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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-95-12-ES
Date: 31 January 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 31 January 2011

PROSECUTOR

v.

IVICA RAJIĆ

PUBLIC REDACTED VERSION

DECISION OF PRESIDENT ON EARLY RELEASE OF IVICA RAJIĆ

Office of the Prosecutor:
Mr. Serge Brammertz

Mr. Ivica Rajić

The Kingdom of Spain

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 a request for early release from Mr. Ivica Rajić, who is serving his sentence in the Kingdom of Spain.

A. Background

2. On 17 June 2010, the Registry forwarded to me a request from Mr. Rajić for early release,¹ pursuant to 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”).² In the request, Mr. Rajić asks to be informed of whether he may be granted conditional release on the basis that he has served two-thirds of his prison sentence and on the basis of an “advancement” of conditional release of 40 days per year served.

3. On 4 August 2010, pursuant to paragraph 3(c) of the Practice Direction, the Registry provided me with the Prosecution’s report of Mr. Rajić’s co-operation with the Office of the Prosecutor.³

4. On 10 November 2010, the Registry forwarded to me documents from Spain, pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and paragraphs 2 and 3 of the Practice Direction.⁴ These documents pertain to Mr. Rajić’s eligibility for early release, his psychological condition, and his behaviour while in detention.⁵

5. All of the above materials were furnished to Mr. Rajić, who provided a response on 16 December 2010, stating that he hopes his request for early release will be granted.⁶

B. Proceedings before the Tribunal

6. On 23 August 1995, Mr. Rajić was initially indicted on six counts of serious violations of international humanitarian law.⁷ On 29 August 1995, Judge Sidhwa confirmed the indictment.⁸ On

¹ Memorandum from Deputy Registrar to President, 17 June 2010 (“Memorandum of 17 June 2010”).

² IT/146/Rev.2, 1 September 2009. The request was submitted before version three of the Practice Direction had been issued.

³ Memorandum from Deputy Registrar to President, 4 August 2010 (“Memorandum of 4 August 2010”) (Memorandum from Deputy Prosecutor to Deputy Registrar, 26 July 2010).

⁴ IT/146/Rev.3, 16 September 2010. This documentation was submitted after version three of the Practice Direction had been issued.

⁵ Memorandum from Deputy Registrar to President, 10 November 2010 (“Memorandum of 10 November 2010”).

⁶ Memorandum from Deputy Registrar to President, 7 January 2011 (Letter from Mr. Rajić to President, 16 December 2010).

⁷ *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12, Indictment, 23 August 1995.

13 September 1996, the Trial Chamber reconfirmed the initial indictment and issued an international arrest warrant.⁹ Mr. Rajić was arrested in the Republic of Croatia on 5 April 2003, and was transferred to the Tribunal and detained at the United Nations Detention Unit on 24 June 2003.¹⁰ On 14 January 2004, the Prosecution filed an amended indictment charging Mr. Rajić with five grave breaches of the Geneva Conventions of 1949 and five violations of the laws or customs of war.¹¹

7. On 26 October 2005, Mr. Rajić pleaded guilty to four counts of grave breaches of the Geneva Conventions of 1949 under Article 2 of the Statute. The Trial Chamber accepted that plea and entered a finding of guilt on those four counts:¹²

- Count 1: wilful killing, Article 2(a) of the Statute;
- Count 3: inhuman treatment, Article 2(b) of the Statute;
- Count 7: appropriation of property, Article 2(d) of the Statute; and
- Count 9: extensive destruction not justified by military necessity and carried out unlawfully and wantonly, Article 2(d) of the Statute.¹³

The plea agreement required Mr. Rajić's full and substantial co-operation with the Prosecution.¹⁴

8. On 8 May 2006, the Trial Chamber delivered its Sentencing Judgement, sentencing Mr. Rajić to 12 years' imprisonment. He was given credit for the time already served since 5 April 2003, pursuant to Rule 101(C) of the Rules.¹⁵ On 13 April 2007, Mr. Rajić was transferred to Spain to serve the remainder of his sentence.¹⁶

C. Applicable Law

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

⁸ *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12-I, Review of the Indictment, 29 August 1995.

⁹ *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12-R61, International Arrest Warrant and Order for Surrender, 13 September 1996.

¹⁰ *Prosecutor v. Ivica Rajić, a.k.a Viktor Andrić*, Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006 (Sentencing Judgement"), para. 3.

¹¹ *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12-PT, Amended Indictment, 14 January 2004.

¹² Sentencing Judgement, paras 9, 13; *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12-PT, Plea Hearing, 26 October 2005, pp. 163-164.

¹³ *Prosecutor v. Ivica Rajić a.k.a Viktor Andrić*, Case No. IT-95-12-PT, Plea Agreement Between Ivica Rajić and the Office of the Prosecutor, 25 October 2005, para. 4 ("Plea Agreement").

¹⁴ Plea Agreement, para. 17.

¹⁵ Sentencing Judgement, para. 183, Disposition.

¹⁶ ICTY Press Release, CT/MOW/1155e, Ivica Rajić Transferred to Serve Sentence in Spain, 13 April 2007.

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 this determination, 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 co-operation of the prisoner with the Prosecution.

10. Article 3 of the Agreement Between the United Nations and the Kingdom of Spain on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 28 March 2000 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Spanish law, subject to supervision of the Tribunal, and that, if, pursuant to the applicable Spanish national law, the convicted person is eligible for early release, Spain shall notify the Registrar accordingly. The President of the Tribunal shall then determine, in consultation with the Judges of the Tribunal, whether any early release is appropriate.

11. The Spanish Penal Code provides as follows:

Article 91.1 Exceptionally, in the presence of the circumstances set out in paragraphs (a) and (c) of part 1 of the previous Article, and provided that the offences are not terrorism offences as referred to in section 2, chapter V, title XXII, book II of this code, and were not committed within criminal organisations, the *juez de vigilancia penitenciaria* [the judge who supervises conditions of imprisonment and applications for parole], having informed the Public Prosecution Service, the penal institutions and the other parties, may grant conditional freedom to persons given sentences depriving them of their liberty if they have served two-thirds of their sentence, provided that they merit the said benefit through having continuously carried out work, cultural or occupational activities.

Article 91.2. At the proposal of penal institutions and once the Public Prosecution Service and the other parties have been informed, in the presence of the circumstances set out in paragraphs (a) and (c) of part 1 of the previous article, the *juez de vigilancia penitenciaria* may bring forward, once half of the sentence has been served, the granting of conditional freedom in relation to the period described in the previous point, by up to a maximum of ninety days for each year of the sentence that has actually been served, provided that the offences are not terrorism offences as referred to in section 2, chapter V, title XXII, and were not committed within criminal organisations. This measure shall require the convict to have continuously carried out the activities indicated in the previous point and, in addition, to have actually and positively participated in victim reparation programmes or treatment or de-addiction programmes, whichever is relevant.

D. Discussion

12. 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 Chamber who remain Judges of the Tribunal.

1. Treatment of Similarly-situated Prisoners

13. Spain has informed the Tribunal that, once Mr. Rajić has completed two-thirds of his sentence, it can proceed with the process of assessing whether he can be granted conditional release, thus allowing him to serve the remainder of his sentence in his country of origin. Spain makes no mention of sentence advancement that would make Mr. Rajić eligible for release prior to two-thirds of his sentence having been served.¹⁷

14. Mr. Rajić has not yet served two-thirds of the sentence that was imposed upon him by the Tribunal. Even if the advancement of conditional release under Spanish law had made Mr. Rajić eligible for release prior to him having served two-thirds of his sentence, I would not have been in favour of releasing him at this time, pursuant to the consistent practice of the Tribunal to only consider a convicted person eligible for early release once two-thirds of his sentence has been served¹⁸—although I am willing to recognise sentence advancement as a matter of law¹⁹—and taking into account the very high gravity of his offences, which is discussed below. Therefore, I am of the view that the amount of time that Mr. Rajić has served for his crimes does not militate in favour of his early release.

15. I note that Mr. Rajić will have served two-thirds of his sentence on approximately 5 April 2011.

2. Gravity of Crimes

16. With respect to gravity, I note that the Trial Chamber in the Sentencing Judgement recalled that Mr. Rajić's crimes were committed in the towns of Vareš, Stupni Do, and Bogoš Hill, in

¹⁷ Memorandum of 10 November 2010 (Letter from Spanish Ministry of the Interior, 13 October 2010).

¹⁸ *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.

¹⁹ See *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 15.

Bosnia and Herzegovina, beginning on or about 21 October 1993 until about 3 November 1993.²⁰ From 12 May 1993 to at least 22 November 1993, Mr. Rajić was Commander of the Second Operational Group, one of three operational wings of the Central Bosnia Operative Zone of the Croatian Defence Council (“HVO”).²¹ He had command or superior responsibility, and exercised operational and effective command and control, over the commander and members of the Bobovac Brigade, Kostromanić Brigade, and Ban Josip Jelačić Brigade, as well as the Maturice and Apostoli special units.²² Knowing that these units had committed crimes against Bosnian Muslim villages in earlier operations, he nevertheless ordered them to participate in operations in the area of Vareš, Stupni Do, and Bogoš Hill in October 1993.²³ The Trial Chamber found that Mr. Rajić was aware that, by ordering these attacks and by ordering his subordinates to round up and detain military-aged Muslim men, there was a substantial likelihood that crimes would be committed, and yet he still gave the orders.²⁴ By 25 October 1993, Mr. Rajić was aware that serious crimes had been committed by commanders and soldiers under his command in connection with operations in and around Vareš.²⁵

17. During the attacks mentioned above, at least twenty-five men, women, children, and elderly persons were murdered by those under Mr. Rajić’s command.²⁶ During a standoff with United Nations Protection Force (“UNPROFOR”), HVO forces under the command of Mr. Rajić fired at UNPROFOR armored personnel carriers and at the UNPROFOR headquarters in Vareš municipality.²⁷ After Mr. Rajić left Vareš town on 26 October 1993, HVO commanders and soldiers under his command committed crimes including looting and robbing Muslim property and sexually assaulting Muslim women.²⁸ Later, Mr. Rajić participated in a cover-up of the crimes committed during the attacks in and around Vareš, which included a false investigation and Mr. Rajić changing his name to “Viktor Andrić” in order to create the appearance that Mr. Rajić had been punished for his actions and that “Andrić” had replaced him in his command.²⁹

18. I find it instructive to quote the Sentencing Judgement:

In determining the seriousness of these crimes, the Trial Chamber examined the nature of the offences committed, their scale and brutality, the role played by Ivica Rajić, and the overall impact of the crimes upon the victims and their families. It concluded that the sentence should reflect the fact that the crimes were committed on a large scale, were of a particularly violent nature and

²⁰ Sentencing Judgement, paras 34-53.

²¹ Sentencing Judgement, paras 27-29.

²² Sentencing Judgement, para. 33.

²³ Sentencing Judgement, paras 38-40.

²⁴ Sentencing Judgement, para. 42.

²⁵ Sentencing Judgement, para. 48.

²⁶ Sentencing Judgement, para. 50.

²⁷ Sentencing Judgement, para. 52.

²⁸ Sentencing Judgement, para. 53.

²⁹ Sentencing Judgement, paras 57-64.

caused severe pain to the victims and their relatives. The sentence should also reflect the importance of the role played by Ivica Rajić in these events who, following orders of his own superiors, planned and ordered the attacks and further ordered the rounding up of more than two hundred and fifty Bosnian Muslim men, knowing the substantial likelihood that criminal acts would ensue following his orders.

Moreover, the Trial Chamber found that the special vulnerability of certain victims was a relevant aggravating circumstance to the crimes. However, it considered that Ivica Rajić's positions of authority and as a superior were not aggravating factors in the present case, but elements inherent in the gravity of the crimes. Finally, the Trial Chamber rejected the Prosecution's arguments that the participation in a cover-up and in obstructing justice for almost eight years constitute aggravating factors.

The Trial Chamber gave consideration to a number of mitigating circumstances which were afforded appropriate weight when considering the sentence: Ivica Rajić's guilty plea before the trial, his remorse and his cooperation with the Prosecution. Moreover, the Trial Chamber accorded limited additional weight in mitigation of sentence to Ivica Rajić's personal circumstances.³⁰

19. Based upon the foregoing, I am of the view that Mr. Rajić'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 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. By letter dated 4 August 2010, the General Secretariat of Penitentiary Institutions addressed Mr. Rajić's behaviour during incarceration, stating that his conduct is "good" and that he has "adapted to the regime of the Centre". Additionally, Mr. Rajić "maintains good relations with the other inmates in the Module who respect him and there are no problems among them".³¹ I consider that Mr. Rajić's good behaviour while serving his sentence is some—albeit very limited—evidence of his rehabilitation, which weighs in favour of his early release.

21. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement states 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. The Spanish authorities transmitted a report in relation to Mr. Rajić during his detention, which records that [REDACTED].³² Based upon the present information provided, I consider the psychological condition of Mr. Rajić to be a neutral factor.

³⁰ Sentencing Judgement, paras 179-181.

³¹ Memorandum of 10 November 2010.

³² Memorandum of 10 November 2010.

4. Co-operation with the Prosecution

22. 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.

23. According to the Prosecution report, Mr. Rajić has fulfilled his obligations to co-operate with the Prosecution pursuant to his plea agreement, and his co-operation with the Prosecution has “been substantial and in good faith”, although this co-operation “has been no more than Mr. Rajić is obligated to provide pursuant to the Plea Agreement”.³³ I consider that Mr. Rajić’s co-operation militates in favour of his early release, although the fact that he was obligated to provide this co-operation pursuant to his plea agreement diminishes the strength of this factor.

5. Conclusion

24. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while Mr. Rajić has displayed some—albeit very limited—evidence of rehabilitation and has provided co-operation to the Prosecution pursuant to his plea agreement, there remain significant factors that weigh against granting him early release: the gravity of Mr. Rajić’s crimes is very high, and I do not consider that the time that he has served in detention militates in favour of his release. I am therefore of the view that Mr. Rajić should not be granted early release.

25. I note that my colleagues unanimously share my view that Mr. Rajić should be denied 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 3 of the Enforcement Agreement, Ivica Rajić is hereby DENIED early release.

³³ Memorandum of 4 August 2010 (Memorandum from Deputy Prosecutor to Deputy Registrar, 26 July 2010), paras 2, 4.

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

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



Judge Patrick Robinson
President

Dated this thirty-first day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]