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UNITED
NATIONS



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

Case No. IT-04-74-AR65.1;
IT-04-74-AR65.2;
IT-04-74-AR65.3
Date: 8 September 2004
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Fausto Pocar
Judge Mehmet Güney

Registrar: Mr. Hans Holthuis

Decision of: 8 September 2004

PROSECUTOR

v.

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

**DECISION ON MOTIONS FOR RE-CONSIDERATION,
CLARIFICATION, REQUEST FOR RELEASE AND
APPLICATIONS FOR LEAVE TO APPEAL**

The Office of the Prosecutor:

Mr Kenneth Scott

For the Accused

Jadranko Prlić

Mr. Čamil Salahović

Mr. Želimir Par

For the Accused Bruno

Stojić

Mr. Zeljko Olujić

For the Accused Milivoj

Petković

Ms. Vesna Alaburić

For the Accused Slobodan Praljak

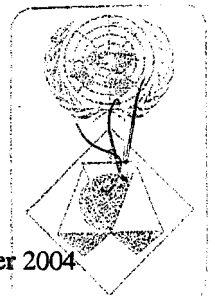
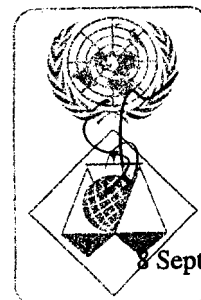
Mr. Božidar Kovačić

For the Accused Berislav Pušić

Mr. Marinko Škobić

For the Accused Valentin Ćorić

Mr. Tomislav Jonjić



1. On 30 July 2004, Trial Chamber I issued six decisions ordering the provisional release of accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić (“the accused”).¹ The decisions of the Trial Chamber were filed on 2 August, the day of the commencement of the official August court recess. This decision disposes of seven motions filed before the Appeals Chamber which arose from these decisions of Trial Chamber I.

a. Background

2. On 3 August, the day following the filing of the decisions by Trial Chamber I, the Prosecution filed a motion before the duty judge requesting a stay of the Trial Chamber’s orders of provisional release.² In a decision rendered on 4 August, the duty judge remitted the Prosecution motion to the Trial Chamber and ordered that the six accused remain in custody pending resolution of the Prosecution motion by the Trial Chamber.³

3. On 5 August, the Prosecution filed an application for leave to appeal the decisions of the Trial Chamber granting the provisional release of the accused,⁴ and on 6 August the Prosecution filed a motion requesting the Appeals Chamber to stay the Trial Chamber’s provisional release orders, relying upon Rules 54, 64, 65 and 107 of the Rules of Procedure and Evidence (“Rules”) and the inherent power of the Appeals Chamber to give effect to, control and carry out its own proceedings.⁵ A supplement to that motion was filed by the Prosecution on 9 August.⁶ The Prosecution requested that the Appeals Chamber grant its application for a stay regardless of the decision of the Trial Chamber on the motion remitted to it by the duty judge.

4. On 9 August, the Trial Chamber rendered its decision on the motion remitted to it by the duty judge, rejecting the Prosecution’s application for a stay of its orders on the provisional release

¹ Order on Provisional Release of Slobodan Praljak; Order on Provisional Release of Bruno Stojić; Order on Provisional Release of Jadranko Prlić; Order on Provisional Release of Valentin Ćorić; Order on Provisional Release of Milivoj Petković; Order on Provisional Release of Berislav Pušić. All filings are dated 30 July 2004 and recorded as filed by the Registry on 2 August 2004.

² Prosecution’s Motion to Stay Orders of Provisional Release, 3 August 2004.

³ Order on Prosecution’s Motion to Stay Orders of Provisional Release, 4 August 2004.

⁴ Prosecutor’s Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 5 August 2004.

⁵ Prosecutor’s Motion to Stay Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 6 August 2004 (“Motion”).

⁶ Prosecutor’s Motion to Stay Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 9 August 2004 (“Supplemental Motion”).

of the accused.⁷ On 10 August, the Appeals Chamber rendered its decision on the Prosecution's application for a stay pending before it and granted the Prosecution's application for a stay of the Trial Chamber's orders on provisional release.⁸

5. Before turning to consider the seven motions filed in response to the Trial Chamber's decision to grant provisional release of the accused, the Appeals Chamber considers it pertinent to note that many of those motions arose from a failure on the part of the Prosecution to make an application for a stay of the Trial Chamber's decision at the time that it filed its response to the initial application of each accused for provisional release, as mandated for by Rule 65(E) of the Rules. This is not the first time the Prosecution has failed to follow this procedure.⁹ If the Prosecution had made its application at the proper time, it would have been unnecessary for it to make a direct application to the duty judge, relying upon the provision of Rule 127(A)(ii) of the Rules, or a direct application to the Appeals Chamber. While the Appeals Chamber agrees that Rule 65(E) does not prevent the Prosecution from making a stay application at a later time by reference to Rule 127(A)(ii), the Prosecution should not rely upon that provision to circumvent the proper procedure to be followed.

b. Application for leave to appeal the decision of the duty judge

6. The first motion to be considered by the Appeals Chamber in this decision is the application of the accused Milivoj Petković for leave to file an interlocutory appeal from the order of the duty judge on the Prosecution's motion to stay the orders of the Trial Chamber on provisional release.¹⁰ The accused Slobodan Praljak filed on a notice of joinder in Petković's motion.¹¹

7. The accused Petković argues that the duty judge exceeded her authority by ordering that the accused be kept in the Tribunal's custody pending resolution of the Prosecution's motion for a stay of the orders of provisional release by the Trial Chamber.¹² In response, the Prosecution argues that

⁷ Decision on Prosecution's Motion for a Stay of Orders on Provisional Release, 9 August 2004.

⁸ Order on the Prosecution Motion for a Stay, 10 August 2004.

⁹ *Prosecutor v Jovica Stanšić and Franko Simatović*, Case IT-03-69-PT, Order Granting Stay of Decisions on Provisional Release, 29 July 2004.

¹⁰ The Accused Milivoj Petković's Application for Leave to File an Interlocutory Appeal in Respect of the Order of the Duty Judge on Prosecutor's Motion to Stay Orders on Provisional Release, 10 August 2004.

¹¹ Mr Slobodan Praljak's Notice of Joinder in Mr Milivoj Petković's Application for Leave to File an Interlocutory Appeal in Respect of The Order of the Duty Judge on Prosecutor's Motion to Stay Orders on Provisional Release, 10 August 2004.

¹² *Ibid*, par 8.

the subsequent actions taken by the Trial Chamber and the Appeals Chamber following the decision of the duty judge render the arguments of Petković moot.¹³

Analysis

8. The arguments made by Petković relate to the issue of whether the duty judge exceeded the jurisdiction conferred upon her under the Rules. While the Appeals Chamber agrees with the submission of the Prosecution that the arguments of Petković are moot, the Appeals Chamber nevertheless concludes that the duty judge did not exceed her authority in remitting the motion to the Trial Chamber and ordering that the accused remain in custody pending the resolution of the Prosecution's stay application by the Trial Chamber. Rule 28 of the Rules confers upon the duty judge the power to deal with applications in place of a Trial Chamber when that Trial Chamber is unavailable – such as when it is unable to convene in periods of court recess - provided that the duty judge is “satisfied as to its urgency or that it is otherwise appropriate to do so in the absence of the Trial Chamber”.¹⁴ Accordingly, the duty judge had the authority to grant the Prosecution's application for a stay pending the resolution of the Prosecution's motion for leave to appeal the Trial Chamber's orders if she was satisfied as to its urgency or appropriateness. The action taken by the duty judge to remand the accused into custody pending the resolution of the motion she remitted to the Trial Chamber is clearly within the authority conferred upon a duty judge by Rule 28. Petković's application is therefore dismissed.

c. Motions for clarification, reconsideration and leave to appeal.

9. The second set of motions to be considered by the Appeals Chamber are the motion for clarification of the legal status of the accused filed by the accused Milivoj Petković¹⁵ and the motion for reconsideration filed by the accused Valentin Ćorić.¹⁶ The accused Slobodan Praljak filed a notice of joinder in Petković's motion for clarification.¹⁷ The accused Milivoj Petković,¹⁸

¹³ Prosecutor's Response to Milivoj Petković's Application for Leave to File an Interlocutory Appeal in Respect of the Order of the Duty Judge on Prosecutor's Motion to Stay Orders on Provisional Release, 18 August 2004, pars 7-9.

¹⁴ Rule 28(D)(ii).

¹⁵ The Accused Milivoj Petković's Motion for Clarification of the Legal Status of the Accused in Respect of the Trial Chamber's Decision on Prosecution's Motion for Stay of Orders on Provisional Release of the Accused and the Appeals Chamber's Order on the Prosecution Motion for Stay, 11 August 2004.

¹⁶ The Accused Valentin Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution Motion for Stay, Dated 10 August, 12 August 2004.

¹⁷ Mr Slobodan Praljak's Notice of Joinder in Mr Milivoj Petković's Motion for Clarification of the Trial Chamber's Decision on Prosecution's Motion for Stay of Orders on Provisional Release of the Accused and Appeal Chamber's Order on the Prosecution's Motion for Stay, 12 August 2004.

¹⁸ The Accused Milivoj Petković's Notice of Joinder to the Accused Valentin Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution's Motion for Stay, Dated 10 August, 12 August 2004

Berislav Pušić,¹⁹ and Jadranko Prlić²⁰ filed notices of joinder to Ćorić's motion for reconsideration. As both of these motions raise the same issues, they can be dealt with together.

10. In the motion for clarification, the accused Petković argues that Rule 65(F) of the Rules provides that a stay of a Trial Chamber's decision to release an accused can only be granted by the Trial Chamber.²¹ According to Petković, the only power the Appeals Chamber has is to review the Trial Chamber's decision.²² He argues that the Appeals Chamber decision was issued as a first instance decision and that the Appeals Chamber did not have power to issue a first instance decision on a matter that was within the exclusive competence of the Trial Chamber. He requests the Appeals Chamber to clarify whether the Trial Chamber's decision to refuse the Prosecution's motion for a stay is derogated by the Appeals Chamber decision granting the motion and, if so, to identify the legal basis for that derogation.²³

11. In the motion for reconsideration, the accused Valentin Ćorić argues that the Statute of the Tribunal and the Rules guarantee each accused two-instance proceedings. Ćorić contends that the Appeals Chamber made a decision that was within the competence of the Trial Chamber and thereby denied the accused a right to appeal from the decision of the Trial Chamber. Ćorić submits that this denial of a right to appeal violated the rights guaranteed to the accused by the Statute and the Rules.²⁴ Ćorić argues further that the Appeals Chamber failed to identify the legal basis for its decision. He requests the Appeals Chamber to reconsider its decision and proclaim itself not competent to decide the motion of the Prosecution to stay the orders of the Trial Chamber on provisional release.²⁵

12. In its response to the motion for clarification and the motion for reconsideration, the Prosecution argues that, upon the filing of the Prosecution's application for leave to appeal the Trial Chamber's decisions granting the provisional release of the accused on 5 August, the Appeals Chamber was seised of all issues relating to the provisional release of the accused in this case.²⁶ The Prosecution's application for a stay of the Trial Chamber's orders of provisional release was filed before the Appeals Chamber "to give meaning and effect to" its application for leave to

¹⁹ The Accused Berislav Pušić's Notice of Joinder to the Accused Valentin Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution's Motion for Stay, Dated 10 August 2004, 13 August 2004

²⁰ The Accused Jadranko Prlić Notice of Joinder to the Accused Valentin Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution Motion for Stay, Dated 10 August 2004, 12 August 2004.

²¹ Motion for clarification, par 11.

²² Motion for clarification, par 15.

²³ Motion for clarification, par 19.

²⁴ Motion for reconsideration, par 5.

²⁵ Motion for reconsideration, pars 6-7.

appeal. The Prosecution identifies Rules 54, 64, 65 and 107 as the legal basis for the Appeals Chamber's jurisdiction over its motion for a stay of the Trial Chamber's orders, as well as the Appeals Chamber's "inherent powers to give effect to, control and carry out its own proceedings".²⁷ The Prosecution disputes the argument of the accused that the Appeals Chamber acted as a court of first instance. It argues that the matter to be appealed was the grant of provisional release to the accused by the Trial Chamber and that the filing of the Prosecution's application for leave to appeal that decision before the Appeals Chamber meant that all matters relating to the provisional release of the accused were placed before the Appeals Chamber.²⁸

13. The Prosecution also submits that the argument of the accused, concerning the Appeals Chamber's consideration of the Prosecution's motion for a stay effectively denied the accused a right of appeal, is misguided.²⁹ It says that no violation of the rights of the accused occurred as the decision of the Appeals Chamber is not a decision convicting the accused and therefore does not carry a right of appeal.³⁰ It argues that, in any event, the accused has found an available avenue of recourse by the filing of a motion of reconsideration before the Appeals Chamber and therefore has suffered no prejudice by the absence of a right to appeal the Appeals Chamber's order to stay the provisional release of the accused.³¹

14. In the reply filed by the accused Petković to the motion for consideration and clarification of the legal status of the accused, Petković argues that the authority to decide on the application for a stay rests in the first instance with the Trial Chamber and in the second instance only with the Appeals Chamber.³² He says that the inherent power of the Appeals Chamber does not include a power of "taking over the prerogatives of the Trial Chamber"³³.

Analysis

15. The Appeals Chamber does not accept the arguments of the accused that the Appeals Chamber was not competent to impose a stay. At the time of rendering its decision on the

²⁶ Prosecutor's Response to: Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution Motion for Stay; Petković's Motion for Clarification of the Legal Status of the Accused in Respect of Various Decisions, 17 August 2004, par 3 ("Prosecution Response").

²⁷ Prosecution Response, pars 3-4.

²⁸ Prosecution Response, par 15.

²⁹ Prosecution Response, par 16.

³⁰ Prosecution Response, pars 18-19.

³¹ Prosecution Response, pars 20-21.

³² The Accused Milivoj Petković's Reply to the Prosecutor's Response to: Ćorić's Motion for Reconsideration of the Appeals Chamber's Order on the Prosecution Motion for Stay and Petković's Motion for Clarification of the Legal Status of the Accused in Respect of Various Decisions, 3 September 2004 ("Petković's Reply").

³³ Petković's Reply, par 21.

Prosecution's application for a stay, the Prosecution's application for leave to appeal the Trial Chamber's grant of provisional release to the six accused was pending before the Appeals Chamber pursuant to Rule 65(D). In its decision, the Appeals Chamber clearly articulated that the decision to grant the Prosecution's application for a stay was to preserve "the objective of the Prosecution's appeal against the provisional release" of the accused.³⁴ Although the Appeals Chamber decision did not explicitly identify the Rules upon which it acted, the Rules clearly confer upon the Appeals Chamber the power to act as it did. Rule 107 confers upon the Appeals Chamber the competence to render any order or decision that could be rendered by a Trial Chamber. Read together with Rules 54, 64 and 65, Rule 107 empowers the Appeals Chamber to render a decision on an application for a stay filed before it. This is particularly so where the purpose of that decision is to preserve the objective of an appeal pending before it. The Appeals Chamber also rejects any argument that its power to render ancillary orders with respect to preserving the object of an appeal is restricted.

16. The Appeals Chamber also rejects the argument of the accused that by acting as it did it effectively denied the accused of a right to appeal. There is no basis in the Tribunal's Statute or Rules for the accused's contention that he has a right to appeal orders issued by the Appeals Chamber in aid of the exercise of its appellate function.

17. In light of the above, the accused's motions for clarification and reconsideration are dismissed. Upon the same reasoning the accused Slobodan Praljak's application for leave to appeal the Appeals Chamber's order on the Prosecution's motion for a stay, which raises similar objections, is also dismissed.³⁵ The Prosecution's application for leave to appeal the Trial Chamber's decision on the Prosecution's motion for a stay is also dismissed.³⁶ This leave application was filed by the Prosecution as a matter of caution should the Appeals Chamber uphold the accused's objections to the Appeals Chamber's ruling on the Prosecution motion for a stay filed before it.

³⁴ Order on the Prosecution's Motion for a Stay, 10 August 2004 ("Decision").

³⁵ The Accused Slobodan Praljak's Application for Leave to File an Interlocutory Appeal in Respect of the Appeals Chamber's Order on the Prosecution's Motion for a Stay, 12 August 2004; The Accused Slobodan Praljak's Supplement to his 12 August 2004 Application for Leave to File an Interlocutory Appeal in Respect of the Appeals Chamber's Order on the Prosecution Motion for a Stay, 19 August 2004; Prosecutor's Response to the Accused Slobodan Praljak's Application for Leave to File an Interlocutory Appeal in Respect of the Appeals Chamber's Order on the Prosecution's Motion for a Stay, 18 August 2004; The Accused Slobodan Praljak's Reply to Prosecutor's Response to the Accused Slobodan Praljak's Application for Leave to File and Interlocutory Appeal in Respect of the Appeals Chamber's Order on the Prosecution's Motion for a Stay, 20 August 2004.

³⁶ Prosecution Application for Leave to Appeal the Trial Chamber's Decision on Prosecution's Motion for Stay of Orders on Provisional Release of the Accused, filed 10 August 2004.

d. Request for release pursuant to Rule 65(G)

18. On 23 August, the accused Milivoj Petković filed an application before the Appeals Chamber requesting that he be released pursuant to Rule 65(G) of the Rules.³⁷ The accused Slobodan Praljak filed a notice of joinder in the request.³⁸ In his request Petković argues that the Prosecution failed to comply with the Rules in the filing of its notice of appeal against the decision of the Trial Chamber ordering the provisional release of the accused. He argues that Rule 65(G) provides that the Prosecution shall file its application for leave to appeal one day following a grant of a stay application and that the Prosecution failed to file its appeal one day after the grant of the stay application by the Appeals Chamber on 10 August 2004, and that it has continued to fail to do so.³⁹ The Prosecution filed a response to the Petković application arguing that Petković's arguments are based upon a misunderstanding of the Rules,⁴⁰ and Petković filed a reply challenging the Prosecution's interpretation of the Rule.⁴¹

Analysis

19. The argument of the accused is meritless. The Prosecution's application for leave to appeal the provisional release of the accused was validly filed before the Appeals Chamber on 5 August 2004, and the validity of that leave application does not turn upon the requirement that it be filed one day after a Trial Chamber decision on a stay application. The provision relied upon by Petković, Rule 65(G), is applicable where the Prosecution makes application for a stay in its initial response to the application for provisional release. This was clearly not the situation here. Accordingly, the Prosecution has a right, pursuant to Rule 65(D) of the Rules, to apply for leave to appeal any decision on provisional release within seven days of the issuing of such a decision. The decision of the Trial Chamber was filed on 2 August, and the leave to appeal application of the Prosecution was filed within the permitted time.

e. Prosecution application for leave to appeal

³⁷ The Accused Milivoj Petković's Request for Release Pursuant to Rule 65(G) of the Rules of Procedure and Evidence, 23 August 2004.

³⁸ Mr Slobodan Praljak's Notice of Joinder in Mr Milivoj Petković's Request for Release Pursuant to Rule 65(G) of the Rules of Procedure and Evidence, 23 August 2004.

³⁹ The Accused Milivoj Petković's Request for Release Pursuant to Rule 65(G) of the Rules of Procedure and Evidence, 23 August 2004, pars 15-17.

⁴⁰ Prosecutor's Response to the Accused Milivoj Petković's Request for Release Pursuant to Rule 65(G) of the Rules of Procedure and Evidence, 25 August 2004.

⁴¹ The Accused Milivoj Petković's Request for Leave to Reply to The Prosecutor's Response to the Accused Petković's Request for Release Pursuant to Rule 65(G), 26 August 2004.

20. Having dealt with the above motions, the Appeals Chamber must determine the final motion pending before it - the Prosecution's application pursuant to Rules 65(D) and 65(F) for leave to appeal the decision of the Trial Chamber granting the provisional release of the accused.⁴² For leave to appeal to be granted by the Appeals Chamber, the Prosecution is required to demonstrate good cause. For the purposes of Rule 65 the jurisprudence of the Tribunal establishes that good cause will be shown if the applicant satisfies the Appeals Chamber that the Trial Chamber may have erred in making the impugned decisions.⁴³ While the Prosecution is required only to show the possibility of error on the part of the Trial Chamber for good cause to be established, the prior jurisprudence of the Tribunal shows that the Appeals Chamber will only grant leave where that possibility of error is clearly established.⁴⁴

21. As each of the accused made similar submissions in support of his application for provisional release, and the Trial Chamber's decisions in relation to each of the accused rested on similar grounds, the Prosecution's appeal is presented as one appeal against the six decisions, with specific reference being made to individual accused where necessary. The application will be determined by the Appeals Chamber upon the same basis, and the situation of each accused will be considered on an individualised basis in light of the general and particular submissions of the Prosecution in relation to each.

22. Each of the accused has filed a response to the Prosecution's application for leave to appeal opposing the Prosecution's application on the basis that the Prosecution has not identified the possibility of error on the part of the Trial Chamber but is seeking to re-argue the case it presented to the Trial Chamber and has not therefore established that there is good cause for leave to appeal being granted.⁴⁵ The accused Milivoj Petković further opposes the Prosecution's single application to appeal all decisions on the basis that each accused has a right to be treated as an individual.⁴⁶

⁴² Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 5 August 2004.

⁴³ *Prosecutor v Simić*, Case IT-95-9-AR65, "Decision on Application for Leave to Appeal", 19 April 2000, page 3.

⁴⁴ *Prosecutor v Nikola Šainović & Dragoljub Ojdanić*, Case IT-99-37 AR 65.2, Decision Refusing Leave to Appeal, 26 June 2003; *Prosecutor Blagoje Simić et al.*, Case IT-95-9-AR65, Decision on Application for Leave to Appeal, 19 April 2000; *Prosecutor v Fatmir Limaj, et al.*, Case IT-03-66-AR65.3, Decision on Isak Musliu's Request for Provisional Release, 31 October 2003; Decision on Haradin Bala's Request for Provisional Release, 31 October 2003; Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003; *Prosecutor v Momčilo Krajišnik & Biljana Plavšić*, Case IT-00-39 & 40-AR65, Decision on Application for Leave to Appeal, 14 December 2001; *Prosecutor v Enver Hadžihasanović*, Case IT-01-47-AR65 & IT-0147-AR65.2, Decision on Application for Leave to Appeal, 5 September 2002; *Prosecutor v Vidoje Blagojević*, Case IT-02-60-AR65.3 & IT-02-60-AR65.4, Decision on Applications by Blagojević and Obrenović for Leave to Appeal, 16 January 2003.

⁴⁵ The Accused Bruno Stojić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, 9 August 2004; The Accused Berislav Pušić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal on Respect of

Insubstantial evidence and reversal of the burden of proof

23. In support of its application, the Prosecution argues that the Trial Chamber erred in finding that each of the accused had satisfied the burden placed upon him and established that if released he would appear for trial and would not pose a danger to any witness, victim or person. The Prosecution says that the jurisprudence of the Trial Chamber establishes that the discharge of each of these burdens requires an accused to establish both of these factors on substantial grounds and that to a large extent the showings made by the accused were nothing more than assertions and promises. The Prosecution argues that the Trial Chamber erred as a matter of law in applying the wrong standard of proof and erred both legally and factually in finding that the accused had satisfied the burdens placed upon them.⁴⁷

24. The Prosecution argues that while the Trial Chamber stated that the burden was on the accused to make the required showings, in practice and effect the Trial Chamber shifted the burden to the Prosecution. It gives the example of the Trial Chamber's finding in relation to four of the accused that it was conceivable that those accused had the ability to interfere with witnesses and victims and to destroy or suppress evidence by virtue of their connection to law enforcement and intelligence agencies in the area where the crimes are alleged to have occurred. The Trial Chamber concluded in relation to each of the accused that even if the accused had this influence and ability, it did not follow that the accused would use it unlawfully. The Prosecution argues that, in concluding as such, the Trial Chamber based its conclusion on a finding that the Prosecution had failed to present sufficient evidence of such dangers.⁴⁸

Analysis

the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 17 August 2004; The Accused Milivoj Petković's Response to the Prosecutor's Application for Leave to File and Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojic, Slobodan Praljak, Milivoj Perković, Valentin Ćorić and Berislav Pušić, 12 August 2004; The Accused Valentin Ćorić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, 8 August 2004; The Accused Jadranko Prlić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, 10 August 2004; The Accused Slobodan Praljak's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, 10 August 2004; Mr Slobodan Praljak's Notice to the Appeals Chamber Regarding the Prosecutor's Reply to Oppositions to the Prosecutor's Application for Leave to Appeal Filed by Accused Jadranko Prlić, Bruno Stojić and Valentin Ćorić, 13 August 2004.

⁴⁶ The Accused Milivoj Petković's Response to the Prosecutor's Application for Leave to File and Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojic, Slobodan Praljak, Milivoj Perković, Valentin Ćorić and Berislav Pušić, 12 August 2004, pars 8-15.

⁴⁷ Prosecution Application for Leave, par 15.

⁴⁸ Prosecution Application for Leave, par 16.

25. Having considered each of the decisions, the Appeals Chamber concludes that the Prosecution has failed to establish that the Trial Chamber reversed the burden of proof placed upon the accused. In each of the decisions, the Trial Chamber identified the burdens placed upon the accused and the standard of that burden as a substantial one in light of the jurisdictional and enforcement limitations of the Tribunal.⁴⁹ The Trial Chamber did not, as the Prosecution claims, find that each of the accused had satisfied the burden placed upon him by reference to mere assertions and promises by the accused.

26. In relation to each of the accused, the Trial Chamber carried out a detailed examination of the evidence placed before it in the context of the enforcement limitations of the Tribunal. Before being satisfied that each accused would appear for trial if released, the Trial Chamber considered evidence of voluntary surrender, earlier co-operation with the Tribunal, each accused's family and economic situation, guarantees provided by the accused's home state, and evidence of the effectiveness of those guarantees with respect to other accused previously released by the Tribunal, the past and present position of the accused and his political influence.⁵⁰ Before concluding that the accused, if released, would not pose a danger to any victim, witness or other person, the Trial Chamber considered the length of time the accused was aware of an investigation against him without having posed any such threat, the area in which he would reside if released, the available supervision by the authorities, and his links to the area to which he would be released.⁵¹ It was only after considering this evidence that the Trial Chamber turned to consider the undertakings given by each of the accused in support of his application for provisional release.⁵²

27. Having considered the evidence in favour of the provisional release of the accused, the Trial Chamber carefully considered the objections of the Prosecution. It analysed those objections in light of the seriousness of the crimes charged against the accused, the difficulties faced by the

⁴⁹ Order on Provisional Release of Slobodan Praljak, 30 July 2004 par 14; Order on Provisional Release of Bruno Stojić, 30 July 2004, par 14; Order on Provisional Release of Milivoj Petković, 30 July 2004, par 13; Order on Provisional Release of Berislav Pušić, 30 July 2003, par 14; Order on Provisional Release of Jadranko Prlić, 30 July 2004, par 14; Order on Provisional Release of Valentin Ćorić, 30 July 2004, par 14.

⁵⁰ Order on Provisional Release of Slobodan Praljak, par 21; Order on Provisional Release of Bruno Stojić, par 21; Order on Provisional Release of Milivoj Petković, par 20; Order on Provisional Release of Berislav Pušić, par 21; Order on Provisional Release of Jadranko Prlić, par 21; Order on Provisional Release of Valentin Ćorić, par 21.

⁵¹ Order on Provisional Release of Slobodan Praljak, par 22; Order on Provisional Release of Bruno Stojić, par 21; Order on Provisional Release of Bruno Stojić, par 20; Order on Provisional Release of Milivoj Petković, par 21; Order on Provisional Release of Berislav Pušić, par 22; Order on Provisional Release of Jadranko Prlić, par 22; Order on Provisional Release of Valentin Ćorić, par 22.

⁵² Order on Provisional Release of Slobodan Praljak, pars 23-24; Order on Provisional Release of Bruno Stojić, par 22 (this Trial Chamber only referred evidence from the accused with respect to his willingness to return when requested); Order on Provisional Release of Milivoj Petković, pars 22-23; Order on Provisional Release of Berislav Pušić, pars 23-24; Order on Provisional Release of Jadranko Prlić, par 23; Order on Provisional Release of Valentin Ćorić, par 23.

Tribunal in enforcing its orders and the reliability of the State guarantees. The Trial Chamber did not, as the Prosecution alleges, consider any one factor in isolation but rather considered all of the circumstances surrounding each accused. It found the objections of the Prosecution to be without an evidentiary basis, in that none of the objections made by the Prosecution was supported by any evidence sufficient to rebut the evidence of the accused.⁵³ The Trial Chamber concluded that it could not identify *in concreto* any indication that the accused would try to abscond or interfere with the administration of justice.⁵⁴ The Trial Chamber did not, as the Prosecution claims, erroneously reverse the burden placed upon the accused. It found those burdens satisfied and the evidence of the Prosecution insufficient to rebut that finding.

28. The one example that the Prosecution cites as demonstrating a reversal of the burden of proof relates to the Trial Chamber's acceptance that the accused are persons of considerable influence with law enforcement and intelligence agencies in the areas where the crimes are alleged to have occurred. The evidence before them, however, was that despite that influence, and in circumstances where each of the accused was for a period of time aware of investigations against him, there was no evidence that any one of the accused had undertaken any activity to interfere with the administration of justice. On the basis of the evidence before them, the Trial Chamber was entitled to conclude that the fact of each accused's influence was insufficient to rebut evidence it accepted from the accused that they had in no instance attempted to interfere with the administration of justice.⁵⁵ Although the burden is on the accused to establish that if released he will not interfere with witnesses and victims, once the accused has satisfied the Trial Chamber of this fact, the Prosecution does have an obligation to produce evidence sufficient to rebut that fact. This is not a burden placed upon the Prosecution but the means by which the Prosecution may rebut the evidence adduced by the accused in satisfaction of the burden placed upon him. The Prosecution has not established that the Trial Chamber may have erred in its conclusion that the fact that each of the accused has the possible ability to interfere with the administration of justice does not establish that that interference will occur.⁵⁶ The evidence of the accused before the Trial Chamber was in fact to the contrary.

⁵³ Order on Provisional Release of Slobodan Praljak, pars 25-33; Order on Provisional Release of Bruno Stojić, pars 24-32; Order on Provisional Release of Milivoj Petković, pars 24-32; Order on Provisional Release of Berislav Pušić, pars 25-36; Order on Provisional Release of Jadranko Prlić, pars 24-34; Order on Provisional Release of Valentin Ćorić, pars 25-35.

⁵⁴ Order on Provisional Release of Slobodan Praljak, par 34; Order on Provisional Release of Bruno Stojić, par 33; Order on Provisional Release of Milivoj Petković, par 33; Order on Provisional Release of Berislav Pušić, par 36; Order on Provisional Release of Jadranko Prlić, par 34; Order on Provisional Release of Valentin Ćorić, par 36.

⁵⁵ Order on Provisional Release of Slobodan Praljak, par 28; Order on Provisional Release of Bruno Stojić, par 27; Order on Provisional Release of Milivoj Petković, par 27; Order on Provisional Release of Berislav Pušić, par 29; Order on Provisional Release of Jadranko Prlić, par 28; Order on Provisional Release of Valentin Ćorić, par 28.

⁵⁶ Order on Provisional Release of Slobodan Praljak, par 28; Order on Provisional Release of Bruno Stojić, par 27; Order on Provisional Release of Milivoj Petković, par 27; Order on Provisional Release of Berislav Pušić, par 29; Order on Provisional Release of Jadranko Prlić, par 28; Order on Provisional Release of Valentin Ćorić, par 28.

Insufficient weight to the seriousness of the crimes charged

29. The Prosecution also argues that the Trial Chamber erred in failing to give adequate consideration to the seriousness of the crimes charged against each of the accused. Each of the accused is charged with twenty-six of the most serious crimes known in the world.⁵⁷ The Prosecution says that in most national systems accused charged with the most serious cases will be detained pending trial and that it is concerned “that there may be an inconsistent or double standard between the ICTY and national courts”.⁵⁸ It claims that the Trial Chamber wrongly found that the seriousness of the crimes charged and the likelihood of a severe sentence to be factors which “cannot be used against the Accused” *in abstracto* on the basis that all accused appearing before the Trial Chamber are likely to face a heavy sentence if convicted of the crimes charged.⁵⁹

Analysis

30. The Appeals Chamber does not accept that the Prosecution has established that the Trial Chamber may have erred by according insufficient weight to the seriousness of the crimes charged against the accused.⁶⁰ In relation to each accused, the Trial Chamber made specific reference to the seriousness of the crimes charged and the long sentence to be expected if convicted. It noted that this may give the accused a strong incentive to flee. However, it found that on the evidence adduced by the accused in satisfaction of this burden, including evidence of voluntary surrender, assurances by the Croatian government, and undertakings of the accused, this possibility was insufficient to rebut the evidence that if released the accused would appear for trial.⁶¹

31. While the Trial Chamber did not dwell upon the seriousness of the crimes charged against the accused, it was not required to do so. The Trial Chamber’s concern was to ensure that the accused had satisfied the burden placed upon him that he would appear for trial if released and would not interfere with the administration of justice. The seriousness of the crimes charged was a factor that the Trial Chamber considered in assessing whether the accused had satisfied those

⁵⁷ Prosecution Application for Leave, par 18.

⁵⁸ Prosecution Application for Leave, pars 19-20.

⁵⁹ Prosecution Application for Leave, par 21.

⁶⁰ Prosecution Application, pars 19-21.

⁶¹ Order on Provisional Release of Slobodan Praljak, par 29 ; Order on Provisional Release of Bruno Stojić, par 28; Order on Provisional Release of Milivoj Petković, par 28; Order on Provisional Release of Berislav Pušić, par 30; Order on Provisional Release of Jadranko Prlić, par 29; Order on Provisional Release of Valentin Ćorić, par 29.

burdens.⁶² The allegation that domestic jurisdictions may not grant provisional release to accused charged with serious crimes is irrelevant.

Insufficient consideration to Tribunal's lack of enforcement and monitoring mechanisms

32. The Prosecution further argues that the Trial Chamber erred in failing to give adequate consideration and weight to the difficulties associated with arresting, releasing and monitoring accused of the Tribunal in light of the conditions existing in the former Yugoslavia and the fact that the Tribunal does not have its own police or law enforcement mechanisms.⁶³

Analysis

33. The Appeals Chamber does not accept the Prosecution's assertion that the Trial Chamber erred in failing to give sufficient consideration to the difficulties associated with the arrest, release and monitoring of accused in light of the current situation in the former Yugoslavia.⁶⁴ In its decisions, the Trial Chamber made numerous references to the difficulties associated with a lack of enforcement measures. It noted that the jurisdiction and enforcement limitations of the Tribunal meant that the burden to be satisfied by the accused was a substantial one,⁶⁵ and that factors specific to the Tribunal may influence the Trial Chamber's assessment of the risk of absconding or interference with the administration of justice.⁶⁶ It identified factors specific to the Tribunal such as the lack of a means to execute a warrant of arrest or to re-arrest an accused provisionally released and the Tribunal's reliance on the co-operation of States for the surveillance of accused who have been released. It noted that these factors required greater caution in assessing the risk of an accused absconding and that the circumstances would determine whether the lack of enforcement measures meant that provisional release should be refused.⁶⁷ The Trial Chamber considered these factors in light of the particular circumstances of each of the accused and found that on the evidence adduced by the accused in satisfaction of the burden upon them these factors did not constitute a basis for refusing provisional release.⁶⁸ The approach of the Trial Chamber does not show that it may have erred by placing inadequate weight upon these factors in relation to the evidence adduced by the accused in satisfaction of the burden upon them as asserted by the Prosecution.

⁶² *Ibid.*

⁶³ Prosecution Application for Leave, pars 23-25.

⁶⁴ Prosecution Application, pars 23-25.

⁶⁵ Order on Provisional Release of Berislav Pušić, pars 14;

⁶⁶ Order on Provisional Release of Berislav Pušić, par 16;

⁶⁷ Order on Provisional Release of Berislav Pušić, par 17.

⁶⁸ Order on Provisional Release of Berislav Pušić, par 31.

Too much weight on the fact that none of the accused were shown to have previously interfered with victims and witnesses

34. The Prosecution also complains that the Trial Chamber erred in placing too much weight on the fact that none of the accused had been shown to have been involved in a recent incident posing a danger or risk to witnesses and victims from their knowing of the indictment issued against them. The Prosecution says that the accused were not aware of the sealed indictment issued against them until at least 31 March 2004 and that from a short time since that date the accused have been detained. As such, the Prosecution argues that this time has little value to predicting what they will or may do when released.⁶⁹ The Prosecution contends that the Trial Chamber erred in failing to consider adequately the indications that, prior to the confirmation of the indictment, at least three of the accused may have been involved in efforts to obstruct justice,⁷⁰ and it further erred in failing to consider adequately the outstanding investigation of fraudulent transactions involving another accused.⁷¹

Analysis

35. The Prosecution has failed to establish that the Trial Chamber may have erred by placing too much weight on the fact that none of the accused were shown to have been involved in a recent incident posing a threat to witnesses and victims following their knowledge of the indictment against them. The Trial Chamber also considered whether there was evidence of the accused acting in any way contrary to the administration of justice prior to the issuing of the indictment against them. In all cases, the Trial Chamber accepted that the accused were aware for a number of years of the likelihood of an indictment being issued against them but, despite influence and opportunity, there was no evidence to rebut the evidence of the accused that none of them had taken any action that could be construed as an attempt to interfere with the administration of justice.⁷²

36. The Appeals Chamber does not accept the assertion of the Prosecution that the Trial Chamber failed, in relation to three of the accused, to consider adequately that, prior to the confirmation of the indictment, they may have been involved in efforts to obstruct justice. Nor is it satisfied that the Trial Chamber failed to consider adequately the outstanding investigation of fraudulent transactions involving another accused.⁷³ Although the Prosecution makes the assertion

⁶⁹ Prosecution Application for Leave, par 29.

⁷⁰ Prosecution Application for Leave, par 30.

⁷¹ Prosecution Application for Leave, par 31.

⁷² Order on Provisional Release of Slobodan Praljak, par 30; Order on the Provisional Release of Bruno Stojić, par 29;

⁷³ Prosecution Application, pars 29-31.

that the Trial Chamber placed too much weight on the fact that there was no evidence of a recent incident, no evidence in fact existed of the accused being involved in an incident constituting an attempt to interfere in the Tribunal's administration of justice.

37. With respect to the accused Milivoj Petković, the Trial Chamber gave consideration to the assertions of the Prosecution that the accused's close co-operation with the Croatian government in preparing his testimony in the *Blaškić* case and his participation in a meeting concerning a Croatian government operation named "Operation Hague" raised concerns about the accused's possible interference with the administration of justice.⁷⁴ The Trial Chamber balanced this evidence against the evidence of the accused that there had been no interference with the administration of justice by him in circumstances where he was aware of the likelihood of his indictment long before an indictment was confirmed against him.⁷⁵ That is, the Trial Chamber did not just consider the behaviour of the accused following the confirmation of the indictment against him but also gave due consideration to the behaviour of the accused for a substantial period of time in which he was aware of that likelihood and accepted that the accused had not at any time posed a threat to the proper administration of justice. The Prosecution did not adduce any evidence to rebut this finding by the Trial Chamber.

38. Regarding the accused Jadranko Prlić, the Trial Chamber balanced the submission of the Prosecution that Prlić "is aware of a network that existed of close coordination and control of ICTY litigation involving Croat and Bosnian Croat indictees by members of the former Government of Croatia"⁷⁶ against the evidence of the accused that he had never made any attempt to interfere with witnesses and victims despite being aware for a substantial period of the likelihood of an indictment being issued against him.⁷⁷ Accordingly, the Trial Chamber did not just consider the evidence that the accused had not posed any such threat following the confirmation of the indictment against him but the evidence that the accused had made no attempt to interfere with the administration of justice despite being aware for sometime of an investigation against him. The Prosecution did not adduce any evidence to rebut the evidence of the accused.

39. With respect to the accused Valentin Ćorić, the Trial Chamber balanced the submissions of the Prosecution regarding his past and current position of authority and ability to influence others and specific instances dating from October 1998, in which the Prosecution alleges that he was

⁷⁴ Order on Provisional Release of Milivoj Petković, par 25.

⁷⁵ Order on Provisional Release of Milivoj Petković, pars 27, 29.

⁷⁶ Order on Provisional Release of Jadranko Prlić, par 24.

⁷⁷ Order on Provisional Release of Jadranko Prlić, par 30.

shown to act in such a way as to undermine his credibility,⁷⁸ against the evidence that, prior to the confirmation of the indictment against him, the accused made no efforts to interfere with the proper administration of justice.⁷⁹ Again, contrary to the submission of the Prosecution, the Trial Chamber did not just consider the evidence that the accused had not posed any such threat following the confirmation of the indictment against him. The Trial Chamber also considered the evidence of the accused that he had at no time attempted to interfere with the administration of justice and again the Prosecution was unable to adduce any evidence capable of rebutting the evidence of the accused accepted by the Trial Chamber.

40. In relation to the accused Berislav Pušić, the Trial Chamber balanced the evidence submitted by the Prosecution relating to criminal charges pending against him for financial misdeeds and an alleged assertion made by him in a press excerpt that he was not the person subject to the indictment,⁸⁰ against the evidence of the accused that he had not interfered with the administration of justice following the confirmation of the indictment against him, nor had he ever attempted to interfere with the administration of justice prior to the issuing of that indictment even though he was aware of the likelihood of his being indicted by the Tribunal.⁸¹ The Trial Chamber specifically stated that it found that allegations of the accused's involvement in financially fraudulent transactions still under investigation "considered together...insufficient to tip the scale against provisional release of the accused". It is clear from the reasoning of the Trial Chamber that it found this evidence insufficient to rebut the evidence adduced by the accused to establish that if released he would not pose a danger to witnesses or victims.

Erred in failing to properly consider the Croatian Government's guarantees

41. The Prosecution further claims that the Trial Chamber erred in failing to consider the guarantees given by the Republic of Croatia critically and pragmatically in light of the particulars of the case and the high level of influence of each accused. The Prosecution also claims that the Trial Chamber failed "to consider adequately the well-documented past and continuing failures by Croatia to produce ICTY-accused before the Tribunal",⁸² and that it accepted the guarantees at face value.⁸³ The Prosecution argues that the Trial Chamber failed specifically to address the issues it raised in relation to the reliability and effectiveness of the Croatian Government guarantees; it

⁷⁸ Order on Provisional Release of Valentin Ćorić, par 25,27-28.

⁷⁹ Order on Provisional Release of Valentin Ćorić, par 30.

⁸⁰ Order on Provisional Release of Berislav Pušić, pars 25, 27-29.

⁸¹ Order on Provisional Release of Berislav Pušić, par 31.

⁸² Prosecution Application for Leave, par 33.

⁸³ Prosecution Application for Leave, par 34.

failed to assess and make findings on the likelihood that the authorities would re-arrest the accused should any of the accused fail to surrender in light of the circumstances existing at the time of the decision, or the time when each accused is likely to face trial;⁸⁴ and further failed to take into consideration the existence of opposition to the Tribunal and the impact it could have on the future execution of the guarantees.⁸⁵

Analysis

42. The Appeals Chamber does not accept that the Prosecution has established that the Trial Chamber may have erred in failing properly to consider the reliability and practical effectiveness of the Croatian Government's guarantees.⁸⁶ The Trial Chamber clearly considered the assertions made by the Prosecution that the Croatian Government opposed the indictments and that its guarantees were lightly given. The Prosecution also had the opportunity to put its objections to two Government representatives who gave evidence to the Trial Chamber regarding Croatia's commitment to co-operation with the Tribunal.⁸⁷ Indeed, as emphasised by some of the accused in their responses, the Prosecutor of the Tribunal has in recent months made clear public statements that the Office of the Prosecutor is satisfied with the co-operation of the Croatian authorities.⁸⁸ In light of this background, and the strong assurances given by the Government representatives, coupled with the absence of any indication that those Government representatives would not be able to ensure the fulfilment of those guarantees, including evidence of their compliance with executing the arrest warrants of the Tribunal on the accused and assistance with the expeditious transfer of the accused to the Tribunal, the Prosecution has not established that the Trial Chamber may have erred in its assessment of the reliability and practical effectiveness of the Croatian government guarantees.

Failure to consider the cumulative effect of all the various factors and indications

⁸⁴ Prosecution Application for Leave, par 36.

⁸⁵ Prosecution Application for Leave, par 37.

⁸⁶ Prosecution Application for Leave, pars 33-37.

⁸⁷ Order on Provisional Release of Slobodan Prljak, par 32.

⁸⁸ The Accused Slobodan Prljak's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, 10 August 2004, par 19; The Accused Bruno Stojić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning Jadranko Prlić et al, par 11; The Accused Berislav Pušić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders on Provisional Release Concerning the Accused Jadranko Prlić, Bruno Stojić, Slobodan Prljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, 17 August 2004, par 16; The Accused Valentin Ćorić's Response to the Prosecutor's Application for Leave to File an Interlocutory Appeal in Respect of the Orders in Provisional Release Concerning Jadranko Prlić et al, 8 August 2004, par 12.

43. The Prosecution also argues that the Trial Chamber erred in failing to consider adequately the cumulative effect of all of the various factors and considerations advanced by the Prosecution. The Prosecution says that while any one particular factor might not be seen as sufficient to warrant detention of the accused, the combination of factors weigh against provisional release.⁸⁹

Analysis

44. The Appeals Chamber is not satisfied that the Prosecution has established that the Trial Chamber may have erred by failing to consider the various factors and indications on a cumulative basis. The Prosecutor has merely asserted that the Trial Chamber may have done so but has not indicated the basis of this assertion in relation to any one of the decisions of the Trial Chamber. Having closely considered the decisions of the Trial Chamber, the Appeals Chamber is satisfied that, contrary to the assertion of the Prosecution, the Trial Chamber was mindful throughout its decisions to consider each factor and to consider the impact of all factors together in order to determine whether or not each of the accused had satisfied the Trial Chamber that, if released, he would return for trial and would not pose a danger to any witnesses, victims or persons, or otherwise interfere with the administration of justice.

Failure to impose more strenuous conditions and terms of release, including house arrest

45. Finally the Prosecution argues that, while the Trial Chamber erred in granting provisional release at all, it further erred by failing to impose more strenuous conditions of release, including house arrest. The Prosecution argues that at least four of the accused indicated that they would accept provisional release and that the Government of Croatia said it would execute and carry out orders for house arrest.⁹⁰

Analysis

46. Once the Trial Chamber had determined that the accused had satisfied the burdens placed upon them, and that the exercise of the Trial Chamber's discretion did not warrant refusal of provisional release despite that satisfaction, the Trial Chamber had the discretion to determine on what terms those accused should be released. The fact that four of the accused indicated an intention to accept a condition of house arrest is not an indication that the Trial Chamber may have

⁸⁹ Prosecution Application for Leave, par 38.

⁹⁰ Prosecution Application, pars 38-39.

erred in not imposing such a condition. The Trial Chamber was entitled to accept or reject that condition as it saw fit. The Prosecution has not presented any other argument to show that the Trial Chamber may have erred in not imposing this condition.

47. Having considered the conditions imposed by the Trial Chamber, the Appeals Chamber concludes that the Prosecution has failed to establish that the Trial Chamber may have erred in relation to the stringency of those conditions. Each of the accused, among other conditions, is required to remain within the locality of his chosen residence in Croatia, to surrender his passport, to notify the Ministry of Interior of his address, to give seven days prior notice of any change of address, to report once a week to the police station, to consent to random unannounced visits by the Ministry of Interior and others, not to have any contact with victims, witnesses, other accused and the media, not to interfere in any way in the administration of justice, and to comply strictly with any order of the Tribunal.⁹¹

Conclusion

48. As established by the above, the Appeals Chamber is not satisfied that the Prosecution has identified any possible error in the decisions of the Trial Chamber. Consequently, the Prosecution has not established good cause to warrant leave to appeal the Trial Chamber's order granting provisional release. Leave to appeal is refused and the Appeal Chamber's stay of the Trial Chamber's orders granting provisional release is dissolved.

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

Dated this 8th day of September 2004,
At The Hague
The Netherlands



Theodor Meron
Presiding Judge

[Seal of the Tribunal]

⁹¹ Order on Provisional Release of Slobodan Praljak, pgs 11-12 ; Order on Provisional Release of Bruno Stojić, pgs 11-12; Order on Provisional Release of Milivoj Petković, pgs 12-13; Order on Provisional Release of Berislav Pušić, pgs 14-15; Order on Provisional Release of Jadranko Prlić, pgs 11-12; Order on Provisional Release of Valentin Ćorić, pgs 15-16.

