



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 Nos.: IT-98-30/1-ES
Date: 23 April 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 23 April 2010

PROSECUTOR

V.

MLAĐO RADIĆ

PUBLIC

**DECISION OF PRESIDENT ON APPLICATION FOR PARDON OR
COMMUTATION OF SENTENCE OF MLAĐO RADIĆ**

Office of the Prosecutor
Mr. Serge Brammertz

Republic of France

Mr. Mlado Radić

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 French authorities that Mr. Mlādo Radić is eligible for conditional release under the French Criminal Code.

I. Background

2. On 19 January 2010, the Registry informed me of a notification received from the Office of Angès Tanguy, Penalty Enforcement Judge, within the *Tribunal de Grand Instance d’Arras*, France, pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence (“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 The notification states that Mr. Mlādo Radić became eligible for conditional release under the French Criminal Code when the length of his sentence served became at least equal to the length of the remaining sentence to be served and that he filed an application for early release on 13 May 2009.²

3. Mr. Radić previously applied for a reduction of his sentence, which was rejected in the decision of the President of the Tribunal of 22 June 2007.³

4. On 18 February 2010, pursuant to paragraph 3(c) of the Practice Direction, the Registry provided me with the report of the Prosecution on the co-operation that Mr. Radić has provided to the Office of the Prosecutor.⁴

5. All of the above materials were furnished to Mr. Radić, who initially indicated to the Registry that he did not intend to make any submission in relation to his early release and had no issues or comments to make in relation to this matter. Mr. Radić then obtained a French legal aid lawyer to make submissions on his application for early release. Mr. Radić now submits that: (a) the gravity of the offences for which he was convicted cannot be considered in relation to his early release; (b) the President is bound by French domestic law in relation to Mr. Radić’s eligibility for

¹ IT/146/Rev.2, 1 September 2009.

² Memorandum from the Registry to the President, 19 January 2010 (letter from Penalty Enforcement Judge, 15 December 2009; application for release on parole by Mr. Radić).

³ *Prosecutor v. Mlādo Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007. Confidentiality was removed by *Prosecutor v. Mlādo Radić*, Case No. IT-98-30/1-ES, Order Withdrawing Confidential Status of the 22 June 2007 Decision of the President on Commutation of Sentence of Mlādo Radić, 9 October 2008.

⁴ Memorandum from the Registry to the President, 18 February 2010.

parole at mid-sentence and it would be unlawful for the President to consider that other prisoners are only eligible at two-thirds; and (c) he has demonstrated rehabilitation.⁵

II. Proceedings before the Tribunal

6. On 3 September 1998, an amended indictment (“Indictment”) was issued against Mr. Radić, Miroslav Kvočka, Milojica Kos, and Zoran Žigić.⁶ The Indictment alleged that Mr. Radić, as a shift commander, committed several counts of crimes against humanity and violations of the laws or customs of war.⁷ The Prosecution subsequently submitted four amended indictments.⁸ Mr. Radić pleaded not guilty in relation to all counts, and the case proceeded to trial.⁹

7. In its Judgement of 2 November 2001, the Trial Chamber convicted Mr. Radić of (a) one count of persecution as a crime against humanity under Article 5 of the Statute in the form of murder; torture and beating; sexual assault and rape; harassment, humiliation, and psychological abuse; and confinement in inhumane conditions; (b) one count of murder, as a violation of the laws or customs of war under Article 3 of the Statute; and (c) two counts of torture as a violation of the laws or customs of war.¹⁰ These crimes were committed in the Omarska camp in Prijedor Municipality, Republika Srpska, beginning circa 28 May 1992 until the end of August 1992.¹¹ The camp was set up to detain persons suspected of collaborating with the opposition to the Serb takeover of Prijedor.¹² The Trial Chamber found that Mr. Radić was criminally responsible for these crimes as a co-perpetrator in a joint criminal enterprise.¹³ He was sentenced to twenty years of imprisonment, and credit was given for time already spent in detention.¹⁴

⁵ Letter from Legal Aid Lawyer to Deputy Registrar, 4 March 2010. On 29 March 2010, Mr. Radić submitted a letter to me in which he endorsed the letter from his legal aid lawyer to the Deputy Registrar of 4 March 2010 and reiterated many of the arguments set forth therein. Letter to the President from Mr. Radić, 29 March 2010.

⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-I, Amended Indictment, 3 September 1998 (“Indictment”).

⁷ Indictment, paras 20, 28–34.

⁸ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-PT, Amended Indictment, 31 May 1999; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-PT, Amended Indictment, 17 June 1999; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Amended Indictment, 29 August 2000; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Amended Indictment, 26 October 2000.

⁹ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001, para. 785 (“Trial Judgement”).

¹⁰ *Ibid.* para. 761.

¹¹ *Ibid.* paras 512, 571.

¹² *Ibid.* para. 2.

¹³ *Ibid.* para. 578.

¹⁴ *Ibid.* paras 763, 767.

8. On 28 February 2005, the Appeals Chamber affirmed the above convictions.¹⁵ Mr. Radić was given credit for time already served since 9 April 1998.¹⁶

9. On 4 October 2005, France was designated as the state in which Mr. Radić was to serve his sentence.¹⁷

III. Discussion

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. 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 this determination, 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 cooperation of the prisoner with the Prosecution.

11. In coming to my decision upon whether pardon or commutation is appropriate, I have consulted the Judges of the Bureau and the Judges of the sentencing Chambers who remain Judges of the Tribunal.

12. In respect of the time that Mr. Radić has spent in detention, the Penalty Enforcement Judge on 23 December 2009 notified the Registry as follows:

[Mr. Radić] has been incarcerated in France since 15 November 2005 and was in detention on remand from 8 April 1998 to 15 November 2005, a total of 7 years, 7 months and 8 days, in the Netherlands. Presently, his prison sentence is scheduled to be completed on 7 April 2018. Having served more than his remaining sentence, he is now legally eligible for release on parole pursuant to the provisions of the French Criminal Code.

In other words, Mr. Radić has served more than half of his sentence and is thus eligible for early release under domestic French law. The majority of persons convicted by the Tribunal are serving

¹⁵ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, para. 699 ("Appeal Judgement").

¹⁶ Trial Judgement, paras 767, 769.

¹⁷ *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Order Designating the State in Which Mlado Radić is to Serve his Prison Sentence, 4 October 2005.

their sentences in countries where they become eligible for early release only after two-thirds of their sentences have been served. Therefore, taking into account the treatment of similarly situated prisoners, the amount of time that Mr. Radić has served does not militate in favour of his early release.

13. Mr. Radić is incorrect when he asserts that I am bound by French domestic law in relation to his eligibility for parole at mid-sentence and that it would be unlawful for me to consider that other prisoners are only eligible at two-thirds. On the contrary, Article 27 of the Statute provides that “imprisonment shall be in accordance with the applicable law of the State concerned, *subject to the supervision of the International Tribunal*” (emphasis added) and Rule 125 of the Rules expressly requires me to take into account the treatment of similarly situated prisoners.

14. I note that Mr. Radić will have served two-thirds of his sentence on approximately 9 August 2011.

15. In respect of the gravity of Mr. Radić’s crimes, I find it instructive to quote the Trial Judgement (footnotes omitted):

571. The Trial Chamber has already found the following in regards to Radić:

(a) that he was aware of the abusive treatment and conditions endured by the non-Serbs detained in Omarska prison camp;

(b) that he continued working in the camp for nearly three months, the entirety of the camp’s existence;

(c) that the crimes alleged against Radić in the Amended Indictment were committed in Omarska during the time that he was employed in the camp;

(d) that Radić’s participation as a guard shift leader played a crucial role in the efficient and effective functioning of the camp, and his participation was significant, making him liable as a participant in the joint criminal enterprise of Omarska camp;

(e) that guards on Radić’s shift committed numerous heinous crimes against detainees and he is also responsible for his active participation in or silent encouragement of the crimes committed in his presence or with his tacit approval;

(f) that Radić physically perpetrated crimes of sexual violence against females detained in the camp; and

(g) that Radić was aware of the persecutory nature of the crimes committed against non-Serbs detained in the camp and, based upon his knowing and substantial participation in the system of persecution pervading Omarska camp, Radić had the intent to discriminate against the non-Serbs detained in the camp.

[...]

575. The Trial Chamber has found that Radić played a substantial role in the functioning of Omarska camp as a guard shift leader. He remained at the camp for its entire duration never

missing a single shift, guard's [sic] on his shift were notoriously brutal and he played a role in orchestrating the abuses, and he personally committed crimes of sexual violence against female detainees. Radić is thus a co-perpetrator of the joint criminal enterprise.

576. Radić is charged with torture (count 16) and outrages upon personal dignity (count 17) as violations of the laws or customs of war under Article 3 of the Statute, based on the rapes and other forms of sexual violence committed in Omarska camp.

[...]

578. In sum, the Trial Chamber finds Radić guilty as a co-perpetrator of the following crimes committed as part of the joint criminal enterprise: persecution (count 1) under Article 5 of the Statute; and murder (count 5) and torture (counts 9 and 16) under Article 3 of the Statute.

I also recall that the Trial Chamber found as follows:

538. The Trial Chamber has received a substantial amount of credible and consistent evidence that a large number of crimes were committed by guards on Radić's shift. It is clear to the Trial Chamber that these guards perpetrated a wide range of abuses and mistreatment against the detainees, including murder and torture, and that Radić, as their shift leader, never exercised his authority to stop the guards from committing such crimes. Indeed, his failure to intervene gave the guards a strong message of approving of their behaviour. Given his position of authority over the guards, his non-intervention condoned, encouraged, and contributed to the crime's commission and continuance.

[...]

545. The Trial Chamber finds that Radić, in his role as a guard shift leader, was exposed on a daily basis to killings, tortures, and other abuses committed in Omarska camp against non-Serb detainees. He knew that crimes of extreme physical and mental violence were routinely committed in the camp for discriminatory purposes. Radić was directly responsible for a number of these abuses.

[...]

740. The Trial Chamber notes that Radić is convicted of committing rape and other forms of sexual violence against several women detained in the camp. He grossly abused his position of power in the camp by forcing or coercing the women into sexual activity for his own pathetic gain.

741. The Trial Chamber heard many witnesses recalling the excessive and deliberate cruelty of the guards on Radić's shift. By contrast to his colleagues Kvočka and Prcać, professional policemen like him who were asked to serve in the camp and who ignored and tolerated the crimes, by all indications Radić relished and actively encouraged criminal activity in the camp. He appeared to regard the abuses as entertainment.

The Appeals Chamber dismissed Mr. Radić's appeal in its entirety.

16. The crimes for which Mr. Radić was convicted are of a very high gravity, which is a factor that weighs against his early release.

17. In coming to this conclusion, I note that Mr. Radić's submission that the gravity of the offences for which he was convicted cannot be considered in relation to his early release is directly

at odds with the plain language of Rule 125 of the Rules, which mandates that I shall take into account the gravity of the crimes for which he was convicted.

18. 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. The Penalty Enforcement Judge states that Mr. Radić “has exhibited good behaviour towards the prison staff and has not been the subject of any disciplinary measure”. The report of the detention facility indicates that, upon his arrival, Mr. Radić expressed his desire to work and was assigned to the workshops as a packer and as an operator. He is not enrolled in the education centre and is not taking French courses, although his understanding of French is very limited. The Penalty Enforcement Judge indicates that Mr. Radić “continues denying the facts for which he was convicted, particularly those of rape and sexual assault, and regularly makes racist remarks when interviewed by the Social Integration and Probation Counsellor”. I also note that, during these interviews, Mr. Radić has stated his belief that “the shelling of Sarajevo was organised by the UN so that the Serbs would be accused”. In the opinion of the Social Integration and Probation Counsellor,

[t]he prevailing impression Mr RADIĆ leaves is of a passive person with respect to the evolution of his detention. While in detention he does not take the time to reflect more profoundly on his actions.

Given the above stated facts, it seems without doubt that Mr RADIĆ has not taken in the meaning of his sentence. We are therefore not favourable to Mr RADIĆ’s application of release on parole.

19. Mr. Radić argues that he has demonstrated rehabilitation because he is 58 years old, his state of health is precarious, he is being harassed in prison by other inmates, his detention conditions are inhumane, his conduct during detention has been exemplary, and, if released, he would reside with his son. I do not consider age, in and of itself, to have a bearing on rehabilitation. In addition, I do not regard 58 years to be an advanced age, particularly without any clear indication as to how it detrimentally affects one’s health or mental well being.¹⁸ Similarly, ill-health is generally not relevant to a prisoner’s rehabilitation *per se*.¹⁹ While I acknowledge that Mr. Radić has some health difficulties, there is no evidence that he is receiving inadequate treatment at the Bapaume Detention Centre. I also note that Mr. Radić argues that his harassment by other prisoners has led the detention centre management to place him in isolation for more than

¹⁸ Cf. *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & IT-40/1-ES, confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 11; *Prosecutor v. Pavle Strugar*, IT-01-42-ES, confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Pavle Strugar, 16 January 2009, paras 11–12.

¹⁹ Cf. *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-ES, confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac, 9 July 2009, para. 20.

nine months, for his own security, which has resulted in his inability to take weekly walks, to go to the canteen or wash areas if other prisoners are present, to work, or to have social activity. The purported harassment that Mr. Radić is experiencing at the hands of other inmates, as well as the purported effect upon his conditions of detention, does not go to the issue of his rehabilitation; however, I am concerned about these allegations and will take steps with the appropriate authorities to ensure that Mr. Radić's concerns in this regard are properly addressed. I have taken into account the reports of the Penalty Enforcement Judge that Mr. Radić has displayed good behaviour towards the prison staff, has not been the subject of any disciplinary measure, and has worked as a packer and as an operator in the Detention Center's workshop. Finally, despite the fact that Mr. Radić intends to reside with his son in the event that he is released, I note that his Social Integration and Probation Counsellor nevertheless did not recommend his release, despite having taken this fact into account.

20. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement state regarding the mental 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 125.²⁰ According to the submission by the Penalty Enforcement Judge, Mr. Radić has not received psychological counselling due to the language barrier.²¹ Based upon this information, as well as the information within the letter from the Penalty Enforcement Judge to the Public Prosecutor of Arras, 3 June 2009, and the report by Social Integration and Probation Counsellor of Bapaume Detention Centre, 5 August 2009, I did not find it productive to request from the French authorities any psychiatric or psychological evaluations prepared on the mental health of the convicted person during the period of incarceration. However, I do share the concerns expressed by some of my colleagues about the lack of psychological support available to Mr. Radić in the Bapaume Detention Centre and the need for detailed reports about Mr. Radić's psychological state, particularly in regard to the "racist comments" he has made to his Social Integration and Probation Counsellor. I intend to request the Registrar to raise these issues with the appropriate authorities.

²⁰ *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & IT-40/1-ES, confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 11.

²¹ The report states, "Given the language barrier he has no psychological counselling. There are no psychologists who speak Serbian and Mr. RADIĆ has no English or German." Memorandum from the Registry to the President, 19 January 2010 (letter from Penalty Enforcement Judge to Public Prosecutor of Arras, 3 June 2009; report by Social Integration and Probation Counsellor of Bapaume Detention Centre, 5 August 2009). This information would seem to imply that counselling is available in English and German, in addition to French, but that Mr. Radić does not speak any of these languages.

21. I note that a previous application for early release was denied by my predecessor. On 22 June 2007, the President denied Mr. Radić's request for early release based, in part, upon a finding that he had not demonstrated clear signs of rehabilitation. The President's decision stated, "While his behaviour in detention has generally been good, this is outweighed by his denial of having committed rape and sexual assault, which the French Penalty Enforcement Judge also found to be of concern".²² While the Penalty Enforcement Judge states that Mr. Radić has made "racist remarks", there is no more detail or substantiation of this representation in the materials furnished to the Tribunal. I therefore find it difficult to rely upon this information in regard to Mr. Radić's demonstration of rehabilitation. In respect of the fact that Mr. Radić continues to deny the facts for which he was convicted, particularly those of rape and sexual assault, I cannot conclude that Mr. Radić's failure to take responsibility for his crimes or failure to express remorse is necessarily a determinative factor in relation to whether he has demonstrated rehabilitation. On the other hand, I—like my predecessor—also find that there is little to no evidence that Mr. Radić has shown clear signs of rehabilitation, other than his good behaviour in detention. I also give weight to the assessment of the Social Integration and Probation Counsellor that Mr. Radić "has not taken in the meaning of his sentence" and that he should not be granted release. I therefore will treat, on the basis of the present information before me, Mr. Radić's demonstration of rehabilitation as a neutral factor.

22. 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. According to the Prosecution report, the Prosecution has neither sought nor received co-operation from Mr. Radić in other cases.²³ Thus, I consider the factor of co-operation with the Prosecution to be a neutral one.

23. I note that my colleagues unanimously share my view that Mr. Radić's application for early release should be denied, which was also the view of Mr. Radić's Social Integration and Probation Counsellor at the Bapaume Detention Centre.

24. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am of the view that Mr. Radić should not be granted early release.

²² *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007, para. 15.

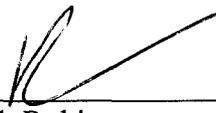
²³ Memorandum from the Registry to the President, 18 February 2010.

IV. Disposition

25. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, and paragraphs 8 and 11 of the Practice Direction, Mlađo Radić is hereby DENIED early release.

26. The Registrar is hereby DIRECTED to inform the French 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.



Judge Patrick Robinson
President

Dated this twenty-third day of April 2010
At The Hague
The Netherlands

[Seal of the Tribunal]