



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-02-59-ES  
Date: 18 December 2013  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**Decision:** 18 December 2013

**PROSECUTOR**

v.

**DARKO MRĐA**

***PUBLIC REDACTED VERSION***

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**DECISION OF PRESIDENT ON EARLY RELEASE OF DARKO MRĐA**

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**Office of the Prosecutor:**

Mr. Serge Brammertz

**Mr. Darko Mrda**

**The Kingdom of Spain**

1. I, Theodor Meron, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal"), am seised of a note verbale from the Embassy of Spain to the Netherlands notifying me that Mr. Darko Mrda has been granted conditional release pursuant to Spanish law, pending approval by the Tribunal ("Note Verbale").<sup>1</sup> I consider the Note Verbale pursuant to Article 28 of the Statute of the Tribunal ("Statute"), Rules 124 and 125 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), and paragraph 2 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").<sup>2</sup>

**A. Background**

2. On 16 April 2002, Mrda was charged with (i) inhumane acts as crimes against humanity and (ii) murder as a violation of the laws or customs of war, based on his personal participation in a large-scale massacre of about 200 non-Serb civilian men from the Prijedor area in Bosnia-Herzegovina on 21 August 1992.<sup>3</sup> On 13 June 2002, Mrda was arrested in Prijedor, Bosnia-Herzegovina, and on 14 June 2002, he was transferred to the United Nations Detention Unit ("UNDU").<sup>4</sup>

3. At his initial appearance before the Tribunal on 17 June 2002, Mrda pleaded not guilty to all charges set forth in the indictment.<sup>5</sup> On 24 July 2003, Mrda entered into a plea agreement with the Prosecution, in which he agreed to plead guilty to counts 2 and 3 of the indictment "because he [was] in fact guilty and acknowledge[d] full responsibility for his actions".<sup>6</sup> The plea agreement expressly required Mrda to cooperate with the Prosecution.<sup>7</sup> At a hearing on the same date, Mrda pleaded guilty to: (i) murder, a violation of the laws or customs of war, pursuant to Article 3 of the

<sup>1</sup> See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 10 January 2013, transmitting Letter from the Embassy of Spain to the Netherlands to the Registrar, dated 20 December 2012 ("Note Verbale"). Attached to the Note Verbale were, *inter alia*, (i) a report from the General Secretariat of Penitentiary Institutions of the Spanish Ministry of the Interior to the Registrar, dated 28 November 2012 ("Interior Ministry Report"), accompanied by various decisions of the Spanish Central Court for Penitentiary Supervision granting Mrda sentence credits for work done while in prison; and (ii) the decision of the Spanish Central Court for Penitentiary Supervision, dated 30 November 2012 ("Decision of the Spanish Court"), granting Mrda conditional release for having completed two-thirds of his sentence under Spanish law, subject to the Tribunal's approval. While the original documents attached to the Note Verbale were transmitted in both Spanish and English, all references to the documents herein are to the English versions of these documents.

<sup>2</sup> IT/146/Rev.3, 16 September 2010.

<sup>3</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59-I, Indictment, 16 April 2002.

<sup>4</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59-S, Sentencing Judgement, 31 March 2004 ("Sentencing Judgement"), para. 2.

<sup>5</sup> Sentencing Judgement, para. 3.

<sup>6</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59, Plea Agreement, 24 July 2003 ("Plea Agreement"), para. 3.

<sup>7</sup> Plea Agreement, para. 10.

Statute (count 2); and (ii) other inhumane acts, a crime against humanity, pursuant to Article 5 of the Statute (count 3).<sup>8</sup> The Trial Chamber entered a finding of guilt for those two counts, after being satisfied that: Mrda's guilty plea was voluntary, informed, and unequivocal; there was a sufficient factual basis for the crimes; and Mrda had participated in the crimes.<sup>9</sup>

4. On 31 March 2004, the Trial Chamber sentenced Mrda to 17 years of imprisonment, with credit given for time served since his transfer to the Tribunal.<sup>10</sup>

5. On 6 May 2004, Spain was designated as the State in which Mrda was to serve his sentence.<sup>11</sup> Mrda was transferred to Spain on 23 November 2004.<sup>12</sup>

6. On 1 February 2011, then-President Robinson denied Mrda's application for early release.<sup>13</sup>

### B. The Note Verbale

7. I received the Note Verbale, along with the Interior Ministry Report, the Decision of the Spanish Court, and other accompanying materials, on 10 January 2013.<sup>14</sup> The Spanish authorities stated that Mrda has been granted sentence credits for the work he has carried out in prison and, as a result of these credits, he has completed two-thirds of his sentence under Spanish law. Accordingly, Mrda has become eligible for conditional release, which was granted to him on 30 November 2012, subject to the approval of the Tribunal.<sup>15</sup>

8. Pursuant to paragraphs 3 and 4 of the Practice Direction, the Registrar then obtained and, on 12 April 2013, provided me with: (i) a letter from the General Secretariat of Penitentiary Institutions of the Spanish Ministry of the Interior, dated 11 January 2013, transmitting (a) a report on Mrda's conduct in prison ("Behaviour Report"), (b) a report on the general conditions of his imprisonment, dated 3 January 2013 ("Report on Conditions of Imprisonment"), (c) a social report, dated 9 January 2013 ("Social Report"), and (d) a medical report, dated 9 January 2013 ("Medical Report"); (ii) a psychological report, dated 9 April 2013 ("Psychological Report"); (iii) a psychiatric report, dated 8 April 2013 ("Psychiatric Report"); and (iv) a memorandum from the

<sup>8</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59-PT, Transcript of Hearing of 24 July 2003 ("Transcript"), p. 87.

<sup>9</sup> Transcript, p. 87.

<sup>10</sup> Sentencing Judgement, para. 129.

<sup>11</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59-ES, Order Designating the State in which Darko Mrda is to Serve his Sentence, 6 May 2004 (issued confidentially, but made public pursuant to the Order Withdrawing the Confidential Status of Order Designating the State in which Darko Mrda is to Serve his Sentence, 29 October 2008).

<sup>12</sup> See Press Release CT/P.I.S./915e, Darko Mrda Transferred to Serve Sentence in Spain, 23 November 2004, available at <http://www.icty.org/sid/8335>.

<sup>13</sup> *Prosecutor v. Darko Mrda*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrda, 1 February 2011 (public redacted version) ("2011 Decision on Early Release"), paras 25-27.

<sup>14</sup> See *supra* n. 1.

<sup>15</sup> See Interior Ministry Report, pp. 2-3; Decision of the Spanish Court, pp. 5-6.

Office of the Prosecutor ("Prosecution"), dated 5 February 2013, containing the Prosecution's view on Mrda's cooperation with the Prosecution ("Prosecution Memorandum").<sup>16</sup>

9. By a memorandum dated 8 May 2013, the Registrar informed me that the above documentation received from the Spanish authorities and the Prosecution was forwarded to Mrda in the Bosnian/Croatian/Serbian language but that Mrda did not submit a response to these materials, as he was entitled to do under Article 5 of the Practice Direction.<sup>17</sup>

**C. Applicable Law**

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.

11. 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 a determination on pardon or commutation of sentence, the President shall take into account, *inter alia*, the gravity of the crime or 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.

12. Paragraph 1 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the Tribunal on the enforcement of sentences and, where practicable, at least forty-five days prior to the date of eligibility, notify the Tribunal accordingly.

13. Article 3(1) of the Agreement Between the United Nations and the Kingdom of Spain on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 28 March 2000 ("Enforcement Agreement"), provides that the Spanish authorities shall be bound by the duration of the sentence imposed by the Tribunal. Article 3(3) of the Enforcement

<sup>16</sup> See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 12 April 2013, and accompanying materials.

<sup>17</sup> See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 8 May 2013, para. 2.

Agreement further states that the conditions of imprisonment shall be governed by Spanish law, subject to supervision of the Tribunal. According to Articles 3(4), 3(5), and 8 of the Enforcement Agreement, if, pursuant to the applicable Spanish national law, the convicted person is eligible for pardon, commutation of sentence or early release, Spain shall notify the Registrar accordingly.

#### D. Discussion

14. 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. Eligibility under Spanish Law and Treatment of Similarly-situated Prisoners

15. According to the information received from the Spanish Ministry of the Interior, Mrda has completed two-thirds of his sentence under Spanish law because of sentence remissions granted to him for the work he performed in prison between 23 November 2004 and 25 June 2006.<sup>18</sup> In light of his eligibility, the Parole Board of the Madrid IV Penitentiary Establishment submitted a request for Mrda's release to the Spanish Central Court of Penitentiary Supervision, which granted Mrda conditional release on 30 November 2012.<sup>19</sup> The Decision of the Spanish Court, however, suspended Mrda's conditional release pending Tribunal approval.<sup>20</sup>

16. At the outset, I note that, according to Article 3 of the Enforcement Agreement, Spain is bound to respect the duration of the sentence of persons convicted by the Tribunal, as imposed by the Tribunal.<sup>21</sup> Indeed, according to the provisions of Article 3(4) and Article 8 of the Enforcement Agreement, the Spanish authorities must notify the Tribunal whenever a person convicted by the Tribunal serving his sentence in Spain becomes eligible for pardon, commutation of sentence, or early release. The Spanish authorities are not at liberty to approve such measures without first informing the President of the Tribunal, who retains the discretion to determine, in consultation with the Judges of the Tribunal, whether the suggested measures are appropriate, in light of the Tribunal's Statute, Rules, and practice.<sup>22</sup> The Decision of the Spanish Court indeed recognizes that any measure affecting the duration of Mrda's sentence must be approved by the Tribunal.<sup>23</sup>

<sup>18</sup> See Interior Ministry Report, pp. 2-3; Report on Conditions of Imprisonment.

<sup>19</sup> See Decision of the Spanish Court, pp. 5-6; Interior Ministry Report, p. 2.

<sup>20</sup> See Decision of the Spanish Court, pp. 5-6.

<sup>21</sup> See Enforcement Agreement, Article 3(1).

<sup>22</sup> See Enforcement Agreement, Articles 3(4), 3(5), and 8.

<sup>23</sup> See Decision of the Spanish Court, pp. 5-6.

17. The Tribunal's long-established practice is to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentences.<sup>24</sup> A convicted person having served two-thirds of his sentence is merely eligible for early release and not entitled to such release, which may only be granted by the President as a matter of discretion.<sup>25</sup>

18. In this case, Mrđa has not yet served two-thirds of the 17-year sentence imposed by the Tribunal. According to the calculations of the Registrar and the UNDU, Mrđa will complete two-thirds of his original sentence on 10 October 2013. Pursuant to Rule 125 of the Rules, which requires me to take into account the treatment of similarly situated prisoners, I am of the view that the time that Mrđa has served for his crimes does not militate in favour of his early release.

## 2. Gravity of Crimes

19. The gravity of the crimes to which Mrđa pleaded guilty is very high. I note that Mrđa's plea agreement contained the following factual basis for his crimes:

On 21 August 1992, Mr. Mrđa was a member of the Prijedor Police "Intervention Squad". On this day, Mr. Mrđa, in his official capacity as a police officer, participated in escorting an organised convoy of Muslim or non-Serb civilians from Tukovi and the Trnopolje camp in Prijedor towards the municipality of Travnik. The convoy consisted of buses and trucks loaded with civilians.

At a location on the road along the Ilomska River, between Skender Vakuf and Mt. Vlašić, the convoy stopped. At this location, Mr. Mrđa and other members of the Intervention Squad actively implemented orders to separate military-aged men from the rest of the convoy, including the personal selection of men by Mr. Mrđa with the awareness and expectation that these men would be murdered. A large number of men, estimated in excess of 200, were loaded into two buses.

Mr. Mrđa and the other members of the Intervention Squad took the separated men in the two buses to Koričanske Stijene. The men from one bus were ordered off the bus, escorted to the side of the road above a deep ravine, ordered to kneel, and then shot and killed. The men from the other bus were taken off in smaller groups of two or three and then shot and killed. Together with the other members of the Intervention Squad, Mr. Mrđa personally and directly participated in the unloading, guarding, escorting, shooting, and killing of the unarmed men at Koričanske Stijene. Except for twelve men who survived the massacre, all of the men from the two buses were murdered.<sup>26</sup>

20. In deciding upon Mrđa's sentence, the Trial Chamber assessed the gravity of the crimes and aggravating and mitigating circumstances. In determining the gravity of the crimes, the Trial Chamber considered the scope and general nature of the offences committed, the role played by Mrđa, and the impact of the crimes upon the victims and their families.<sup>27</sup> The Trial Chamber

<sup>24</sup> See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 8 April 2013 ("*Tarčulovski Decision*"), para. 17, and authorities cited therein; 2011 Decision on Early Release, para. 15, and authorities cited therein.

<sup>25</sup> *Tarčulovski Decision*, para. 17.

<sup>26</sup> Sentencing Judgement, para. 10.

<sup>27</sup> Sentencing Judgement, para. 21.

concluded that “the sentence should reflect all of the cruelty and inhumanity of Darko Mrđa’s direct participation in the shooting of around 200 civilians, of which all but 12 were killed”.<sup>28</sup>

21. Following previous practice, I am of the view that the high gravity of the crimes for which Mrđa was convicted weighs against his early release.

### 3. Demonstration of Rehabilitation

22. Rule 125 of the Rules provides that the President of the Tribunal shall take into account a prisoner’s demonstration of rehabilitation in determining whether pardon or commutation is appropriate. In addressing the convicted person’s rehabilitation, paragraph 3(b) of the Practice Direction states that the Registrar shall

request reports and observations from the relevant authorities in the enforcing State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

23. The Interior Ministry Report recommends Mrđa’s release. According to the Interior Ministry Report, Mrđa’s “progress with regard to the rehabilitation programme and the activities in which he participates has been positive”, and in the view of the “specialists who deal with” him, “he is ready to lead a normal social life in his environment so that continuing to keep him under the current penitentiary regime would only amount to continuing to fulfil solely the retributive aspect of the sentence.”<sup>29</sup>

24. The Behaviour Report acknowledges that Mrđa has continued to behave in accordance with the prison rules and to carry out his occupational and sports activities.<sup>30</sup> The Behaviour Report states that [REDACTED].<sup>31</sup> Furthermore, on the issue of Mrđa’s conduct, the previous decision on early release issued by then-President Robinson referred to a minor disciplinary sanction imposed in 2010 and a sanction for serious misconduct, imposed in January 2010 and subsequently revoked.<sup>32</sup> The then-President concluded that Mrđa demonstrated “generally good behaviour while serving his sentence”.<sup>33</sup>

<sup>28</sup> Sentencing Judgement, para. 42.

<sup>29</sup> Interior Ministry Report, p. 3.

<sup>30</sup> See Behaviour Report.

<sup>31</sup> See Behaviour Report.

<sup>32</sup> 2011 Decision on Early Release, para. 19.

<sup>33</sup> 2011 Decision on Early Release, para. 19.

25. According to the Social Report, Mrđa maintains good relations with his family, even though he has not received any family visits and last saw his family in October 2002.<sup>34</sup>

26. As far as Mrđa's medical condition is concerned, [REDACTED]<sup>35</sup> [REDACTED]<sup>36</sup> According to the Psychological Report, [REDACTED]<sup>37</sup> [REDACTED]<sup>38</sup> [REDACTED]<sup>39</sup>

27. Based upon the foregoing, I am of the view that Mrđa has demonstrated signs of rehabilitation, which, in my opinion, militate in favour of his early release

#### 4. Co-operation with the Prosecution

28. Rule 125 of the Rules states that the President of the Tribunal shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any cooperation that the convicted person has provided to the Prosecution and the significance thereof.

29. According to the Prosecution, [REDACTED].<sup>40</sup> [REDACTED]<sup>41</sup>

30. I first note that the entry of a guilty plea by an accused person pursuant to a plea agreement with the Prosecution constitutes cooperation with the Prosecution, due to the impact of such a plea on the efficient administration of justice.<sup>42</sup> [REDACTED].<sup>43</sup> [REDACTED]<sup>44</sup> In conclusion, [REDACTED].

#### 5. Conclusion

31. In light of the above, and having considered the factors identified in Rule 125 of the Rules, as well as all relevant information on the record and the views of my Colleagues, I am of the view

<sup>34</sup> See Social Report.

<sup>35</sup> Medical Report.

<sup>36</sup> Psychological Report, p. 2.

<sup>37</sup> Psychological Report, p. 2.

<sup>38</sup> Psychological Report, p. 3.

<sup>39</sup> Psychiatric Report, p. 1.

<sup>40</sup> Prosecution Memorandum, para. 2.

<sup>41</sup> Prosecution Memorandum, para. 3.

<sup>42</sup> See *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012, para. 21. The entry of a guilty plea has long been considered as a mitigating factor in determining a sentence because "a guilty plea 'saves the Tribunal the effort of a lengthy investigation and trial'". See *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003, para. 231, and authorities cited therein.

<sup>43</sup> Prosecution Memorandum, paras 2-3.

<sup>44</sup> See *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Public Redacted Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009, paras 7-8, 13-15; *Prosecutor v. Dragan Obrenović*, IT-02-60/2-ES, Public Redacted Decision of President on Early Release of Dragan Obrenović, 29 February 2012, paras 25-28.



that, despite the severe gravity of his crimes (to which Mrđa pleaded guilty and for which he continues to admit responsibility), Mrđa should be granted early release, but should only be released upon completion of the two-thirds of his sentence on 10 October 2013. Mrđa has shown signs of rehabilitation and, most importantly, has provided substantial cooperation to the Prosecution, a factor that justifies release upon the completion of the two-thirds of the sentence.

32. I note that my colleagues unanimously share my view that Mrđa should be granted early release, but differ as to the date on which Mrđa should be released, with the majority favouring his release upon completion of the two-thirds of his sentence in October 2013.

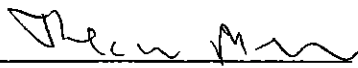
#### **E. Disposition**

33. 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 3 of the Enforcement Agreement, I hereby **ORDER** that Darko Mrđa be **GRANTED** early release on 10 October 2013.

34. The Registrar is hereby **DIRECTED** to inform the Spanish 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.

Done this 18th day of December 2013,  
At The Hague,  
The Netherlands.

  
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Judge Theodor Meron  
President

[Seal of the Tribunal]