

**UNITED  
NATIONS**



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-98-30/1-ES

Date: 9 January 2013

Original: English

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**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**Decision of: 9 January 2013**

**PROSECUTOR**

**v.**

**MLAĐO RADIĆ**

***PUBLIC***

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**PUBLIC REDACTED VERSION OF 13 FEBRUARY 2012  
DECISION OF THE PRESIDENT ON  
EARLY RELEASE OF MLAĐO RADIĆ**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for the Mr. Mlado Radić:**

Mr. Toma Fila

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 (“International Tribunal”), am seised of “Mlado Radić’s Request for Early Release” (“Request”), filed on 14 June 2011 pursuant to Article 28 of the Statute of the International Tribunal (“Statute”), Rules 124 and 125 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) and paragraph 2 of the relevant Practice Direction.<sup>1</sup>

### A. Background

2. The initial indictment against Mlado Radić (“Radić”) and 18 co-accused was confirmed on 13 February 1995.<sup>2</sup> The indictment was subsequently amended three times.<sup>3</sup> The final amended indictment (“Indictment”) charged Radić with several counts of crimes against humanity and violations of the laws or customs of war.<sup>4</sup> Radić pleaded not guilty in relation to all counts.<sup>5</sup>

3. On 2 November 2001, the Trial Chamber convicted Radić, under Article 7(1) of the Statute as a co-perpetrator participating in a joint criminal enterprise, of four counts: persecution as a crime against humanity for murder, torture and beating, sexual assault and rape, harassment, humiliation and psychological abuse, and confinement in inhumane conditions; murder as a violation of the laws or customs of war; and two counts of torture as a violation of the laws or customs of war.<sup>6</sup> Radić was sentenced to 20 years’ imprisonment<sup>7</sup> with credit for time served since 8 April 1998.<sup>8</sup>

4. The Appeals Chamber dismissed Radić’s appeal and affirmed his sentence.<sup>9</sup> Radić was transferred to France to serve the remainder of his sentence.<sup>10</sup>

<sup>1</sup> 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, IT/146/Rev.3, 16 September 2010 (“Practice Direction”).

<sup>2</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (“Trial Judgement”), para. 784.

<sup>3</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-I, Corrigendum to Order Granting Leave to File an Amended Indictment and Confirming the Amended Indictment, 12 November 1998; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-PT, Amended Indictment, 31 May 1999; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Amended Indictment, 26 October 2000 (“Indictment”). See also Trial Judgement, paras 785-786.

<sup>4</sup> Indictment, paras 22, 24-25, 30-31, 33-36, 38-40, 42.

<sup>5</sup> *Prosecutor v. Meakić et al.*, Public Transcript of a Hearing, 14 April 1998, T. 49.

<sup>6</sup> Trial Judgement, paras 578 and 761.

<sup>7</sup> Trial Judgement, para. 763.

<sup>8</sup> Trial Judgement, paras 767 and 769.

<sup>9</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“Appeal Judgement”), para. 699.

<sup>10</sup> *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 (confidential).

## **B. The Request**

5. Radić seeks early release from prison, having served two-thirds of his sentence as of 9 August 2011.<sup>11</sup> In support of his Request, Radić further submits that he was eligible for early release under French law after serving one-half of his sentence.<sup>12</sup>

6. On 16 June 2011, then President Robinson (“President Robinson”) directed the Registrar of the International Tribunal (“Registry”) to request relevant reports and observations from the French authorities and the Office of the Prosecutor (“OTP”) pursuant to paragraphs 3(b) and (c) of the Practice Direction.<sup>13</sup> [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>14</sup> On 14 December 2011, the Registry provided me with a report from the French authorities regarding, *inter alia*, Radić’s eligibility for conditional release under French law and a psychological evaluation of Radić (“Psychological Evaluation”).<sup>15</sup>

7. The Registry forwarded the above information to Radić on 19 December 2011. On 29 December 2011, counsel for Radić responded to this information, pursuant to paragraph 5 of the Practice Direction.<sup>16</sup> Radić also responded in a letter dated 29 December 2011.<sup>17</sup>

## **C. Applicable Law**

8. 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 International 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 mirrors Article 28, 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

<sup>11</sup> Request, para. 4.

<sup>12</sup> Request, para. 4, *citing Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, 23 April 2010 (“Decision of 23 April 2010”), para. 12.

<sup>13</sup> Memorandum from President Patrick Robinson to the Registrar, Mr. John Hocking, 16 June 2011.

<sup>14</sup> Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 23 November 2011, transmitting *confidential* Letter from the French Embassy in The Hague to the Registrar, Mr. John Hocking, 14 November 2011 and Memorandum from the Prosecutor, Mr. Serge Brammertz, 13 July 2011.

<sup>15</sup> Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 14 December 2011, transmitting Letter from the Ministry of Justice, 29 November 2011 and Psychological Evaluation of Mlado Radić, 3 November 2011.

<sup>16</sup> *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Submission on Registry Letter of 19 December 2011, 29 December 2011.

<sup>17</sup> Letter from Mr. Mlado Radić to President Patrick Robinson, 29 December 2011.

International Tribunal, whether pardon or commutation of sentence is appropriate. Rule 125 of the Rules provides that, in determining whether pardon or commutation is appropriate, the President shall take into account, *inter alia*: (i) the gravity of the crime or 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 OTP.

9. 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. When such a petition is made, the procedures in the Practice Direction shall apply *mutatis mutandis*.

10. Article 3(2) of the Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia ("Enforcement Agreement") provides that the conditions of imprisonment shall be governed by French law, subject to the supervision of the International Tribunal.<sup>18</sup> Article 3(4) provides that where the President determines, in consultation with the Judges of the International Tribunal, that early release is appropriate, the Registrar shall inform France of the President's determination.<sup>19</sup>

#### D. Discussion

11. In coming to my decision regarding 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 International Tribunal, pursuant to Rule 124 of the Rules.

##### 1. Eligibility under French Law

12. In a letter to the Registry dated 15 December 2009, relating to a previous application for early release by Radić, the French authorities indicated that Radić was eligible for early release under French law, having served more than half of his sentence.<sup>20</sup> In the letter dated 29 November

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<sup>18</sup> Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 25 February 2000 ("Enforcement Agreement"), Article 3(2).

<sup>19</sup> Enforcement Agreement, Article 3(4).

<sup>20</sup> See Decision of 23 April 2010, paras 2 and 12 (citing Memorandum from the Registry to the President, 19 January 2010, transmitting letter from Penalty Enforcement Judge, 15 December 2009).

2011, the French authorities explained that Radić has been eligible for conditional release under French law since 7 April 2008.<sup>21</sup>

## 2. Treatment of Similarly-Situated Prisoners

13. Radić served 13 years and four months of his 20 year sentence, or two-thirds of his sentence, as of 9 August 2011. It is the practice of the International Tribunal to consider convicted persons eligible for early release when they have served at least two-thirds of their sentences.<sup>22</sup> I note that a convicted person reaching two-thirds of his or her sentence is merely eligible for early release and not entitled to such release. Taking into account the treatment of similarly-situated prisoners, I am of the view that the amount of time Radić has served for his crimes weighs in favour of his early release.

## 3. Gravity of the Crimes

14. The events underlying Radić's conviction took place between May and August 1992 in Omarska camp, located in the Prijedor region of Bosnia and Herzegovina.<sup>23</sup> The Trial Chamber found that Omarska camp functioned as a joint criminal enterprise.<sup>24</sup> In finding Radić liable as a co-perpetrator in the joint criminal enterprise, the Trial Chamber noted that as a guard shift leader at Omarska, Radić "played a substantial role in the functioning of the camp". It further noted that:

He remained at the camp for its entire duration never missing a single shift, guard's 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.<sup>25</sup>

With regard to the crimes committed by the guards on Radić's shift, the Trial Chamber elaborated 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.<sup>26</sup>

<sup>21</sup> Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 14 December 2011, transmitting Letter from the Ministry of Justice, 29 November 2011 and Psychological Evaluation of Mlado Radić, 3 November 2011.

<sup>22</sup> See e.g., *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. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 21 October 2011, para. 15; *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. Iviča Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Iviča Rajić, 22 August 2011, para. 12; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of the President on Early Release of Milomir Stakić, 15 July 2011, para. 22.

<sup>23</sup> Trial Judgement, paras 11-15, 512.

<sup>24</sup> Trial Judgement, para. 319.

<sup>25</sup> Trial Judgement, para. 575.

<sup>26</sup> Trial Judgement, para. 538.

15. Considering the foregoing, I am of the view that the crimes for which Radić was convicted are of high gravity and that this factor weighs against his early release.

4. Demonstration of Rehabilitation

16. With regard to the convicted person's rehabilitation, paragraph 3(b) of the Practice Direction provides that the Registry shall request reports and observations from the relevant authorities in the enforcement State as to, *inter alia*, the behaviour of the convicted person during his or her period of incarceration and any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration.

17. In the Request, Radić states that early release is warranted because he "has shown good behaviour towards the prison staff and has not been subject to any disciplinary measure".<sup>27</sup> He also states that "his behavior and his attitude while incarcerated demonstrate that the process of his rehabilitation was successful and that he is capable to restart his live [*sic*] out of the prison".<sup>28</sup> He further states that "he is not in the position to present additional arguments [...] mostly because of the language barrier which constantly impedes his communication within the prison facility and outside world".<sup>29</sup>

18. [REDACTED]

19. [REDACTED]<sup>30</sup>

20. [REDACTED]

<sup>27</sup> Request, para. 6.

<sup>28</sup> Request, para. 8.

<sup>29</sup> Request, para. 9.

<sup>30</sup> Psychological Evaluation, p. 5.

[Redacted] 31

21. [Redacted] 32

22. [Redacted] 33  
[Redacted] 34

23. A letter from the French authorities states that Radić has not demonstrated an effort to reintegrate. In this regard, it notes that Radić does not participate in professional or educational activities offered in detention, including French lessons, which renders it more difficult to interact with him.<sup>35</sup>

24. In response to the information from the French authorities, Radić’s counsel states that his rehabilitation has been impeded by the following factors: he is serving his sentence in a country where he faces language and cultural differences; his educational background and prior life experience have not provided him with the necessary tools to deal with his situation; his separation from his family; and security risks. He explains that these factors combined have had an alienating effect on Radić, and that according to Radić, the French authorities have failed to take them into

<sup>31</sup> Psychological Evaluation, p. 6.

<sup>32</sup> Psychological Evaluation, p. 6.

<sup>33</sup> Psychological Evaluation, p. 6.

<sup>34</sup> Psychological Evaluation, p. 7.

<sup>35</sup> Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 14 December 2011, transmitting Letter from the Ministry of Justice, 29 November 2011 and Psychological Evaluation of Mlado Radić, 3 November 2011.

account when evaluating his rehabilitation.<sup>36</sup> He further maintains that Radić “has shown a sufficient level of regret” for the victims of the war in the former Yugoslavia.<sup>37</sup>

25. Radić responds that he is aware of his sentence, the crimes for which he has been convicted and that he finds it “difficult to come to terms with the fact that many people [...] suffered torture, such as abuse, harassment, mistreatment, belittling, etc.” He further states that he finds it particularly difficult if he contributed to such crimes through his presence, and that he is “prepared to apologise to each and every one and to express my sincerest remorse for everything”.<sup>38</sup>

26. Based on the information provided, I think it is obvious that Radić has not been able to adjust to his conditions of detention in France. I am concerned that his rehabilitation has been impeded by his inability to come to terms with his environment. That said, I am equally concerned that there is little to no evidence of actual rehabilitation other than his response to the materials provided to him, in which he expresses his regret for the suffering of the victims. Based upon the foregoing, I consider Radić’s demonstration of rehabilitation to be a neutral factor in my assessment of his suitability for early release.

#### 5. Cooperation with the OTP

27. Paragraph 3(c) of the Practice Direction states that the Registry shall request the OTP to submit a detailed report of any co-operation that the convicted person has provided to the OTP and the significance thereof. According to the OTP, [REDACTED]  
[REDACTED].<sup>39</sup> I note that there is no obligation on an accused or convicted person to cooperate with the OTP absent a plea agreement to do so. I therefore place neither positive nor negative weight on this factor.

#### 6. Previous Requests for Early Release

28. 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.

29. I note that two previous applications for pardon or commutation of sentence were denied by my predecessors. First, on 22 June 2007, upon notification by the French authorities that Radić was

<sup>36</sup> *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Submission on Registry Letter of 19 December 2011, 29 December 2011, para. 4.

<sup>37</sup> *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Submission on Registry Letter of 19 December 2011, 29 December 2011, para. 5.

<sup>38</sup> Letter from Mr. Mlado Radić to President Patrick Robinson, 29 December 2011.

<sup>39</sup> Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 23 November 2011, transmitting confidential letter from the French Embassy in The Hague to the Registrar, Mr. John Hocking, 14 November 2011 and Memorandum from the Prosecutor, Mr. Serge Brammertz, 13 July 2011.



eligible under French law for a sentence-reduction credit of 41 months,<sup>40</sup> the President denied the application upon finding, *inter alia*, that although Radić's behaviour in detention had generally been good, he had not demonstrated clear signs of rehabilitation."<sup>41</sup> Next, on 23 April 2010, the President denied Radić's application for pardon or commutation of sentence, treating Radić's demonstration of rehabilitation as a neutral factor<sup>42</sup> but considering that Radić had not yet served two-thirds of his sentence.<sup>43</sup>

## 7. Conclusion

30. Having considered the factors identified in Rule 125 of the Rules, I am of the view that there is limited evidence of rehabilitation on the part of Radić. In making this finding, I am mindful of the adjustment problems he has faced due to his inability to communicate in the French language

I note that the only factor that weighs in favour of granting the Request is the fact that Radić served two-thirds of his sentence as of 9 August 2011. That said, I reiterate that the Tribunal's practice of considering applicants eligible for early release once they reach two-thirds of their sentences is not an entitlement to early release at that time. In these circumstances, taking into account the situation of similarly-situated prisoners, I am of the view that Radić's Request should be denied at this time but that he should be granted early release effective 31 December 2012.

## E. Disposition

31. 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, Radić is hereby GRANTED early release effective 31 December 2012.

32. 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.


<sup>40</sup> *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007, para. 7 ("Decision of 22 June 2007").

<sup>41</sup> Decision of 22 June 2007, para. 15.

<sup>42</sup> Decision of 23 April 2010, para. 21.

<sup>43</sup> Decision of 23 April 2010, paras 12-14, 24.

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



Judge Theodor Meron  
President

Dated this 9th day of January 2013,  
At The Hague,  
The Netherlands.

**[Seal of the International Tribunal]**