



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-97-25-ES
Date: 12 November 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 12 November 2008

PUBLIC

**DECISION OF THE PRESIDENT ON THE APPLICATION
FOR PARDON OR COMMUTATION OF SENTENCE
OF MILORAD KRNOJELAC**

Counsel for the Prosecution:

Mr. Serge Brammertz

Counsel for the Applicant:

Mr. Mihajlo Bakrač

Teu

1. On 9 April 2008, Milorad Krnojelac filed a request for early release on 20 June 2008, at which time the Request indicated that two-thirds of his sentence would be served.¹ In this instance, the notification envisaged by Rule 123 of the Rules of Procedure and Evidence (“Rules”) was made by Mr. Krnojelac personally. While the Rules do not specifically recognize the right of a convicted person to make this application in his personal capacity, past practice of this Tribunal has been to deal with such an application in accordance with the Rules applicable to other notifications under Rule 124 of the Rules.²
2. On 10 April 2008, I requested that the Registry undertake to contact the Italian authorities to ascertain Mr. Krnojelac’s eligibility for early release under Italian national law and to procure the relevant reports from the Prosecutor of the Tribunal and the Italian prison authorities,³ as prescribed 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 Tribunal (“Practice Direction”).⁴
3. On 22 May 2008 and 5 August 2008, the Registry forwarded medical reports received from the Italian prison authorities pursuant to Article 2(b) of the Practice Direction.⁵
4. On 22 May 2008, the Registry also forwarded a submission prepared by the Prosecutor of the Tribunal pursuant to Article 2(c) of the Practice Direction. The Registry subsequently forwarded a corrigendum to correct an error in the original submission on 26 June 2008.⁶
5. Pursuant to Article 2(c) of the Practice Direction, on 14 April 2008 the Registrar requested information from the Italian authorities’ as to whether Mr. Krnojelac is eligible for early release under Italian national law.⁷ On 4 August 2008, the Italian Embassy responded that the inquiry had been referred to a judicial panel on the enforcement of sentences in the

¹ Confidential Defence Request Seeking Milorad Krnojelac’s Early Release, 9 April 2008 (“Request”).

² See *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-ES, Confidential Decision of the President on Commutation of Sentence, 4 September 2007, para. 4; *Prosecutor v. Drago Josipović*, Case No. IT-95-16-ES, Confidential and Ex Parte Decision of the President on the Application for Pardon or Commutation of Sentence of Drago Josipović, 30 January 2006, paras 4 and 6; *Prosecutor v. Stefan Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stefan Todorović, 22 June 2005, para. 5.

³ Memorandum of 10 April 2008 to the Deputy Registrar.

⁴ IT/146/Rev. 1, 15 August 2006.

⁵ Memorandum of 22 May 2008 from the Deputy Registrar; Memorandum of 5 August 2008 from the Deputy Registrar.

⁶ Memorandum of 22 May 2008 from the Deputy Registrar; Memorandum of 26 June 2008 from the Deputy Registrar.

⁷ Memorandum of 3 July 2008 from the Registrar to G. Cortese, Ambassador of the Italian Republic to The Netherlands.

Italian judicial system and that a response would be made after the conclusion of an ongoing judicial recess.⁸

6. On 5 November 2008, the Registrar advised me that a response had been received from the Italian authorities.⁹ The information provided by the Italian authorities was that although Mr. Krnojelac was entitled to a reduction in sentence of 810 days, he was not entitled to early release under domestic law.¹⁰

7. Pursuant to Rule 123 of the Rules of Procedure and Evidence, a convicted person's application for pardon or commutation of sentence can only be granted where that person would be eligible for such treatment pursuant to the laws of State of imprisonment. Consequently, as Italy has advised that Mr. Krnojelac is not eligible under Italian law for pardon or commutation of sentence his Request must be rejected.

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

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

Done this 12th day of November 2008,
At The Hague,
The Netherlands.



Fausto Pocar
President of the International Tribunal

[Seal of the Tribunal]

⁸ Memorandum of 5 August 2008 from the Deputy Registrar.

⁹ Memorandum of 5 November 2008 from the Deputy Registrar.

¹⁰ *Ibid.*