



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-AR65.15

Date: 08 July 2009

Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision of: 08 July 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION'S APPEAL AGAINST THE TRIAL
CHAMBER'S DECISION ON SLOBODAN PRALJAK'S MOTION FOR
PROVISIONAL RELEASE**

Office of the Prosecutor

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Ms. Vesna Alaburić and Mr. Nicolas 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

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 seized of the “Prosecution’s Appeal of the *Décision portant sur la demande de mise en liberté provisoire de l’Accusé Praljak (vacances judiciaires été 2009)*, dated 18 May 2009” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 19 May 2009 (“Appeal”) against the “Decision on Slobodan Praljak’s Motion for Provisional Release (2009 Summer Judicial Recess)”, issued confidentially by Trial Chamber III (“Trial Chamber”) on 18 May 2009¹ (“Impugned Decision”) and granting provisional release to Slobodan Praljak (“Praljak”). Praljak responded on 27 May 2009.² The Prosecution replied on 2 June 2009.³

I. BACKGROUND

2. On 22 April 2009, Praljak filed a confidential motion requesting provisional release for a period that the Trial Chamber would deem appropriate during the summer judicial recess.⁴ On 6 May 2009, the Prosecution filed a public response opposing the Request and applying for a stay of any decision granting release.⁵ The Trial Chamber ordered that the response to the Request be rendered confidential.⁶

3. On 18 May 2009, the Trial Chamber issued its Impugned Decision granting the Request and ordering a stay of the execution of its decision pending the Appeal Chamber’s determination of the Prosecution’s intended appeal. The Trial Chamber found, *inter alia*, that Praljak, if released, would appear for the continuation of his trial and that he would not pose a danger to victims, witnesses and other persons.⁷ The Trial Chamber considered that the long time spent in custody and the foreseeable length of the trial were already having a serious negative effect on Praljak’s mental health which constituted a sufficiently compelling humanitarian reason for granting him provisional

¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Slobodan Praljak’s Motion for Provisional Release (2009 Summer Judicial Recess), filed in French on 18 May 2009 (English translation filed on 25 May 2009) (confidential with confidential annex). The public version was filed in French on 25 May 2009 (English translation filed on 28 May 2009).

² Slobodan Praljak’s Response to the “Prosecution’s Appeal of the *Décision portant sur la demande de mise en liberté provisoire de l’Accusé Praljak (vacances judiciaires été 2009)*, Dated 18 May 2009”, 27 May 2009 (confidential) (“Response”).

³ Prosecution Reply to “Pralak [*sic*] Response to Prosecution Appeal of the *Décision portant sur la demande de mise en liberté provisoire de l’Accusé Praljak (vacances judiciaires été 2009)*, Dated 18 May 2009”, 2 June 2009 (confidential) (“Reply”).

⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, The Accused Praljak’s Motion for Provisional Release During the Period of the 2009 Summer Judicial Recess, 22 April 2009 (confidential with confidential annex) (“Request”).

⁵ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Prosecution Response to the Accused Praljak’s Motion for Summer Recess Release, 6 May 2009, paras 27, 28.

⁶ Impugned Decision, para. 4, referring to T. 39747-39748 (French).

⁷ Impugned Decision, paras 24, 25.

release at the present stage of the proceedings.⁸ The Trial Chamber held that a period of maximum ten days of provisional release would be proportionate to Praljak's circumstances and to "the need to allow him to recuperate after three years of preventative detention".⁹

II. STANDARD OF REVIEW

4. The Appeals Chamber recalls that an interlocutory appeal is not a *de novo* review of the Trial Chamber's decision.¹⁰ The Appeals Chamber has previously held that a decision on provisional release by the Trial Chamber under Rule 65 of the Rules of Procedure and Evidence ("Rules") is a discretionary one.¹¹ 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.¹²

5. In order to successfully challenge a discretionary decision on provisional release, a party must demonstrate that the Trial Chamber has committed a "discernible error".¹³ 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.¹⁴ 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.¹⁵

⁸ Impugned Decision, para. 34.

⁹ Impugned Decision, para. 36.

¹⁰ See e.g., *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-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. 5; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović's Interlocutory Appeal against the Decision on Popović's Motion for Provisional Release, 1 July 2008 ("Popović Decision of 1 July 2008"), para. 5; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.2, Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006 ("Brahimaj Decision of 9 March 2006"), para. 5; *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 ("Stanišić Decision of 17 October 2005"), para. 6.

¹¹ See e.g., Prlić Decision of 5 June 2009, para. 5; *Prosecutor v. Milan 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, para. 3; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006, para. 5.

¹² Prlić Decision of 5 June 2009, para. 5.

¹³ Prlić Decision of 5 June 2009, para. 6; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.11, Decision on Praljak's Appeal of the Trial Chamber's 2 December 2008 Decision on Provisional Release, 17 December 2008 ("Praljak Decision of 17 December 2008"), para. 5.

¹⁴ Prlić Decision of 5 June 2009, para. 6; Praljak Decision of 17 December 2008, para. 5. See also *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-AR65, Decision on Appeal Concerning Provisional Release, 20 May 2009, para. 6; *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-AR65, Decision on Matthieu Ndirumpatse's Appeal Against Trial Chamber's Decision Denying Provisional Release, 7 April 2009, para. 4.

¹⁵ See e.g., Popović Decision of 1 July 2008, para. 6; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-AR73.1, Decision on Rasim Delić's Interlocutory Appeal Against Trial Chamber's Oral Decisions on Admission of Exhibits 1316 and

III. APPLICABLE LAW

6. 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.¹⁶

7. 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 opinion indicating its view on those relevant factors.¹⁷ What these relevant factors are, as well as the weight to be accorded to them, depends upon the particular circumstances of each case.¹⁸ 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.¹⁹ 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.²⁰ Finally, an application for provisional release brought at a late stage of proceedings, and in particular after the close of the Prosecution case, should only be granted when serious and sufficiently compelling humanitarian reasons exist.²¹

IV. DISCUSSION

8. The Prosecution submits that the Trial Chamber committed two errors of law and one error of fact.²² With respect to the alleged errors of law, the Prosecution argues that the Impugned Decision is not based on the established criterion of “compelling humanitarian reasons” and that it

1317, 15 April 2008, para. 6; *Brahimaj* Decision of 9 March 2006, para. 5; *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, para. 4; *Stanišić* Decision of 17 October 2005, para. 6, fn. 10; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel, 1 November 2004, para. 10.

¹⁶ *Prlić* Decision of 5 June 2009, para. 7; *Praljak* Decision of 17 December 2008, para. 6; *Brahimaj* Decision of 9 March 2006, para. 6.

¹⁷ *Prlić* Decision of 5 June 2009, para. 8; *Praljak* Decision of 17 December 2008, para. 7; *Brahimaj* Decision of 9 March 2006, para. 10.

¹⁸ *Prlić* Decision of 5 June 2009, para. 8; *Praljak* Decision of 17 December 2008, para. 7; *Stanišić* Decision of 17 October 2005, para. 8.

¹⁹ *Prlić* Decision of 5 June 2009, para. 8; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-AR65.1, Decision on Johan Tarčulovski’s Interlocutory Appeal from Trial Decision Denying Johan Tarčulovski’s Motion for Provisional Release, 4 October 2005, para. 7.

²⁰ *Prlić* Decision of 5 June 2009, para. 8; *Praljak* Decision of 17 December 2008, para. 7; *Stanišić* Decision of 17 October 2005, para. 8.

²¹ *Prlić* Decision of 5 June 2009, para. 8; *Praljak* Decision of 17 December 2008, para. 7.

²² Appeal, para. 2; Reply, para. 2.

failed to follow the Appeals Chamber's earlier decision concerning Praljak.²³ Regarding the alleged error of fact, the Prosecution submits that the Trial Chamber erred in holding that compelling humanitarian circumstances justifying provisional release existed simply on the basis of its own observations and not the medical evidence on the record.²⁴ In his Response, Praljak submits that the Appeal should be denied as it failed to apply the correct standard of review and to challenge critical elements of the Trial Chamber's discretionary decision.²⁵ Praljak argues that no argument has been made to show how the Trial Chamber's exercise of discretion in relation to trial management was unfair or unreasonable.²⁶

A. Alleged errors of law

1. Compelling humanitarian reasons

9. The Prosecution argues that the Impugned Decision is simply a decision to grant provisional release during the judicial recess whereas the jurisprudence of the Tribunal does not provide for such "recess release" or "holiday release".²⁷ Praljak responds that the Trial Chamber was entitled to take into consideration the fact that his presence would not be required for any judicial activity during that period.²⁸

10. The Appeals Chamber recalls its observation that "there is no reason to establish a precedent pursuant to which accused are granted provisional release for the period between the Prosecution and Defence case, absent sufficiently compelling humanitarian reasons".²⁹ The Appeals Chamber notes that the Trial Chamber correctly stated the applicable law, including the criterion of sufficiently compelling humanitarian reasons, and proceeded to apply it to the circumstances of the case before it.³⁰ The Trial Chamber noted the fact that it would adjourn for judicial recess during the period for which Praljak requested to be released only after it identified the criteria that it was required to establish in order to grant the Request.³¹ While the Appeals Chamber agrees that there is no "recess leave", it considers that the judicial activity calendar may be a relevant factor when assessing a request for provisional release, notably to avoid unwarranted disruptions or undue

²³ Appeal, paras 3, 5-7, 9-11, referring to *Prosecutor v. Jadranko Prlić et al.*, Case IT-04-74-AR65.10, Decision on Prosecution's Appeal of the Trial Chamber's Decision to Provisionally Release the Accused Praljak during the 2008 Summer Recess, 28 July 2008 (confidential) ("*Praljak Decision of 28 July 2008*"). See also, Reply, para. 2.

²⁴ Appeal, para. 14; Reply, para. 2.

²⁵ Response, para. 4.

²⁶ Response, para. 25.

²⁷ Appeal, paras 3-5.

²⁸ Response, para. 21.

²⁹ *Prosecutor v. Jadranko 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 of 21 April 2008*"), para. 17. This observation was made in the context of the proportionality of the length of the release to the circumstances justifying provisional release.

³⁰ Impugned Decision, paras 16, 26 *et seq.*

delays in the proceedings.³² Consequently, the Appeals Chamber finds that the Prosecution has failed to show an error of law in the Impugned Decision in this regard.

2. Alleged non-compliance with the *Praljak* Decision of 28 July 2008

11. The Prosecution alleges that the Trial Chamber committed a discernible error based on an incorrect interpretation of the governing law and erroneously relied on arguments in favour of provisional release previously rejected by the Appeals Chamber.³³

12. According to the Prosecution, the reasoning followed by the Trial Chamber in the Impugned Decision is that (i) Praljak's "anticipated tiredness following his testimony would not amount to sufficiently compelling humanitarian reasons to fulfil the requirements under the Tribunal [*sic*] jurisprudence", but that (ii) Praljak's poor state of health as observed by the Trial Chamber, following the detrimental effect of a prolonged detention, justified provisional release.³⁴ The Prosecution submits that this reasoning is the same as in the Trial Chamber's Decision of 17 July 2008 granting provisional release on the basis of remarks by the Registrar.³⁵

13. The Prosecution contends that explicit consideration should have been given by the Trial Chamber "to whether the additional humanitarian reasons [...] of a sufficiently different nature, present[ed] a higher degree of gravity or evince[d] a more acute level of urgency than the humanitarian grounds which the Appeals Chamber already deemed insufficient".³⁶ It alleges that no material change has been demonstrated or exists between the Request and the reasons rejected by the Appeals Chamber in its *Praljak* Decision of 28 July 2008.³⁷ In the Prosecution's view, the only new additional factor referred to in the Impugned Decision is the Trial Chamber's own observations made in court with respect to Praljak's poor state of health.³⁸

14. Praljak responds that what the Prosecution seems to characterise as an incorrect interpretation of governing law is nothing more than the Trial Chamber taking note of certain facts.³⁹ In this regard, Praljak submits that there is no governing law which forbids the Trial

³¹ Impugned Decision, para. 20.

³² Cf. *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Public Redacted Version of the "Decision on Vladimir Lazarević's Second Motion for Temporary Provisional Release on the Grounds of Compassion" Issued on 21 May 2009, 22 May 2009, para. 12.

³³ Appeal, paras 2, 6-11.

³⁴ Appeal, para. 5.

³⁵ Appeal, paras 6-7, referring to *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Accused Praljak's Motion for Provisional Release, 17 July 2008 ("Trial Chamber's Decision of 17 July 2008") which was overturned by the *Praljak* Decision of 28 July 2008. See also, Reply, para. 2.

³⁶ Appeal, para. 7 (emphasis omitted), citing *Petković* Decision of 21 July 2008, paras 19, 20.

³⁷ Appeal, para. 7.

³⁸ Appeal, para. 10.

³⁹ Response, para. 17.

Chamber from taking note of facts such as the statements made by the Registrar, or the duration of the detention.⁴⁰ Praljak argues that it is incorrect to state that the *Praljak* Decision of 28 July 2008 barred the Trial Chamber from taking “on board” the fact of the duration of detention.⁴¹

15. In the Impugned Decision, the Trial Chamber noted the absence of a medical certificate or any other specific information related to Praljak’s state of health.⁴² It considered that his tiredness, possibly resulting from the extensive period of his testimony, can not constitute a sufficient humanitarian ground to justify provisional release pursuant to the Tribunal’s jurisprudence.⁴³ The Trial Chamber further recalled the conclusions reached by the Appeals Chamber in the *Praljak* Decision of 28 July 2008,⁴⁴ to the effect that a Trial Chamber may not rely upon predictions concerning an accused’s health at an indeterminate point in the future to establish a sufficiently compelling humanitarian circumstance in the present. The Trial Chamber concluded, however, that sufficient compelling reason existed to provisionally release Praljak at this juncture given that the long time spent in detention and the foreseeable length of the trial were *already* having a serious negative effect on his mental health.⁴⁵ In reaching this conclusion, the Trial Chamber relied on a report made by the Registrar with respect to the common effects of long-term incarceration, as well as its own observations made in court with respect to Praljak’s anxiety and stress.⁴⁶ The Trial Chamber recalled that Praljak had been detained since 25 April 2006 and that his last provisional release had been granted a year and a half ago.⁴⁷ It also found that a short period spent with his relatives would help alleviate the negative effects of Praljak’s prolonged detention.⁴⁸

16. The Appeals Chamber recalls that a Trial Chamber is required to assess the relevant factors as they exist at the time when it reaches its decision on provisional release as “factual circumstances on the basis of which [a previous] decision was made may well have changed by the time a new request for provisional release is before the Trial Chamber.”⁴⁹ The Appeals Chamber further recalls that when it has previously found analogous humanitarian grounds to be insufficient for granting provisional release, “the Trial Chamber should give explicit consideration to whether the *additional* humanitarian reasons are of a sufficiently different nature, present a higher degree of gravity or

⁴⁰ Response, paras 18-24.

⁴¹ Response, para. 24.

⁴² Impugned Decision, para. 27.

⁴³ Impugned Decision, para. 28.

⁴⁴ Impugned Decision, para. 29.

⁴⁵ Impugned Decision, para. 34.

⁴⁶ Impugned Decision, para. 31.

⁴⁷ Impugned Decision, para. 31.

⁴⁸ Impugned Decision, para. 33.

⁴⁹ See *Prlić* Decision of 5 June 2009, para. 13.

evinced a more acute level of urgency than the humanitarian grounds which the Appeals Chamber already deemed insufficient”.⁵⁰

17. The Appeals Chamber is not convinced that the Trial Chamber relied on exactly the same factors rejected by the Appeals Chamber in the *Praljak* Decision of 28 July 2008. In that instance, the Appeals Chamber quashed the Trial Chamber’s Decision of 17 July 2008 on the ground that “having concluded that Praljak’s individual humanitarian circumstances were insufficiently compelling to allow provisional release, the Trial Chamber could not rely on the possibility that his health condition might, at some indeterminate point in the future, be impacted to such an extent by the length of detention to establish that sufficiently compelling humanitarian circumstances in fact existed at the time it issued the Impugned Decision” and that “[n]either could the Trial Chamber consider that the overall health benefit that would result from Praljak’s release constituted a sufficiently compelling humanitarian circumstance.”⁵¹ In the Impugned Decision, the Trial Chamber took into account such additional factors as Praljak’s actual exhaustion caused by the intensity of the proceedings and the fact that he had been in detention for almost another year since the issuance of the Trial Chamber’s Decision of 17 July 2008.⁵² Further, the Impugned Decision expressly refers to the existing impact on Praljak’s health as observed by the Trial Chamber, rather than any possible future impact on his health. Therefore, the Prosecution has failed to show that the Trial Chamber committed an error of law in not establishing humanitarian reasons additional to those rejected in the *Praljak* Decision of 28 July 2008. Whether the Trial Chamber was correct in concluding on the basis of those additional factors that sufficiently compelling humanitarian circumstances existed is a question of fact that the Appeals Chamber now turns to address.

B. Alleged error of fact

18. The Prosecution alleges that the Trial Chamber based its decision granting the provisional release on an incorrect conclusion of fact as to Praljak’s state of health, “which is so unfair and unreasonable as to constitute an abuse of the Trial Chamber’s discretion”.⁵³ It explains that the factual finding regarding Praljak’s poor state of health, based solely on the Trial Chamber’s own observations of Praljak in the courtroom, constitutes a discernible error and an abuse of discretion.⁵⁴ The Prosecution insists that the Impugned Decision is based on a factual finding unsupported by

⁵⁰ *Petković* Decision of 21 April 2008, para. 20 (emphasis added).

⁵¹ *Praljak* Decision of 28 July 2008, para. 16.

⁵² Impugned Decision, paras 31, 34. The Appeals Chamber notes that some of these factors were not considered to constitute sufficiently compelling humanitarian grounds *per se*. It considers however that the Trial Chamber concluded that such humanitarian grounds existed on the basis of the combination of all relevant factors.

⁵³ Appeal, para. 2; Reply, para. 2.

⁵⁴ Appeal, para. 11.

any objective medical evidence – such as, for example, a medical report⁵⁵ – that Praljak is suffering from fatigue of such seriousness that compelling humanitarian reasons justify his provisional release and that he would benefit from a period outside detention with his family in order to recover.⁵⁶ Finally, the Prosecution stresses that, in light of Praljak’s refusal to undergo medical examination for the purposes of his Request, the Trial Chamber substituted its own reasons justifying the release.⁵⁷

19. In his Response, Praljak submits that the Prosecution refers to the wrong standard of review with regard to a conclusion of fact, the correct one being that to overturn such a conclusion the Appeals Chamber must find that it is “patently incorrect” and not “unfair and unreasonable”.⁵⁸ Praljak further submits that the fact that the Judges of the Trial Chamber “are intimately familiar with the daily courtroom behaviour of the Accused Praljak is an asset, not a detriment”.⁵⁹ Praljak stresses that the Prosecution failed to demonstrate that the Trial Chamber’s conclusion regarding his present state of the mental health is patently incorrect.⁶⁰ Praljak argues that it was clearly within the Trial Chamber’s discretion to assess his condition based on its direct observation.⁶¹

20. The Appeals Chamber finds that the Trial Chamber committed a discernible error of fact in concluding that sufficiently compelling humanitarian reasons for Praljak’s provisional release existed on the basis that his mental health was affected by the long time spent in detention and the foreseeable length of the trial. The Appeals Chamber considers that, in the absence of any precise medical information or evidence provided with respect to Praljak’s state of health, it was unreasonable for the Trial Chamber to come to such conclusion. Whereas the Appeals Chamber has held that “under certain circumstances, written expert reports and other relevant personal conditions might not necessarily be required”,⁶² in the present situation, no reasonable trier of fact could conclude that factors like prolonged detention during the trial proceedings and the foreseeable length of the trial – common to most of the accused appearing before the Tribunal – amounted to compelling humanitarian circumstances. In order to conclude what precise impact, if any, those factors have had on Praljak’s mental health, the Trial Chamber should have assessed objective medical evidence. The Appeals Chamber thus finds that this error constitutes an abuse of discretion.

⁵⁵ Appeal, para. 11.

⁵⁶ Appeal, paras 5, 13.

⁵⁷ Appeal, para. 14.

⁵⁸ Response, para. 6.

⁵⁹ Response, para. 9.

⁶⁰ Response, paras 8, 10.

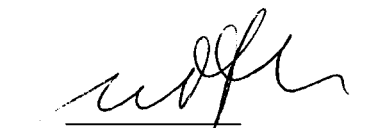
⁶¹ Response, paras 13-15, referring to 21 May 2009, T. 40497-40499 (closed session).

⁶² *Praljak* Decision of 17 December 2008, para. 11.

V. DISPOSITION

21. For the foregoing reasons, the Appeals Chamber **GRANTS** the Appeal and **QUASHES** the Impugned Decision.

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



Judge Carmel Agius
Presiding Judge

Done this eighth day of July 2009,
At The Hague,
The Netherlands.

[Seal of the Tribunal]