



INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CHURCHILLPLEIN, I. P.O. Box 13888
2517 JW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 512-5000
FAX: 31 70 512-8637

TRIBUNAL PÉNAL INTERNATIONAL
POUR L'EX-YOUGOSLAVIE

CHURCHILLPLEIN, I. B.P. 13888
2517 JW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 512-5000
FAX: 31 70 512-8637

Case No. IT-02-60/2-ES
The Prosecutor v. Dragan Obrenović

PUBLIC
CERTIFICATE

I, Linda Strite Murnane, Chief, Court Management and Support Services Section of the International Criminal Tribunal for the former Yugoslavia;

NOTING the Confidential “Decision of President on Early Release of Dragan Obrenovic”, filed on 21 September 2011 President Patrick Robinson (“Decision”);

NOTING the Confidential and Ex Parte President’s “Order On the Confidentiality of Decision of President on Early Release of Dragan Obrenovic” filed by President Theodor Meron on 28 February 2012, (“Order”) whereby the President ordered the Registrar to file a public redacted version of the Decision;

INFORMS the Chamber and the Parties that, in compliance with the Decision and Order, on 29 February 2012, the Registry submitted a redacted version of the Decision, and, in accordance with the Order, files the Decision as a Public document; and

FURTHER INFORMS the Chamber and the Parties that this Certificate is submitted as a record of the Registry’s compliance with the Order.


Linda Strite Murnane
Chief, Court Management and Support Services

Done this twenty ninth day of February 2012,
The Hague,
The Netherlands.

Case No. IT-02-60/2-ES
The Prosecutor v. Dragan Obrenović

PUBLIC REDACTED VERSION
AS PER CERTIFICATE ATTACHED

IT-02-60/2-ES
D40-032
21 September 2011

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SMS

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-02-60/2-ES
Date: 21 September 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 21 September 2011

PROSECUTOR

v.

DRAGAN OBRENOVIĆ

CONFIDENTIAL

**DECISION OF PRESIDENT ON EARLY RELEASE OF
DRAGAN OBRENOVIĆ**

The Office of the Prosecutor:
Mr. Serge Brammertz

Counsel for Mr. Dragan Obrenović:
Mr. David E. Wilson
Mr. Dušan Slijepčević

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 seised of Mr. Dragan Obrenović's application for early release.

A. Background

2. On 9 March 2011, counsel for Mr. Obrenović filed an application 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").¹ Mr. Obrenović submits that he should be eligible for consideration for release on probation under Norwegian release arrangements, after having served one-half of his prison sentence on 15 October 2009 and providing "special, weighty and well documented reasons" for such release.²

3. On 25 July 2011, the Registry, pursuant to paragraph 3(b) of the Practice Direction, provided me with a custodial behaviour report from the Norwegian authorities.³

4. On 25 July 2011, [REDACTED]

5. All of the above materials were furnished to Mr. Obrenović on 9 August 2011.⁵ Mr. Obrenović did not respond with comments on the materials furnished to him, as he is entitled to do under paragraph 5 of the Practice Direction.⁶

B. Proceedings Before the Tribunal

6. Mr. Obrenović was initially indicted on 16 March 2001, under Articles 7(1) and 7(3) of the Statute, for three counts of crimes against humanity of extermination, murder, and persecution, under Article 5 of the Statute; one count of complicity in genocide, under Article 4 of the Statute; and one count of murder as a violation of the laws or customs of war, under Article 3 of the Statute.⁷ The initial indictment against Mr. Obrenović was confirmed on 9 April 2001.⁸ A joinder

¹ IT/146/Rev.3, 16 September 2010.

² *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, confidential Application for Early Release, 9 March 2011 ("Application"), pp. 3, 18, Annex 1.

³ Memorandum from the Registrar to the President, dated 25 July 2011 ("Memorandum of 25 July 2011").

⁴ Memorandum of 25 July 2011.

⁵ Memorandum from the Registrar to the President, dated 26 August 2011 ("Memorandum of 26 August 2011").

⁶ Memorandum of 26 August 2011.

⁷ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Indictment, 23 March 2001.

indictment⁹ and an amended joinder indictment¹⁰ were subsequently filed. The charges and modes of responsibility alleged against Mr. Obrenović in the joinder indictment and amended joinder indictment mirror those set forth in the initial indictment.¹¹

7. On 15 April 2001, Mr. Obrenović was arrested, transferred to the Tribunal, and detained at the United Nations Detention Unit.¹²

8. At his initial appearance on 18 April 2001, Mr. Obrenović pleaded not guilty to all charges set forth in the initial indictment.¹³ However, on 21 May 2003, Mr. Obrenović agreed to plead guilty to one count of crimes against humanity for persecution.¹⁴ The Trial Chamber accepted the plea agreement between Mr. Obrenović and the Prosecution¹⁵ and entered a finding of guilt on count 5, persecution on political, racial, and religious grounds, a crime against humanity, punishable under Articles 5(h), 7(1), and 7(3) of the Statute.¹⁶

9. The plea agreement requires that Mr. Obrenović testify truthfully at any trial related to Srebrenica 1995 upon which he has evidence, upon the request of the Prosecution.¹⁷

10. On 10 December 2003, the Trial Chamber rendered its Sentencing Judgement, sentencing Mr. Obrenović to 17 years' imprisonment, with credit given for time served prior to the Sentencing Judgement.¹⁸ On 18 June 2004, Mr. Obrenović was transferred to Norway to serve the remainder of his sentence.¹⁹

⁸ *Prosecutor v. Dragan Obrenović*, Case No. IT-01-43-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 9 April 2001; *see also Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003 ("Sentencing Judgement"), para. 3.

⁹ *Prosecutor v. Vidoje Blagojević, Prosecutor v. Dragan Obrenović, Prosecutor v. Dragan Jokić*, Case No. IT-98-33/1-PT, IT-01-43-PT, IT-01-44-PT, Written Reasons Following Oral Decision of 15 January 2002 on the Prosecution's Motion for Joinder, 16 January 2002, Disposition, para. 3; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-PT, Motion to File Joinder Indictment Pursuant to the Oral Directive of the Trial Chamber on 15 January 2002, 22 January 2002.

¹⁰ *Prosecutor v. Momir Nikolić and Prosecutor v. Blagojević et al.*, Case No. IT-02-53-PT & IT-02-56-PT, Decision on Prosecution's Motion for Joinder, 17 May 2002; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

¹¹ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-PT, Motion to File Joinder Indictment Pursuant to the Oral Directive of the Trial Chamber on 15 January 2002, 22 January 2002; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

¹² Sentencing Judgement, para. 4.

¹³ Sentencing Judgement, para. 4.

¹⁴ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-T, Motion Hearing, 21 May 2003 ("Plea Hearing"), T. 551-552.

¹⁵ Plea Hearing, T. 560; Sentencing Judgement, paras 10, 20.

¹⁶ Plea Hearing, T. 560; Sentencing Judgement, paras 13, 17.

¹⁷ *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60-T, Plea Agreement Between Dragan Obrenović and the Office of the Prosecutor, 10 October 2003, para. 9; Plea Hearing, T. 552; *see also* Sentencing Judgement, para. 14.

¹⁸ Sentencing Judgement, para. 156.

¹⁹ International Criminal Tribunal for the former Yugoslavia, Press Release CT/P.I.S./858-e, "Dragan Obrenović Transferred to Norway to Serve His Prison Sentence", 16 June 2004.

C. Applicable Law

11. 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, and any substantial co-operation of the prisoner with the Prosecution.

12. Article 3(2) of the Agreement between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 24 April 1998 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Norwegian law, subject to the supervision of the Tribunal.²⁰ Article 3(4) of the Enforcement Agreement provides that the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate, and that the Registrar shall inform Norway of the President's determination.²¹

D. Discussion

13. In coming to my decision upon whether it is appropriate to grant early release, I have consulted with the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

1. Treatment of Similarly-situated Prisoners

14. Mr. Obrenović asserts that, in considering the factor of similarly-situated prisoners, the Tribunal is presented with the opportunity to "review the question of the sentence originally imposed".²² Mr. Obrenović further asserts that this is particularly important as he could not appeal his sentence under the terms of his plea agreement, and thus there "has been no Tribunal review of

²⁰ Agreement Between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 24 April 1998 ("Enforcement Agreement").

²¹ Enforcement Agreement, Article 3(4).

²² Application, p. 14.

his sentence since its imposition.”²³ I note, however, that the regime for pardon and commutation of sentence governed by Article 28 of the Statute and Rules 123, 124, and 125 of the Rules does not fall into the category of review proceedings. Rather, the procedure for considering early release, and in particular the factor concerning treatment of similarly-situated prisoners, seeks to harmonise rules pertaining to the enforcement of sentences applicable to the Tribunal's convicted persons who are serving their sentences in various enforcement states with divergent national laws pertaining to early release. I therefore do not consider Mr. Obrenović's invitation for me to review his sentence to be an appropriate procedure within the context of early release. I also do not find helpful, nor relevant to his application for early release, his survey of the sentences imposed by the Tribunal in relation to other convicted persons with “similarly-situated cases”.²⁴

15. I note that Mr. Obrenović has served approximately ten years of his seventeen year sentence, including time spent in custody, up to and including the date of sentencing.²⁵ He thus has served more than one-half, but not yet two-thirds of his sentence. Mr. Obrenović will have served two-thirds of his sentence on 15 August 2012.

16. 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.²⁶ I note that a convicted person

²³ Application, p. 14.

²⁴ Application, pp. 9-14.

²⁵ Application, p. 3, Annex 1; see Memorandum of 25 July 2011 (Letter from Royal Norwegian Ministry of Justice and Police, dated 13 July 2011).

²⁶ *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; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011, para. 21; *Prosecutor v. Veselin Šljivčanin*, Case No. IT-95-13/1-ES.1, Decision of President on Early Release of Veselin Šljivčanin, 5 July 2011, para. 20; *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 Mrda*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrda, 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; *Prosecutor 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, 13 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.

reaching two-thirds of his sentence is merely eligible for early release and not entitled to such a release. Taking into account the treatment of similarly-situated prisoners, I am of the view that the amount of time that Mr. Obrenović has served for his crimes does not militate in favour of his early release.

2. Gravity of the Crimes

17. With respect to gravity, the crimes for which Mr. Obrenović has been convicted are of a very high gravity. I find it instructive to quote the Sentencing Judgment (footnotes omitted):

77. The Trial Chamber, in making its determination regarding the gravity and nature of the offence, has reviewed the evidence presented before it. The Trial Chamber has considered the purpose of the joint criminal enterprise in which Dragan Obrenović was a participant. The crimes committed following the fall of Srebrenica were of an enormous magnitude and scale, and the gravity of these crimes is unquestionable. Over 7,000 men were separated from their families, murdered and buried in mass graves. The manner in which the executions were carried out, as described was both methodical and chilling in its "efficiency" and display of utter inhumanity. Over eight years later, the impact of the crimes committed after the fall of Srebrenica continue to be felt upon the women, children and men who survived the horrific events.

...

85. ... Dragan Obrenović not only knew that members of the Zvornik Brigade took part in the organisation of the killings and the burials of the executed Muslim prisoners, but also approved the release of members of the Zvornik Brigade to participate in the implementation of this plan on at least three occasions. The Trial Chamber finds that by approving the removal of his soldiers, Dragan Obrenović participated in the implementation of the plan to kill the Muslim prisoners. While the plan to kill the Muslim prisoners was decided by commanders above Dragan Obrenović, he released his men from their actual duties and ordered them to follow the orders that came from above...

18. The crime against humanity of persecution in Count 5, for which Mr. Obrenović was convicted, was carried out, not only through the murder of thousands of Bosnian Muslim civilians, but also the cruel and inhuman treatment of Bosnian Muslim civilians, including beatings of civilians in schools and other detention centres in the Zvornik area, the terrorisation of Bosnian Muslim civilians from Srebrenica and Potočari, and the destruction of personal property and effects of Bosnian Muslim civilians from Srebrenica who were detained and murdered in the Zvornik area.²⁷

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

3. Demonstration of Rehabilitation

20. 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

²⁷ Sentencing Judgment, para. 29.

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.

21. By letter dated 13 July 2011, the Norwegian authorities addressed Mr. Obrenović's custodial behaviour by stating that he had not breached any rules or regulations during his detention.²⁸ In this regard, [REDACTED]

[REDACTED] Mr. Obrenović has also reliably served as a kitchen assistant for several years, "taking full responsibility for his duties and fulfilling his obligations very accurately."³⁰

22. [REDACTED]
[REDACTED]
[REDACTED]

23. Paragraph 3(b) of the Practice Direction 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 may consider any other information that he or she believes to be relevant to supplement the criteria specified in Rule 125 of the Rules. I note that no reports regarding the psychological condition of Mr. Obrenović were provided by the Norwegian authorities. I therefore consider this to be a neutral factor.

24. Based on the information provided, I am of the view that Mr. Obrenović's good behaviour while serving his sentence demonstrates some rehabilitation and weighs in favour of his early release.

4. Substantial Co-operation with the Prosecution

25. 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.

26. According to the Prosecution, Mr. Obrenović's co-operation with the Office of the Prosecutor [REDACTED]
[REDACTED]

²⁸ Memorandum of 25 July 2011 (Letter from Royal Norwegian Ministry of Justice and Police, dated 13 July 2011).

²⁹ Memorandum of 25 July 2011 (Letter from Royal Norwegian Ministry of Justice and Police, dated 13 July 2011).

³⁰ Memorandum of 25 July 2011 (Letter from Royal Norwegian Ministry of Justice and Police, dated 13 July 2011).

³¹ Application, p. 16.

³² Application, p. 16.

27. Based upon the foregoing, I am of the view that Mr. Obrenović has provided [REDACTED] [REDACTED] co-operation to the Office of the Prosecutor and that this is a factor that weighs in favour of his early release.

5. Conclusion

28. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while the very high gravity of Mr. Obrenović's crimes and the time that he has served in detention militate against his early release, Mr. Obrenović's exceptionally substantial co-operation with the Office of the Prosecutor and his demonstration of some rehabilitation weigh in favour of his early release. I am therefore of the view that Mr. Obrenović should be granted early release on [REDACTED]. I note that, on the date of his early release, Mr. Obrenović will be eight months short of having served two-thirds of his sentence. Nevertheless, due to the exceptionally substantial co-operation that Mr. Obrenović has provided to the Prosecution, I have decided to grant Mr. Obrenović's early release, notwithstanding the Tribunal's practice requiring that a convicted person serve two-thirds of his sentence before he is considered eligible for early release.

29. I note that my colleagues unanimously share my view that Mr. Obrenović should be granted early release.

E. Disposition

30. For the foregoing reason and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 3 of the Enforcement Agreement, Mr. Dragan Obrenović is hereby GRANTED early release, effective [REDACTED]

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

32. The Registrar is hereby DIRECTED to lift the confidentiality of this decision [REDACTED]
[REDACTED]

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



Judge Patrick Robinson
President

Dated this twenty-first day of September 2011,
At The Hague,
The Netherlands.

[Seal of the Tribunal]