



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-98-30/1-ES
Date: 22 June 2007
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 22 June 2007

PROSECUTOR

v.

MLAĐO RADIĆ

CONFIDENTIAL

DECISION OF THE PRESIDENT ON COMMUTATION OF SENTENCE

Counsel for the Applicant:

Mr. Timo Fila

1. On 10 April 2007, the Embassy of France in The Netherlands notified 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 ("International Tribunal"), pursuant to Article 3(3) of the Agreement between the United Nations and the French Government on enforcement of the Tribunal's sentences,¹ Article 28 of the Statute and Rule 123 of the Rules of Procedure and Evidence ("Rules"), of Mlado Radić's eligibility for commutation of sentence under French law ("Notification"). Attached to the correspondence are reports from the French Government on Radić's behaviour, conditions of detention and psychological condition while imprisoned in France as required under Article 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".²

2. On 17 May 2007, the Office of the Prosecutor forwarded a memorandum to the Registrar of the International Tribunal concerning Radić's cooperation pursuant to Article 2 of the Practice Direction ("Prosecution Report").³ On 25 May 2007, pursuant to Article 2 of the Practice Direction, the Registrar informed Radić of the French Government's Notification and attached reports, the Prosecution Report and the steps to be taken by me under the Rules for determining whether commutation of sentence may be granted. On 1 June 2007, Counsel for Radić filed before me a Response pursuant to Article 4 of the Practice Direction.⁴

3. Thereafter, upon considering the above materials, I circulated them to the members of the Bureau and the permanent Judges of the sentencing Chamber on 12 June 2007 pursuant to Rule 124 of the Rules⁵ and Article 5 of the Practice Direction for consultation purposes in disposing of the Notification.

¹ Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, 25 February 2000.

² 15 August 2006.

³ Memorandum from Mr. Gavin Ruxton, Chief of Prosecutions, to Mr. John Hocking, Deputy Registrar, Re: Milomir Stakić and Mlado Radić—Application for Commutation/Reduction of Sentence, 17 May 2007.

⁴ Defence Submission, 1 June 2007 ("Response").

⁵ Under Rule 124 of the Rules: "[t]he 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."

I. BACKGROUND

4. Radić was arrested on 8 April 1998 and transferred to the custody of the International Tribunal on 9 April 1998 to stand trial. On 2 November 2001, the Trial Chamber issued its Judgement in *Prosecutor v. Kvočka et al.* ("Trial Judgement").⁶ The Trial Chamber convicted Radić for persecutions by murder, torture and beating, sexual assault and rape, harassment, humiliation and psychological abuse, and confinement in inhumane conditions as a crime against humanity under Article 5 of the Statute of the International Tribunal; murder as a violation of the laws or customs of war under Article 3 of the Statute; and two counts of torture as a violation of the laws or customs of war.⁷ These crimes were committed in the Omarska camp in Prijedor Municipality, Republika Srpska, from around 28 May 1992 until the end of August 1992.⁸ The camp was set up to detain persons suspected of collaborating with the opposition to the Serb takeover of Prijedor.⁹ The Trial Chamber found that Radić, as one of three guard shift leaders in the camp, was criminally responsible for these crimes as a co-perpetrator in a joint criminal enterprise pursuant to Article 7(1) of the Statute.¹⁰

5. Although the Trial Chamber also found that Radić exercised authority over guards on his shift and that there was substantial evidence of crimes committed by his subordinates, it declined to find that Radić incurred superior responsibility under Article 7(3) of the Statute.¹¹ The Trial Chamber further dismissed charges against Radić for inhumane acts, murder, two counts of torture and rape as crimes against humanity, as well as for cruel treatment and two counts of outrages upon personal dignity as violations of the laws or customs of war.¹² Accordingly, the Trial Chamber sentenced Radić to a single sentence of 20 years' imprisonment with credit for time already spent in custody pursuant to Rule 101(C) of the Rules.¹³

6. On appeal, the Appeals Chamber affirmed the convictions and sentence imposed by the Trial Chamber against Radić.¹⁴ Radić was transferred to serve sentence in France on 15

⁶ Case No. IT-98-30/1-T.

⁷ Trial Judgement, para. 761.

⁸ *Id.*, paras. 512, 571.

⁹ *Id.*, para. 2.

¹⁰ *Id.*, para. 578.

¹¹ *Id.*, para. 570.

¹² *Id.*, para. 762.

¹³ *Id.*, paras. 763, 767.

¹⁴ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, p. 243.

November 2005. The date on which he is to be released if he serves his full sentence is 7 April 2018.

II. SUBMISSIONS

7. In correspondence attached to the Notification, the Penalty Enforcement Judge of the Douai Court of Appeal Arras *Tribunal de Grande Instance* advises that under Article 721 of the French Code of Criminal Procedure, a reduction of sentence is granted automatically to convicted persons from the time they serve their sentence calculated at three months for the first year, two months for the following years, and for the last part of the sentence of less than a full year, seven days per month. This reduction may be withdrawn, however, by a penalty enforcement Judge where there is detainee misconduct. According to the Judge, Radić is eligible for an automatic sentence-reduction credit of 41 months, which is calculated from the day of Radić's arrest, or 8 April 1998, to 7 April 2018, or the last day of his sentence, because the International Tribunal has "previously indicated that convicted persons may benefit from the provisions of French law as from the beginning of their imprisonment."¹⁵

8. The Judge also advises that pursuant to Article 721-1 of the French Code of Criminal Procedure as amended by Law no. 2004-204 of 9 March 2004, which entered into force on 1 January 2005, Radić may be eligible for an additional reduction not exceeding three months per year of detention where he shows "serious signs of social readjustment" such as by successfully sitting for a school, university or professional examination or by making efforts to compensate his victims.¹⁶ Although Radić could be eligible for 24 months reduction from 8 April 1998 to 8 April 2006, the Judge recommends that Radić only be granted a portion of that amount, or 10 months, due to his denials of having committed rape and sexual assault, and his lack of reflection on the facts of his case.¹⁷

¹⁵ Correspondence from Agnès Tanguy, Penalty Enforcement Judge, Douai Court of Appeal Arras *Tribunal de Grande Instance* to the Public Prosecutor, Arras *Tribunal de Grande Instance*, 8 November 2006 ("Correspondence of 8 November 2006"). However, in a letter dated 30 November 2006 to the Minister of Justice, the Public Prosecutor advises that under Article 721 of the French Code of Criminal Procedure, Radić is only entitled to a reduction of 25 months and 28 days as calculated from the day he was incarcerated in France, or 15 November 2005, until the last day of Radić's sentence. According to precedent set in *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-ES, Decision of the President on Commutation of Sentence, filed confidentially on 10 March 2006, remission of sentence under Article 721 of the French Code of Criminal Procedure is calculated from the duration of the sentence imposed. *See id.*, para. 10. Thus, the correct date on which Radić's remissions begin to accrue is the date of his incarceration, or 8 April 1998. *Cf. id.*, para. 11.

¹⁶ Correspondence of 8 November 2006.

74

9. Thus, in total, the Penalty Enforcement Judge submits that Radić is eligible for 51 months sentence reduction or four years and three months of his 20-year sentence. As a result, if granted, Radić's last day of sentence would be on or about 7 January 2014 rather than 7 April 2018.

10. According to the "Socio-Educational Report" attached to the Notification, since Radić's arrival at the Bapaume Detention Centre on 16 November 2005, he has displayed good behavior towards prison staff with no disciplinary measures taken. While in prison, he has taken up employment in the workshop with entirely satisfactory performance and has also taken French courses in the education center, although his French skills are limited. He has not undergone any psychological counseling although this may be due to the language barrier, which renders therapy difficult. He maintains contact with his three children and supports his wife with his workshop earnings. Friends residing in France have visited him three times. He has no specific plans following his release from prison, but has indicated he is ready to work in any occupation. With respect to his convictions and sentence, he does not acknowledge all of the acts ascribed to him and expresses shock whenever sexual assault and rape are mentioned.¹⁸

11. In the Prosecution Report, the Prosecution indicates that Radić did not provide any cooperation with the Office of the Prosecutor either before or after his transfer to France.

12. As for Radić's Response, Counsel claims that the Prosecution Report on Radić's cooperation with the International Tribunal is inadequate.¹⁹ Counsel notes that contrary to what is stated in the Prosecution Report, Radić did give, in the presence of his Counsel and prior to the commencement of his trial, a voluntary statement to the Prosecution.²⁰ Radić also provided testimony in court and, as noted by the Trial Chamber in its Judgement, this allowed for "clarifications of matters and thus expedition of the proceedings against him."²¹ Furthermore, Counsel notes that the Prosecution has never invited Radić to cooperate with it with respect to other cases before the Tribunal.²² Thus, Counsel submits that Radić's

¹⁷ *Id.*

¹⁸ Socio-Educational Report for Radić, Mlađo, Detainee #3668, from the Ministry of Justice, Directorate Prison Administration, Bapaume Detention Centre Prison Social Integration and Probation Service.

¹⁹ Response, para. 7.

²⁰ *Id.*, para. 5.

²¹ *Id.* (Internal quote marks omitted).

²² *Id.*, para. 6.

cooperation with the Tribunal as outlined in the Response “should be given due weight and consideration in the rendering of a decision on the reduction of his sentence.”²³

III. DISCUSSION

13. Rule 125 of the Rules provides the factors to be taken into account for determining whether commutation of sentence is appropriate. These include, *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, as well as any substantial cooperation of the prisoner with the Prosecutor.”

14. With respect to the gravity of the crimes for which Radić was convicted, I note that the Trial Chamber found that during the three months that he was guard shift leader in Omarska camp, he substantially participated in the camp system, which allowed for war crimes and crimes against humanity including persecutions, murder and torture, to be committed against a large number of vulnerable Bosnian Muslim and Bosnian Croat detainees. The persecutions involved widespread and systematic murder, torture and beatings, sexual violence, harassment, humiliation and psychological abuse, and confinement in inhumane conditions.²⁴ The Trial Chamber received a substantial amount of credible and consistent evidence that a large number of the crimes were committed by Radić’s guard shift and, although Radić was exposed on a daily basis to killings, tortures, and other abuses, he never exercised his authority to stop the guards from committing crimes.²⁵ In fact, the Trial Chamber found that in contrast to his colleagues who ignored and tolerated crimes, “by all indications, Radić relished and actively encouraged criminal activity in the camp.”²⁶ Finally, the Trial Chamber found that he physically perpetrated crimes of rape and sexual violence against several female detainees in the camp, some of which amounted to torture.²⁷ The Trial Chamber considered that Radić, in doing so, “grossly abused his position of power in the camp by forcing or coercing the women into sexual activity for his own pathetic gain.”²⁸

²³ *Id.*, para. 7.

²⁴ Trial Judgement, paras. 737-739.

²⁵ *Id.*, paras. 538, 545.

²⁶ *Id.*, para. 741.

²⁷ *Id.*, paras. 546-561.

²⁸ *Id.*, para. 740.

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15. Having considered all of the materials provided by the Registrar, the circumstances of this case and the views of the Judges of the sentencing Chamber and of the Bureau, I am not persuaded that commutation of sentence should be granted. I have assessed the gravity of the crimes for which Radić was convicted against the evidence of rehabilitation and cooperation with the Prosecution, as well as the treatment of similarly-situated prisoners. In the Prosecution Report on cooperation, I note that the Prosecution fails to indicate whether any cooperation has in fact been sought. As for Radić's Response, I do not take his cooperation prior to conviction into account under Rule 125 and Article 2 of the Practice Direction,²⁹ and given that it was already weighed by the Trial Chamber when determining Radić's sentence. Thus, I consider the factor of cooperation with the Prosecution to be neutral. Furthermore, I do not consider that Radić demonstrates clear signs of rehabilitation. While his behavior in detention has generally been good, this is outweighed by his denial of having committed rape and sexual assault, which the French Penalty Enforcement Judge also found to be of concern.

IV. DISPOSITION

16. On the basis of the foregoing, commutation of sentence in this case is denied at this time. However, I note that this decision does not preclude Radić from making a further application for commutation of sentence in the future on the basis of changed circumstances.

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

Done this 22nd day of June 2007,
At The Hague,
The Netherlands.



Fausto Pocar
President of the International Tribunal

[Seal of the International Tribunal]

²⁹ Article 2(c) of the Practice Direction provides 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 [. . .]" (emphasis added).