



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-03-66-ES  
Date: 15 October 2010  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Patrick Robinson, President  
**Registrar:** Mr. John Hocking, Registrar  
**Decision:** 15 October 2010

**PROSECUTOR**

**v.**

**HARADIN BALA**

**PUBLIC**

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**DECISION ON APPLICATION OF  
HARADIN BALA FOR SENTENCE REMISSION**

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**Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Haradin Bala:**

Mr. Gregor Guy-Smith  
Mr. Gentian Zyberi

**The Government of the French Republic**

1. 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 (“Tribunal”) has been advised by the authorities of the French Republic that Mr. Haradin Bala is eligible under French law to benefit from reductions in his sentence pursuant to Articles 721 and 721-1 of the *Code de procédure pénale*.

#### A. Background

2. On 2 October 2009, the Registry of the Tribunal informed me that a notification was received from the Embassy of France in The Netherlands, pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and paragraph 3 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.2), 1 September 2009 (“Practice Direction”).<sup>1</sup> The notification includes a letter from the Court of Appeal of Nancy stating that Mr. Bala is eligible under French law to benefit from reductions in his sentence pursuant to Articles 721 and 721-1 of the *Code de procédure pénale*.<sup>2</sup> This notification also enclosed a report from the Public Prosecutor at the Regional Court of Verdun and Mr. Bala’s criminal file dated 20 September 2008.<sup>3</sup>

3. On 9 February 2010, pursuant to paragraph 3(c) of the Practice Direction, the Registry provided me with a report of the Prosecution on the co-operation that Mr. Bala has provided to the ICTY Office of the Prosecutor.<sup>4</sup>

4. On 20 August 2010, pursuant to paragraph 3(b) of the Practice Direction, the Registry provided me with (a) the French Deputy Prosecutor’s opinion regarding Mr. Bala’s conduct dated 30 June 2010; (b) a letter from the sentencing judge dated 4 June 2010; and (c) a psychological evaluation report dated 28 May 2010.<sup>5</sup>

5. All of the above materials were furnished to Mr. Bala who, after receiving the materials, responded on 26 September 2010.<sup>6</sup>

<sup>1</sup> Memorandum from Deputy Registrar to President, 2 October 2009 (“Memorandum of 2 October”) (attaching Notification of French Republic to Registrar, 9 September 2009).

<sup>2</sup> Memorandum of 2 October (attaching Referral from Public Prosecutor of Court of Appeal of Nancy to Minister of Justice, 22 October 2008).

<sup>3</sup> Memorandum of 2 October (attaching Report from the Public Prosecutor of Verdun to the Public prosecutor at the Court of Appeal of Nancy, 19 September 2008).

<sup>4</sup> Memorandum from Deputy Registrar to President, 9 February 2010 (attaching Memorandum from Chief of ICTY Trial Division to Deputy Registrar, 2 February 2010).

<sup>5</sup> Memorandum from Deputy Registrar to President, 20 August 2010.

<sup>6</sup> Response to Psychological Evaluation Report of ... and the Subsequent Opinions of the Verdun Prosecutor and the Sentencing Judge on the Reduction of Sentence for Mr. Haradin Bala, 26 September 2010 (“Bala Response”).

## **B. Proceedings Before the Tribunal**

6. The initial indictment against Mr. Bala, Fatmir Limaj, and Isak Musliu was confirmed on 27 January 2003,<sup>7</sup> which was subsequently amended and confirmed on 25 March 2003. On 6 November 2003, a second amended indictment was confirmed on 12 February 2004 with a corrigendum being issued on 9 August 2004. The indictment charged Mr. Bala with (a) imprisonment, torture, inhumane acts, and murder as crimes against humanity and (b) cruel treatment, torture, and murder as violations of the laws and customs of war. His responsibility for these crimes was alleged under Article 7(1) of the Statute by virtue of his role as a guard at the Lapušnik/Llapushnik prison camp of the Kosovo Liberation Army (“KLA”) and through his participation in a joint criminal enterprise, the goal of which was to target for intimidation, imprisonment, violence, and murder those Serb civilians and perceived Albanian collaborators who refused to co-operate with or resisted the KLA by non-military means.<sup>8</sup> Mr. Bala was arrested on 17 February 2003 and transferred to The Hague on 18 February 2003.

7. In its Judgement of 30 November 2005, the Trial Chamber convicted Mr. Bala of three counts: torture as a violation of the laws or customs of war; cruel treatment as a violation of the laws or customs of war; and murder as a violation of the laws and customs of war. Mr. Bala was sentenced to 13 years’ imprisonment and was given credit for time served, pursuant to Rule 101(c) of the Rules, from 17 February 2003.<sup>9</sup>

8. On 27 September 2007, the Appeals Chamber dismissed Mr. Bala’s appeal in its entirety and affirmed the sentence imposed by the Trial Chamber.<sup>10</sup> On 14 May 2008, Mr. Bala was transferred to France to serve the remainder of his sentence.<sup>11</sup>

## **C. Applicable Law**

9. Under Article 28 of the Statute, if, pursuant to the applicable law of the state in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the state concerned shall notify the Tribunal accordingly and the President, in consultation with the Judges, shall decide the matter on the basis of the interests of justice and the general principles of law. Rule 123 of the Rules echoes Article 28, and Rule 124 of the Rules provides that the President

<sup>7</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-I, Indictment, 27 January 2003.

<sup>8</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-PT, Second Amended Indictment, 6 November 2003.

<sup>9</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005, Chapter IX, Disposition, paras 741–742.

<sup>10</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Judgement, 27 September 2007, Chapter VII, Disposition, p. 116.

<sup>11</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Order Withdrawing Confidential Status of Order Designating the State in which Haradin Bala is to Serve his Prison Sentence, 14 May 2008.

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. Rule 125 of the Rules provides that, in making a determination on pardon or commutation of sentence, the President shall take into account, *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 co-operation of the prisoner with the Prosecution.

10. The 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 ("Enforcement Agreement"), dated 25 February 2000, provides at Article 3(1) that, in enforcing the sentence pronounced by the Tribunal, the competent national authorities of the French Republic shall be bound by the duration of the sentence and at Article 3(2) that the conditions of imprisonment shall be governed by French law, subject to the supervision of the Tribunal.<sup>12</sup> Article 3(3) provides that, if pursuant to the national law, the convicted person is eligible for release on parole or any other measure altering the conditions of length of detention, France shall notify the Registrar accordingly. Article 3(4) provides that, where the President determines, in consultation with the Judges of the Tribunal, that the convicted person is not eligible for release on parole or any other measures altering the conditions or length of detention, the Registrar shall so inform France forthwith. Article 7(1)(a) requires the French authorities to immediately notify the Registrar two months prior to the completion of the sentence.<sup>13</sup>

#### **D. Discussion**

11. In coming to my decision upon whether it is appropriate to grant sentence remission, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal.

##### 1. Treatment of Similarly-situated Prisoners

12. The *Code de procédure pénale* states:

Article 721. Each convicted person benefits from a remission of sentence of three months for the first year [and] two months for the following years ... In cases of misbehaviour by a prisoner, the penalty enforcement judge may be seized of the case by the prison governor or at the request of the district prosecutor in order to rescind this remission of sentence by a maximum of three months [per] year and of seven days per month ....

<sup>12</sup> 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, dated 25 February 2000, Article 3 ("Enforcement Agreement").

<sup>13</sup> Enforcement Agreement, Article 7.

Article 721-1. Additional remission may be granted to inmates who show serious signs of social readjustment, especially where they successfully sit for a school, university or professional examination demonstrating the acquisition of new knowledge or justifying real progress within the framework of tuition or training, by following therapy designed to reduce the risks of re-offending or by making efforts to compensate their victims ... This remission is granted by the penalty enforcement judge after hearing the opinion of the penalty enforcement commission ... [and is limited to] three months [per year] ....

Thus, under Article 721, a convicted person is entitled to three months remission in their first year and two months in the following years, providing they behave well in custody. However, if a convicted person can show that he is eligible for additional remission under Article 721-1, he may receive a maximum of six months remission in his first year and five months in every following year if he continues to show serious signs of social readjustment.

13. Article 3 of the Enforcement Agreement provides that the conditions of imprisonment shall be governed by French law, subject to the supervision of the Tribunal, and that, if pursuant to the national law an ICTY detainee is eligible for release on parole or any other measure altering the conditions of length of detention, France shall notify the Registrar accordingly (which has been done in the present case). In the past, it has been noted that the French system of sentence remissions, which grants reductions of sentence from the beginning of a prisoner's sentence, is incompatible with the Tribunal's system of considering a reduction of sentence only after at least two-thirds of a sentence has been served. The possibility, however, was always kept open for the Tribunal to recognise sentence remissions if the appropriate circumstances arose.<sup>14</sup> Due to the fact that the Tribunal's non-recognition of French sentence remissions could lead to the possibility that an ICTY detainee serving his sentence in a French prison may perceive that he is being treated differently than ICTY detainees serving their sentences in other countries and due to the fact that it would be desirable to ensure the compatibility of the French and ICTY systems to the greatest extent possible, I have decided to reconsider this issue.

14. I note that Article 3(3) of the Enforcement Agreement with France provides not only for "release on parole" but also for "any other measure altering the conditions of length of detention". In my view, this latter phrase can encompass sentence remissions. Moreover, sentence remissions are a means by which the French penal system motivates detainees to conduct themselves in an acceptable manner from the very beginning of their detention. At the same time, I am under an

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<sup>14</sup> In the *Banović* Decision of 4 September 2007, the President of the Tribunal expressed his concern "about the systematic incompatibility of the French system with that of the Tribunal's, which will result in unequal treatment of French detainees compared to other Tribunal's convicts serving their sentence in other countries", noting that "[t]his incompatibility arises from the French practice of awarding periods of remission of sentence to convicted detainees at the commencement of their sentence, while the Tribunal's system is to permit the application of such rewards only after a significant part of that sentence has been served." The President noted, however, that "a future application may cause [him] to take a different view." *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-ES, Decision of the President on Commutation of Sentence, 4 September 2007, para. 13.

obligation to treat all ICTY detainees in a similar manner, despite the state in which they are serving their sentences; and, the enforcement of sentences always remains under the supervision of the Tribunal, as is stated in Article 3(2) of the Enforcement Agreement. In this regard, I take heed of the practice that has arisen at the Tribunal of only considering a prisoner to be eligible for release when he has served at least two-thirds of his sentence.<sup>15</sup>

15. Under these circumstances, I have decided, as a matter of law, to recognise the French domestic system of sentence remissions, provided that such remissions remain subject to the supervision of the Tribunal. In determining whether sentence remission is appropriate, I will apply the criteria of Rule 125 of the Rules, *i.e.*, 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 co-operation of the prisoner with the Prosecution. If it is considered that a prisoner should be granted sentence remission, this will be granted only provisionally and may be withdrawn at a subsequent time. In the event that a detainee becomes eligible for release through sentence remission, I will be notified by France and will still apply the practice of the Tribunal whereby a prisoner is considered eligible for early release only when he has served at least two-thirds of his sentence, in order to ensure equal treatment of all ICTY detainees.<sup>16</sup>

16. In the case of Mr. Bala, I note that he has been in detention since 17 February 2003 and that he will finish serving his sentence on 17 February 2016. The request from the French authorities is for confirmation that the sentence remissions under French law be applied, which, if granted, would result in Mr. Bala's release date being 15 September 2014. For the reasons stated above, I would be willing to provisionally recognise these sentence remissions, in the event that the other criteria in Rule 125 militate in favour of such remission.

<sup>15</sup> See, e.g., *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of the President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 14; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, confidential Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of the President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010, para. 13; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, 23 April 2010, paras 12-13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; *Prosecutor v. Dragan Jokić*, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 13 January 2010, para. 14; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10.

<sup>16</sup> The feasibility of this approach is supported by the fact that the French authorities have informed the Tribunal that, in the event that an early release application is made in the future, the sentence remissions can be withdrawn. See Memorandum of 2 October, paras 6, 8.

## 2. Gravity of Crimes

17. Article 125 of the Rules requires me to take into account the gravity of the crimes committed. The Trial Chamber held as follows:

726. It is to be emphasized that the Accused Haradin Bala was not in a position of command in respect of the camp. The Prosecution has not been able to establish who was in command. The role of Haradin Bala was that of a guard.... The evidence does not establish, or even suggest, that Haradin Bala exercised any authority over these other KLA members or that he actively instigated their mistreatment of detainees. Rather, his role was often as a mere attendant, apparently acting at the bidding of others. There were, however, episodes, identified in this Judgement, in which he actively participated in the physical mistreatment of individual detainees, whether as the perpetrator or an aider.... It is clear from the evidence, nevertheless, that there was culture of violence in the prison camp, of which Haradin Bala was well aware. Indeed his conduct helped to create and re-inforce that culture. It was his day to day running of the prison that led to the deplorable and inhumane conditions of detention, particularly in the storage room and cowshed, that have been described earlier in this Judgement.

727. The remaining detainees were escorted from the prison on the last day by Haradin Bala and another. It is possible there was a third KLA guard. Having been led into the nearby Berishe/Beriša Mountains some of the detainees were released and allowed to leave. Of those that remained, it has been established that nine were executed by Haradin Bala, and the other guard or guards, acting together. At least one detainee was not executed, but death befell the majority of those remaining detainees. This is the most grave aspect of the criminal conduct of Haradin Bala. It is the effect of the evidence, however, in the Chamber's finding, that Haradin Bala was acting under orders from a higher authority, whose identity is not established by the evidence, in marching the detainees to the mountains, releasing some, and executing nine. He did not murder the nine detainees on his own initiative.

...

733. The Chamber has also heard evidence regarding Haradin Bala's good treatment to some detainees at the Llapushnik/Lapušnik prison camp. Although this evidence shows that he was capable of some benevolence this does not significantly detract from the seriousness of his conduct on the other occasions for which he is to be punished. The occasional assistance to some detainees will not be given much weight.<sup>17</sup>

Based upon the foregoing, I am of the view that Mr. Bala's crimes are of a high gravity and that this is a factor that weighs against granting him sentence remission.

## 3. Demonstration of Rehabilitation

18. Paragraph 3(b) of the Practice Direction states that the Registry shall request reports and observations from the relevant authorities in the enforcement state as to the behaviour of the convicted person during his or her period of incarceration. Rule 125 of the Rules provides that the President shall take into account the prisoner's demonstration of rehabilitation.

19. In the psychological evaluation report dated 28 May 2010, the psychologist noted that there were difficulties in carrying out a psychological examination due to the use of an interpreter; as a result, the evaluations dealt primarily with observations regarding Mr. Bala's attitude during the

<sup>17</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005, paras 726–727, 733.

interview and the *stricto sensu* translations of the interpreter.<sup>18</sup> It was observed that Mr. Bala behaved courteously, was co-operative, and answered questions put to him in an appropriate manner.<sup>19</sup> However, the psychological examination revealed that Mr. Bala was in denial concerning his crimes:

Mr. Bala has resorted to denial. He does not assume responsibility for his actions. He denies any involvement in the deeds for which he was charged. However, he accepts the sentence in an extremely self-effacing manner. He chalks this up to “politics”, as though it were a manner of sacrificing some few for the sake of the higher cause of peace.<sup>20</sup>

The psychological report refers to Mr. Bala “not having any troubles of any kind whatsoever” and he “does not have nightmares, intrusive thoughts or recurring memories”. According to the report, Mr. Bala “shows no sign of emotional problems or of depression or that he is thinking about committing suicide.”<sup>21</sup> The psychological report concludes that “Mr. Bala does not technically display any psychiatric pathologies as such” but observes that “Mr. Bala is not immune to breaking down after the occurrence of any event recalling the traumatic situation, which could be harmful and have repercussions on his mental and physical health.”<sup>22</sup> When asked by the sentencing judge commissioning the report to evaluate the risk that Mr. Bala could take action or repeat his offences were he to receive a reduced sentence or a permit for leave, the psychologist concluded that “the risk of recidivism continues to be present. Denial does not allow him to develop new thought patterns.”<sup>23</sup> He continues, “The internalized, unrestrained and unexpressed violence that Mr. Bala harbours constitutes a risk to society, where provocations are frequent and can often lead to frustration and aggressiveness.”<sup>24</sup>

20. In the letter from the sentencing judge, dated 4 June 2010, it is stated that Mr. Bala “has evidenced good conduct while in detention and has not been subjected to any disciplinary proceedings” and that he has acquitted himself well in his work in the prison workshops.<sup>25</sup>

21. In the Deputy Prosecutor’s opinion, dated 30 June 2010, Mr. Bala’s conduct in detention has been good, and he is taking French classes. However, despite his good conduct, the Prosecutor’s Office declined “to issue an opinion that would favour granting a sentence reduction inasmuch as

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<sup>18</sup> Memorandum from Deputy Registrar to President, 20 August 2010 (attaching Psychological evaluation, 28 May 2010, p. 5).

<sup>19</sup> Psychological evaluation, p. 5.

<sup>20</sup> Psychological evaluation, p. 6.

<sup>21</sup> Psychological evaluation, p. 7.

<sup>22</sup> Psychological evaluation, p. 8.

<sup>23</sup> Psychological evaluation, p. 8.

<sup>24</sup> Psychological evaluation, p. 9.

<sup>25</sup> Memorandum from Deputy Registrar to President, 20 August 2010 (attaching Letter from Sentencing Judge, 4 June 2010).



the detainee has not seen to make use of his incarceration to start reflecting upon his past deeds, and has instead opted to portray himself as [a] person who is sacrificing himself for a noble cause.”<sup>26</sup>

22. Mr. Bala responds that little or no weight should be given to the psychological report for a variety of reasons, including the following: (a) the short duration of the psychological consultations; (b) the psychologist’s lack of familiarity with the Kosovo Albanian language and culture, which could provide an explanation for the lack of expressed emotions; (c) the psychologist’s lack of familiarity with the crimes of which Mr. Bala was convicted, especially with regard to his conclusion upon the risk of recidivism; (d) no account was taken of the fact that there is no armed conflict in Kosovo anymore, and Mr. Bala represents no risk to society because he would be able to receive emotional support in his own community back in Kosovo; (e) the conclusion that Mr. Bala denies responsibility for his crimes is due to a miscommunication; (f) the conclusions in the report are not based upon any psychological monitoring or counselling but on perception hindered by the language barrier; and (g) Mr. Bala has requested psychological counselling but was not provided with any as there was no one who could speak Albanian.<sup>27</sup>

23. Mr. Bala submits a letter dated 24 September 2010 from Mr. Jeffrey Bielely, a former employee of the United Nations Mission in Kosovo (“UNMIK”) who now works and lives in Kosovo. Pursuant to Paragraph 3(d) of the Practice Direction, I can consider any other information that is relevant, and accordingly Mr. Bielely’s letter can be considered. In sum, Mr. Bielely notes that, through his former work with UNMIK, he accompanied Mr. Bala home on two occasions in 2006 and 2007 when he was granted provisional release to attend funerals of family members. Mr. Bielely became familiar with Mr. Bala and his family. Mr. Bielely observes that Mr. Bala (a) treated him with respect and hospitality; (b) has a warm and close relationship with his family and is a man attentive to his children and who had many people waiting for him to return; (c) has deep connections to his community and received an outpouring of sympathy from his community, but is not considered a war hero in Kosovo; and (d) is well supported by his family and community, and thus there is no risk that he would turn to crime. Mr. Bielely finally asserts that Kosovo is now a peaceful society with no chance of Mr. Bala committing crimes like those of which he was accused.<sup>28</sup>

24. I take note of the fact that the record is contested in relation to whether the psychological assessment indicates that Mr. Bala has demonstrated signs of rehabilitation. Having carefully reviewed the psychological report and taking into consideration Mr. Bala’s submissions regarding

<sup>26</sup> Memorandum from Deputy Registrar to President, 20 August 2010 (attaching Opinion of Deputy Prosecutor, 30 June 2010).

<sup>27</sup> Bala Response, pp. 1–5.

it, I have great difficulty in relying upon its conclusions, which appear to be general observations that are not based upon specific information and reactions obtained from Mr. Bala during his interview with the psychologist. In any subsequent application for confirmation of sentence remission or early release, it would assist me in my determination of the matter if the French authorities would ensure that future psychological reports provide additional detail regarding the bases upon which the conclusions are reached. I acknowledge Mr. Biele's views of Mr. Bala, but do not consider that they show that Mr. Bala has demonstrated rehabilitation while in detention. I finally note that Mr. Bala has shown good behaviour in detention and that he has shown a willingness to improve his language skills so as to integrate into the prison environment. Under these circumstances, I consider that Mr. Bala has demonstrated some—but very limited—signs of rehabilitation.

25. I take this opportunity to note that whether Mr. Bala has demonstrated signs of rehabilitation will be an important factor in any future application for recognition of sentence remission or for pardon, commutation, or early release, and that good behaviour while in detention is often quite relevant to such a determination.

#### 4. Co-operation with the Prosecution

26. Rule 125 of the Rules states that the President shall take into account any substantial co-operation of the prisoner with the ICTY Prosecutor. Paragraph 3(c) of the Practice Direction states 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.

27. According to the Prosecution report, the Office of the Prosecutor has neither sought nor received co-operation from Mr. Bala.<sup>29</sup> Thus, I consider the factor of co-operation with the Prosecution to be a neutral one.

#### 5. Conclusion

28. Although I would have been willing, as a matter of law, to provisionally recognise the sentence remissions of Mr. Bala, his very limited demonstration of rehabilitation and the high gravity of his crimes lead me to the conclusion that such remissions under Articles 721 and 721-1 of the *Code de procédure pénale* are not appropriate, based upon all the information that has been submitted to me.

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<sup>28</sup> Bala Response, Annex A.

<sup>29</sup> Memorandum from Deputy Registrar to President, 9 February 2010 (attaching Memorandum from Chief of ICTY Trial Division to Deputy Registrar, 2 February 2010, para. 2).


29. I note that my colleagues unanimously share my view that Mr. Bala should not be granted sentence remission.

**E. Disposition**

30. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 3 of the Enforcement Agreement, I hereby decline to grant Haradin Bala sentence remission.

31. The Registrar is hereby DIRECTED to inform the French authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction.

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



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Judge Patrick Robinson  
President

Dated this fifteenth day of October 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**