

**UNITED
NATIONS**



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-00-39-ES
Date: 11 July 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision: 11 July 2011

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION OF PRESIDENT ON EARLY RELEASE OF
MOMČILO KRAJIŠNIK**

The Office of the Prosecutor

Mr. Serge Brammertz

Mr. Momčilo Krajišnik

The United Kingdom of Great Britain and Northern Ireland

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 authorities of the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) that Mr. Momčilo Krajišnik would be eligible on 2 April 2011 for consideration for release on parole licence under the United Kingdom’s release arrangements, after having served one-half, plus one year, of his prison sentence.

A. Background

2. On 11 January 2011, the Registry informed me of a notification received from the United Kingdom’s Ministry of Justice (“UK Ministry of Justice”), 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

3. On 18 April 2011, the Registry, pursuant to paragraphs 3(b) and 4 of the Practice Direction, provided me with the correspondence to the Registry from the UK Ministry of Justice dated 5 April 2011, and the attached documentation from the detention facility, including a Behaviour Report dated 22 March 2011, a Sentence Planning Meeting Report dated 11 February 2011, and a Security Re-Categorisation Report dated 11 February 2011.²

4. On 18 April 2011, pursuant to paragraph 3(c) of the Practice Direction, the Registry provided me with a memorandum from the Prosecutor discussing Mr. Krajišnik’s co-operation with the Office of the Prosecutor.³

5. All of the above materials were furnished to Mr. Krajišnik, who responded to the Governor of the detention facility on 5 April 2011 regarding the Behaviour Report dated 22 March 2011.⁴ The Governor of the detention facility replied to Mr. Krajišnik and issued an Amended Behaviour Report on 8 April 2011.⁵ The Registry, pursuant to Article 3 of the Practice Direction, provided me with the exchange of correspondence between Mr. Krajišnik and the Governor of the detention

¹ IT/146/Rev.3, 16 September 2010.

² Memorandum of 18 April 2011 from the Registrar to the President of the Tribunal (“Memorandum of 18 April 2011”), para. 2.

³ Memorandum of 18 April 2011, para. 2.

⁴ Letter from Momčilo Krajišnik to the Governor of the detention facility (Reply to Behaviour Report of 22 March 2011) dated 5 April 2011 (“Krajišnik Reply Letter of 5 April 2011”).

⁵ Letter from the Governor of the detention facility to Momčilo Krajišnik (Reply to Mr. Krajišnik Letter to Governor) dated 8 April 2011 (“Governor’s Reply to Mr. Krajišnik”).

facility dated 5 April 2011 and 8 April 2011, as well as the Amended Behaviour Report dated 8 April 2011.⁶

6. On 10 May 2011, Mr. Krajišnik wrote to me informing of his intention to submit a “request for early release”.⁷ On 21 May 2011, Mr. Krajišnik furnished a written response regarding the extent of his co-operation with the Prosecution.⁸ On 21 June 2011, I received documentation from Mr. Krajišnik and his counsel seeking to support the arguments made in his written response.⁹

B. Proceedings before the Tribunal

7. The initial indictment against Mr. Krajišnik was issued on 21 February 2000,¹⁰ and an amended indictment was confirmed on 21 March 2000.¹¹ On 9 March 2001, the amended indictment was consolidated to join Biljana Plavšić in the proceedings¹² and was amended again on 7 March 2002¹³ (“indictment”). The indictment alleged that Mr. Krajišnik, in his role as a leading member of the Serbian Democratic Party, was individually criminally responsible under Article 7(1) of the Statute through his participation in a joint criminal enterprise, the goal of which was the removal of non-Serbs from large areas of Bosnia-Herzegovina.¹⁴ It alleged that this campaign involved the perpetration of genocide, persecution, extermination, killing, deportation, and inhumane acts.¹⁵ The indictment also accused Mr. Krajišnik of being responsible for the above crimes as a superior pursuant to Article 7(3) of the Statute.¹⁶ On 3 April 2000, Mr. Krajišnik was arrested by the Stabilisation Force in Sarajevo, on the basis of an indictment issued on 25 February 2000, and transferred to The Hague on the same day.¹⁷

8. In its Judgement of 27 September 2006, the Trial Chamber convicted Mr. Krajišnik of five counts: persecution, extermination, murder, deportation, and inhumane acts (forced transfer) as crimes against humanity.¹⁸ It held that Mr. Krajišnik was responsible pursuant to Article 7(1) of the

⁶ Memorandum of 18 April 2011, para. 2.

⁷ Letter from Mr. Krajišnik to the President of the Tribunal dated 10 May 2011.

⁸ Letter from Mr. Krajišnik to the President of the Tribunal dated 21 May 2011 (“Letter of 21 May 2011”).

⁹ Letter from the Registrar to the President of the Tribunal dated 21 June 2011 (“Letter of 21 June 2011”). I received the final batch of supplemental material in support Mr. Krajišnik’s early release application, consisting of a DVD recording, on 9 June 2011. Memorandum of 6 July 2011 from the Registrar to the President of the Tribunal.

¹⁰ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-I, Indictment, 21 February 2000.

¹¹ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-I, Amended Indictment, 21 March 2000.

¹² *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, Case No. IT-00-39 & 40-PT, Consolidated Indictment, 9 March 2001.

¹³ *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, Case No. IT-00-39 & 40-PT, Amended Consolidated Indictment, 7 March 2002 (“Indictment”).

¹⁴ Indictment, paras 1, 3-9.

¹⁵ Indictment, paras 15-27.

¹⁶ Indictment, paras 10-12, 14.

¹⁷ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, para. 11 (“Trial Judgement”).

¹⁸ Trial Judgement, para. 1126.

Statute for participating in a joint criminal enterprise to achieve the permanent removal, by force or other means, of Bosnian Muslim, Bosnian Croat, or other non-Serb inhabitants from large areas of Bosnia and Herzegovina through the commission of crimes.¹⁹ The Trial Chamber found that Mr. Krajišnik was part of the Pale-based leadership group of the joint criminal enterprise, which included local politicians, military and police commanders, paramilitary leaders, and others operating in the regions and municipalities of the Bosnian-Serb Republic.²⁰

9. In the determination of his sentence, the Trial Chamber considered Mr. Krajišnik's relatively advanced age, his having no prior convictions, and his good behaviour during a long period in detention.²¹ It also took into account the context of ethnic tension in which the crimes were committed, as well as evidence that Mr. Krajišnik helped non-Serb individuals.²² Whilst it held that none of these factors in itself constituted mitigating circumstances, when taken together, they amounted to personal circumstances of a kind that could be accorded some weight in mitigation.²³ However, the Trial Chamber considered the seriousness of Mr. Krajišnik's crimes, including the killing, through a joint criminal enterprise, of 3,000 people, the removal of 100,000 from their homes, and the persecution of tens of thousands of others, which led to them being excluded from the economic and social life of their communities.²⁴ It also took into account, as aggravating factors, the vulnerability of the victims, the immense suffering experienced, and the wide scope of crimes committed.²⁵ The Trial Chamber also found that Mr. Krajišnik's position of leadership during this period, coupled with his public duty to protect the victims, increased the gravity of his conduct.²⁶ Mr. Krajišnik was sentenced to 27 years' imprisonment on 27 September 2006 and was given credit for the time already served since 3 April 2000.²⁷

10. On 17 March 2009, the Appeals Chamber allowed some of Mr. Krajišnik's grounds of appeal and some of the grounds of appeal lodged by the *Amicus Curiae*, particularly with regard to the Trial Chamber's findings on Mr. Krajišnik's responsibility through a joint criminal enterprise, thus "significantly revis[ing] the findings of the Trial Chamber".²⁸ The Appeals Chamber reversed Mr. Krajišnik's convictions for:

¹⁹ Trial Judgement, paras 1089-1090.

²⁰ Trial Judgement, para. 1087.

²¹ Trial Judgement, paras 1161-1169.

²² *Ibid.*

²³ Trial Judgement, para. 1168.

²⁴ Trial Judgement, paras 1143-1144.

²⁵ Trial Judgement, paras 1147-1153.

²⁶ Trial Judgement, paras 1154-1160.

²⁷ Trial Judgement, paras 1179-1180.

²⁸ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009, para. 797 ("Appeals Judgement").

- persecution (count 3), pursuant to Article 7(1), with the underlying acts of the imposition and maintenance of restrictive and discriminatory measures; killings during and after attacks; cruel or inhumane treatment during and after attacks; unlawful detention; killings related to detention facilities; cruel or inhumane treatment in detention facilities; inhumane living conditions in detention facilities; forced labour at front lines; use of human shields; appropriation or plunder of property; and destruction of private property, cultural monuments, and sacred sites, pursuant to Article 7(1);²⁹
- extermination (count 4), pursuant to Article 7(1);³⁰
- murder (count 5), pursuant to Article 7(1);³¹ and
- deportation (count 7), pursuant to Article 7(1), in the Bijeljina, Bratunac, and Sanski Most municipalities.³²

11. Nevertheless, the Appeals Chamber affirmed some of Mr. Krajišnik's convictions for crimes against humanity. Specifically, the Appeal Chamber affirmed his convictions for:

- persecution (deportation) (count 3), pursuant to Article 7(1), in the Zvornik, Banja Luka, and Prnjavor municipalities;³³
- persecution (forcible transfer) (count 3), pursuant to Article 7(1), in the Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo, and Sokolac municipalities;³⁴
- deportation (count 7), pursuant to Article 7(1), in the Zvornik, Banja Luka, and Prnjavor municipalities;³⁵ and
- inhumane acts (forcible transfer) (count 8), pursuant to Article 7(1) in the Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo, and Sokolac municipalities.³⁶

12. The Appeals Chamber noted that the convictions for the majority of crimes, of which Mr. Krajišnik had been found guilty, had been quashed; however, it held that "convictions for persecution, deportation and forcible transfer have been upheld, and the gravity of these crimes requires a severe and proportionate sentence".³⁷ It sentenced Mr. Krajišnik to 20 years' imprisonment, subject to credit received under Rule 101(C) of the Rules for the period he had been detained at the United Nations Detention Unit.³⁸

²⁹ Appeals Judgement, para. 177.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Appeals Judgement, para. 321.

³³ Appeals Judgement, para. 283.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Appeals Judgement, paras 797-799.

³⁸ Appeals Judgement, paras 818-819.

C. Applicable Law

13. 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, 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.

14. Rule 125 of the Rules provides that, in making a determination upon pardon or commutation of sentence, 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 co-operation of the prisoner with the Prosecution.

15. The Agreement between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia ("Enforcement Agreement"), dated 11 March 2004, provides at Article 3(1) that, in enforcing the sentence pronounced by the Tribunal, the competent national authorities of the United Kingdom shall be bound by the duration of the sentence and at Article 3(2) that the conditions of imprisonment shall be governed by the law of the United Kingdom, subject to the supervision of the Tribunal. Article 7(1)(d) requires the United Kingdom to immediately notify the Registrar six months prior to the point at which early release would be considered for an equivalent domestic sentence in the jurisdiction of the United Kingdom.

16. Article 8(1) provides that, if, pursuant to the applicable national law of the United Kingdom, the sentenced person is eligible for early release, pardon, or commutation of sentence, the United Kingdom shall notify the Registrar in advance of such eligibility and shall include in any such notification all the circumstances pertaining to such eligibility. Article 8(2) provides that, if the President of the Tribunal determines that an early release, pardon, or commutation of sentence is not appropriate, the United Kingdom shall act accordingly. Articles 9(1)(c) and 9(4) provide that the enforcement of the sentence shall cease upon the pardon or commutation of the sentenced person, after which the United Kingdom may transfer or deport that person as appropriate and in accordance with its international obligations.

D. Discussion

17. In coming to my decision upon whether it is appropriate to grant early release, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal.

1. Gravity of Crimes

18. Rule 125 of the Rules requires me to take into account the gravity of the crimes committed. I note that the Appeals Chamber reversed most of Mr. Krajišnik's convictions, but stated that the remaining convictions were amongst the most severe crimes known to humankind,³⁹ the gravity of which required a severe and proportionate sentence.⁴⁰ The sentence of 20 years⁴¹ handed down by the Appeals Chamber, notwithstanding the quashing of several convictions, still shows that the crimes committed by Mr. Krajišnik were of a very high gravity.

19. Based upon the foregoing, I am of the view that the very high gravity of Mr. Krajišnik's offences is a factor that weighs against his early release.

2. Treatment of Similarly-situated Prisoners

20. On 15 December 2010, the UK Ministry of Justice notified the Registry "that Mr. Krajišnik would be eligible for consideration for release on parole on 2 April 2011."⁴² According to s. 244 of the *Criminal Justice Act 2003*:

- (1) As soon as a fixed term prisoner, other than a prisoner [posing a significant risk to the public], has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence under this section.

...

- (3) In this section "the requisite custodial period" means—

- (a) in relation to a person serving a sentence of imprisonment for a term of twelve months or more ... one-half of his sentence.⁴³

21. The National Offender Management Service of the United Kingdom has advised the Registry that prisoners such as Mr. Krajišnik are entitled to be considered for release on parole

³⁹ Appeals Judgement, para. 813.

⁴⁰ Appeals Judgement, para. 799.

⁴¹ Appeals Judgement, para. 819.

⁴² Memorandum of 11 January 2011 (Letter from the Ministry of Justice, National Offender Management Service to the Registrar, 15 December 2010).

⁴³ *Criminal Justice Act 2003* (c. 44), s. 244.

license from the half-way point of their sentence and every year thereafter, until the two-thirds point.⁴⁴ Mr. Krajišnik has served more than half of his sentence and is thus eligible for early release under the laws of the United Kingdom.⁴⁵ However, it is the practice of the Tribunal to consider convicted persons to be eligible for early release only when they have served at least two-thirds of their sentences.⁴⁶ Therefore, I am of the view that the amount of time that Mr. Krajišnik has served for his crimes does not militate in favour of his early release.

22. I note that Mr. Krajišnik will have served two-thirds of his sentence on approximately 3 August 2013.

3. Demonstration of Rehabilitation

23. Rule 125 of the Rules requires that the President shall take into account the prisoner's demonstration of rehabilitation. 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.

24. The 8 April 2011 amended report from the detention facility acknowledges Mr. Krajišnik's good behaviour in custody, stating that he "remains a polite and helpful prisoner."⁴⁷ The 11 February 2011 Security Planning Meeting Report from the detention facility provides that Mr. Krajišnik's "custodial behaviour is exemplary. He has no proven adjudication or formal

⁴⁴ Memorandum of 11 January 2011.

⁴⁵ *Ibid.*

⁴⁶ See, e.g., *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-ES.1, Decision of President on Early Release of Veselin Šljivančanin, 5 July 2011, para. 20; *Prosecutor v. Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 23 June 2011, para. 13; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-ES, Decision of President on Early Release of Blagoje Simić, 15 February 2011, para. 20; *Prosecutor v. Darko Mrda*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrda, 1 February 2011, para. 15; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 31 January 2011, para. 14; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-ES, Decision of President on Early Release of Zoran Žigić, 8 November 2010, para. 12; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 14; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010, para. 13; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, 23 April 2010, paras. 12-13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; *Prosecutor v. Dragan Jokić*, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 13 January 2010, para. 14; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10.

⁴⁷ Memorandum of 18 April 2011 (Amended Behaviour Report dated 8 April 2011).

warnings. His interactions with staff are always polite and co-operative, and he complies with requests' made of him".⁴⁸

25. Mr. Krajišnik also recognised the need to learn English during the course of his detention.⁴⁹ It was noted that "[h]e is undertaking assistance with the improvement of his English to enable him to participate in more activities".⁵⁰

26. According to the Governor the detention facility, Mr. Krajišnik does not mix with other prisoners.⁵¹ Mr. Krajišnik has only attended an older prisoner's group once.⁵² He has stated that he would prefer not to attend meetings that were organised with another group of prisoners.⁵³ Mr. Krajišnik, however, has agreed to attend evening meetings with "prisoners located in healthcare."⁵⁴

27. 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 of the Rules. However, at the time of notification, Mr. Krajišnik had yet to see a psychologist or a psychiatrist as he had neither referred himself or been referred by the prison authorities.⁵⁵ I therefore consider this to be a neutral factor.

28. Based upon all the foregoing, I am of the view that Mr. Krajišnik through his good behaviour during his detention in the United Kingdom has demonstrated some—albeit very limited—rehabilitation, which militates in favour of his early release.

4. Substantial Co-operation with the Prosecution

29. Rule 125 of the Rules states that the President shall take into account any substantial co-operation of the prisoner with the Prosecutor. 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.

⁴⁸ Memorandum of 18 April 2011 (Sentence Planning Meeting Report dated 11 February 2011).

⁴⁹ Memorandum of 18 April 2011 (Sentencing Planning Meeting Report dated 11 February 2011).

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Memorandum of 18 April 2011 (Amended Behaviour Report dated 8 April 2011).

⁵³ *Ibid.*

⁵⁴ Memorandum of 18 April 2011 (Amended Behaviour Report dated 8 April 2011); Krajišnik Reply Letter of 5 April 2011.

⁵⁵ Memorandum of 18 April 2011 (Correspondence to the Registrar from the UK Ministry of Justice dated 5 April 2011).

30. On 3 February 2011, the Prosecutor submitted a memorandum stating that “in all respects, [Mr. Krajišnik] did not cooperate with the Prosecution.”⁵⁶ The Prosecutor also referenced arguments put forth in his memorandum of 14 May 2010.⁵⁷ I have previously considered and rejected the Prosecution’s arguments that an accused person’s lack of co-operation during his trial can count against him for the purposes of early release.⁵⁸ I also did not find it necessary to elaborate further on arguments put forth by the Prosecution relating to Mr. Krajišnik’s claimed indigence during proceedings before the Tribunal as I considered them to be irrelevant to the determination of Mr. Krajišnik’s eligibility for early release under Rule 125 of the Rules.⁵⁹ I will therefore not revisit the Prosecutor’s arguments in his memorandum of 14 May 2010.

31. On 21 May 2011, Mr. Krajišnik responded to the Prosecution’s memorandum regarding the extent of his co-operation, which he suggests dates back to 1996.⁶⁰ First, Mr. Krajišnik argues that he acted as an intermediary between the Prosecution and Radovan Karadžić in relation to the indictment against the latter.⁶¹ Second, he argues that he co-operated with the Prosecution by securing funds for Mr. Karadžić’s defence.⁶² Third, Mr. Krajišnik argues that he appointed a representative of Republika Srpska (“RS”) to sit in The Hague and liaise with the Tribunal upon the request of the former Prosecutor of the Tribunal, Ms. Louise Arbour, thereby facilitating co-operation between RS and the Tribunal.⁶³ Fourth, Mr. Krajišnik argues that he allowed the Prosecution to interview him in 1997 and encouraged other RS officials to give interviews to the Prosecutor, which they then in fact did give.⁶⁴ Fifth, Mr. Krajišnik argues that he gave 40 days of testimony in his own case, thereby further facilitating co-operation with the Prosecution.⁶⁵ Sixth, Mr. Krajišnik argues that during the trial and appeal proceedings there was “mutual and good co-operation” between him and the Prosecution.⁶⁶ Finally, Mr. Krajišnik argues that he either facilitated the release of documents from RS to the Prosecution or delivered documents himself to the Prosecution,⁶⁷ in particular, documents that helped the Prosecution prove elements of joint criminal enterprise in his case and proved he chaired the Assembly of Bosnia and Herzegovina.⁶⁸

⁵⁶ Memorandum of 18 April 2011 (Memorandum from the Prosecutor dated 3 February 2011).

⁵⁷ Memorandum of 18 April 2011 (Memorandum from the Prosecutor dated 3 February 2011).

⁵⁸ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 27 (“26 July 2010 Decision on Early Release”).

⁵⁹ 26 July 2010 Decision on Early Release, para. 30.

⁶⁰ Letter of 21 May 2011, allegation 1.

⁶¹ Letter of 21 May 2011, allegation 2.

⁶² Letter of 21 May 2011, allegation 3.

⁶³ Letter of 21 May 2011, allegation 12.

⁶⁴ Letter of 21 May 2011, allegation 7.

⁶⁵ Letter of 21 May 2011, allegation 11.

⁶⁶ Letter of 21 May 2011, p. 4.

⁶⁷ Letter of 21 May 2011, allegations 4, 5, 6, 10.

⁶⁸ Letter of 21 May 2011, allegations 8 and 9.

32. A number of the arguments put forth by Mr. Krajišnik in relation to co-operation with the Prosecution are either unsubstantiated or irrelevant to the issue of co-operation with the Prosecution. In terms of co-operation with Ms. Arbour since 1996 and his role as an intermediary between the Prosecution and Radovan Karadžić, Mr. Krajišnik only points to his own testimony during trial to this effect; therefore, the matter remains unsubstantiated even if, as Mr. Krajišnik claims, the Prosecution did not refute it.⁶⁹ Mr. Krajišnik's statement that he secured funds for Radovan Karadžić's defence is irrelevant to co-operation with the Prosecution. Mr. Krajišnik's argument that he appointed an RS representative to sit in The Hague and liaise with the Tribunal, upon the request of Ms. Arbour, is unsubstantiated. Mr. Krajišnik also leaves unsubstantiated the assertion that he convinced a number of other officials to give interviews to the Prosecution.⁷⁰ In terms of Mr. Krajišnik's 40 days of testimony, such testimony was given in his defence and therefore does not amount to co-operation with the Prosecution. In relation to the "mutual and good co-operation" between Mr. Krajišnik and the Prosecution during trial and appeal proceedings, this claim remains unsubstantiated and is directly contested by the Prosecution.

33. Finally, in terms of the turn-over of documentation to the Prosecution, Mr. Krajišnik refers to letters from the RS Minister Branko Petrić to Ms. Arbour⁷¹ and a letter from then Deputy Prosecutor of the Tribunal, Mr. Graham T. Blewitt, to Prime Minister Gojko Kličković,⁷² expressly indicating a willingness on the part of the RS Government to provide documentation, but such letters do not show that documentation was in fact turned over to the Prosecution or done so at the behest of Mr. Krajišnik. In terms of documents sent to the Prosecution relating to a "Decision on Strategic Goals" and access to the archives of the RS National Assembly, these claims remain unsubstantiated. The testimony of a witness, pointed to by Mr. Krajišnik, indicates that a document may have been given by that witness to the Prosecution in 1997, but this testimony, once again, does not show that this was done at the behest of Mr. Krajišnik.⁷³

34. Based upon all the foregoing, I consider the factor of co-operation to be a neutral one.

⁶⁹ Letter of 21 May 2011, citing *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, T. 24817- T. 24818 (29 May 2006).

⁷⁰ An interview given by Mr. Krajišnik to the Prosecution in 1997 would not constitute substantial co-operation with the Prosecution for the purposes of early release unless Mr. Krajišnik had directly connected such an interview with specific evidentiary material used by the Prosecution.

⁷¹ Letter of 21 May 2011 (Letter of Minister Branko Petrić to Louise Arbour dated 20 January 1997).

⁷² Letter of 21 May 2011 (Letter of Deputy Prosecutor Graham T. Blewitt to Prime Minister Gojko Kličković dated 29 October 1997).

⁷³ See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006, closed session, T. 22759-22760, T. 22771, T. 22787-22788, T. 22791 (10 April 2006).

5. Conclusion

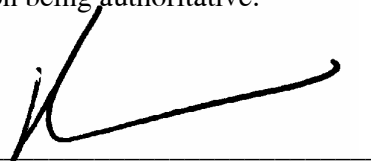
35. Taking all the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while Mr. Krajišnik has displayed some—albeit very limited—evidence of rehabilitation, there remain significant factors that weigh against granting him early release. Mr. Krajišnik's crimes are of a very high gravity, involving a widespread displacement of the non-Serb population, which caused great suffering. Moreover, in respect of the requirement that the President shall take into account the treatment of similarly-situated prisoners, the practice of the Tribunal is to consider the eligibility of a convicted person only after he has served two-thirds of his sentence; therefore, the fact that Mr. Krajišnik has only recently completed serving half of his sentence does not weigh in favour of his early release. I am therefore of the view that Mr. Krajišnik should not be granted early release.

36. I note that my colleagues unanimously share my view that Mr. Krajišnik should be denied early release.

E. Disposition

37. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 8(2) of the Enforcement Agreement, Mr. Momčilo Krajišnik is hereby DENIED early release.

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



Judge Patrick Robinson
President

Dated this eleventh day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]