



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-96-23&23/1-ES
Date: 3 July 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 3 July 2013

PROSECUTOR

v.

RADOMIR KOVAČ

PUBLIC

**PUBLIC AND REDACTED VERSION OF THE 27 MARCH 2013
DECISION OF PRESIDENT ON EARLY RELEASE
OF RADOMIR KOVAČ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Radomir Kovač

The Kingdom of Norway

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 an application from Radomir Kovač (“Kovač”), dated 9 July 2012 (“Application”).¹ I consider the Application 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 22 February 2001, Trial Chamber II of the Tribunal (“Trial Chamber”) convicted Kovač pursuant to Article 7(1) of the Statute for crimes committed while he served as a member of a military unit in Foča. Specifically, Kovač was convicted of four counts of: enslavement as a crime against humanity, rape as a crime against humanity, rape as a violation of the laws or customs of war, and outrages upon personal dignity as a violation of the laws or customs of war.³ The Trial Chamber sentenced Kovač to 20 years of imprisonment.⁴

3. The Appeals Chamber affirmed Kovač’s convictions and his 20-year sentence on 12 June 2002.⁵ On 26 July 2002, Norway was designated as the state in which Kovač was to serve his sentence.⁶ Kovač was transferred to Norway on 28 November 2002.⁷

4. In a letter, dated 2 May 2011, Kovač filed an application for early release with the Norwegian authorities.⁸ On 12 June 2012, I denied the request for early release on the basis that

¹ Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 15 August 2012, *transmitting* application for early release from Kovač, dated 9 July 2012 (“Application”), including attachments. While the Application and its attachments were originally submitted in B/C/S, all references herein are to the Tribunal’s English translations of this document.

² IT/146/Rev.3, 16 September 2010.

³ *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T&IT-96-23/1-T, Judgement, 22 February 2001 (“Trial Judgement”), para. 886.

⁴ Trial Judgement, para. 880.

⁵ *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23&IT-96-23/1-A, Judgement, 12 June 2002 (“Appeal Judgement”), p. 126.

⁶ *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23&23/1-ES, Order Designating the State in which Radomir Kovač is to Serve his Prison Sentence, 31 July 2002 (confidential) (“Designation Order”). A public version of the Designation Order was filed on 9 April 2008.

⁷ International Criminal Tribunal for the former Yugoslavia, Press Release CVO/P.I.S./712e, “Radomir Kova[č] and Zoran Vukovi[ć] Transferred to Norway to serve Prison Sentences”, 28 November 2002.

⁸ Memorandum from John Hocking, Registrar, to Judge Patrick Robinson, President, dated 2 November 2011, *transmitting* application for early release from Kovač, dated 2 May 2011.

Kovač's crimes were of a high gravity and he had not at that time served two-thirds of his sentence.⁹

II. THE APPLICATION

5. Following receipt of the Application, I directed the Registrar on 15 August 2012 to undertake the steps prescribed by paragraph 3 of the Practice Direction, including inquiring with the Norwegian authorities whether the information they provided in connection with Kovač's 2011 Application was still valid.¹⁰ On 8 November 2012, the Registrar conveyed to me (i) a memorandum from the Office of the Prosecutor ("Prosecution"), dated 17 September 2012, regarding Kovač's cooperation with the Prosecution ("Prosecution Memorandum"); and (ii) a letter from the Norwegian Ministry of Justice and Public Security, dated 26 October 2012, conveying, *inter alia*, information on Kovač's eligibility for early release, his custodial behaviour, and his physical and mental condition while in detention ("Norwegian Letter").¹¹

6. The Prosecution Memorandum and the Norwegian Letter were provided to Kovač in B/C/S on 8 November 2012, in accordance with paragraph 4 of the Practice Direction.¹² Kovač submitted a written response to the materials on 19 November 2012, in accordance with paragraph 5 of the Practice Direction.¹³

III. APPLICABLE LAW

7. Article 28 of the Statute provides that if a convicted person is eligible for pardon or commutation of his sentence "pursuant to the applicable law of the State in which [the person] is imprisoned, [...] the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law."

8. Rule 124 of the Rules provides that the President, upon receipt of such a notification, shall determine, in consultation with the members of the Bureau and any permanent Judges of the

⁹ *Prosecutor v. Radomir Kovač*, Case No. IT-96-23&IT-96-23/1-ES, Decision of the President on Early Release of Radomir Kovač, 12 June 2012 (confidential), paras 17, 19, 29-30.

¹⁰ Memorandum from Judge Theodor Meron, President, to John Hocking, Registrar, dated 15 August 2012.

¹¹ Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 8 November 2012, transmitting (i) Memorandum from Michelle Jarvis, Senior Legal Advisor to the Prosecutor, to Martin Petrov, Chief of the Office of the Registrar, dated 17 September 2012; and (ii) Letter from the Royal Norwegian Ministry of Justice and Public Security to the Tribunal, dated 26 October 2012.

¹² Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 23 November 2012, transmitting letter from Radomir Kovač, Detainee, to Martin Petrov, Chief of the Office of the Registrar, dated 19 November 2012 ("Kovač Response").

¹³ Kovač Response. While the letter was originally submitted in B/C/S, all references herein are to the Tribunal's English translation of this document.

sentencing Chamber who remain Judges of the Tribunal, whether pardon or commutation is appropriate.

9. Rule 125 of the Rules provides that the President shall take into account, *inter alia*, the following factors when making a determination on pardon or commutation of a sentence: (i) the gravity of the crimes for which the prisoner was convicted, (ii) the treatment of similarly-situated prisoners, (iii) the prisoner's demonstration of rehabilitation, and (iv) any substantial cooperation of the prisoner with the Prosecution.

10. 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 45 days prior to the date of eligibility, notify the Tribunal accordingly.

11. Paragraph 2 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release if he or she believes that he or she is eligible therefor. It further provides that when such a petition is made, the procedures in the Practice Direction shall apply *mutatis mutandis*, and the Tribunal shall request the enforcing State to inform the Tribunal as to whether the convicted person is eligible for pardon, commutation of sentence, or early release under the domestic law of the enforcing State.

12. Paragraph 8 of the Practice Direction provides that the President may consider "any other information" he finds relevant, in addition to the factors set forth in Rule 125 of the Rules.

13. Article 3(2) of the Agreement between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 24 April 1998 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Norwegian law, subject to the supervision of the Tribunal.¹⁴ Articles 3(4) and 8(2) of the Enforcement Agreement provide that the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate.¹⁵

¹⁴ Enforcement Agreement, art. 3(2).

¹⁵ Enforcement Agreement, arts. 3(4), 8(2).

IV. DISCUSSION

1. Eligibility under Norwegian Law

14. According to section 42 of the Norwegian Act relating to the Execution of Sentences, the correctional services may release a convicted person on probation when he or she has served two-thirds of the sentence.¹⁶ The correctional services shall decide against releasing a convicted person, where, based on an overall assessment, the circumstances are not in favour of such a release.¹⁷ The correctional services will attach particular weight to the convicted person's conduct while serving the sentence and to whether there is reason to assume that the convicted person will commit criminal acts once released.¹⁸

15. Pursuant to this provision, the Governor of Telemark Prison, where Kovač is currently serving his sentence, recommends that Kovač be released upon serving two-thirds of his sentence.¹⁹ Kovač served two-thirds of his sentence on 3 December 2012.

2. Gravity of the Crimes

16. The Trial Chamber convicted Kovač of four counts of: enslavement and rape as crimes against humanity, and rape and outrages upon personal dignity as a violation of the laws or customs of war.²⁰ Specifically, the Trial Chamber found that Kovač kept four girls, namely Witnesses FWS-75, FWS-87, A.B., and A.S., in his apartment, preventing them from leaving.²¹ Kovač abused all four girls and repeatedly raped three of them.²² Kovač "reserved" one of the four girls for himself "and raped her almost every night he spent at the apartment."²³ Moreover, Kovač invited his friends to the apartment and at times allowed them to rape one of the girls.²⁴

17. While the girls were in the apartment, Kovač completely neglected their hygiene and diet.²⁵ Kovač gave two of the four girls to other Serb soldiers, who abused them for more than three weeks before returning them to Kovač.²⁶ Kovač subsequently sold three of the four girls.²⁷ The Trial Chamber found that the sexual exploitation of two of the four girls, and in particular their sale,

¹⁶ Norwegian Letter, p. 1.

¹⁷ Norwegian Letter, p. 1.

¹⁸ Norwegian Letter, p. 1.

¹⁹ Norwegian Letter, p. 1.

²⁰ Trial Judgement, para. 886.

²¹ Trial Judgement, paras 587, 748-750.

²² Trial Judgement, paras 587, 749, 767-769, 772-773, 780-781.

²³ Trial Judgement, paras 761.

²⁴ Trial Judgement, paras 587, 757-758, 761, 764.

²⁵ Trial Judgement, para. 752.

²⁶ Trial Judgement, paras 754-755.

²⁷ Trial Judgement, paras 587, 756, 759, 779.

constituted “a particularly degrading attack on their dignity.”²⁸ The Trial Chamber further held that the relationship between Kovač and the girl he “reserved” for himself “was not one of love as the Defence suggested, but rather one of cruel opportunism on Kovač’s part, of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old.”²⁹ Lastly, the Trial Chamber held that Kovač’s conduct was “wanton in abusing and humiliating the four women and in exercising his *de facto* power of ownership as it pleased him. [...] For all practical purposes, he possessed them, owned them and had complete control over their fate, and he treated them as his property.”³⁰

18. Based on the foregoing, I am of the view that the high gravity of the crimes for which Kovač was convicted is a factor that weighs against granting the Application for early release.

3. Treatment of Similarly-Situated Prisoners

19. It is the practice of the Tribunal to consider a convicted person eligible for early release when he has served at least two-thirds of his sentence.³¹ 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. Kovač has served two-thirds of his sentence as of 3 December 2012.

20. Kovač draws attention to the case of Dragan Obrenović (“Obrenović”), who was released approximately six months before he served two-thirds of his sentence in Norway.³² However, I observe that the factors that contributed to Obrenović’s early release are considerably different than the circumstances surrounding Kovač’s Application. Obrenović was convicted on the basis of a plea agreement and agreed to testify in other proceedings before the Tribunal, including trials related to Srebrenica.³³ His early release was granted in part because of this “exceptionally substantial cooperation” with the Prosecution.³⁴ Furthermore, Obrenović’s criminal responsibility was derived primarily from his responsibilities as a commander and his failure to have prevented his

²⁸ Trial Judgement, para. 756.

²⁹ Trial Judgement, para. 762.

³⁰ Trial Judgement, para. 781.

³¹ See, e.g., *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of the President on Early Release of Momčilo Krajišnik, 8 November 2012 (public with confidential annex) (“*Krajišnik* Early Release Decision”), para. 23; *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011, para. 12; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011, para. 13; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 22 August 2011, para. 12; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 18 July 2011, para. 22.

³² Application, p. 2.

³³ *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003 (“*Obrenović* Judgement”), paras 10, 12-20.

³⁴ *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012 (public redacted), para. 28.

subordinates from committing heinous crimes.³⁵ In contrast, Kovač directly perpetrated the crimes for which he was convicted.

21. In light of the foregoing, I do not consider Kovač's reliance on Obrenović's case, where release was ordered prior to the two-thirds service of sentence, to be relevant.³⁶ Nonetheless, taking account of the practice of the Tribunal to allow early release at two-thirds of the sentence, this is a factor that weighs in favour of Kovač's release.³⁷

4. Demonstration of Rehabilitation

22. In his Application, Kovač states that he "most sincerely regret[s] all the acts for which [he has] been convicted".³⁸ Moreover, Kovač notes that he has been a "model worker" and passed the "furniture-maker carpentry exam with the best possible grade."³⁹ While serving his sentence, Kovač submits, he has "fully accepted the counsel of [his] superiors and acted in accordance with all the laws and regulations on serving a sentence."⁴⁰ Kovač asserts that he has "completely changed [his] social values" and has "educated [himself] in this respect."⁴¹ He is convinced that the "rehabilitation measures" have been entirely successful in his case, and that he will never allow himself "to be in a situation again to commit any sort of crime."⁴² According to Kovač, he has not committed any "serious offences" while serving his sentence in Norway. Kovač notes that he had one "minor argument with a guard" but was only given a verbal warning as a result.⁴³

23. In support of his rehabilitation, Kovač included a letter from the Department of Adult Education in his Application ("DAE Letter"), in which the Head of the Department expresses "complete satisfaction" concerning Kovač's efforts at the school and the woodworking shop.⁴⁴ The DAE Letter further states that Kovač "acts responsibly and politely, and has followed the instructions given at all times."⁴⁵

24. Kovač further attached to his Application an "Amendment to Petition for Conditional Release" by the Telemark Prison, dated 24 May 2012 ("Petition").⁴⁶ The Petition states that Kovač

³⁵ *Obrenović* Judgement, paras 38-40, 78, 81-82, 85-90.

³⁶ See *Krajišnik* Early Release Decision, paras 27-28.

³⁷ See *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Public Redacted Version of the 28 June 2012 Decision of the President on Early Release of Haradin Bala, 9 January 2013, para. 39.

³⁸ Application, p. 1.

³⁹ Application, p. 1. See also Application, p. 2.

⁴⁰ Application, p. 2.

⁴¹ Application, p. 2.

⁴² Application, p. 2.

⁴³ Application, p. 2.

⁴⁴ Application, including DAE Letter, dated 24 May 2012, p. 4.

⁴⁵ DAE Letter, p. 4.

⁴⁶ I observe that the Petition reflects that it was last updated on 7 February 2004, while at the same time containing a signature by a prison officer dated 24 May 2012. Petition, p. 11. Notwithstanding this ambiguity, I note that the

would live with his wife in Foča upon his release, and that he wants to run his father's farm or start a carpentry workshop when he returns home.⁴⁷ The Petition further notes that Kovač has regular telephone contact with his wife, though it had been four years since his wife last visited him.⁴⁸ The Petition states that Kovač was disciplined for having displayed threatening behaviour towards an officer, but it does not reference any further altercations or issues.⁴⁹ The Petition also observes that there have been female inmates at the prison, to whom Kovač displayed no problematic behaviour.⁵⁰ Further, the Petition notes that Kovač "is very organised and structured" and can be characterised as "institutionalised".⁵¹

25. The Petition further notes that Kovač, in conversation with inmates, has said that he feels that he was treated unjustly by the Tribunal.⁵² He admits to having committed crimes, but "not to the extent he was imprisoned for."⁵³ According to the Petition, it is therefore "very difficult to conclude whether there is a change in relation to what he was sentenced for and the examination of the truth in recognition of this."⁵⁴

26. I observe that the Petition reflects that it was last updated on 7 February 2004, while at the same time it contains a signature by a prison officer dated 24 May 2012.⁵⁵ It is therefore unclear, on its face, whether the Petition is applicable to the time period after 7 February 2004 or has been updated since. Accordingly, I am of the view that the Petition should be treated as outdated, and hence of little relevance to the current analysis, given the apparent ambiguity on the face of the document.

27. According to the Norwegian Letter, the Governor of the Telemark Prison has observed no remarkable changes in Kovač's behaviour or health since his last application for release.⁵⁶ Kovač was sanctioned by form of a written reprimand for having saved some painkillers that he got from a doctor for later use.⁵⁷ The Norwegian Letter explains that this is not considered a serious offence

Norwegian Letter states that no remarkable changes occurred with respect Kovač's rehabilitation since his last application for early release in 2011. Norwegian Letter, p. 2.

⁴⁷ Petition, p. 6.

⁴⁸ Petition, p. 7.

⁴⁹ Petition, p. 8. *See also* Petition, p. 10.

⁵⁰ Petition, p. 8.

⁵¹ Petition, p. 8 (internal quotations omitted).

⁵² Petition, p. 10.

⁵³ Petition, p. 10.

⁵⁴ Petition, p. 10.

⁵⁵ Petition, p. 11.

⁵⁶ Norwegian Letter, p. 2.

⁵⁷ Norwegian Letter, p. 2.

and would normally not affect a decision on early release.⁵⁸ The Norwegian Letter further notes that Kovač has been on leave of absence from the prison on six occasions, which “all went well.”⁵⁹

28. Considering the above, I am of the view that Kovač’s expressions of regret for the crimes he has committed, his positive and productive behaviour vis-à-vis his work whilst imprisoned and his successful leaves of absence from the Telemark Prison on six occasions are positive indicators of Kovač’s rehabilitation. However, I do note with concern the doubt raised by the Petition with respect to Kovač’s full acceptance of his responsibility for the crimes for which he was convicted. Nevertheless, given that the majority of the factors discussed are positive indicators of Kovač’s rehabilitation, I consider that this factor weighs in favour of his early release.

5. Cooperation with the Prosecution

29. The Prosecution Memorandum states that Kovač did not cooperate with the Prosecution in the course of his trial or during his appeal.⁶⁰ Similarly, Kovač has not cooperated with the Prosecution at any point while serving his sentence in Norway.⁶¹ Kovač responded that the Prosecution never sought his cooperation, nor asked him to admit to his guilt.⁶²

30. An accused or convicted person is not obliged to cooperate with the Prosecution. Furthermore, there is nothing on the record to indicate that the Prosecution sought Kovač’s cooperation at any stage of the proceedings against him or after his conviction. I therefore consider the absence of assistance to the Prosecution to be a neutral factor and, accordingly, irrelevant to the overall assessment of Kovač’s Application for early release.

6. Additional Considerations

31. According to the Governor of the Telemark Prison, there has been no remarkable change in Kovač’s health condition since his last application.⁶³ [REDACTED].⁶⁴ [REDACTED].⁶⁵ [REDACTED].⁶⁶ [REDACTED].⁶⁷ [REDACTED].⁶⁸

⁵⁸ Norwegian Letter, p. 2.

⁵⁹ Norwegian Letter, p. 2.

⁶⁰ Prosecution Memorandum, para. 2.

⁶¹ Prosecution Memorandum, para. 2.

⁶² Kovač Response.

⁶³ Norwegian Letter, p. 2.

⁶⁴ Norwegian Letter, p. 2. *See also* Application, *attaching* Report from the Telemark Prison, Skien Section, Health Department, Medical Statement regarding the health of the patient, dated 6 June 2012 (“Medical Report”), p. 1; Petition, p. 7.

⁶⁵ Norwegian Letter, p. 2.

⁶⁶ Norwegian Letter, p. 2.

⁶⁷ Medical Report, p. 1.

⁶⁸ Medical Report, p. 1.

32. Kovač notes that he has not seen his parents for over 10 years and would like a chance to see them before they die.⁶⁹ He states that they do not have the means to travel and are not healthy enough to visit him.⁷⁰ Similarly, Kovač has not seen his wife in the last four years because she does not have the means to pay for the travel and accommodation.⁷¹

33. [REDACTED]. Similarly, I do not find the fact that he has not seen his wife or parents for a number of years since he has been incarcerated, sufficient reason to weigh in favour of Kovač's early release.⁷² Accordingly, I am of the view that the additional considerations raised are a neutral factor.

7. Conclusion

34. I conclude that there are two factors which weigh in favour of Kovač's early release. Specifically, Kovač has served two-thirds of his sentence as of 3 December 2012 and there exist positive indicators of his rehabilitation while in prison. I recall that it is the Tribunal's practice to consider detainees eligible for early release once they have served two-thirds of their sentence, but it does not confer any entitlement to early release upon a detainee. Nevertheless, past practice demonstrates that the completion of two-thirds of a detainee's sentence weighs strongly in favour of his early release.

35. In light of the above, and having considered the factors identified in Rule 125 of the Rules, the views of the relevant Judges, [REDACTED], as well as all relevant information on the record, I am of the view that Kovač's Application for early release should be granted, albeit not with immediate effect. Specifically, Kovač shall be released on 30 June 2013, provided that he continues to exhibit good conduct as a detainee and that he does not become the subject of any disciplinary proceedings while serving the remainder of his sentence in Norway. I further direct the Registrar to request a report from the Norwegian authorities with respect to Kovač's conduct at the prison during this period, if any change has occurred in respect thereto, to be submitted on or before 30 June 2013. [REDACTED].

⁶⁹ Application, p. 1. *See also* Petition, p. 7.

⁷⁰ Application, p. 1.

⁷¹ Application, p. 1.

⁷² *See Prosecutor v. Mile Mrkšić*, Case No. IT-95-13/1-ES.2, Decision on Mile Mrkšić's Motion for Provisional Release, 20 July 2012 (confidential), para. 12. [REDACTED].

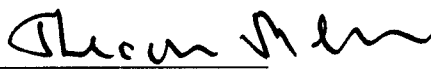
V. DISPOSITION

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(2) of the Enforcement Agreement, Radomir Kovač is hereby **GRANTED** early release, effective 31 May 2013.

37. The Registrar is hereby **DIRECTED** to inform the Norwegian authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction. Moreover, the Registrar is **DIRECTED** to request the Norwegian authorities to submit a report on or before 31 May 2013 with respect to Kovač's conduct during this period, if any change has occurred in respect thereto.

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

Done this 3rd day of July 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]