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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-95-9

Date: 24 June 2004

Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** **Judge Theodor Meron, President**

**Registrar:** **Mr. Hans Holthuis**

**Decision of:** **24 June 2004**

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# DECISION OF THE PRESIDENT ON THE APPLICATION FOR PARDON OR COMMUTATION OF SENTENCE OF MIROSLAV TADIĆ

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1. In this decision, I must consider whether a convicted defendant who is serving his sentence at the United Nations Detention Unit is eligible for pardon or commutation of his sentence when he has served less than two-thirds of the sentence.

2. Miroslav Tadić, convicted and sentenced by Trial Chamber II on 17 October 2003 and currently serving his sentence at the United Nations Detention Unit ("UNDU"), has filed before me an Application for Pardon or Commutation of Sentence.[1] Mr. Tadić argues that, as of the date of his application, he has already served more than one-half of his eight-year sentence, and is therefore eligible for pardon or commutation of sentence. The Applicant then lists several factors which, he argues, warrant a grant of pardon or a commutation of his sentence: his poor health; his act of voluntary surrender to the Tribunal and his cooperation with the Office of the Prosecution; his cooperative and respectful attitude during the trial; the fact that he was granted a provisional release prior to trial and unfailingly complied with its restrictive conditions; and, finally, his contribution to the process of reconciliation among the population of the Odžak and Šamac municipalities in Bosnia and Herzegovina.

3. The initial issue to be determined is whether the Applicant is indeed eligible for pardon or commutation of sentence.[2] Article 28 of the Tribunal's Statute states explicitly that the President of the Tribunal can consider a request for pardon or commutation of sentence only if the convicted person is eligible for pardon or commutation "pursuant to the applicable law of the State in which the convicted person is imprisoned."[3] Neither Article 28 nor the appropriate Rules of Procedure and Evidence or the implementing 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 address the situation where the convicted person is serving his sentence at the UNDU and not in one of the enforcement

[1] "Miroslav Tadić's Application for Pardon or Commutation of Sentence," filed confidential in part on 26 May 2004.

[2] While, in accordance with Article 5 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, IT/146, issued on 7 April 1999, I must consult with the Bureau and the sentencing Chamber when deciding whether an application for pardon or commutation of sentence should be granted, the preliminary determination of the applicant's eligibility, which is the prerequisite for relief, is one I am entitled to make alone. *See also* Rule 124 of the Rules of Procedure and Evidence (specifying that the President shall consult with the permanent judges on whether pardon or commutation is appropriate only after being notified by the enforcement state that the applicant is eligible for such relief).

[3] *See also* Rule 123 of the Rules of Procedure and Evidence (same); and Article 1 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, IT/146, issued on 7 April 1999 (same).

states. As I have explained in previous decisions, however, the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal.[4] Accordingly, the eligibility of individuals serving their sentence at the UNDU must be determined by reference to the equivalent conditions for eligibility established by the enforcement states.[5]

4. As I have also stated in previous decisions, and as the Applicant acknowledges, the eligibility for pardon or commutation of sentence in the enforcement states generally "starts at two-thirds of the sentence served."[6] It has been a consistent practice of this Tribunal to apply this standard when determining the eligibility of persons imprisoned at the UNDU for pardon or commutation of sentence.[7] As the Applicant concedes, he has not yet served two-thirds of his sentence.[8] In these circumstances, and in line with the established practice of the Tribunal, I conclude that Mr. Tadić is not yet eligible for a pardon or a commutation of sentence.

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[4] Order of the President on the Application for the Early Release of Simo Zarić, IT-95-9, 21 January 2004, at p. 3; Order of the President on the Application for the Early Release of Milan Simić, IT-95-9/2, 27 October 2003, at p. 3; Order of the President in Response to Zdravko Mucić's Request for Early Release, IT-96-21-A *bis*, 9 July 2003, at p. 3.

[5] *See* decisions cited in note 4, *supra*.

[6] *Ibid.*; *see also* "Miroslav Tadić's Application for Pardon or Commutation of Sentence," para. 5.

[7] *See* Order of the President on the Application for the Early Release of Simo Zarić, IT-95-9, 21 January 2004, at p. 3 ("Zarić's application is receivable because he has served over two-thirds of his sentence and is therefore eligible for early release"); Order of the President on the Application for the Early Release of Milan Simić, IT-95-9/2, 27 October 2003, at p. 3 ("Milan Simić's application is receivable because he will have served two-thirds of his sentence . . . and will therefore be eligible for early release"); Order of the President in Response to Zdravko Mucić's Request for Early Release, IT-96-21-A *bis*, 9 July 2003, at p. 3 ("Zdravko Mucić's application is receivable because he has served two-thirds of his sentence and is therefore eligible for early release"); Letter from Judge Claude Jorda, President of the Tribunal, to Maître Slobodan Zečević, counsel for Milan Simić, dated 6 March 2003 (concluding that, under the terms of Rules 123-125 of the Rules of Procedure and Evidence and the constant practice of the Tribunal, the President lacked authority to consider Milan Simić's request for early release until Mr. Simić served at least two-thirds of his sentence) (on file with the Office of the President).

[8] *See* "Miroslav Tadić's Application for Pardon or Commutation of Sentence," para. 1. The Applicant argues, however, that the time he spent on pre-trial provisional release should be added to the time he spent in detention when determining his eligibility. *Ibid.*, para. 12. When the period or provisions release is so counted, the combined period would amount to two-thirds of his sentence. The Applicant concedes, as he must, that the consistent position of this Tribunal is that the time spent on provisional release is not subject to credit for the time served. The Applicant argues, however, that an exception now be made in his case because the conditions of his provisional release imposed stringent restrictions on his movement, proscribing Mr. Tadić from leaving his residence except for approved medial treatment and requiring him to report daily to the local police station. *Ibid.* Conditions of provisional release, however restrictive, are requirements that the Applicant voluntarily accepted in exchange for not being kept in jail. They cannot give rise to an expectation that the time spent on provisional release would be later considered as time served. I am therefore unable to accept the Applicant's request that it be so considered in the determination of his eligibility for pardon or commutation of sentence. To do otherwise would be to violate the Trial Chamber's determination of what constituted time served by the Applicant and creditable against his sentence.

5. It must be acknowledged that, as the Applicant points out, my decisions granting early release have also stated that "in some circumstances" eligibility for pardon or commutation of sentence in some enforcement states starts "even earlier" than at two-thirds of the sentence served.[9] The Applicant believes that his case falls within the limited category of cases where special circumstances justify departure from the normal practice of the enforcement states and of this Tribunal. The only special circumstance which the Applicant puts forward, however, is his poor health.[10] Mr. Tadić explains that his state of health was poor already at the time of trial – a fact acknowledged by the Trial Chamber – and has subsequently deteriorated further. In particular, Mr. Tadić had to undergo two recent serious operations, and may require a third one. His health situation is rendered even more precarious, so the Applicant submits, by his advanced age of 67 years. The Applicant argues that home care and attention which could be provided by his family would facilitate his post-operative recovery and alleviate attendant health risks.

6. Accepting, *arguendo*, the Applicant's representations about the state of his health and the advantages that home care will provide, his case still does not appear to warrant a departure from the Tribunal's established rules of eligibility for pardon or commutation of sentence. The Applicant presents no medical reports or opinions indicating that a continuing incarceration at the UNDU presents a risk to his health, and that such a risk would be removed by home care in the hands of his family. On the contrary, the Applicant concedes that "the hospital conditions at hospitals in the Netherlands are on the high level," which suggests that he may be receiving better medical treatment than would be available at his home country of Bosnia-Herzegovina. The Applicant also provides no examples of a situation where the states enforcing the Tribunal's sentences would find an incarcerated individual in the Applicant's medical condition eligible for an early pardon or commutation on medical or compassionate grounds. In the absence of such showing, I am unable to conclude that it would be the practice of the enforcement states to grant an individual in the

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[9] *See* "Miroslav Tadić's Application for Pardon or Commutation of Sentence," para. 5 (quoting Order of the President on the Application for the Early Release of Milan Simić, IT-95-9/2, 27 October 2003, at p. 3); *see also* Order of the President on the Application for the Early Release of Simo Zarić, IT-95-9, 21 January 2004, at p. 3; Order of the President in Response to Zdravko Mucić's Request for Early Release, IT-96-21-A *bis*, 9 July 2003, at p. 3.

[10] The other circumstances on which the Applicant relies, *see* para. 2, *supra*, such as his act of voluntary surrender to the Tribunal and his cooperation with the Office of the Prosecution and the Trial Chamber, are not circumstances warranting departure from the normal rules of eligibility for pardon or commutation, but factors to be considered when deciding whether discretionary relief should be granted.

Applicant's medical condition an early pardon or commutation of sentence. Consequently, this is not a case where special circumstances warrant a departure from the Tribunal's normal rules of pardon or commutation eligibility.

For the foregoing reasons, I **DISMISS** Mr. Miroslav Tadić's Application for Pardon or Commutation of Sentence.

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

Done this 24th day of June 2004,
At The Hague,
The Netherlands.

Theodor Meron
President of the International Tribunal

**[Seal of the Tribunal]**