claude Antonetti has attached a separate opinion.

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]

Separate Opinion of Presiding Judge Jean-Claude Antonetti

The Accused **Jadranko Prlić** has presented a motion for provisional release, indicating that he has always respected the conditions imposed by the Chamber. He attached to his motion the guarantees provided by the Croatian Government.

I completely agree with my colleagues to grant the extension.

However, it seems to me necessary to point out that it would have been easier for the Chamber to grant provisional release, pursuant to *Rule 65 of the Rules*, until the order setting the date for the Judgement because, by all accounts, the Judgement will not be issued before June 2012 and, for this reason, the Chamber will once more be seized of another request, even though it must dedicate all its time to the drafting of the Judgement.

This seems to me even more obvious since, in my opinion, there is no risk of the Accused fleeing or being involved in any sort of intimidation of witnesses or victims.

Moreover, I do not understand the Prosecution's argument according to which, after a year of deliberations, the Chamber should know whether the Accused is guilty or innocent. For this reason the Chamber has rightly recalled that, while awaiting his Judgement, the Accused is presumed innocent until the day the Judgement is rendered.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]