



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-95-16-ES  
Date: 16 February 2009  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Patrick Robinson, President**

**Acting Registrar: Mr. John Hocking**

**Decision of: 16 February 2009**

**PUBLIC-REDACTED**

**DECISION OF THE PRESIDENT ON THE APPLICATION FOR  
PARDON OR COMMUTATION OF SENTENCE OF  
VLADIMIR ŠANTIĆ**

**Office of the Prosecutor**

Mr. Serge Brammertz

**Counsel for Mr. Vladimir Šantić**

Mr. Petar Pavković

1. On 21 November 2008, Counsel for Vladimir Šantić filed a confidential request seeking commutation of sentence (“Request”).<sup>1</sup> Šantić is currently serving his sentence in Spain.<sup>2</sup>
2. On 27 November 2008 I requested relevant reports from the Registrar pursuant to 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 (IT/146/Rev.1) (“Practice Direction”). I received a report from the Office of the Prosecutor on Šantić’s cooperation pursuant to Article 2(c) of the Practice Direction on 5 December 2008 and the relevant information pursuant to Article 2(b) from the Spanish authorities on 26 January 2009.

## I. BACKGROUND

3. The initial indictment against Vladimir Šantić was issued on 2 November 1995.<sup>3</sup> It alleged that Šantić, along with Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Dragan Papić, Drago Josipović, Stipo Alilović and Marinko Katava, was responsible for Grave Breaches under Article 2(a), (c), (d) and (g), and Violations of the Laws and Customs of War under Article 3 of the Statute of the International Tribunal (“Statute”). The indictment was based on two conflicts involving the Croatian Defence Council (“HVO”) in the village of Ahmići in the Lašva River Valley in Bosnia and Herzegovina on 20 October 1992 and 16 April 1993.
4. The indictment was publicised on 11 December 1996 and Vladimir Šantić surrendered himself to the International Tribunal along with his co-accused on 6 October 1997, with the exception of Vlatko Kupreškić, who was arrested on 18 December 1997.<sup>4</sup> The Trial began on 17 August 1998, after the withdrawal of Marinko Katava and Stipo Alilović from the indictment.<sup>5</sup> Vladimir Šantić was convicted by the Trial Chamber for persecution, murder and other inhumane acts as Crimes Against Humanity pursuant to Article 5 of the Statute and acquitted of murder and cruel treatment as violations of the laws and customs of war pursuant to Article 3 of the Statute.<sup>6</sup> The Trial Chamber sentenced Vladimir Šantić to 25 years imprisonment subject to credit of 27

<sup>1</sup> *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-A, Proposal of Vladimir Šantić for Commutation of Sentence, 21 November 2008.

<sup>2</sup> *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-A, Order Designating the State in which Vladimir Šantić is to Serve his Sentence, 18 December 2001.

<sup>3</sup> *Prosecutor v. Kupreškić et al.* Case No. IT-95-16-I, Indictment, 2 November 1995 (“Indictment”).

<sup>4</sup> *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić, Vladimir Šantić*, Case No. IT-95-16-T, Trial Judgement (“Trial Judgement”), paras 2-8.

<sup>5</sup> Trial Judgement, paras 9-17. The Prosecutor decided there was insufficient evidence against Marinko Katava; Stipo Alilović died in custody.

<sup>6</sup> Trial Judgement, paras 825-833.

months and 8 days pursuant to Rule 101(D)<sup>7</sup> of the Rules of Procedure and Evidence of the International Tribunal (“Rules”).<sup>8</sup>

5. Šantić appealed the Trial Judgement. The Appeals Chamber affirmed his convictions but rejected the Trial Chamber finding that Šantić had taken a command role in the HVO attack. This was discounted as an aggravating factor and as a result, the Appeals Chamber revised the sentence of the Trial Chamber from twenty-five years of imprisonment to eighteen years.<sup>9</sup> The reduction was made despite the fact that the Appeals Chamber allowed the Prosecution’s Appeal and found Šantić guilty of murder and cruel treatment as violations of the laws and customs of war pursuant to Article 3 of the Statute.<sup>10</sup>

## II. DISCUSSION

6. Under Article 28 of the Statute, a convicted person becomes eligible for pardon or commutation of sentence if he or she becomes eligible for parole under the laws of the host state. The first issue that must be considered, therefore, is whether Šantić qualifies for parole under Spanish law.

7. Prisoners in Spain generally become eligible for parole after three-quarters of their sentence. In some circumstances, however, they may be eligible after two thirds of the sentence. To become eligible for parole, prisoners must have passed through three grades of prisoner status and displayed good behaviour and a high likelihood of successful reintegration in society.<sup>11</sup> Šantić would ordinarily have served two-thirds of his sentence by 2 October 2009.<sup>12</sup>

8. Although Šantić has not yet served two-thirds of his original sentence, he has passed through the three grades of prisoner status. He has also qualified, through work and good behaviour,

<sup>7</sup> Now Rule 101(C) of the Rules.

<sup>8</sup> Trial Judgement, pp. 326-327.

<sup>9</sup> *Prosecutor v. Kupreškić et al.* Case No. IT-95-16-A, Appeal Judgement, (“Appeal Judgement”) 23 October 2001, p.171.

<sup>10</sup> Appeal Judgement p.172.

<sup>11</sup> *Prosecutor v. Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stevan Todorović, 22 June 2005, para. 5.

<sup>12</sup> “Proposal for Penitentiary Benefit, Qualified Advancement of Conditional Release, Article 91, Paragraph 2 of the Penal Code”, 13 November 2008.

for 302 days of “benefit”, which amounts to time off his sentence. When these 302 days of benefit are considered, Šantić effectively completed two-thirds of his sentence on 4 December 2008.<sup>13</sup>

9. A Decision of the Spanish National High Court confirmed that Šantić was eligible for Conditional Release, provided he returns to Croatia. The Decision remarks that the decision confirming “conditional release” will be effective as soon as confirmed by the International Tribunal.<sup>14</sup> It is therefore clear that Šantić is eligible for parole under Spanish law.

10. It is not sufficient for a detainee to merely be eligible for parole under the law of the host state in order to qualify for early release, however: other special circumstances must be present. According to Rule 125 of the Rules, referred to in Article 7 of the Practice Direction, when determining whether pardon or commutation is appropriate, the President shall take account of additional factors, including the gravity of the crime or crimes for which the individual 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.

11. In its Judgement, the Appeals Chamber considered the fact that Šantić had accepted his level of guilt. This demonstrates an initial degree of rehabilitation relevant under Rule 125 to considering the request.<sup>15</sup> This evidence of rehabilitation is supplemented by the reports from the General Subdirectorate of Penitentiary Treatment and Management received 19 January 2009. The Social Report gives no cause for concern. The conduct report from the Parole Board of Segovia Penitentiary Centre is generally positive, reporting several ‘notes of merit’ and good participation in various activities. The psychological report suggests that Šantić is “balanced and civil”, “active and confident” and has adapted well to his conditions.<sup>16</sup>

12. Šantić’s behaviour and activities in prison have resulted in a substantial benefit of 302 days being substituted from his sentence. Šantić participated in various activities, which include working in various sections of the prison and significantly improving his Spanish.<sup>17</sup> The fact that Šantić

<sup>13</sup> *Ibid.*

<sup>14</sup> National High Court Central Juvenile Court (with Penitentiary Supervision) Conditional Release 0000715/2004 0001 Decision, 22 December 2008.

<sup>15</sup> Appeal Judgement, para. 464.

<sup>16</sup> Communication from Spanish Authorities, received 19 January 2009: Report on Social Situation, Social Worker no. 19378, 19 December 2009; Report on Conduct, Segovia Prison Parole Board (undated); Segovia Penitentiary Centre Psychological Report of Vladimir Šantić, 15 January 2009.

<sup>17</sup> Segovia Penitentiary Centre Psychological Report of Vladimir Šantić, 15 January 2009.

accrued the legal maximum amount of benefit (90 days) in both 2006 and 2007,<sup>18</sup> is evidence of the extent of his good behaviour in prison. The evidence of rehabilitation and good behaviour is therefore significant and must be considered relevant to the Request.

13. Šantić has offered “extensive” support to the Office of the Prosecutor.<sup>19</sup> [REDACTED] His “substantial” assistance to the Prosecutor was also recognised by the Appeals Chamber, forming part of its decision to reduce his sentence to eighteen years.<sup>23</sup> This extent of cooperation offered by Šantić is relevant to the consideration of his Request.

14. In accordance with Article 5 of the Practice Direction and Rule 124 of the Rules, I attached the information collected by the Registrar from the Spanish authorities for the consideration of the Bureau and the Judges of the sentencing Chamber and Appeals Chamber that remain Judges of the International Tribunal. All but one of the Judges consulted fully agreed with my assessment that Mr. Šantić should be granted early release. The Judge that did not fully agree queried whether an inequality was caused between Šantić and other Tribunal convicts in light of the reduction of 302 days he accrued for good behaviour. Noting that a failure to take account of that benefit would create inequality between Šantić and other Spanish convicts, that Judge expressed a preference for balancing the two inequalities and granting early release in May 2009. Acknowledging that the difference was relatively small – a period of 3 months only – he did not insist on this solution, particularly in light of the views expressed by the other Judges that he was eligible for release now.

15. In light of the foregoing, and having considered those factors identified in Rule 125 of the Rules, Vladimir Šantić’s Request for commutation of 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.

---

<sup>18</sup> “Proposal for Penitentiary Benefit, Qualified Advancement of Conditional Release, Article 91, Paragraph 2 of the Penal Code”, 13 November 2008.

<sup>19</sup> Report of Gavin Ruxton, Vladimir Šantić [sic] Application for review of qualification within the Spanish Penitentiary System, 20 October 2008.

<sup>20</sup> [REDACTED].


<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> Appeals Judgement, paras 461-465.

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

Done this 16th day of February 2009,  
At The Hague,  
The Netherlands.

  
\_\_\_\_\_  
Judge Patrick Robinson  
President

[Seal of the International Tribunal]