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**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-95-13/1-ES  
Date: 5 July 2011  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Patrick Robinson, President  
**Registrar:** Mr. John Hocking  
**Decision:** 5 July 2011

**PROSECUTOR**

v.

**VESELIN ŠLJIVANČANIN**

**CONFIDENTIAL**

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**DECISION OF PRESIDENT ON EARLY RELEASE OF  
VESELIN ŠLJIVANČANIN**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Veselin Šljivančanin:**

Mr. Novak Lukić

Mr. Stéphane Bourgon

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") is in receipt of a request for early release from Mr. Veselin Šljivančanin, who is currently detained at the United Nations Detention Unit ("UNDU").

#### A. Background

2. On 01 April 2011, counsel for Mr. Veselin Šljivančanin filed a request for early release 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").<sup>1</sup> Mr. Šljivančanin maintains that he is eligible for early release as of 19 June 2011, after having served two-thirds of his prison sentence.<sup>2</sup>

3. On 16 May 2011, the Registrar, pursuant to paragraphs 2(a), 3(b), and 4 of the Practice Direction, provided me with a report submitted by the UNDU concerning Mr. Šljivančanin's custodial behaviour, dated 18 April 2011, and a psychological health report and corresponding statement of consent for the release thereof signed by Mr. Šljivančanin, dated 16 May 2011.<sup>3</sup>

4. On 16 May 2011, pursuant to paragraph 3(c) of the Practice Direction, the Registrar provided me with a memorandum from the Prosecution discussing Mr. Šljivančanin's level of cooperation with the Office of the Prosecutor.<sup>4</sup>

5. All of the above materials were furnished to Mr. Šljivančanin on 24 May 2011.<sup>5</sup>

6. On 27 May 2011, the Registrar provided me and Mr. Šljivančanin with a memorandum correcting the number of days Mr. Šljivančanin had been reported to have been detained at the UNDU as of 18 April 2011.<sup>6</sup>

7. The Registry, pursuant to Article 5 of the Practice Direction, provided me with Mr. Šljivančanin's response on 1 June 2011.<sup>7</sup>

<sup>1</sup> IT/146/Rev.3, 16 September 2010.

<sup>2</sup> *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-R.1, Application on Behalf of Veselin Šljivančanin for Early Release, 31 March 2011, para. 14 ("Application for Early Release").

<sup>3</sup> Memorandum from the Registrar to the President, 16 May 2011 ("Memorandum of 16 May 2011").

<sup>4</sup> Memorandum of 16 May 2011 (Memorandum from the Prosecutor Regarding Mr. Šljivančanin's Co-operation with the Office of the Prosecutor dated 7 April 2011).

<sup>5</sup> Memorandum from Chief of the Immediate Office of the Registrar to Mr. Šljivančanin, 24 May 2011 ("Memorandum of 24 May 2011").

<sup>6</sup> Memorandum from the Registrar to the President, 27 May 2011 ("Memorandum of 27 May 2011").

**B. Proceedings before the Tribunal**

8. The initial indictment against Mr. Šljivančanin was filed on 7 November 1995.<sup>8</sup> Amended indictments were confirmed on 3 April 1996,<sup>9</sup> 2 December 1997,<sup>10</sup> 28 August 2002,<sup>11</sup> 9 February 2004,<sup>12</sup> and 26 August 2004.<sup>13</sup> The final indictment was issued on 15 November 2004,<sup>14</sup> in which the Prosecution alleged that Mr. Šljivančanin—in his role as Major, and later Colonel in the Yugoslav Peoples' Army (“JNA”)—was individually criminally responsible under Article 7(1), or alternatively, under Article 7(3) of the Statute, for crimes against humanity of persecution, extermination, murder, torture, inhumane acts and for war crimes of murder, torture, and cruel treatment of the Croats and other non-Serbs who were present in the Vukovar Hospital after the fall of Vukovar.<sup>15</sup>

9. Mr. Šljivančanin was taken into the custody of the Tribunal on 13 June 2003 and detained at the UNDU.<sup>16</sup>

10. In its Judgement of 27 September 2007, the Trial Chamber convicted Mr. Šljivančanin, pursuant to Article 7(1) of the Statute, of a single count of persecution, as a violation of the laws or customs of war, under Article 3 of the Statute, for having aided and abetted the torture of prisoners of war at the hangar at Ovčara on 20 November 1991.<sup>17</sup> Mr. Šljivančanin was sentenced to 5 years' imprisonment and was given credit for the time already served since 13 June 2003.<sup>18</sup>

11. On 5 May 2009, the Appeals Chamber quashed Mr. Šljivančanin's acquittal for having aided and abetted the murder of prisoners of war,<sup>19</sup> having concurred with the Prosecution's submission that Mr. Šljivančanin knew that the Territorial Defence and paramilitaries were capable of killing and that, if no action were taken, there was a real likelihood that the violence would

<sup>7</sup> Memorandum from the Registrar to the President, 1 June 2011 (“Memorandum of 1 June 2011”).

<sup>8</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13-I, Indictment, 7 November 1995.

<sup>9</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13a-I, Indictment, 1 April 1996.

<sup>10</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13a-PT, Amended Indictment, 2 December 1997.

<sup>11</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-PT, Second Amended Indictment, 28 August 2002.

<sup>12</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-PT, Consolidated Amended Indictment, 9 February 2004.

<sup>13</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-PT, Second Modified Consolidated Amended Indictment, 26 August 2004.

<sup>14</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-PT, Third Consolidated Amended Indictment, 15 November 2004, (“Final Indictment”).

<sup>15</sup> Final Indictment, paras 28-48.

<sup>16</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007, para. 709 (“Trial Judgement”).

<sup>17</sup> Trial Judgement, para. 715.

<sup>18</sup> Trial Judgement, para. 716.

<sup>19</sup> *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-A, Judgement, 5 May 2009 (“Appeals Judgement”), paras 103, 418.

escalate.<sup>20</sup> The Appeals Chamber convicted Mr. Šljivančanin under Articles 3 and 7(1) of the Statute for aiding and abetting by omission the murder of 194 individuals.<sup>21</sup> The Appeals Chamber increased Mr. Šljivančanin's sentence to 17 years of imprisonment, subject to credit received under Rule 101(C) of the Rules for the period he had been detained at the UNDU.<sup>22</sup>

12. On 8 December 2010, the Appeals Chamber Review Judgement vacated the additional conviction for aiding and abetting the murder of 194 prisoners of war,<sup>23</sup> as evidence that was previously thought not to be reliable was now proven credible, and thus a new fact had been proved.<sup>24</sup> The Appeals Chamber considered that the reversal of the additional conviction for aiding and abetting the murder of 194 prisoners of war represented a significant reduction in Mr. Šljivančanin's culpability and called for a revision in sentence.<sup>25</sup> The Appeals Chamber quashed Mr. Šljivančanin's sentence of 17 years' imprisonment and imposed a sentence of ten years, subject to credit being given under Rule 101(C) of the Rules for the period he had been detained at the UNDU.<sup>26</sup>

### C. Applicable Law

13. 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, 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 upon 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, as well as any substantial co-operation of the prisoner with the Prosecution.

14. Although the Statute, Rules, and Practice Direction do not address the situation where a convicted person is detained at the UNDU, rather than in one of the enforcement States, the

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<sup>20</sup> Appeals Judgement, para. 101.

<sup>21</sup> Appeals Judgement, para. 103.

<sup>22</sup> Appeals Judgement, para. 419 and p. 170.

<sup>23</sup> *Prosecutor v. Šljivančanin*, Case No. IT-95-13/1-R.1, Judgement, 8 December 2010 ("Review Judgement"), paras 32-33, 37.

<sup>24</sup> Review Judgement, paras 30-31.

<sup>25</sup> Review Judgement, para. 36.

conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal, and the eligibility of individuals detained at the UNDU must be determined by reference to the equivalent conditions for eligibility established by the enforcement States.<sup>27</sup>

#### D. Discussion

15. In coming to my decision upon whether it is appropriate to grant early release, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal.

##### 1. Gravity of Crimes

16. Article 125 of the Rules requires me to take into account the gravity of the crimes committed.

17. Mr. Šljivančanin was found guilty of aiding and abetting, by omission, the torture of approximately 200<sup>28</sup> prisoners of war at the hangar in Ovčara.<sup>29</sup> Despite being responsible for the security of the prisoners of war and having visited Ovčara at a time when they were being mistreated, Mr. Šljivančanin did nothing to stop the beatings.<sup>30</sup> Mr. Šljivančanin “failed to give appropriate directions to military police guarding the prisoners, and he failed to secure, or even to seek, their reinforcement, it being within his capacity, and also his authority, to do those things.”<sup>31</sup> For these reasons, it was established by the Trial Chamber that Mr. Šljivančanin was criminally responsible for having aided and abetted the torture of prisoners of war at the hangar at Ovčara by his omission to act, pursuant to Articles 3 and 7(1) of the Statute.<sup>32</sup> It was not established, however, that Mr. Šljivančanin was aware or foresaw at that time that the prisoners of war would be executed.<sup>33</sup> According to the Trial Chamber, the circumstances of his conduct that led to his

<sup>26</sup> Review Judgement, para. 37.

<sup>27</sup> *Prosecutor v. Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 23 June 2011, para. 10; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 7; *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, 21 June 2005, para. 5; *Prosecutor v. Miroslav Kvočka*, Case No. IT-98-30/1-A, Decision on Application for Pardon or Commutation of Sentence, 30 March 2005, para. 4.

<sup>28</sup> Trial Judgement, paras 526-527.

<sup>29</sup> Trial Judgement, para. 715; *see* Appeals Judgement, Disposition; *see* Review Judgement, Disposition.

<sup>30</sup> Trial Judgement, para. 690.

<sup>31</sup> *Ibid.*

<sup>32</sup> Trial Judgement, para. 715.

<sup>33</sup> Trial Judgement, para. 691.

conviction “reveal a failure to act to protect from severe criminal abuse the prisoners of war” and “reflects most adversely on him as a person and an officer”.<sup>34</sup>

18. The Appeals Chamber found that “the gravity of the crime, and in particular the consequences of the torture upon the victims and their families, the particular vulnerability of the prisoners of war, and the very large number of victims,” leads to the conclusion that a “sentence of five years’ imprisonment is so unreasonable that it can be inferred that the Trial Chamber must have failed to exercise its discretion properly”.<sup>35</sup> In the Appeals Chamber Review Judgement, the Appeals Chamber again observed that Mr. Šljivančanin’s aiding and abetting the torture of approximately 200 prisoners of war was an extremely serious crime.<sup>36</sup>

19. Based upon the foregoing, I am of the view that Mr. Šljivančanin’s crimes are of a high gravity, and that this is a factor that weighs against granting him early release.

## 2. Treatment of Similarly-situated Prisoners

20. I note that Mr. Šljivančanin will have served approximately 2,434 days in custody in Belgrade and the UNDU on or about 20 June 2011, which represents two-thirds of the prison term imposed by the Appeals Chamber.<sup>37</sup> It is the practice of the Tribunal to consider the eligibility of convicted persons for early release only when they have served two-thirds of their sentence.<sup>38</sup> I

<sup>34</sup> Trial Judgement, para. 704.

<sup>35</sup> Appeals Judgement, para. 413.

<sup>36</sup> Review Judgement, para. 36.

<sup>37</sup> See Memorandum of 27 May 2011. Independent calculations have determined that Mr. Šljivančanin will have served two-thirds of his prison sentence on 20 June 2011, and not 19 June 2011 as asserted. See Memorandum of 1 June 2011 (Written Response from Mr. Šljivančanin’s counsel to the President, 30 May 2011).

<sup>38</sup> *Prosecutor v. Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 23 June 2011, para. 13; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-ES, Decision of President on Early Release of Blagoje Simić, 15 February 2011, para. 20; *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrđa, 1 February 2011, para. 15; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 31 January 2011, para. 14; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-ES, Decision of President on Early Release of Zoran Žigić, 8 November 2010, para. 12; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 14; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; *Prosecution v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of the President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010, para. 13; *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, paras 12-13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; *Prosecutor v. Dragan Jokić*, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 12 January 2010, para. 14; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10.

note that a convicted person reaching two-thirds of his sentence is merely eligible for early release and not entitled to such a release.

21. Taking into account the treatment of similarly-situated prisoners, I am of the view that the amount of time that Mr. Šljivančanin has served militates in favour of his early release.

### 3. Demonstration of Rehabilitation

22. Rule 125 of the Rules provides that the President shall take into account the prisoner's demonstration of rehabilitation. Paragraph 3(b) of the Practice Direction states that the Registry shall request reports and observations from the relevant authorities as to the behaviour of the convicted person during his or her period of incarceration.

23. I take note of a memorandum, dated 18 April 2011, from the Deputy Commanding Officer of the UNDU, in which he states that "Mr. Šljivančanin has at all times shown respect for the management and staff of the unit and has complied with both the Rules of Detention and the instructions of the Detention Officers."<sup>39</sup> The Deputy Commanding Officer explains that Mr. Šljivančanin has integrated well into the pattern of life in custody while participating fully in the programme and has consistently maintained good relations with a "wide group" of fellow detainees.<sup>40</sup> Mr. Šljivančanin also "regularly assists in the library and has been heavily involved in the reorganization of the facility to the benefit of all detainees."<sup>41</sup> It was further submitted by the Deputy Commanding Officer that Mr. Šljivančanin found it difficult to come to terms with his increased sentence after appeal and review, but remained psychologically balanced at all other times and was able to maintain his emotional stability by continued good relationships with his family members.<sup>42</sup>

24. Paragraph 3(b) of the Practice Direction envisages reports from enforcement States regarding the mental condition of the convicted person during his incarceration. The Reporting Medical Officer of the UNDU submitted a letter on 18 April 2011, stating that, following his examination, he concluded that Mr. Šljivančanin was not suffering from any psychological or psychiatric condition.<sup>43</sup> The Reporting Medical Officer added, "as with all persons detained,

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<sup>39</sup> Memorandum of 16 May 2011 (Memorandum from UNDU Regarding Mr. Šljivančanin's Custodial Behaviour dated 18 April 2011).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Memorandum of 16 May 2011 (Statement from the Reporting Medical Officer at UNDU dated 16 May 2011).

Mr. Veselin Šljivančanin's state of mind is influenced by being incarcerated. He experienced some problems on the proclamation of the verdict; for which he was treated successfully."<sup>44</sup>

25. Should Mr. Šljivančanin be released, he plans to live with his family.<sup>45</sup> He has maintained good relationships with his family members throughout his period of incarceration.<sup>46</sup> Mr. Šljivančanin's family, accordingly, remains united and looks forward to providing the necessary "family atmosphere and stability; thereby facilitating his social rehabilitation."<sup>47</sup> In addition, I recall that the Trial Chamber noted that, following his resignation from the JNA, Mr. Šljivančanin had integrated successfully into civilian life.<sup>48</sup>

26. Mr. Šljivančanin also expresses, in his request for early release, "remorse for the terrible events which took place not only in Vukovar but all over the territory of the former Yugoslavia."<sup>49</sup> Mr. Šljivančanin maintains that "his involvement in the war was never ethnically motivated."<sup>50</sup> I note that Mr. Šljivančanin expresses sympathy for the victims of the conflict in the former Yugoslavia, and in Vukovar in particular, but does not express remorse for his own crimes, as he does not link the fate of the victims to his own actions.

27. Based on the foregoing, I consider that Mr. Šljivančanin has demonstrated some signs of rehabilitation, which weighs in favour of his release.

#### 4. Substantial Co-operation with the Prosecution

28. Rule 125 of the Rules states that the President shall take into account any substantial co-operation of the prisoner with the ICTY Prosecutor. 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.

29. On 7 April 2011, the Prosecutor submitted a memorandum stating that Mr. Šljivančanin has not co-operated with the Prosecution in the course of his trial, appeal, or enforcement of his sentence. Mr. Šljivančanin submits that he substantially co-operated with the Trial Chamber and the Prosecution by giving his consent for trial proceedings to continue in his absence while he

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<sup>44</sup> *Ibid.*

<sup>45</sup> Application for Early Release, para. 27.

<sup>46</sup> Memorandum of 16 May 2011 (Memorandum from UNDU Regarding Mr. Šljivančanin's Custodial Behaviour dated 18 April 2011).

<sup>47</sup> Application for Early Release, para. 28.

<sup>48</sup> Trial Judgement, para. 705; Application for Early Release, para. 29.

<sup>49</sup> Application for Early Release, para. 36.

<sup>50</sup> *Ibid.*



underwent surgery.<sup>51</sup> Although Mr. Šljivančanin's acquiescence to the trial continuing in his absence for four days possibly contributed to the efficient progression of proceedings, it does not constitute co-operation with the Prosecution. Even if it could be considered co-operation with the Prosecution, it could not be deemed substantial.

30. In all, I consider the factor of co-operation to be a neutral one.

#### 5. Conclusion

31. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while the gravity of Mr. Šljivančanin's crimes is high, the time that he has served in detention and his demonstration of some rehabilitation militate in favour of his release. I am therefore of the view that Mr. Šljivančanin should be granted early release.

32. I note that my colleagues unanimously share my view that Mr. Šljivančanin should be granted early release.

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<sup>51</sup> Application for Early Release, para. 42; Memorandum of 1 June 2011 (Written Response from Mr. Šljivančanin's counsel to the President dated 30 May 2011).

**E. Disposition**

33. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, and paragraph 8 of the Practice Direction, Mr. Veselin Šljivančanin is hereby GRANTED early release and shall be released from the custody of the Tribunal as soon as practicable and once the administrative procedures have been completed.

34. The Registrar is hereby DIRECTED to lift the confidentiality of this decision once Mr. Veselin Šljivančanin has been released.

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



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Judge Patrick Robinson  
President

Dated this fifth day of July 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**