



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-95-9/1-ES

Date: 22 June 2005

Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. Hans Holthuis**

**Decision of: 22 June 2005**

**PROSECUTOR V TODOROVIĆ**

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**DECISION OF THE PRESIDENT ON THE APPLICATION  
FOR PARDON OR COMMUTATION OF SENTENCE  
OF STEVAN TODOROVIĆ**

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**Counsel for the Applicant:**

Mr. Slobodan M. Zečević

1. On 27 April 2005, Mr. Stevan Todorović (“Todorović”) filed before me a motion requesting his early release pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rules 123, 124 and 125 of the Rules of Procedure and Evidence (“Rules”) and the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Person Convicted by the International Tribunal (IT/146) (“Practice Direction”).
2. In September 1998, Todorović was detained and transferred to the Tribunal. At his initial appearance he pleaded not guilty and subsequently challenged the legality of his arrest and detention and initiated proceedings seeking his release and return to FRY. On 20 November 2000, Todorović entered into a plea agreement with the Prosecution and entered a guilty plea to one charge of persecutions and withdrew his various challenges to the legality of his arrest. He was sentenced by Trial Chamber III on 31 July 2001 to a sentence of 10 years imprisonment. Todorović was given credit for the two years, ten months and three days spent in custody prior to the rendering of the sentencing judgement. Todorović is currently serving his sentence in Spain and would have served his full sentence on 28 October 2008. Todorović served two-thirds of his sentence on 25 May 2005.
3. In support of his application for early release, Todorović argues that he has served the requisite two-thirds of his sentence and that he has repeatedly expressed regret and remorse for the crimes he committed, including in a statement he gave at his Sentencing Hearing on 13 December 2000. Further, Todorović argues that he has fully cooperated with the Office of the Prosecutor on two cases and that he has demonstrated rehabilitation while in detention and will be able to rejoin his community as a peaceful, law-abiding member of society.
4. Upon receipt of Todorović’s application for early release, I requested the Deputy Registrar to provide me with the relevant reports pursuant to Article 2 of the Practice Direction. On 26 May 2005, the Deputy Registry forwarded to me reports obtained from the Office of the Prosecutor describing Todorović’s cooperation and from the Spanish authorities regarding Todorović’s behaviour and psychological condition during his period of incarceration in Spain. The Deputy Registrar also forwarded the relevant reports to Todorović pursuant to Article 4 of the Directive to allow him the opportunity to comment. On 27 May 2005, Todorović sent a letter stating that he had no objection to them.<sup>1</sup>

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<sup>1</sup> Letter from Slobodan. M. Zečević, Counsel for Todorović, 27 May 2005.

5. Rule 123 of the Rules provides that the State in which the convicted person is serving his sentence shall notify the Tribunal when that convicted person becomes eligible for pardon or commutation of sentence according to that State's laws. In this case there was no such notification by the State of Spain. Rather, Todorović filed his application after serving two-thirds of his sentence on the basis that other convicted persons have become eligible for early release after serving two-thirds of their sentences in other countries. Under the law of Spain, a convicted person generally becomes eligible for pardon and commutation of sentence only upon the serving of three-quarters of their sentence. However, the Spanish penal code does allow parole after two-thirds of a sentence in exceptional circumstances. In the report provided, the Spanish authorities have stated that they consider exceptional circumstances to exist in this case. The applicable laws of Spain allow for early release or parole only if a detainee has progressed through three grades of prisoner status and displayed good behaviour and a high likelihood of successful reintegration in society. To facilitate the grant of Todorović's application, on 10 March 2005, the Spanish authorities elevated Todorović to grade three of the Spanish detention system, thus making him eligible for parole in that country.<sup>2</sup>

6. Article 28 of the Tribunal's Statute states that the President of the Tribunal can only consider a request for pardon or a commutation of sentence 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." Todorović's application would have therefore failed had not the Tribunal received notification from the Spanish authorities of Todorović's eligibility for parole under the laws of Spain.

7. However, serving two-thirds of a sentence alone is not sufficient to grant an early release and other special circumstances must be present. According to Rule 125 of the Rules, incorporated by reference in Article 7 of the Practice Direction, the President should take into account additional factors, such as the gravity of the offence, demonstration of rehabilitation, any substantial co-operation with the Office of the Prosecutor, treatment of similarly situated prisoners, and further criteria identified in prior orders and decisions relating to early release.

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<sup>2</sup> Ministry of the Interior Virgilio Valero Garcia, Sub director General of Treatment and Penitentiary Management, 17 May 2005.

8. The report of the Office of the Prosecutor is favourable to Todorović. It states that pursuant to the plea agreement entered into by Todorović in the *Simić* case he cooperated with the prosecution by providing evidence in that case and has also provided evidence in the *Milošević* case. Mr. Todorovic has also indicated his availability as a witness for the prosecution in the proceedings against *Stanišić and Simatović* and he is expected to testify in those proceedings when they come to trial.

9. The report of the Spanish authorities is also favourable to Todorović. It states that Todorović has been well-behaved during his detention. He complied with the regimental regulations and diligently carried out the orders of officials, with whom he maintained a respectful relationship.<sup>4</sup> Authorities noted that he was “mature, stable” and has shown remorse for the actions for which he was convicted. He also maintained good relations with the other inmates, including Muslims.<sup>5</sup>

10. In addition to his good-behaviour, I note that Todorović pled guilty to the significantly grave crime of persecutions, however, I also note that his readiness to work with the prosecution on a plea agreement and his expressions of remorse at the sentencing hearing were considered mitigating factors in arriving at his sentence.<sup>6</sup>

11. Upon my consideration of the relevant materials received from the Deputy Registrar, pursuant to Rule 124 of the Rules and Article 5 of the Practice Direction, I circulated this material and my provisional view to the members of the Bureau and those members of the original sentencing Trial Chamber that remain members of the Tribunal. All Judges consulted were in favour of granting Todorović’s application on the basis that exceptional circumstances existed. Of particular relevance is Todorović’s indicated willingness to continue to assist the prosecution.

12. On the basis of the foregoing, Todorović’s request for commutation of his sentence is granted. The Registrar is directed to inform the Spanish Authorities of this decision and to ensure that all steps are taken to implement the decision within a reasonably practicable time.

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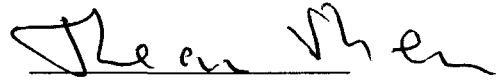
<sup>4</sup> Chief of Services 8 August 2002 Ministry of the Interior General Directorate of Penitentiary Institutions. No. 44.669

<sup>5</sup> The Psychologist 11 March 2005 Ministry of the Interior General Directorate of Penitentiary Institutions. No. 44.669

<sup>6</sup> See: Prosecutor v. Todorović Sentencing Judgement Case No. IT-95-9/1-S 31 July 2001

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

Done this 22<sup>nd</sup> day of June 2005,  
At The Hague,  
The Netherlands.



Theodor Meron  
President of the International Tribunal

**[Seal of the Tribunal]**