

**UNITED
NATIONS**

MC



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-00-39 & 40/1-ES

Date: 14 September 2009

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 14 September 2009

PUBLIC REDACTED

**DECISION OF THE PRESIDENT ON THE APPLICATION FOR
PARDON OR COMMUTATION OF SENTENCE OF MRS.
BILJANA PLAVŠIĆ**

Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Biljana Plavšić

Mr. Robert J. Pavich
Mr. Eugene O'Sullivan

1. On 25 May 2009, the Swedish authorities notified the International Criminal Tribunal for the former Yugoslavia (“Tribunal”), pursuant to Article 8(1) of the Agreement between the United Nations and the Government of Sweden on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia (“Enforcement Agreement”) and Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), that Mrs. Biljana Plavšić is eligible for conditional release under Swedish law as of 27 October 2009 (“Notification”).¹

2. Attached to the Notification, the Swedish authorities submitted behavioural and psychological reports from the prison authorities pursuant to Article 2(b) 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”),² including two reports on the psychological condition of Mrs. Plavšić, dated 15 June 2008 and 24 February 2009, respectively (“Psychological Reports”), as well as one report dated 20 March 2009 concerning Mrs. Plavšić’s behaviour and the conditions under which she has been imprisoned (“Behavioural Report”). On 12 June 2009, pursuant to Article 2 of the Practice Direction, the Registrar informed Mrs. Plavšić of the Notification and the steps to be taken by me under the Rules for determining whether commutation of sentence may be granted.

2. On 8 July 2009, the Office of the Prosecutor forwarded a memorandum to the Registrar of the Tribunal concerning Mrs. Plavšić’s cooperation pursuant to Article 2 of the Practice Direction (Prosecution Report). On 20 July 2009, pursuant to Article 2 of the Practice Direction, the Registrar provided Mrs. Plavšić with the Prosecution Report, Psychological Reports, and Behavioural Report, and informed her of her right, pursuant to Article 4 of the Practice Direction, to respond to the documents. On 23 July, Mrs. Plavšić submitted a response, in which she confirmed the accuracy of the documents.

I. BACKGROUND

3. The initial indictment against Mrs. Plavšić was issued on 3 April 2000.³ The Indictment alleged that from November 1990 until April 1992, Mrs. Plavšić was a member of the collective Presidency of Bosnia and Herzegovina, and from February 1992 through May 1992, she served as a member of the acting Presidency of the “so called Serbian Republic of Bosnia and Herzegovina”.

¹ Memorandum of 26 May 2009 from the Registrar to the President of the Tribunal (“Memorandum of 26 May”).

² IT/146/Rev. 1, 15 August 2006.

³ *Prosecutor v. Biljana Plavšić*, Case No. IT-00-40-I, Indictment, 3 April 2000 (“Indictment”).

The Indictment contained nine counts, charging Mrs. Plavšić, acting individually or in concert with Radovan Karadžić, Momčilo Krajišnik and others, with genocide, complicity in genocide, extermination, murder, willful killing, persecutions, deportation, and inhumane acts against Bosnian Muslims, Bosnian Croats and other non-Serbs in 37 municipalities in Bosnia and Herzegovina, in order to secure control of those areas of Bosnia and Herzegovina that had been proclaimed part of the Serbian republic.⁴

4. On 23 February 2001, the Trial Chamber granted a Prosecution motion for joinder of the *Krajišnik* case with Mrs. Plavšić's case.⁵ Mrs. Plavšić was then indicted with Mr. Krajišnik in the amended consolidated indictment.⁶ The Consolidated Indictment contained 8 counts against Mrs. Plavšić, alleging genocide, complicity in genocide, persecutions, extermination, killing, deportation and inhumane acts.⁷

5. Mrs. Plavšić voluntarily surrendered to the Tribunal on 10 January 2001.⁸ On 2 October 2002, pursuant to a plea agreement made with the Prosecutor, Mrs. Plavšić pled guilty to Count 3 of the Consolidated Indictment, which alleged that acting individually and in concert with others, she participated in a joint criminal enterprise and planned, instigated, ordered and aided and abetted persecutions of the Bosnian Muslim, Bosnian Croat and other non-Serb populations of 37 municipalities in Bosnia and Herzegovina.⁹ As part of the plea agreement, Mrs. Plavšić admitted to supporting and contributing to achieving the objective of the permanent removal of ethnic populations by force, which included the knowledge that forcible permanent removal of non-Serbs from Serbian-claimed territories would include a discriminatory campaign of persecution.¹⁰ In light of the plea agreement, the Trial Chamber ordered that the trial of Mr. Krajišnik be severed from Mrs. Plavšić's sentencing proceedings.¹¹

6. On 27 February 2003, Trial Chamber III sentenced Mrs. Plavšić to 11 years of imprisonment.¹² The sentence was imposed subject to credit given under Rule 101(C) of the Rules

⁴ Indictment, paras 3-4 and 6.

⁵ *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39 & 40-PT, Decision on Motion for Joinder, 23 February 2001.

⁶ *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39 & 40-PT, Amended Consolidated Indictment, 23 February 2001 ("Consolidated Indictment").

⁷ *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003 ("Sentencing Judgement"), para. 2.

⁸ Sentencing Judgement, para. 1.

⁹ Sentencing Judgement, para. 8.

¹⁰ *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39 & 40-PT, Factual Basis for Plea of Guilt, 30 September 2002, paras 10 and 13.

¹¹ *Prosecutor v. Krajišnik and Plavšić*, Case No. IT-00-39 & 40-PT, Scheduling Order, 25 November 2002, p. 3.

¹² Sentencing Judgement, para. 132.

for the period already spent in detention in the United Nations Detention Unit (“UNDU”). At sentencing, Mrs. Plavšić had been detained in the UNDU between 10 January 2001 and 6 September 2001, between 14 and 19 December 2002 and on 26 February 2002, for a total of 245 days.¹³ On 26 June 2003, Mrs. Plavšić was transferred to Sweden to serve the remainder of her sentence.¹⁴ As of 24 October 2009, Mrs. Plavšić will have served two-thirds of her sentence. According to the notification from the Swedish authorities, Mrs. Plavšić will be eligible for conditional release as of 27 October 2009.¹⁵

II. DISCUSSION

7. Under Article 28 of the Statute of the Tribunal (“Statute”), the President of the Tribunal shall consider granting early release to a convicted person when he or she becomes eligible for pardon or commutation of sentence under the applicable law of the enforcement State. In determining whether early release is appropriate, Article 28 of the Statute indicates that the President is to evaluate the application “on the basis of the interests of justice and the general principles of law”. More specifically, Rule 125 of the Rules provides that the President should consider, *inter alia*, the gravity of the crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, and any substantial cooperation by the prisoner with the Prosecutor.

8. Evaluating Mrs. Plavšić’s eligibility for early release under Rule 125 of the Rules, I note first that she appears to have demonstrated substantial evidence of rehabilitation. Although previously taken into consideration at the time of her sentencing, Mrs. Plavšić’s guilty plea indicates that she accepted responsibility for her crimes from an early stage of the proceedings. At the sentencing hearing, Mrs. Plavšić expressed her remorse and accepted that “[t]he knowledge that I am responsible for such human suffering and for soiling the character of my people will always be with me.”¹⁶ In her statement in support of her motion for a change of plea it was also stated: “By accepting responsibility and expressing her remorse fully and unconditionally, Mrs. Plavšić hopes to offer some consolation to the innocent victims [...] of the war in Bosnia and Herzegovina.”¹⁷

¹³ Sentencing Judgement, para. 133.

¹⁴ *Prosecutor v. Plavšić*, Case No. IT-00-39 & 40/1, Order Designating the State in Which Biljana Plavšić is to Serve her Sentence, 24 April 2003.

¹⁵ Memorandum of 26 May.

¹⁶ Sentencing Judgement, paras. 71-72.

¹⁷ *Id.* at para. 71.

9. The Behavioural Report further indicates that Mrs. Plavšić has exhibited good behaviour during the course of her incarceration, which is also evidence of rehabilitation. Although Mrs. Plavšić has not taken part in any organised occupation at the prison because she is a pensioner, she has participated in the institution's walks, and she also occupies herself by cooking and baking. According to the Behavioural Report, Mrs. Plavšić was reprimanded for misbehaviour on three occasions. However, the events were dismissed as having been of a minor nature and did not result in "any measure on the part of the correctional institution." It is also important to note that Mrs. Plavšić behaved well [redacted].¹⁸ Overall, the Behavioural Report concludes that Mrs. Plavšić's "behaviour has been good."¹⁹

10. Notwithstanding the gravity of her crimes, I note that as of 24 October 2009, Mrs. Plavšić will have served two-thirds of her sentence. Considering that other convicted persons similarly-situated have been eligible for early release after serving two-thirds of their sentences, this factor supports her eligibility for early release.

11. Although the Rules admit no direct consideration of the health and mental wellbeing of a convicted person as part of the criteria for early release,²⁰ past Presidents have considered advanced age and health to be relevant to the exercise of their discretion.²¹ Further, Article 7 of the Practice Direction, provides that the President may consider any other information that he or she believes to be relevant to supplement the criteria specified in Rule 125. The Psychological Reports note that Mrs. Plavšić [redacted].²² [redacted]."²³ According to the Psychological Reports, [redacted]."²⁴ [redacted].²⁵ [redacted].²⁶

12. According to the Prosecution Report, Mrs. Plavšić has not been overtly helpful or anxious to cooperate with the Office of the Prosecutor. Nevertheless, I observe that she has engaged in discussions with the Office of the Prosecutor and has testified before the Tribunal. In particular, the Prosecution Report notes that, despite the fact that on-going cooperation was not part of her plea

¹⁸ See Behavioural Report.

¹⁹ See Behavioural Report.

²⁰ *Prosecutor v. Krnojelac*, Case No.: IT-97-25-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac, 21 June 2005.

²¹ *Prosecutor v. Strugar*, Case No. IT-01-42-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Pavle Strugar, 16 January 2009, paras 11-12.

²² See Psychological Reports.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*


agreement, Mrs. Plavšić testified in the *Krajišnik* case as a witness ordered to appear by the court. She also participated in interviews with the Office of the Prosecutor in connection with the possibility of testifying in the *Milošević* case. The Prosecution Report indicates that she did not wish to testify in this case. [redacted]. I consider that Mrs. Plavšić's willingness to cooperate in the *Krajišnik* case should weigh in favour of her request for early release.

13. In accordance with Article 5 of the Practice Direction, I attached the information received from the Swedish authorities and the Prosecution for consideration by the Bureau and the Judges of the sentencing Chamber and Appeals Chamber that remain Judges of the Tribunal and offered my views on this matter, as expressed above, for consideration by my colleagues. All but one of the Judges consulted fully agreed with my assessment that Mrs. Plavšić should be granted early release. The Judge who did not fully agree expressed concern with regard to whether Mrs. Plavšić has demonstrated sufficient evidence of rehabilitation.

14. Although I appreciate the concern of my colleague, for the reasons expressed above, I am satisfied that Mrs. Plavšić should be granted early release in accordance with her entitlement to be released under Swedish law. The Registrar is directed to inform the Swedish authorities of this decision as soon as practicable, as prescribed in Article 10 of the Practice Direction.

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

Done this 14th day of September 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]