



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-11-ES
Date: 5 March 2009
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Acting Registrar: Mr. John Hocking
Decision of: 5 March 2009

PROSECUTOR

v.

MILAN MARTIĆ

CONFIDENTIAL

**DECISION ON MILAN MARTIĆ REQUEST FOR RECONSIDERATION OF
ORDER DESIGNATING STATE IN WHICH HE IS TO SERVE HIS SENTENCE**

Office of the Prosecutor

Ms. Michelle Jarvis

Counsel for Milan Martić

Mr. Predrag Milovančević

Mr. Nikola Perović

1. On 18 February 2009, I issued an order deciding that Milan Martić (“Martić”) shall serve his sentence in the Republic of Estonia.¹ On 27 February 2009, Martić filed before me a confidential “Requests of Milan Martić Following Confidential ‘Order Designating State in Which Milan Martić is to Serve His Sentence’ Issued by the President of the International Tribunal on 18 February 2009, with attached annexes I, II, III and IV” (“Request” and “Order”).

2. In his Request, Martić asks me to (a) reconsider the Order and designate another State in which he will serve his sentence, (b) disclose to him all material that formed a basis for my decision, including the agreement between the International Tribunal and Estonia and the Registrar’s confidential memorandum to me pursuant to paragraph 3 of the “Practice Direction on the Procedure for the International Tribunal’s Designation of the State in which a Convicted Person is to Serve His/Her Sentence of Imprisonment” (“Practice Direction”),² (c) order the Registrar to conduct an investigation into the financial resources available to Martić’s family to visit him in the State where he is to serve his sentence, and (d) order the Registrar to stay the procedure of enforcement of his sentence, pending the resolution of the above.³

3. My decision to designate a State for the enforcement of a prison sentence is guided by the Practice Direction, which provides that I shall, following advice by the Registrar via confidential memorandum, designate a State where the convicted person shall serve his or her sentence. The Practice Direction allows me, if I so wish, to request the opinion of the convicted person and of the Office of the Prosecutor. However, as the Statute, Rules of Procedure and Evidence, and Practice Direction make clear, there is no right conferred on a convicted person to be heard on this issue. Accordingly, Martić has no right to directly petition me with respect to the location in which he will serve his imprisonment, and the Request is incompetent on this basis alone.

4. I will nevertheless briefly deal with the merits of the Request. In support of the Request, Martić argues that he is unable to verify whether Estonia has in fact agreed to accept convicted persons and also whether the Parliament of Estonia has ratified this agreement.⁴ I note that the agreement is available on the public website of the International Tribunal, so Martić’s claim that he cannot verify the agreement is erroneous. Moreover, paragraph 2 of the Practice Direction makes it clear that the Registrar would not agree to the enforcement of a sentence in a State unless that State had signed the relevant agreement. Finally, article 12 of the agreement with Estonia provides that it

¹ Confidential Order Designating State in Which Milan Martić is to Serve His Sentence, 18 February 2009.

² IT/137, 9 July 1998.

³ Request, para. 3(a)–(d).

⁴ Request, para. 6.

shall enter into force upon notification to the International Tribunal by Estonia through diplomatic channels that the necessary internal formalities for the entry into force have been fulfilled. The relevant notification was transmitted by Estonia to the International Tribunal about completion of internal formalities and entry into force of the enforcement agreement on 1 September 2008. Martić's ratification argument therefore fails.

5. Martić complains that his family does not have the financial means to visit him in Estonia and analyses the available flight schedules from Belgrade to the place where he is to serve his sentence.⁵ He also voices various other complaints about not being able to speak the language of the enforcement State, practice his religion, and watch Serbian television.⁶ Paragraphs 3(a), (e), and (g) of the Practice Direction require the Registrar to take these considerations—and “any other considerations related to the case”—into account. As for Martić's averment that he does not have access to the confidential memorandum of the Registrar, the Practice Direction makes it clear that he has no right to such access. In light of the above, there is no basis for ordering the Registrar to conduct an investigation into Martić's family's financial resources and to stay the procedure of enforcement of his sentence.

6. In light of the foregoing, the Request is hereby DISMISSED.

7. The Registry of the International Tribunal is hereby REQUESTED to lift the confidential status of the present Decision once Martić's transfer to the Republic of Estonia has been completed.

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



Judge Patrick Robinson
President

Dated this fifth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Request, paras. 10–17. I note that Martić mistakenly refers to the enforcement State as “Lituania” in some places in the Request. *See, e.g.*, Request, para. 16.

⁶ Request, para. 18.