



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-ES
Date: 8 November 2012
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 8 November 2012

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC WITH CONFIDENTIAL ANNEX

**DECISION OF THE PRESIDENT
ON EARLY RELEASE OF MOMČILO KRAJIŠNIK**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Momčilo Krajišnik

The United Kingdom of Great Britain and Northern Ireland

1. I, Theodor Meron, President of 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”), am seised of a Request for Early Release (“Request”) from Mr. Momčilo Krajišnik (Krajišnik), submitted to me in the form of a letter with attached materials on 22 December 2011.¹ I consider this Request pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rules 124 and 125 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and 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”).²

I. BACKGROUND

2. On 3 April 2000, Krajišnik was arrested in Sarajevo and transferred to the United Nations Detention Unit in The Hague.³ At his initial appearance, Krajišnik pled not guilty to all counts against him⁴ in the operative indictment at that time.⁵ On 27 September 2006, Trial Chamber I of the Tribunal convicted Krajišnik of persecution, extermination, murder, deportation and inhumane acts (forced transfer) as crimes against humanity.⁶ It held that Krajišnik was responsible for participating in a joint criminal enterprise to achieve the permanent removal, by force or other means, of Bosnian Muslim, Bosnian Croat or other non-Serb inhabitants from large areas of Bosnia and Herzegovina through the commission of criminal acts.⁷ He was sentenced to twenty-seven years of imprisonment and given credit for time served since 3 April 2000.⁸

3. On 17 March 2009, the Appeals Chamber reversed (i) in their entirety, Krajišnik’s convictions for extermination and murder as crimes against humanity, and (ii) in part, his convictions for

¹ Letter from Krajišnik to Judge Theodor Meron, President, dated 22 December 2011. While Krajišnik’s correspondence was originally submitted in B/C/S, all references herein are to the Tribunal’s English translations of these documents.

² IT/146/Rev.3, 16 September 2010. I note that on 2 November 2011, the Ministry of Justice of the United Kingdom of Great Britain and Northern Ireland (“UK Ministry of Justice”) informed the Registry of the Tribunal (“Registrar”) that Krajišnik would be eligible for consideration for release on parole under the law of the United Kingdom of Great Britain and Northern Ireland (“UK”) as of 2 April 2012. See Internal Memorandum from John Hocking, Registrar, to Judge Patrick Robinson, President, dated 4 November 2011, *transmitting* Letter from the UK Ministry of Justice to the Registrar, dated 2 November 2011 (“Notification of Eligibility”). The Notification of Eligibility was received in accordance with Rule 123 of the Rules and paragraph 1 of the Practice Direction.

³ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006 (“Trial Judgement”), para. 1206.

⁴ Trial Judgement, para. 1206.

⁵ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-I, Amended Indictment, 21 March 2000.

⁶ Trial Judgement, para. 1182.

⁷ Trial Judgement, paras 1089-1090, 1122, 1124.

⁸ Trial Judgement, paras 1183-1184.

persecution, deportation and forced transfer as crimes against humanity.⁹ The Appeals Chamber reduced Krajišnik's sentence to 20 years' imprisonment, subject to credit for time already served since 3 April 2000.¹⁰

4. On 24 April 2009, the United Kingdom (UK) was designated as the State in which Krajišnik was to serve his sentence.¹¹ On 7 September 2009, Krajišnik was transferred to the UK to serve the remainder of his sentence.¹²

5. Since his transfer to the UK, Krajišnik was denied early release by then-President Robinson twice, in July 2011 and July 2010, despite advice received by the UK authorities that Krajišnik has been eligible for release on parole under UK law as of April 2010 in light of the completion of half of his sentence.¹³

II. THE APPLICATION

6. The present Request was filed in response to the 2011 Decision on Early Release.¹⁴ Before the filing of the Request, the Registrar had received notice from the UK authorities on 2 November 2011 that Krajišnik would be eligible for release on parole on 2 April 2012.¹⁵

7. Pursuant to paragraphs 3 and 4 of the Practice Direction, the Registrar obtained and provided me with (i) a memorandum from the Office of the Prosecutor ("Prosecution"), dated 13 December 2011,¹⁶ stating that the Prosecution "has neither sought nor received cooperation from" Krajišnik;¹⁷ and (ii) a Sentence Planning and Review Report from Krajišnik's offender supervisor, dated 14 March 2012, which reported on Krajišnik's conduct in prison and the risk of his committing any crime if he would be released into the community ("SPR Report").¹⁸ The SPR Report stated that, since his transfer

⁹ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009 ("Appeal Judgement"), paras 177, 283-284, 321, 820.

¹⁰ Appeal Judgement, paras 818-820.

¹¹ Order Designating State in Which Momčilo Krajišnik is to Serve his Sentence, 24 April 2009, pp. 1-2.

¹² See Press Release, VE/MOW/PR1331e, Momčilo Krajišnik Transferred to the United Kingdom to Serve Sentence, 8 September 2009, available at: <http://www.icty.org/sid/10211>.

¹³ Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011 ("2011 Decision on Early Release"), paras 1, 37; Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010 ("2010 Decision on Early Release"), paras 1, 36.

¹⁴ See Request, p. 1.

¹⁵ See Notification of Eligibility.

¹⁶ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 28 March 2012 ("Memorandum of 28 March 2012"), transmitting, *inter alia*, Internal Memorandum from Ms. Michelle Jarvis, Senior Legal Adviser to the Prosecutor, to Mr. Martin Petrov, Chief, Office of the Registrar, dated 13 December 2011 ("Prosecution Memorandum").

¹⁷ Prosecution Memorandum, para. 2.

¹⁸ See Memorandum of 28 March 2012, transmitting Letter from Christopher Binns, UK Ministry of Justice, to the Registrar, dated 26 March 2012, and the SPR Report.

to the Usk detention facility on 22 November 2011, Krajišnik's "behaviour has been exemplary."¹⁹ Krajišnik's offender supervisor stated his assessment that "the risk that Mr. Kraji[š]nik presents at the current time would be safe to be managed outside of a custodial environment"²⁰ and recommended that "it is now an appropriate time for Mr. Kraji[š]nik to be released back into the community."²¹

8. In response to those materials, Krajišnik submitted an Addendum to his Request, dated 2 April 2012, in which he admitted that the Prosecution "did not require" him "to admit guilt or to assist them in any way during [his] trial",²² but argued that before his arrest, the Prosecution did seek and obtain his assistance on various matters, including obtaining access to official files of the Republika Srpska and facilitating communications between the Tribunal and Mr. Radovan Karadžić ("Karadžić").²³

9. On 13 April 2012, Mr. Simon Creighton ("Creighton"), a UK-based solicitor, also submitted a response to the Prosecution Memorandum and comments on the SPR Report on behalf of Krajišnik, pursuant to paragraph 5 of the Practice Direction.²⁴ The Response, *inter alia*, stressed that Krajišnik should be considered for and granted early release even though he has not yet completed two-thirds of his sentence, because he "has been effectively rehabilitated by the prison system" and "is described as an exemplary prisoner".²⁵ In support of that argument, the Response cites two decisions of the President of the Tribunal granting early release to prisoners who had allegedly not yet served two-thirds of their sentence.²⁶

10. On 21 May 2012, I requested the Registrar to forward to the Prosecution Krajišnik's Request and the materials attached thereto in support of his claim that he provided substantial assistance to the Prosecution on various issues before his arrest.²⁷ I received the Prosecution's comments on 1 June

¹⁹ SPR Report, para. 6.1. *See also ibid*, para. 1.1.

²⁰ SPR Report, para. 11.1.

²¹ SPR Report, para. 12.1.

²² Addendum to Request for Early Release from Krajišnik to Judge Theodor Meron, President, dated 2 April 2012 ("Addendum"), p. 1.

²³ Addendum, p. 2.

²⁴ Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 16 April 2012 ("Memorandum of 16 April 2012"), transmitting a response from Mr. Simon Creighton In the Matter of an Application for Early Release By: Momčilo Kraji[š]nik, dated 12 April 2012 ("Response"). I note that Creighton has not been admitted or assigned as counsel, but is assisting Krajišnik. *See* Memorandum of 16 April 2012, para. 4.

²⁵ Response, para. 19.

²⁶ Response, paras 12-13, citing *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Public Redacted Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009 ("Šantić Decision"), *Prosecutor v. Dragan Obrenović*, IT-02-60/2-ES, Public Redacted Decision of President on Early Release of Dragan Obrenović, 29 February 2012 ("Obrenović Decision").

²⁷ Internal Memorandum from Judge Theodor Meron, President, to John Hocking, Registrar, dated 21 May 2012.

2012.²⁸ The Second Prosecution Memorandum reiterated the Prosecution's initial assessment that Krajišnik "did not cooperate with the [Prosecution] in the course of his trial or appeal or at any point while serving his sentence."²⁹ That assessment, according to the Prosecution, was not altered by the additional documents submitted by Krajišnik, which still failed "to show that he substantially cooperated with the" Prosecution.³⁰

11. The Second Prosecution Memorandum was forwarded to Krajišnik, who responded by letter dated 10 July 2012.³¹ Krajišnik expressed his disagreement with the Prosecution's assessment and submitted to my attention witness statements that, in Krajišnik's view, undermine the Prosecution's position.³² Three additional witness statements were separately submitted to me by Krajišnik's son, Mr. Njegoš Krajišnik, on 20 July 2012.³³

III. DISCUSSION

12. In coming to my decision upon whether it is appropriate to grant Krajišnik's Request, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

A. Applicable Law

13. 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 State 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.

14. Rules 123 and 124 of the Rules echo Article 28 of the Statute. 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 crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation and any substantial cooperation of the prisoner with the Prosecution.

²⁸ Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 1 June 2012, transmitting Internal Memorandum from Ms. Michelle Jarvis, Senior Legal Adviser to the Prosecutor, to Mr. Martin Petrov, Chief, Office of the Registrar, dated 31 May 2012 ("Second Prosecution Memorandum").

²⁹ Second Prosecution Memorandum, para. 2.

³⁰ Second Prosecution Memorandum, para. 4.

³¹ Letter from Krajišnik to Judge Theodor Meron, President, dated 10 July 2012 (confidential) ("10 July 2012 Letter").

³² See generally 10 July 2012 Letter and enclosures.

³³ See Letter from Njegoš Krajišnik to Judge Theodor Meron, President, received on 20 July 2012, and enclosures.

15. Paragraph 1 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the Tribunal on the enforcement of sentences and, where practicable, at least forty-five days prior to the date of eligibility, notify the Tribunal accordingly.

16. Article 3(2) of the Agreement Between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 11 March 2004 (“Enforcement Agreement”), provides that the conditions of imprisonment shall be governed by the law of the UK, subject to the supervision of the Tribunal.³⁴ Article 8 of the Enforcement Agreement provides, *inter alia*, that, following notification of eligibility for early release under UK law, the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate, and the Registrar shall inform the UK of the President’s determination accordingly.³⁵

B. Eligibility Under UK Law

17. The UK Ministry of Justice has informed the Registrar that, under UK law, Krajišnik would be eligible for consideration for release on parole on 2 April 2012.³⁶ In the Response, Krajišnik claims that the applicable UK legislation governing his eligibility for release is not the UK Criminal Justice Act 2003, on which the 2011 Decision on Early Release relied,³⁷ but rather the UK Criminal Justice Act 1991.³⁸ Krajišnik further argues that under the allegedly correct UK legislation, he would have “an enforceable right” to early release after he has served two-thirds of his sentence.³⁹

18. I note, however, that Krajišnik concedes that he has not yet served the two-thirds of his sentence.⁴⁰ And even if Krajišnik had a statutory right to early release under UK law, that right is certainly not enforceable before this Tribunal: the early release of persons convicted by the Tribunal is not governed by national law but is exclusively left to the discretion of the President, pursuant to Rule 124 of the Rules and Article 8(2) of the Enforcement Agreement. As there is no dispute that Krajišnik

³⁴ Agreement Between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 11 March 2004 (“Enforcement Agreement”), art. 3(2).

³⁵ Enforcement Agreement, art. 8.

³⁶ See Notification of Eligibility.

³⁷ See 2011 Decision on Early Release, para. 20.

³⁸ Response, paras 8-9, *referring to* the 2011 Decision on Early Release.

³⁹ Response, para. 11. See also *ibid*, paras 9-10.

⁴⁰ Response, para. 18.

would be eligible for release on parole as of 2 April 2012, it is not necessary to delve into a further analysis of the UK domestic legislation.

C. Gravity of Crimes

19. The gravity of the crimes for which Krajišnik was convicted is very high. The Appeals Chamber reversed many of Krajišnik's convictions but stated that the remaining convictions were amongst the most severe crimes known to humankind, the gravity of which required a severe and proportionate sentence.⁴¹ The sentence of 20 years imposed by the Appeals Chambers confirms that the crimes committed by Krajišnik were of a very high gravity.⁴²

20. Attached to the Request are a number of documents which Krajišnik asserts are relevant to the assessment of the gravity of his crimes, because they allegedly prove that Krajišnik did not participate in the crimes for which he was found guilty.⁴³ However, such documents improperly seek to challenge the merits of Krajišnik's conviction and, consequently, are not relevant to the assessment of the gravity of his crimes.

21. Krajišnik also attached to his Request and the Addendum statements from various citizens of Bosnia and Herzegovina expressing their opinions on Krajišnik's possible early release; Krajišnik asserts that these statements are relevant for assessing the gravity of his crimes.⁴⁴ However, these statements are subjective opinions on the potential political effects of Krajišnik's early release; they do not pertain to the gravity of his crimes and are therefore irrelevant here.

22. Following previous practice, I am of the view that the high gravity of the crimes for which Krajišnik was convicted weighs against his early release.

D. Treatment of Similarly Situated Prisoners

23. It is the practice of the Tribunal to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentences.⁴⁵ I note, however, that a convicted person having served two-thirds of his sentence is merely eligible for early release and not entitled to such release, which may only be granted by the President as a matter of discretion.⁴⁶

⁴¹ Appeal Judgement, paras 799, 813.

⁴² Appeal Judgement, para. 819.

⁴³ See Request, pp. 2-3.

⁴⁴ See Request, pp. 3-4.

⁴⁵ See 2011 Decision on Early Release, para. 21, n. 46, and authorities cited therein.

⁴⁶ See *Obrenović* Decision, para. 16.