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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-98-34-ES
Date: 16 December 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision: 16 December 2011

PROSECUTOR

v.

VINKO MARTINOVIĆ

CONFIDENTIAL

**DECISION OF THE PRESIDENT ON EARLY RELEASE OF
VINKO MARTINOVIĆ**

The Office of the Prosecutor:
Mr. Serge Brammertz

Counsel for the Mr. Vinko Martinović:
Mr. Želimir Par
Mr. Kurt P. Kerns

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 Mr. Vinko Martinović’s (“Martinović”) confidential application for early release (“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 relevant Practice Direction.¹

A. Background

2. Martinović is currently serving his sentence in Italy and requests early release from prison as of 9 August 2011.² On 13 October 2011, the Registry of the Tribunal (“Registry”), pursuant to paragraph 3(b) and (c) of the Practice Direction, provided me with a letter from the Italian authorities conveying a report regarding Martinović’s custodial behaviour as well as a report regarding his psychological and physical health³, and a memorandum from the Office of the Prosecutor of the Tribunal (“Prosecution”) regarding Martinović’s cooperation with that Office.⁴

3. On 3 November 2011, the Registry provided me with a translation of an order by an Italian Judge for Sentence Enforcement concerning sentence remission in the case of Martinović.⁵ The order grants Martinović a sentence reduction of 765 days for the period of his incarceration between 9 August 1999 and 9 February 2008, declares inadmissible the request for sentence reduction for time served between 9 February 2008 and 9 May 2008, and rejects any sentence reduction for the period between 9 May 2010 and 9 May 2011 because of Martinović’s refusal to carry out work assigned to him in the months of December 2010 and June 2011.⁶ On 17 November 2011, the Registry provided me with a translation of an order of the Prosecutor General of the Court of Appeals in Rome (“Prosecutor General”), which states that Martinović’s sentence is expected to be completed on 24 October 2012, provided that he is not detained for another reason.⁷

¹ *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-ES, Motion to Credit Defendant Vinko Martinović for Time Already Served (confidential), 22 December 2010 (“Application”); 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”).

² Application, p. 4.

³ Memorandum from the Registrar to the President, dated 13 October 2011 (“Memorandum of 13 October 2011”); Memorandum of 13 October 2011 (Note Verbale from the Embassy of Italy Transmitting Report of Judge for Sentence Enforcement, dated 30 September 2011).

⁴ Memorandum of 13 October 2011 (Memorandum from Office of the Prosecutor to the Office of the Registrar, dated 1 February 2011).

⁵ Memorandum from the Registrar to the President, dated 3 November 2011 (“Memorandum of 3 November 2011”).

⁶ Memorandum of 3 November 2011 (Order on Early Release of 10 October 2011).

⁷ Memorandum from the Registrar to the President, dated 17 November 2011 (Order for Early Release of 21 October 2011).

4. The Registry provided all of the above materials to Martinović on 4 November 2011, with the exception of the order of the Prosecutor General. Martinović responded to these materials, pursuant to paragraph 5 of the Practice Direction, on 11 November 2011 (“Response”).⁸

B. Proceedings Before the Tribunal

5. The initial indictment against Vinko Martinović and his co-accused, Mladen Naletilić, was issued on 18 December 1998⁹ and confirmed on 21 December 1998.¹⁰ An amended indictment was issued on 4 December 2000,¹¹ followed by a second amended indictment on 28 September 2001.¹² In the second amended indictment, the Prosecution charged Martinović with four crimes against humanity, six grave breaches of the Geneva Conventions of 1949, and six violations of the laws and customs of war.¹³ The Prosecution alleged that Martinović was individually responsible for these crimes pursuant to Article 7(1) of the Statute or, alternatively, that he was responsible as a superior for the acts of his subordinates pursuant to Article 7(3) of the Statute.¹⁴ Martinović was detained in the Republic of Croatia, and was transferred to the Tribunal on 9 August 1999.¹⁵

6. On 31 March 2003, the Trial Chamber convicted Martinović, under Articles 7(1)¹⁶ and 7(3)¹⁷ of the Statute, of nine counts: persecution, inhumane acts, and murder as crimes against humanity; inhumane treatment, unlawful transfer of civilians, wilful killing, and wilfully causing great suffering or serious injury to body or health, as grave breaches of the Geneva Conventions of 1949; and unlawful labour and plunder of public or private property as violations of the laws and customs of war.¹⁸ Martinović was sentenced to 18 years’ imprisonment, and was given credit for time already served since 9 August 1999, pursuant to Rule 101(C) of the Rules.¹⁹

7. On 3 May 2006, the Appeals Chamber allowed in part Martinović’s second ground of appeal relating to defects in the indictment and partially set aside his convictions for unlawful labour as a violation of the laws or customs of war and wilfully causing great suffering or serious

⁸ Response from Vinko Martinović to the President, dated 11 November 2011.

⁹ *Prosecutor v. Mladen Naletilić also known as (a/k/a) “Tuta” and Vinko Martinović also known as (a/k/a) “Štela”*, Case No. IT-98-34-I, Indictment, 18 December 1998.

¹⁰ *Prosecutor v. Mladen Naletilić also known as (a/k/a) “Tuta” and Vinko Martinović also known as (a/k/a) “Štela”*, Case No. IT-98-34-I, Order Confirming Indictment, 21 December 1998.

¹¹ *Prosecutor v. Mladen Naletilić also known as (a/k/a) “Tuta” and Vinko Martinović also known as (a/k/a) “Štela”*, Case No. IT-98-34-PT, Amended Indictment, 4 December 2000.

¹² *Prosecutor v. Mladen Naletilić also known as (a/k/a) “Tuta” and Vinko Martinović also known as (a/k/a) “Štela”*, Case No. IT-98-34-PT, Second Amended Indictment, 28 September 2001 (“Indictment”).

¹³ Indictment, paras 25-58.

¹⁴ Indictment, paras 23-24.

¹⁵ *Prosecutor v. Mladen Naletilić, aka “Tuta”, and Vinko Martinović, aka “Štela”*, Case No. IT-98-34-T, Judgement, 31 March 2003 (“Trial Judgement”), paras 761, 770.

¹⁶ Trial Judgement, paras 334, 455, 511, 569, 627, 710-713.

¹⁷ Trial Judgement, paras 334, 628.

¹⁸ Trial Judgement, para. 767.

¹⁹ Trial Judgement, paras 769-770.

injury to body or health as a grave breach of the Geneva Conventions of 1949.²⁰ The Appeals Chamber affirmed Martinović's sentence of 18 years' imprisonment.²¹ Martinović was transferred to Italy to serve his sentence.²²

C. Applicable Law

8. As a preliminary matter, I note that although Martinović requests the "commutation" of his sentence, he does not ask for a reduction in his prison term but rather to be released from prison. I will therefore treat Martinović's request as a request for early release.

9. 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 determining whether pardon or commutation is appropriate, 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.

10. Article 3(2) of the Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia of 6 February 1997 ("Enforcement Agreement") provides that conditions of imprisonment shall be governed by Italian law, subject to the supervision of the Tribunal.²³ Article 8(2) of the Enforcement Agreement sets out the procedure to be followed when a convicted person becomes eligible for pardon and commutation of sentence.²⁴

²⁰ Appeal Judgement, paras 15-97.

²¹ Appeal Judgement, Disposition.

²² *Prosecutor v. Vinko Martinović, a.k.a. "Štela"*, Case No. IT-98-34-ES, Order Designating the State in Which Vinko Martinović is to Serve his Prison Sentence, 11 March 2008.

²³ Agreement Between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, dated 6 February 1997 ("Enforcement Agreement"), art. 3(2).

²⁴ Enforcement Agreement, art. 8(2).

D. Discussion

11. In reaching my decision on granting early release, I have consulted with the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

1. Treatment of Similarly-situated Prisoners

12. According to the Italian authorities, Martinović is eligible under Italian law to be released on 24 October 2012, provided that he is not detained for another reason. However, it is the practice of the Tribunal to consider convicted persons to be eligible for early release when they have served at least two-thirds of their sentences.²⁵ I note that on 9 August 2011 Martinović had served 12 years of his 18 year sentence, or two-thirds of his sentence. Considering the treatment of similarly-situated prisoners, I am of the view that the amount of time that Martinović has served for his crimes weighs in favour of his early release.

2. Gravity of the Crimes

13. The events underlying Martinović's conviction took place between April 1993 and January 1994 in Mostar and its surrounding municipalities in south-western Bosnia and Herzegovina, in the course of fighting between the Croatian Defence Council (army of Bosnian Croats) and the Army of Bosnia and Herzegovina.²⁶ Attacks occurring during this period resulted in thousands of Bosnian Muslim civilians being forced to leave their homes in Sovići, Doljani, and West Mostar.²⁷ A large number of prisoners of war and civilians were also held in detention centres, and some were forced to perform labour.²⁸ Martinović was a member of a Croatian military force, and from at least mid-May 1993 was the commander of a group of soldiers who held positions at a confrontation line in Mostar.²⁹

14. The Trial Chamber found that Martinović ordered prisoners of war to: perform labour in dangerous conditions, walk across the front line with wooden rifles, and assist in the looting of private property.³⁰ It also found that: he participated in the frequent beatings of prisoners;³¹ aided

²⁵ See e.g., *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. 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, 15 July 2011, para. 22.

²⁶ Appeal Judgement, paras 2 and 240.

²⁷ Appeal Judgement, para. 2.

²⁸ Appeal Judgement, para. 2.

²⁹ Appeal Judgement, para. 5.

³⁰ Trial Judgement, para. 334.

and abetted the murder of Nenad Harmandžić, a police officer with the Ministry of Interior in Mostar;³² and was in charge of a military operation conducted on 13-14 June 1993 which led to the unlawful transfer of civilians from the DUM area of Mostar. Finally, it found that his unit was involved in the unlawful transfer of civilians on 29 September 1993,³³ and that a large-scale operation of plunder was carried out by soldiers acting under his supervision.³⁴ Pursuant to these findings, the Trial Chamber convicted him of three counts of crimes against humanity, four counts of grave breaches of the Geneva Conventions of 1949, and two counts of violations of the laws and customs of war.³⁵ Significantly, it found that Martinović's pattern of conduct amounted to persecution as a crime against humanity.³⁶

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

3. Demonstration of Rehabilitation

16. Rule 125 of the Rules provides that the President of the Tribunal shall take into account a prisoner's demonstration of rehabilitation in considering requests for pardon or commutation. 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.

17. The Italian prison authorities report that Martinović's behaviour has been irregular, as he has conformed to prison rules during some periods, but during other periods has refused to carry out mandatory work activity.³⁷ Specifically, they state that Martinović claimed he was unable to carry out work activities due to dermatological allergies and that he refused to work as a sweeper or serve meals in December 2010 and June 2011. They also indicate that he "behave[ed] normally and there were no disciplinary measures" and that during interviews with rehabilitation officers "he continued to be polite and respectful even if communication difficulties persist because of language" barriers.³⁸

³¹ Trial Judgement, para. 389.

³² Trial Judgement, paras 460, 507-508.

³³ Trial Judgement, para. 569.

³⁴ Trial Judgement, paras 627-628.

³⁵ Trial Judgement, para. 767.

³⁶ Trial Judgement, paras 632-715. The Appeals Chamber upheld these convictions. Appeal Judgement, paras 439, 449, 465, 479, 480, 488, 538, 550, 557, 581.

³⁷ Memorandum of 13 October 2011 (Note Verbale from the Embassy of Italy Transmitting Report of Judge for Sentence Enforcement, dated 30 September 2011).

³⁸ Memorandum of 13 October 2011 (Rehabilitation Work Report, dated 19 September 2011).

18. Martinović responds that he did not refuse to clean or serve food, as he normally undertakes such work, but had asked to be spared work due to an allergic reaction on his skin and injury to his right hand. He asserts that this request was misunderstood because of his difficulty in understanding and communicating in Italian.³⁹

19. Paragraph 3(b) of the Practice Direction also envisages reports from the enforcement State regarding the psychological condition of the convicted person during his incarceration, and paragraph 8 of the Practice Direction provides that the President of the Tribunal may consider other relevant information.

20. According to a psychological report from the Italian prison authorities, Martinović is “open for dialogue and communicates in a proper and respectful way.”⁴⁰ Martinović has had no problem adapting to prison life and “his mood is adjusted and stable.”⁴¹ A clinical examination found Martinović to be “lucid, alert and focused, and having good contact with reality.”⁴² The Italian authorities have indicated that Martinović does not need psychological support at this time.⁴³

21. The report also states that Martinović “did not know the reasons for his imprisonment and ascribed it to the power of the position he held, maintaining that he was not responsible for the acts.”⁴⁴ I note, however, that Martinović submits that he will refrain from crime in the future because “he regards the conduct as wrong and inimical to the interests of self and society.”⁴⁵ He also states that he knows why he was incarcerated, understands the verdict of the Tribunal and accepts his punishment. Martinović asserts that these positions were not interpreted correctly because relevant exchanges were conducted in Italian.⁴⁶ He also states that he “has repeatedly expressed his regret before the ICTY for all the victims of the events incriminated in the verdict.”⁴⁷

22. Based on the information provided, I find the prison authorities’ assessment of Martinović’s acceptance of guilt for his crimes a neutral factor in relation to his demonstration of rehabilitation.⁴⁸ I am also of the view that Martinović’s behaviour while serving his sentence demonstrates some rehabilitation, which ultimately weighs in favour of his early release.

³⁹ Response, p. 2.

⁴⁰ Memorandum of 13 October 2011 (Psychological Report, dated 21 June 2011).

⁴¹ Memorandum of 13 October 2011 (Psychological Report, dated 21 June 2011).

⁴² Memorandum of 13 October 2011 (Psychological Report, dated 21 June 2011).

⁴³ Memorandum of 13 October 2011 (Psychological Report, dated 21 June 2011).

⁴⁴ Memorandum of 13 October 2011 (Rehabilitation Work Report, dated 19 September 2011).

⁴⁵ Application, p. 3.

⁴⁶ Response, pp. 2-3.

⁴⁷ Response, p. 3.

⁴⁸ I note that while the ability of a convicted person to take responsibility for his or her crimes is a factor to be considered in the overall determination of rehabilitation, it is not necessarily determinative of the convicted person’s rehabilitation. See *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, para. 21.

4. Substantial Cooperation with the Prosecution

23. Rule 125 of the Rules states that the President of the Tribunal shall take into account any substantial cooperation of the prisoner with the Prosecutor of the Tribunal. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any cooperation that the convicted person has provided to the Prosecution and the significance thereof. According to the Prosecution, "Martinović did not cooperate with the Office of the Prosecutor during the course of his trial or appeal. Nor has he cooperated with the Office of the Prosecutor at any point whilst serving his sentence." However, the Prosecution gave no indication that it ever requested cooperation from Martinović.⁴⁹ Based upon the foregoing, I place neither negative nor positive weight on this indicium.

5. Conclusion

24. In light of the above, and having considered the factors identified in Rule 125 of the Rules, I consider that, while Martinović's crimes are of high gravity, he has served two-thirds of his sentence and has demonstrated some rehabilitation. In light of the treatment of similarly-situated persons, I have concluded that Martinović should be granted early release.

25. I note that not all of my colleagues share my view that Martinović should be granted early release.

E. Disposition

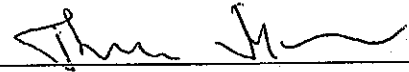
26. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 8 of the Enforcement Agreement, Martinović is hereby GRANTED early release.

27. The Registrar is hereby DIRECTED to inform the Italian authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction.

28. The Registrar is hereby DIRECTED to lift the confidentiality of this decision once Martinović has been released.

⁴⁹ Memorandum of 13 October 2011 (Memorandum from Office of the Prosecutor to the Office of the Registrar, dated 1 February 2011).

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



Judge Theodor Meron
President

Dated this 16th day of December 2011,
At The Hague,
The Netherlands.

[Seal of the Tribunal]