



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-95-9
Date: 3 November 2004
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. Hans Holthuis

Decision of: 3 November 2004

**DECISION OF THE PRESIDENT ON THE APPLICATION
FOR PARDON OR COMMUTATION OF SENTENCE
OF MIROSLAV TADIĆ**

Counsel for the Prosecution:

Mr. Gramsci di Fazio
Mr. Philip Weiner
Mr. David Re

Counsel for the Applicant:

Mr. Novak Lukić
Mr. Dragan Krgović

1. On 5 October 2004, Miroslav Tadić filed an application before me for early release pursuant to Rules 124 and 125 of the Rules of Evidence and Procedure (“Rules”).¹ In June 2004, I dismissed an application for early release filed by Tadić in May 2004, on the ground that Tadić had not served two-thirds of his sentence and there existed no special circumstances to justify departure from the normal practice of enforcement states, and this Tribunal, to consider eligibility for early release once two-thirds of a sentence had been served.² In the application now filed, Tadić states that he would have served two thirds of his sentence on 27 October 2004.

2. Article 28 of the Statute of the International Tribunal, Rules 123 of the Rules and Article 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”),³ provide that when a convicted person becomes eligible for early release under the law of the State in which he is serving his sentence, the enforcing State shall notify the Tribunal accordingly. Tadić, however, is not serving his sentence in one of the States signatory to an agreement with the International Tribunal on the enforcement of sentences but remains in the United Nations Detention Unit (“UNDU”).

3. In decisions I issued on the early release of Tihomir Blaškić and Simo Zarić, I noted that the Practice Direction does not specify the early release procedure when a convicted person is serving his sentence at the UNDU in the Netherlands. However, I concluded in both of those cases that the same procedure should be followed when a request is made by a convicted person from the UNDU.⁴ Accordingly, that procedure will apply to the request of Tadić.

4. Miroslav Tadić was convicted and sentenced by Trial Chamber II on 17 October 2003 to eight years of imprisonment, and is currently serving his sentence at the United Nations Detention Unit (“UNDU”).⁵ In his application Mr. Tadić says that two thirds of his sentence

¹ Application for Early Release of Mr Miroslav Tadić, 5 October 2004 (“Application”).

² Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 24 June 2004.

³ It/146, 7 April 1999.

⁴ Order of the President on the Application for the Early Release of Tihomir Blaškić, 29 July 2004; Order of the President for the Early Release of Simo Zarić, 21 January 2004.

⁵ Miroslav Tadić’s Application for Pardon or Commutation of Sentence, filed confidential in part on 26 May 2004.

is completed on 27 October 2004, and he is therefore eligible for pardon or commutation of sentence. In support of his application for early release Mr Tadić points to his voluntary surrender to the Tribunal on 14 February 1998, the fact that during his trial he testified on his own behalf and expressed genuine remorse and that both of these factors were considered by the Trial Chamber to be mitigative of his sentence. Mr Tadić also points to his poor health and his good conduct while in detention of the UNDU.⁶

5. In a separate document filed in further support of his application, Mr Tadić says that before the war he was one of the most prominent figures in Bosanski Samac. During his trial, prosecution and defence witnesses testified to his good character and behaviour and he has a broad circle of friends amongst all three nationalities. He says that it is likely to expect that after his return to the community he originated from he will lead a normal life with his family. He expresses his “sincere opinion” that his return to the community where he lived “will not cause any disturbance, and that his complete re-socialisation in the community is expected”.⁷

6. Pursuant to Article 2 of the Practice Direction, the Deputy Registrar has provided me with reports obtained from the UNDU and the Office of the Prosecutor. The UNDU Commanding Officer reports Mr Tadić’s behaviour as exemplary. He has shown respect for staff and management, abided by all rules of detention, participated in the prisoner programme fully and integrated well with his fellow inmates. He has maintained close contact with his family and they have been supportive of him. He has required some medical treatment but is generally in good health for his age. He has no psychiatric problems.

7. The Office of the Prosecutor reports that Mr Tadić has not been approached, and has not provided any co-operation to it. The Office of the Prosecutor provides no further comment on Mr Tadić’s application for early release.

8. On 25 October, Mr Tadić filed his response to the Report of the Registrar pursuant to Article 4 of the Practice Direction.⁸ In that response, Mr Tadić addresses the report of the Office of the Prosecutor and its statement that it had no contact with him and that he did not

⁶ Application for the Early Release of Mr Miroslav Tadić, 5 October 2004.

⁷ Application for the Early Release of Mr Miroslav Tadić, 5 October 2004.

⁸ Written Submission of Mr Miroslav Tadić on Reports From the Registry (*sic*) and the Office of the Prosecutor Regarding his Early Release, 25 October 2004 (“Response”).

cooperate with it. He says that he was the first accused to surrender voluntarily to the Tribunal on 14 February 1998, and that “[h]is act of voluntary surrender was followed by statements of the highest officials of the Tribunal, United Nations and other high world officials”.⁹ Prior to his voluntary surrender he learnt from the press that he had been indicted and contacted the Office of the Prosecutor, agreeing to give two telephone interviews. Immediately following his surrender, he gave two further interviews to the Investigator of the Office of the Prosecutor.¹⁰ He claims further that, in 1996 he provided the Office of the Prosecutor with more than thirty documents, which were later admitted into evidence by the Prosecutor.¹¹ Finally, he says that he chose to give evidence in his trial, was subject to more than one week of cross examination, and that the Trial Chamber acknowledged his cooperation with the Prosecution and included it as a mitigating factor when determining his sentence.¹²

9. Pursuant to Article 5 of the Practice Direction, I have consulted Judge Mumba, the only member of the sentencing Trial Chamber still in service at the Tribunal and the members of the Bureau. Both Judge Mumba and the Bureau members find no impediment to the release of Mr Tadić.

10. I have considered Rule 125, incorporated by reference in Article 7 of the Practice Direction, which enumerates some of the factors to be taken into account when examining an application for early release, such as the gravity of the offence, demonstration of rehabilitation, any substantial co-operation with the Office of the Prosecutor, treatment of similarly situated prisoners, and further criteria identified in prior orders and decisions relating to early release.

11. On the basis of the foregoing, I have determined pursuant to Rule 124, Rule 125 and Article 7 of the Practice Direction that, in the particular circumstances of this case, the early release application of Mr Tadić should be granted. The Registrar is directed to transmit this decision to the Commanding Officer of the UNDU and provision is to be made for the early release of Mr Tadić as soon as is reasonably practicable.

⁹ Response, pars 2-4.

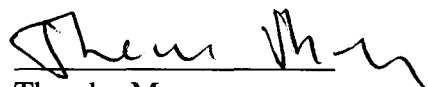
¹⁰ Response, pars 4-5.

¹¹ Response, pars 6-7.

¹² Response, pars 8-9.

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

Done this 3rd day of November 2004,
At The Hague,
The Netherlands.



Theodor Meron
President of the International Tribunal

[Seal of the Tribunal]