



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 Nos.: IT-95-14/2-ES
Date: 13 May 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 13 May 2010

PROSECUTOR

V.

DARIO KORDIĆ

PUBLIC

**DECISION OF PRESIDENT ON APPLICATION FOR PARDON OR
COMMUTATION OF SENTENCE OF DARIO KORDIĆ**

Office of the Prosecutor
Mr. Serge Brammertz

Republic of Austria

Mr. Dario Kordić

1. 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”) has been advised by the Austrian authorities that Mr. Dario Kordić is eligible for conditional release under the Austrian Penal Code and Penal Law.

I. Background

2. On 4 February 2010, the Registry informed me of a notification received from the Embassy of Austria, pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and paragraph 1 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the International Tribunal (“Practice Direction”).¹ The notification states that Mr. Kordić became eligible for conditional release under Austrian law as of 6 April 2010, after having served one-half of his prison sentence.² The notification also states that the Prison Head of the Correctional Institute Graz-Karlau has filed an application for consideration of Mr. Kordić’s early release with the Austrian Federal Ministry of Justice, and recommends Mr. Kordić’s early release.³

3. On 11 March 2010, the Registrar, pursuant to paragraph 3(b) of the Practice Direction, provided me with reports from the Prison Head and Psychological Services of the Correctional Institute Graz-Karlau, as well as extracts from the Austrian Penal Code (section 46 *Strafgesetzbuch*) and Penal Law (section 152 *Strafvollzugsgesetz*) provided to the Registry by the Embassy of Austria.⁴

4. On 11 March 2010, the Registry also provided me with the Prosecution’s report of Mr. Kordić’s co-operation with the Office of the Prosecutor, pursuant to paragraph 3(c) of the Practice Direction.⁵

5. All of the above materials were furnished to Mr. Kordić, who responded that he had no comments or anything further to add.⁶

¹ IT/146/Rev.2, 1 September 2009.

² Memorandum from the Registry to the President, 4 February 2010 (“Memorandum of 4 February 2010”).

³ Memorandum of 4 February 2010 (letter from the Embassy of Austria, 27 January 2010; report from the Prison Head of the Correctional Institute Graz-Karlau, 15 December 2009).

⁴ Memorandum from the Registry to the President, 11 March 2010 (“Memorandum of 11 March 2010”) (letter from the Embassy of Austria, 18 February 2010; report from the Prison Head of the Correctional Institute Graz-Karlau, 17 February 2010; report from the Psychological Service of the Correctional Institute Graz-Karlau, 17 February 2010).

⁵ Memorandum of 11 March 2010.

II. Proceedings Before the Tribunal

6. The initial indictment against Mr. Kordić, along with Mario Čerkez and four others, was issued on 10 November 1995.⁷ On 30 September 1998, an amended indictment against Mr. Kordić and Mr. Čerkez was confirmed (“Indictment”).⁸ The Indictment alleged that Mr. Kordić, as a Bosnian Croat political leader in Central Bosnia, committed twenty-two counts of grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity.⁹ From November 1991 to approximately March 1994, the Indictment alleged that Mr. Kordić was influential and instrumental in a political-military campaign to persecute, ethnically cleanse, or substantially reduce and subjugate the Bosnian Muslim population in Bosnia and Herzegovina.¹⁰ The Indictment also alleged that Mr. Kordić “publicly advocated the campaign’s goals and encouraged and instigated the ethnic hatred, strife and distrust which served its ends.”¹¹ Mr. Kordić voluntarily surrendered to the Tribunal on 6 October 1997 and pleaded not guilty on 8 October 1997.¹²

7. In its Judgement of 26 February 2001, the Trial Chamber convicted Mr. Kordić of twelve counts of crimes against humanity, in the form of murder; inhumane acts; imprisonment; and persecutions on political, racial, or religious grounds; grave breaches of the Geneva Conventions, in the form of wilful killing; inhuman treatment; and unlawful confinement of civilians; and violations of the laws or customs of war, in the form of unlawful attacks on civilians and civilian objects; wanton destruction not justified by military necessity; plunder of public or private property; and destruction or wilful damage to institutions dedicated to religion or education.¹³ Mr. Kordić was sentenced to 25 years of imprisonment and given credit for the time already served since 6 October 1997.¹⁴

8. On 17 December 2004, the Appeals Chamber reversed some of Mr. Kordić’s convictions, but affirmed most of his convictions: while some convictions were reversed in relation to charges at

⁶ Memorandum from the Registry to the President, 4 May 2010.

⁷ *Prosecutor v. Dario Kordić, Tihofil (aka Tihomir) Blaškić, Mario Čerkez, Ivan Šantić, Pero Skopljak, and Zlatko Aleksovski*, Case No. IT-17-95-14-1, Indictment, 10 November 1995.

⁸ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-PT, Amended Indictment, 30 September 1998 (“Indictment”).

⁹ Indictment, paras 36–58.

¹⁰ Indictment, paras 9–10, 25–26.

¹¹ Indictment, para. 25.

¹² *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001, para. 2 (“Trial Judgement”).

¹³ Trial Judgement, pp. 305–308.

¹⁴ Trial Judgement, para. 854, p. 309.

particular locations, Mr. Kordić was not acquitted of any substantive counts by the Appeals Chamber.¹⁵

9. On 12 May 2006, Mr. Kordić was transferred to Austria to serve the remainder of his sentence.¹⁶

III. Discussion

10. Under Article 28 of the Statute, if, pursuant to the applicable law of the state in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the state concerned shall notify the Tribunal accordingly and the President, in consultation with the Judges, shall decide the matter on the basis of the interests of justice and the general principles of law. Rule 123 of the Rules echoes Article 28 of the Statute, and Rule 124 of the Rules provides that the President shall, upon such notice, determine, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, whether pardon or commutation is appropriate. Rule 125 of the Rules provides that, in making this determination, the President shall take into account, *inter alia*, the gravity of the crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.

11. In coming to my decision upon whether pardon or commutation is appropriate, I have consulted the Judges of the Bureau and the Judges of the sentencing Chambers who remain Judges of the Tribunal.

12. In respect of the time that Mr. Kordić has spent in detention, the Embassy of Austria has notified the Registry as follows:

[...] Mr. Dario Kordić, who is currently serving his sentence in Austria, will be eligible for conditional release under Austrian law as of 6 April 2010, after having served one-half of his prison sentence.

Section 46(1) and (2) of the Austrian Penal Code (*Strafgesetzbuch*) provides as follows:

Section 46(1) – If the prisoner has served half of a prison sentence imposed or determined in a pardon, or half of the portion of such a sentence that has not been conditionally remitted, being a minimum of three months, the rest of the sentence can be conditionally

¹⁵ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Appeal Judgement, 17 December 2004 (“Appeal Judgement”), para. 1067.

¹⁶ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-ES, Order Designating the State in Which Dario Kordić is to Serve his Prison Sentence, 12 May 2006. Made public via “Order Withdrawing Confidential Status of Order Designating the State in Which Dario Kordić is to Serve His Prison Sentence”, 30 January 2008.

remitted, with a period of probation, as soon as it can be assumed, with regard to the effect of the measures foreseen in [sections] 50 to 52, that the prisoner is no more likely to commit crimes than if he were to serve the rest of his sentence.

Section 46(2) – If the prisoner has served half, but not yet two-thirds of his sentence, he is not to be conditionally released, despite having fulfilled the conditions set forth in para. 1, if, in view of the gravity of his crime, the full sentence is exceptionally needed to impede others from committing crimes.

13. Mr. Kordić has served more than half of his sentence and is thus eligible for early release under domestic Austrian law. However, the majority of persons convicted by the Tribunal are serving their sentences in countries where they become eligible for early release only after having served two-thirds of their sentence. Therefore, taking into account the treatment of similarly situated prisoners who have been considered eligible for early release, I am of the view that the amount of time that Mr. Kordić has served for his crimes does not militate in favour of his early release.

14. I note that Mr. Kordić will have served two-thirds of his sentence on approximately 6 June 2014.

15. In respect of the gravity of Mr. Kordić's crimes, I find it instructive to quote the Trial Judgement (footnotes omitted):

Both [Mr. Kordić and Mr. Čerkez] have been convicted of numerous offences. However, all arise from the same common design which led to the persecution and "ethnic cleansing" of the Bosnian Muslims of the Lašva Valley and surroundings. This led to a sustained campaign involving a succession of attacks on villages and towns which were characterised by ruthlessness and savagery and in which no distinction was made as to the age of its victims: young and old were either murdered or expelled and their houses burned. The total number of dead may never be known, but it runs into hundreds, with thousands expelled. Offences of this level of barbarity could not be more grave and those who participated in them must expect sentences of commensurate severity to mark the outrage of the international community.¹⁷

16. I also find it instructive to list the crimes for which Mr. Kordić was convicted, following the Judgement of the Appeals Chamber:

- a. in Busovača – persecutions, a crime against humanity; unlawful attacks on civilians, a violation of the laws or customs of war; unlawful attack on civilian objects, a violation of the laws or customs of war; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; wanton destruction not justified by military necessity, a violation of the laws or customs of war; and plunder of public or private property, a violation of the laws or customs of war;
- b. in Večeriska/Donja Večeriska – persecutions, a crime against humanity; unlawful attack on civilian objects, a violation of the laws or customs of war; and wanton

¹⁷ Trial Judgement, para. 852.

destruction not justified by military necessity, a violation of the laws or customs of war;

- c. Ahmići – persecutions, a crime against humanity; unlawful attack on civilians, a violation of the laws or customs of war; unlawful attack on civilian objects, a violation of the laws or customs of war; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; inhuman acts, a crime against humanity; inhuman treatment, a grave breach of the Geneva Conventions of 1949; wanton destruction not justified by military necessity, a violation of the laws or customs of war; plunder of public or private property, a violation of the laws or customs of war; and destruction or wilful damage to institutions dedicated to religion or education, a violation of the laws or customs of war;
- d. Nadioci and Pirići – persecutions, a crime against humanity; unlawful attack on civilians, a violation of the laws or customs of war; murder, a crime against humanity; and wilful killing, a grave breach of the Geneva Conventions of 1949;
- e. Šantići – persecutions, a crime against humanity; unlawful attack on civilians, a violation of the laws or customs of war; unlawful attack on civilian objects, a violation of the laws or customs of war; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; and wanton destruction not justified by military necessity, a violation of the laws or customs of war;
- f. Rotilj – persecutions, a crime against humanity; unlawful attack on civilians, a grave breach of the Geneva Conventions of 1949; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; inhumane acts, a crime against humanity; inhuman treatment, a grave breach of the Geneva Conventions of 1949; plunder of public or private property, a violation of the laws or customs of war; imprisonment, a crime against humanity; and unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949;
- g. Han Ploča-Grahovci – persecutions, a crime against humanity; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; wanton destruction not justified by military necessity, a violation of the laws or customs of war; plunder of public or private property, a violation of the laws of customs of war; and destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war;
- h. Tulica – persecutions, a crime against humanity; murder, a crime against humanity; wilful killing, a grave breach of the Geneva Conventions of 1949; inhumane acts, a crime against humanity; inhuman treatment, a grave breach of the Geneva Conventions of 1949; wanton destruction not justified by military necessity, a violation of the laws or customs of war; and plunder of public or private property, a violation of the laws or customs of war;
- i. Kiseljak – persecutions, a crime against humanity; imprisonment, a crime against humanity; and unlawful confinement of civilians, a grave breach of the Geneva Conventions of 1949;
- j. Svinjarevo – persecutions, a crime against humanity; and wanton destruction not justified by military necessity, a violation of the laws or customs of war;
- k. Gomionica – persecutions, a crime against humanity; wanton destruction not justified by military necessity, a violation of the laws or customs of war; and plunder of public or private property, a violation of the laws or customs of war; and

- 1. Očehnići, Behrići, Gromiljak, Plje Višnjica, Višnjica, and Gaćice – persecutions, a crime against humanity; and wanton destruction not justified by military necessity, a violation of the laws or customs of war.

The Appeals Chamber re-affirmed Mr. Kordić’s sentence of 25 years of imprisonment, finding that “the picture of [Mr. Kordić’s] criminal conduct ha[d] not changed substantially”.¹⁸

17. The crimes for which Mr. Kordić was convicted are of a very high gravity, which is a factor that weighs against his early release.

18. Paragraph 3(b) of the Practice Direction states that the Registry shall request reports and observations from the relevant authorities in the enforcement state as to the behaviour of the convicted person during his or her period of incarceration. The 15 December 2009 report from the Prison Head of the Correctional Institute acknowledged Mr. Kordić’s “good behaviour in custody, his stable personality and [his] good rehabilitation prognosis”. In a more recent 17 February 2010 report from the Correctional Institute, the Prison Head stated:

Since his arrival on 8 June 2006, he has been working in the prison laundry. His work performance has been described by the operations head as very good. His conduct at the prison ward has been described by the ward officer in charge as calm and adapted. However, there are currently three infractions recorded at this prison [...].

19. In relation to the three infractions, the correctional facility provides scant information: prohibited contact in 2007, banned objects in 2008, and banned objects and prohibited contact in 2009. While I am concerned with what appears, on its face, to be a pattern of infractions by Mr. Kordić during his detention, without more detail of their substance, it is difficult to assess how they may impact Mr. Kordić’s demonstration of rehabilitation. I also take into account that the Prison Head of the Correctional Institute recommended Mr. Kordić’s early release, despite these infractions. Also of relevance to his rehabilitation is the fact that Mr. Kordić plans to reside at his family home in Croatia and to work as an editor at a publishing company in the event that he is released.

20. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement states regarding the psychological condition of the convicted person during his incarceration, and paragraph 8 of the Practice Direction provides that the President may consider any other information that he or she believes to be relevant to supplement the criteria specified in Rule 125. The Austrian authorities transmitted one psychological report in relation to Mr. Kordić during his detention. The Psychological Services report informs that Mr. Kordić is “cooperative and friendly”; has a “stable” state of mind and no mental complaints; expresses his thoughts clearly;

¹⁸ Appeal Judgement, pp. 295–300, para. 1067.

possesses “good intellectual and communicative abilities”; possesses “reality orientation, self-reflection ability and stress management ability” that are within normal parameters; is able to tolerate frustration and checks his impulses sufficiently; and displays “adequate” social behaviour. The psychological report concludes that “no risk factors could be determined that would argue against relaxation/of prison conditions/or provisional release. Neither the so-called historical variables nor the personality variables indicate that the inmate would represent a danger to society.”¹⁹ According to the submission by the Federal Ministry of Justice, psychiatric reports are not available because Mr. Kordić has not exhibited any psychological irregularities and did not himself request a meeting with a psychiatrist.²⁰ It therefore appears that Mr. Kordić is not suffering from any psychological difficulties, and I note that Psychological Services has not determined any psychological or psychiatric risk factors that would argue against his early release.

21. I consider that, in spite of the infractions, which were not of critical concern to the Correctional Institute, Mr. Kordić’s good behaviour while serving his sentence, along with the good rehabilitative prognosis by the Correctional Institute and his plans for employment if granted early release, is some evidence of his rehabilitation, which weighs in favour of his early release.

22. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof. According to the Prosecution report, the Prosecution has neither sought nor received co-operation from Mr. Kordić.²¹ Thus, I consider the factor of co-operation to be a neutral one.

23. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, the fact that Mr. Kordić has demonstrated some rehabilitation is outweighed by the very high gravity of his crimes and, taking into account the treatment of similarly situated prisoners, the amount of time that he has served for those crimes. I am therefore of the view that Mr. Kordić should not be granted early release.

24. I note that my colleagues unanimously share my view that Mr. Kordić’s application for early release should be denied.

¹⁹ Memorandum of 11 March 2010 (report from the Psychological Service of the Correctional Institute Graz-Karlau, 17 February 2010).

²⁰ Memorandum of 11 March 2010 (submission by the Federal Ministry of Justice, Republic of Austria, 18 February 2010).

²¹ Memorandum of 11 March 2010.

IV. Disposition

25. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, and paragraphs 8 and 11 of the Practice Direction, Dario Kordić is hereby DENIED early release.

26. The Registrar is hereby DIRECTED to inform the Austrian authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction.

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



Judge Patrick Robinson
President

Dated this thirteenth day of May 2010
At The Hague
The Netherlands

[Seal of the Tribunal]