



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-02-59-ES
Date: 1 February 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 1 February 2011

PROSECUTOR

v.

DARKO MRĐA

PUBLIC REDACTED VERSION

DECISION OF PRESIDENT ON EARLY RELEASE OF DARKO MRĐA

Office of the Prosecutor:
Mr. Serge Brammertz

Mr. Darko Mrda

The Kingdom of Spain

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”) is seised of a request for early release from Mr. Darko Mrđa, who is serving his sentence in the Kingdom of Spain.

A. Background

2. On 22 July 2010, the Registry informed me of correspondence received from Mr. Mrđa, pursuant to paragraph 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 (“Practice Direction”).¹ Mr. Mrđa enquires about the possibility of commutation of the remainder of his prison sentence based upon, *inter alia*, his “substantial cooperation with the Office of the Prosecutor.”²

3. On 4 August 2010, the Registry, pursuant to paragraph 3(c) of the Practice Direction, provided me with the Prosecution’s report of Mr. Mrđa’s cooperation with the Office of the Prosecutor.³

4. On 25 August 2010, the Registry provided me with a letter from Mr. Mrđa, in which he provides additional information about his cooperation with the Prosecution.⁴

5. On 4 November 2010, the Registry forwarded to me documents from Spain, 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 paragraphs 2 and 3 of the Practice Direction. These documents pertain to Mr. Mrđa’s eligibility for early release, his psychological condition, and his behaviour while in detention.⁵

6. All of the above materials were furnished to Mr. Mrđa. On 22 December 2010, the Registry, pursuant to paragraph 5 of the Practice Direction, provided me with a response from Mr. Mrđa, in

¹ IT/146/Rev. 3, 16 September 2010.

² Memorandum from Deputy Registrar to President, dated 22 July 2010 (Letter from Darko Mrđa to President, 30 June 2010).

³ Memorandum from Deputy Registrar to President, dated 4 August 2010 (Memorandum from Deputy Prosecutor to Registrar, 30 July 2010).

⁴ Memorandum from Deputy Registrar to President, 25 August 2010 (Letter from Mr. Mrđa to President).

⁵ Memorandum from Deputy Registrar to President, 4 November 2010 (Note Verbale from Embassy of Spain to Registrar, 19 October 2010; Psychological Report, 15 September 2010; Report from Ministry of Interior General Secretariat of Penitentiary Institutions, Madrid IV Penitentiary Center, Navalcarnero to Subsecretariat General Directorate for International Judicial Cooperation and Relations with Religious Communities Ministry of Justice, 2 September 2010).

which he provides additional information about his co-operation with the Prosecution and asks that his request be granted.⁶

B. Proceedings before the Tribunal

7. Mr. Mrđa was indicted on 16 April 2002 on two counts of crimes against humanity and one count of violations of the laws or customs of war.⁷ The indictment against Mr. Mrđa was confirmed by Judge Liu on 26 April 2002.⁸ On 13 June 2002, Mr. Mrđa was arrested in Prijedor, Bosnia and Herzegovina; transferred to the Tribunal; and detained at the United Nations Detention Unit.⁹

8. At his initial appearance on 17 June 2002, Mr. Mrđa pleaded not guilty to all charges set forth in the indictment.¹⁰ On 24 July 2003, Mr. Mrđa entered into a plea agreement with the Prosecution, in which he agreed to plead guilty to counts 2 and 3 of the indictment “because he [was] in fact guilty and acknowledge[d] full responsibility for his actions.”¹¹ The plea agreement expressly required Mr. Mrđa to cooperate with the Prosecution.¹² At a hearing on the same date, Mr. Mrđa pleaded guilty to (a) murder, a violation of the laws or customs of war, pursuant to Article 3 of the Statute (count 2) and (b) other inhumane acts, a crime against humanity, pursuant to Article 5 of the Statute (count 3).¹³ The Trial Chamber entered a finding of guilt for those two counts, after being satisfied that the plea was voluntary, informed, and unequivocal; that there was a sufficient factual basis for the crimes; and that Mr. Mrđa had participated in them.¹⁴ During the hearing, the Prosecution made an oral motion seeking leave to dismiss count 1 of the indictment, which was granted.¹⁵

9. On 31 March 2004, the Trial Chamber rendered its Sentencing Judgement, sentencing Mr. Mrđa to 17 years’ imprisonment. Credit was given for time served since his transfer to the

⁶ Memorandum from Deputy Registrar to President, 22 December 2010 (Letter from Mr. Mrđa to President, 15 December 2010).

⁷ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-I, Indictment, 16 April 2002.

⁸ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-I, Decision on Review of Indictment and Order for Non-Disclosure, 26 April 2002.

⁹ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-S, Sentencing Judgement, 31 March 2004 (“Sentencing Judgement”), para. 2.

¹⁰ Sentencing Judgement, para. 3.

¹¹ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59, Plea Agreement, 24 July 2003 (“Plea Agreement”), para. 3.

¹² Plea Agreement, para. 10.

¹³ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-PT, Hearing of 24 July 2003, T. 87.

¹⁴ *Ibid.*, T. 87.

¹⁵ *Ibid.*, T. 91-92. An amended indictment was filed by the Prosecution on 4 August 2003. *Prosecutor v. Darko Mrđa*, Case No. IT-02-59, Amended Indictment, 4 August 2003.

Tribunal.¹⁶ On 6 May 2004, Mr. Mrđa was ordered to be transferred to Spain to serve the remainder of his sentence.¹⁷ He was transferred on 23 November 2004.¹⁸

C. Applicable Law

10. 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 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 this determination, 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.

11. Article 3 of the Agreement Between the United Nations and the Kingdom of Spain on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 28 March 2000 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Spanish law, subject to supervision of the Tribunal, and that, if, pursuant to the applicable Spanish national law, the convicted person is eligible for early release, Spain shall notify the Registrar accordingly. The President of the Tribunal shall then determine, in consultation with the Judges of the Tribunal, whether any early release is appropriate.

12. The Spanish Penal Code provides as follows:

Article 91.1 Exceptionally, in the presence of the circumstances set out in paragraphs (a) and (c) of part 1 of the previous Article, and provided that the offences are not terrorism offences as referred to in section 2, chapter V, title XXII, book II of this code, and were not committed within criminal organisations, the *juez de vigilancia penitenciaria* [the judge who supervises conditions of imprisonment and applications for parole], having informed the Public Prosecution Service, the penal institutions and the other parties, may grant conditional freedom to persons given sentences depriving them of their liberty if they have served two-thirds of their sentence, provided that they merit the said benefit through having continuously carried out work, cultural or occupational activities.

Article 91.2. At the proposal of penal institutions and once the Public Prosecution Service and the other parties have been informed, in the presence of the circumstances set out in paragraphs (a) and (c) of part

¹⁶ Sentencing Judgement, para. 129.

¹⁷ *Prosecutor v. Darko Mrđa*, Case No. IT-02-59-ES, Order Designating the State in which Darko Mrđa is to Serve his Sentence, 6 May 2004; see Order Withdrawing the Confidential Status of Order Designating the State in which Darko Mrđa is to Serve his Sentence, 29 October 2008.

¹⁸ International Criminal Tribunal for the former Yugoslavia, Press Release CT/P.I.S./915e "Darko Mrđa Transferred to Serve Sentence in Spain", 23 November 2004.

1 of the previous article, the *juez de vigilancia penitenciaria* may bring forward, once half of the sentence has been served, the granting of conditional freedom in relation to the period described in the previous point, by up to a maximum of ninety days for each year of the sentence that has actually been served, provided that the offences are not terrorism offences as referred to in section 2, chapter V, title XXII, and were not committed within criminal organisations. This measure shall require the convict to have continuously carried out the activities indicated in the previous point and, in addition, to have actually and positively participated in victim reparation programmes or treatment or de-addiction programmes, whichever is relevant.

D. Discussion

13. In coming to my decision upon whether it is appropriate to grant early release, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal.

14. As a preliminary matter, I note that, although Mr. Mrđa's enquiry is expressed as a request for "commutation" of the remainder of his prison sentence, his request is actually one for early release due to the fact that he asks to be "set free" and does not propose any modalities by which his sentence is in fact to be commuted to any other form. As such, I will assess Mr. Mrđa's enquiry as an application for early release.

1. Treatment of Similarly-situated Prisoners

15. I note that Mr. Mrđa has served approximately nine years of his 17-year sentence, including time spent in custody up to and including the date of sentencing. He therefore has not yet served two-thirds of the sentence that was imposed upon him by the Tribunal. It is the practice of the Tribunal to consider convicted persons to be eligible for early release when they have served at least two-thirds of their sentences.¹⁹ Pursuant to Rule 125 of the Rules, which requires me to take into account the treatment of similarly situated prisoners, I am of the view that the time that Mr. Mrđa has served for his crimes does not militate in favour of his early release.

¹⁹ *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 31 January 2011, para. 14; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-ES, Decision of President on Early Release of Zoran Žigić, 8 November 2010, para. 12; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of 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, 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, 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, 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.

16. I note that Mr. Mrđa will have served two-thirds of his sentence on approximately 14 October 2013.

2. Gravity of Crimes

17. With respect to gravity, I note that Mr. Mrđa's plea agreement contained the following factual basis for his crimes, which formed the basis of the sentence imposed by the Trial Chamber:

In August 1992, an armed conflict was taking place in Bosnia and Herzegovina. This armed conflict involved a widespread or systematic attack, within the meaning of Article 5 of the Statute, upon the non-Serb civilian population of the municipality of Prijedor. Mr. Mrđa acknowledged that the crimes to which he pleaded guilty were part of this widespread and systematic attack.

On 21 August 1992, Mr. Mrđa was a member of the Prijedor Police "Intervention Squad". On this day, Mr. Mrđa, in his official capacity as a police officer, participated in escorting an organised convoy of Muslim or non-Serb civilians from Tukovi and the Trnopolje camp in Prijedor towards the municipality of Travnik. The convoy consisted of buses and trucks loaded with civilians.

At a location on the road along the Ilomska River, between Skender Vakuf and Mt. Vlašić, the convoy stopped. At this location, Mr. Mrđa and other members of the Intervention Squad actively implemented orders to separate military-aged men from the rest of the convoy, including the personal selection of men by Mr. Mrđa with the awareness and expectation that these men would be murdered. A large number of men, estimated in excess of 200, were loaded into two buses.

Mr. Mrđa and the other members of the Intervention Squad took the separated men in the two buses to Koričanske Stijene. The men from one bus were ordered off the bus, escorted to the side of the road above a deep ravine, ordered to kneel, and then shot and killed. The men from the other bus were taken off in smaller groups of two or three and then shot and killed. Together with the other members of the Intervention Squad, Mr. Mrđa personally and directly participated in the unloading, guarding, escorting, shooting, and killing of the unarmed men at Koričanske Stijene. Except for twelve men who survived the massacre, all of the men from the two buses were murdered.²⁰

In deciding upon Mr. Mrđa's sentence, the Trial Chamber assessed the gravity of the crimes and aggravating and mitigating circumstances. In determining the gravity of the crimes, the Trial Chamber gave consideration to the scope and general nature of the offences committed, the role played by Mr. Mrđa, and the impact of the crimes upon the victims and their families.²¹ The Trial Chamber concluded that "the sentence should reflect all of the cruelty and inhumanity of Darko Mrđa's direct participation in the shooting of around 200 civilians, of which all but 12 were killed".²²

18. Based upon the foregoing, I am of the view that Mr. Mrđa's crimes are of a very high gravity and that this is a factor that weighs against granting him early release.

²⁰ Sentencing Judgement, para. 10.

²¹ Sentencing Judgement, para. 21.

²² Sentencing Judgement, para. 42.

3. Demonstration of Rehabilitation

19. Rule 125 of the Rules provides that the President shall take into account the prisoner's demonstration of rehabilitation. 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. The report from the Ministry of the Interior General Secretariat of Penitentiary Institutions acknowledges Mr. Mrda's behaviour as one of an educated, respectful, and diligent person, while pointing out that he had some problems with an inmate a year ago that led to a minor disciplinary sanction and in January 2010 to a sanction for serious misconduct, which was subsequently revoked.²³ I consider that Mr. Mrda's generally good behaviour while serving his sentence is some—albeit very limited—evidence of his rehabilitation.

20. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement states regarding the psychological condition of the convicted person during his incarceration, and paragraph 8 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 Spanish authorities transmitted a psychological report in relation to Mr. Mrda, which informs that, [REDACTED].²⁴

21. The psychological report records that the danger of recidivism is medium to low, provided that the original situation of a war is not repeated. Factors facilitating integration back into society include the fact that this is Mr. Mrda's first crime, the fact that he has adapted well to the penitentiary conditions, his positive attitude towards treatment, the absence of sanctions, his recognition of his actions, his family ties, his normalised education, his work habits, and the absence of drug addiction. Factors making integration difficult include the type of crimes for which Mr. Mrda was convicted, the exceptional social situation, the seriousness of his crimes, and the absence of ordinary leave permits.²⁵

22. Although there are positive aspects of the psychological evaluation, there is also information in the report that concerns me. I therefore am of the view that Mr. Mrda's psychological state, as well as the possible consequences his release may entail, militate against his early release, despite the generally positive diagnostic conclusion.

²³ Memorandum from Deputy Registrar to President, 4 November 2010 (Report from Ministry of Interior General Secretariat of Penitentiary Institutions, Madrid IV Penitentiary Center, Navalcarnero to Subsecretariat General Directorate for International Judicial Cooperation and Relations with Religious Communities Ministry of Justice, 2 September 2010).

²⁴ Memorandum from Deputy Registrar to President, 4 November 2010 (Psychological Report, 15 September 2010).

²⁵ Memorandum from Deputy Registrar to President, 4 November 2010 (Psychological Report, 15 September 2010).

4. Co-operation with the Prosecution

23. 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.

24. According to the Prosecution report, the Prosecution has received substantial cooperation from Mr. Mrđa, which was expressly required pursuant to the plea agreement.²⁶ In a letter me, Mr. Mrđa states that his cooperation has significantly contributed to the establishment of the truth and that he has provided more co-operation than was required by his plea agreement.²⁷ I consider that Mr. Mrđa's co-operation militates in favour of his early release, although the fact that he was obligated to provide some of this co-operation pursuant to his plea agreement somewhat diminishes the strength of this factor.

5. Conclusion

25. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while Mr. Mrđa has displayed some evidence of rehabilitation and has provided co-operation to the Prosecution, some of which was required by his plea agreement, there remain significant factors that weigh against granting him early release: the gravity of Mr. Mrđa's crimes is very high, I do not consider that the time that he has served in detention militates in favour of his release, and I have concerns about the psychological state of Mr. Mrđa and the possible consequences his release may entail. I am therefore of the view that Mr. Mrđa should not be granted early release.

26. I note that my colleagues unanimously share my view that Mr. Mrđa should be denied early release.

E. Disposition

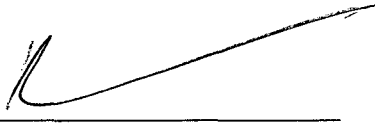
27. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 3 of the Enforcement Agreement, Darko Mrđa is hereby DENIED early release.

²⁶ Memorandum from Deputy Registrar to President, dated 4 August 2010 (Memorandum from Deputy Prosecutor to Registrar, 30 July 2010).

²⁷ Memorandum from Deputy Registrar to President, 25 August 2010 (Letter from Mr. Mrđa to President).

28. The Registrar is hereby DIRECTED to inform the Spanish 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.



Judge Patrick Robinson
President

Dated this first day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]