



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: 2 July 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 2 July 2013

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION OF THE 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. 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 seized of a request for early release from Mr. Momčilo Krajišnik (Krajišnik), submitted to me in the form of a letter on 24 January 2013 (“Request”).¹ I consider this Request 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”).²

I. BACKGROUND

2. On 3 April 2000, Krajišnik was arrested in Sarajevo and transferred to the United Nations Detention Unit in The Hague.³ At his initial appearance, Krajišnik pled not guilty to all counts.⁴ On 27 September 2006, Trial Chamber I of the Tribunal convicted Krajišnik of persecution, extermination, murder, deportation, and inhumane acts (forced transfer) as crimes against humanity.⁵ Krajišnik was found responsible 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 criminal acts.⁶ He was sentenced to twenty-seven years of imprisonment and given credit for time served since 3 April 2000.⁷

3. On 17 March 2009, the Appeals Chamber reversed (i) in their entirety, Krajišnik’s convictions for extermination and murder as crimes against humanity, and (ii) in part, his convictions for persecution, deportation, and forced transfer as crimes against humanity.⁸ The Appeals Chamber

¹ Letter from Krajišnik to Judge Theodor Meron, President, dated 24 January 2013. While Krajišnik’s correspondence was originally submitted in B/C/S, all references herein are to the Tribunal’s English translations of these documents.

² IT/146/Rev.3, 16 September 2010. I also note that on 14 January 2013, the Ministry of Justice of the United Kingdom of Great Britain and Northern Ireland (“UK Ministry of Justice”) informed the Registry of the Tribunal (“Registrar”) that Krajišnik would be eligible for automatic early release for having served two-thirds of his sentence, under the law of the United Kingdom of Great Britain and Northern Ireland (“UK”), as of 15 June 2013. See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 14 January 2013, transmitting Letter from the UK Ministry of Justice to the Registrar, dated 14 January 2013 (“Notification of Eligibility”). The Notification of Eligibility was received in accordance with Rule 123 of the Rules and paragraph 1 of the Practice Direction.

³ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006 (“Trial Judgement”), para. 1206.

⁴ Trial Judgement, para. 1206.

⁵ Trial Judgement, para. 1182.

⁶ Trial Judgement, paras 1089-1090, 1122, 1124.

⁷ Trial Judgement, paras 1183-1184.

⁸ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009 (“Appeal Judgement”), paras 177, 283-284, 321, 820.

reduced Krajišnik's sentence to 20 years' imprisonment, subject to credit for time already served since 3 April 2000.⁹

4. On 24 April 2009, the UK was designated as the State in which Krajišnik was to serve his sentence.¹⁰ On 7 September 2009, Krajišnik was transferred to the UK to serve the remainder of his sentence.¹¹

5. Since his transfer to the UK, Krajišnik has been denied early release three times, in July 2010, July 2011, and November 2012.¹²

II. THE APPLICATION

6. The Request was filed after the Registrar informed Krajišnik about the Notification of Eligibility.¹³ Krajišnik reiterated his request for early release in a letter to me, dated 25 March 2013.¹⁴

7. Pursuant to paragraphs 3 and 4 of the Practice Direction, the Registrar obtained and provided me with (i) a Sentence Planning and Review Report from Krajišnik's offender supervisor, dated February 2013, which reported on Krajišnik's conduct in prison and the risk of his committing any crime if released into the community ("SPR Report"); (ii) a Note from the Forensic Mental Health Lead of the Usk prison, dated 22 February 2013, regarding Krajišnik's mental health ("Note on Mental Health"); and (iii) a memorandum from the Office of the Prosecutor ("Prosecution"), dated 5 February 2013, on Krajišnik's cooperation with the Prosecution.¹⁵

⁹ Appeal Judgement, paras 818-820.

¹⁰ Order Designating State in Which Momčilo Krajišnik is to Serve his Sentence, 24 April 2009, pp. 1-2.

¹¹ See Press Release, VE/MOW/PR1331e, Momčilo Krajišnik Transferred to the United Kingdom to Serve Sentence, 8 September 2009, available at: <http://www.icty.org/sid/10211>.

¹² See Decision of President on Early Release of Momčilo Krajišnik, 8 November 2012, para. 45 ("2012 Decision on Early Release"); Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011 ("2011 Decision on Early Release"), paras 1, 37; Decision of President on Early Release of Momčilo Krajiš[n]ik, 26 July 2010 ("2010 Decision on Early Release"), paras 1, 36.

¹³ See Request, p. 1.

¹⁴ See Letter from Krajišnik to Judge Theodor Meron, President, dated 25 March 2013 ("March Letter").

¹⁵ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 14 March 2013 ("Memorandum of 14 March 2013"), transmitting, (i) Letter from Christopher Binns, UK Ministry of Justice, to the Registrar, dated 8 March 2013, and the SPR Report, (ii) the Note on Mental Health; and (iii) Internal Memorandum from Ms. Michelle Jarvis, Senior Legal Adviser to the Prosecutor, to Mr. Martin Petrov, Chief, Office of the Registrar, dated 5 February 2013 ("Prosecution Memorandum").

8. On 4 April 2013, Mr. Simon Creighton (“Creighton”), a UK-based solicitor, submitted comments on the SPR Report on behalf of Krajišnik, pursuant to paragraph 5 of the Practice Direction.¹⁶

III. DISCUSSION

9. In coming to my decision upon whether it is appropriate to grant Krajišnik’s Request, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

A. 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(2) of 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

¹⁶ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 9 April 2013 (“Memorandum of 9 April 2013”), transmitting a response from Mr. Simon Creighton In the Matter of an Application for Early Release By: Momčilo Krajišnik, dated 4 April 2013 (“Response”).

Criminal Tribunal for the former Yugoslavia, dated 11 March 2004 (“Enforcement Agreement”), provides that the conditions of imprisonment shall be governed by the law of the UK, subject to the supervision of the Tribunal. Article 8 of the Enforcement Agreement provides, *inter alia*, that, following notification of eligibility for early release under UK law, the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate, and the Registrar shall inform the UK of the President’s determination accordingly.

B. Eligibility Under UK Law

14. The UK Ministry of Justice has informed the Registrar that, under UK law, Krajišnik would be eligible for automatic release from custody on 15 June 2013, having served two-thirds of his sentence at that time.¹⁷

15. I note, however, that even if Krajišnik has a statutory right to automatic early release under UK law upon completion of two-thirds of his sentence, that right is not enforceable before this Tribunal. The early release of persons convicted by the Tribunal falls exclusively within the discretion of the President of the Tribunal, pursuant to Rule 124 of the Rules and Article 8(2) of the Enforcement Agreement. The Notification of Eligibility recognises that Krajišnik would be entitled to automatic release from custody upon completion of the two-thirds of his sentence only if he “were a person convicted and sentenced in England and Wales”.¹⁸

C. Gravity of Crimes

16. The gravity of the crimes for which Krajišnik was convicted is very high. The Appeals Chamber reversed many of Krajišnik’s convictions but stated that the remaining convictions were amongst the most severe crimes known to humankind, the gravity of which required a severe and proportionate sentence.¹⁹ The sentence of 20 years imposed by the Appeals Chambers confirms that the crimes committed by Krajišnik were of a very high gravity.²⁰

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

¹⁷ See Notification of Eligibility.

¹⁸ See Notification of Eligibility.

¹⁹ Appeal Judgement, paras 799, 813.

²⁰ Appeal Judgement, para. 819.

D. Treatment of Similarly Situated Prisoners

18. It is the practice of the Tribunal to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentences.²¹ I note, however, that 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.²²

19. As of the date of this Decision, Krajišnik has already served more than thirteen years of his twenty-year sentence, including time spent in custody up to and including the date of sentencing.²³ However, Krajišnik will not have served two-thirds of his sentence until approximately 3 August 2013, and, thus, releasing him before that date would constitute a departure from the Tribunal's well-established practice.²⁴

20. I note that, pursuant to the Notification of Eligibility, the UK authorities suggest that Krajišnik will have served two-thirds of his sentence on 15 June 2013. However, in response to the Registrar's request to the UK authorities for further clarifications on this issue, the UK authorities have acknowledged that their calculation of the two-thirds of Krajišnik's sentence was erroneous. This acknowledgement provides more clarity, but I note that the duration of a sentence imposed by the Tribunal and the early release of a Tribunal convict are matters within the exclusive competence of the Tribunal.²⁵ In my view, based on past decisions on Krajišnik's early release,²⁶ the correct date at which Krajišnik will have served two-thirds of his sentence is 3 August 2013.

21. To avoid discrepancies in the treatment of similarly-situated prisoners, the President must, of course, take into account the established practice of the Tribunal to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentence. Yet it must be noted that the equal treatment factor is only one factor in the early release calculus and does not hold primacy over the other factors to be taken into account.

22. In light of the foregoing, I am of the view that this factor weighs against Krajišnik's eligibility for early release before 3 August 2013.

²¹ See 2011 Decision on Early Release, para. 21, n. 46, and authorities cited therein.

²² See 2012 Decision on Early Release, para. 23.

²³ See Trial Judgement, para. 1206. See also *ibid*, para. 1184.

²⁴ See 2012 Decision on Early Release, para. 24; 2011 Decision on Early Release, para. 22.

²⁵ See Articles 3(2) and 8 of the Enforcement Agreement.

²⁶ See Notification of Eligibility.

E. Demonstration of Rehabilitation

23. 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.

24. The SPR Report states that Krajišnik "could be termed as a model prisoner" and that since his arrival at the Usk prison, "he has behaved in an exemplary manner".²⁷ It notes that Krajišnik attends the prison's education department to improve his knowledge of the English language, is involved in a Bible study group, and "uses the gym to keep himself fit".²⁸ The SPR Report further notes that, upon release, Krajišnik wishes to return to his home in Pale, in Republika Srpska, Bosnia-Herzegovina, and work at his children's petrol station company.²⁹ According to the SPR Report, it is "difficult" to assess the risk Krajišnik would pose to society once released, due to, *inter alia*, Krajišnik's "continued denial of the offences".³⁰ The SPR Report suggests, however, that "the amount of time spent in custody and lack of contact with the political arena could be seen" as factors reducing the societal risk posed by Krajišnik.³¹ The SPR Report concludes that Krajišnik's length of time in prison and his age indicate that he could be "safely managed outside of the custodial environment, albeit with some measures in place to assist and support him with reintegration to his home society."³² The reporting officer recommends that "now would be an appropriate time to test Mr. Kraji[š]nik within his own community if permitted" because he has "shown he is prepared to follow rules and regimes".³³ Krajišnik's conduct in prison was similarly reported to be positive in connection with previous proceedings concerning his potential early release.³⁴

²⁷ SPR Report, para. 6.1.

²⁸ SPR Report, para. 6.2.

²⁹ SPR Report, para. 7.1.

³⁰ SPR Report, para. 8.1.

³¹ SPR Report, para. 8.1.

³² SPR Report, para. 11.1.

³³ SPR Report, para. 12.1.

³⁴ See 2012 Decision on Early Release, paras 31-32; 2011 Decision on Early Release, paras 24-25; 2010 Decision on Early Release, paras 21-22.

25. Furthermore, the Response states that Krajišnik has been “held for a considerable period of time in a category C prison”, “effectively the lowest security category of prison available to foreign individuals”, a fact that Krajišnik points to as evidence of his rehabilitation.³⁵

26. Moreover, in his March Letter, Krajišnik appears to acknowledge and accept the Tribunal’s final judgement in his case (even though he admits that he is actively collecting evidence in support of a request for a review of his conviction).³⁶ Krajišnik indeed states that he “accept[s] the judgement of the ICTY that” he is “guilty of the forcible transfer of the non-Serbian population, and for [him] this is the only one that exists at this moment.”³⁷ In his Request, Krajišnik also emphasizes that he stands “prepared to help seek reconciliation between the three peoples in” Bosnia-Herzegovina.³⁸

27. Finally, I note that, although paragraph 3(b) of the Practice Direction envisages psychiatric or psychological evaluations prepared by the prison authorities on a prisoner’s mental condition, no such reports have been submitted in this case.³⁹ No such reports had been submitted in prior proceedings concerning Krajišnik’s previous applications for early release either.⁴⁰ The absence of such materials here was due to the fact that Krajišnik neither sought to see a psychologist or a psychiatrist, nor was he referred to one by the prison authorities.⁴¹ As a result, I consider the absence of a psychiatric or psychological evaluation of Krajišnik’s mental condition to be a neutral factor.

28. Based upon the foregoing, I am of the view that Krajišnik, through his good behaviour during his detention, has demonstrated some rehabilitation, which militates in favour of his early release.

F. Substantial Cooperation with the Prosecution

29. 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. The Prosecution contends that Krajišnik did not cooperate with the Prosecution in the course of his trial, appeal or at

³⁵ Response, para. 6.

³⁶ March Letter, p. 6.

³⁷ March Letter, p. 6.

³⁸ Request, p. 3.

³⁹ See Memorandum of 14 March 2013, Note on Mental Health.

⁴⁰ See 2012 Decision on Early Release, para. 34; 2011 Decision on Early Release, para. 27; 2010 Decision on Early Release, para. 23.

⁴¹ See Memorandum of 14 March 2013, Note on Mental Health.

any point whilst serving his sentence.⁴² However, I note that there is no obligation on an accused or convicted person to cooperate with the Prosecution absent a plea agreement to do so, and I conclude that this factor should be of neutral weight here.⁴³

G. Request for Oral Hearing

30. I note that in the Response, Krajišnik reiterates his request for an oral hearing, which he also requested in the context of his 2012 early release application.⁴⁴

31. Paragraph 5 of the Practice Direction states that a convicted person “shall be given ten [...] days to examine the information [submitted to the Registrar by the Prosecution or the enforcement State], following which the President shall hear him or her either through written submissions or, alternatively, by video- or telephone-link.” Here, Krajišnik has been sufficiently heard through his extensive written submissions. Therefore, I am of the view that a video- or telephone-conference with Krajišnik (which, pursuant to paragraph 5 of the Practice Direction, shall only be permitted as an alternative to written submissions) is not necessary.

32. Accordingly, I recommend that Krajišnik’s present request for an oral hearing be denied.

H. Conclusion

33. 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, I am of the view that Krajišnik should not be released immediately but should be released soon after the completion of two-thirds of his sentence, on 3 August 2013. There is significant evidence that Krajišnik has been rehabilitated and that the risk of his committing a new crime once released is low; I am thus of the opinion that the rehabilitation factor should be counted in his favour. Also, by 3 August 2013, Krajišnik will have served two-thirds of his sentence, and the practice of the Tribunal is to consider the eligibility of a convicted person only after he has served two-thirds of the imposed sentence. Thus the need to take into account the treatment of similarly-situated persons weighs against his immediate early release, but favours his early release soon

⁴² Prosecution Memorandum, para. 2.

⁴³ Cf. *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011 (made public on 9 January 2012), para. 23.

⁴⁴ Response, para. 20. See also 2012 Decision on Early Release, paras 40-42.

after 3 August 2013. These factors undercut, in my view, the negative weight that must be given to the very high gravity of the crimes of which Krajišnik was convicted.

34. I note that my colleagues unanimously share the view that Krajišnik should be granted early release upon or after the completion of two-thirds of his sentence, even though they disagree as to the date of the release, with three Judges expressing a preference for setting the date of release *after* 3 August 2013, two Judges suggested release *on* 3 August 2013, and one Judge abstaining from indicating a clear preference as to the date of release.

35. In these circumstances, and taking into account the views of my colleagues, I consider that Krajišnik should be released on 1 September 2013.

IV. DISPOSITION

36. 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 of the Enforcement Agreement, I hereby **GRANT** the Request and **ORDER** that Krajišnik be released on 1 September 2013.

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

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

Done this 2nd day of July 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]