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UNITED
NATIONS

	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 him[4] 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

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[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 Krajiš[n]ik, 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

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[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.

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[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

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[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]

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[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.

24. As of the date of this Memorandum, Krajišnik has already served more than twelve years of his twenty-year sentence, including time spent in custody up to and including the date of sentencing.[47] However, Krajišnik will not have served two-thirds of his sentence until approximately 3 August 2013,[48] and thus releasing him before that date would constitute a departure from the Tribunal's well-established practice.[49]

25. In the Request, Krajišnik protests that the two-thirds "requirement [...] has been afforded an undeservedly high importance," becoming "an additional, fifth and most important condition for resolving [his] request."[50] This assertion is incorrect. In any application for early release, consideration is given to all of the factors listed in Rule 125 of the Rules, as well as the totality of the circumstances involved. To avoid discrepancies in the treatment of similarly-situated prisoners, the established practice of the Tribunal is to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentence. But the equal treatment factor is only one factor in the early release calculus and does not hold primacy over the other factors to be taken into account.

26. Krajišnik admits that there have been some – albeit rare – exceptions to the two-thirds norm: he cites the *Šantić* and *Obrenović* Decisions, in which Vladimir Šantić ("Šantić") and Dragan Obrenović ("Obrenović"), respectively, were granted early release though neither of them, according to Krajišnik, had served two-thirds of their sentence.[51] Krajišnik asserts that his case is akin to both of those cases, because (i) like Šantić, he has endured "onerous" prison conditions, having spent fifteen months in the "Belmarsh [prison], the strictest prison in England, with a high degree of security restrictions" and a year in "in solitary confinement at [the] Full Sutton" prison;[52] and because (ii), like Obrenović, he has cooperated substantially with the Prosecution.[53] In the Response, Krajišnik argues that the good behaviour he has exhibited in prison should militate in favour of his release, as it allegedly did in the *Šantić* Decision.[54]

27. Of the *Šantić* and *Obrenović* Decisions, however, only the *Obrenović* Decision qualifies as a genuine deviation from the two-thirds norm: in that decision, then-President Robinson granted Obrenović's application for early release eight months before he completed two-thirds of his sentence,

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[47] *See* Trial Judgement, para. 1206. *See also ibid*, para. 1184.
[48] *See* 2011 Decision on Early Release, para. 22.
[49] *See* 2011 Decision on Early Release, para. 21, n. 46.
[50] Request, p. 4.
[51] Request, pp. 4-5.
[52] Request, pp. 4-5.
[53] Request, p. 4, n. 2.
[54] Response, para. 13.

based on his "exceptionally substantial co-operation with the [Prosecution] and his demonstration of some rehabilitation".[55] By contrast, in the *Šantić* Decision, the President noted that, although Šantić had not yet served two-thirds of his sentence by the time the decision was issued, he, nonetheless, had qualified "through work and good behaviour, for 302 days of 'benefit', which amount[ed] to time off his sentence" so that, with those "benefit" days considered pursuant to the provisions of the enforcement State where he was serving his sentence, Šantić had "effectively completed two-thirds of his sentence" before the *Šantić* Decision was issued.[56]

28. The present case is different from both those cases. Unlike the circumstances involved in the *Šantić* Decision, Krajišnik has not qualified for beneficial counting of any prison time under UK law so as to be entitled to claim that he has already served two-thirds of his sentence.[57] And unlike the circumstances involved in the *Obrenović* Decision, the record on this case does not establish that Krajišnik's cooperation was akin to Obrenović's "exceptionally substantial co-operation" with the Prosecution.[58] Therefore, Krajišnik presents no compelling reason why the two-thirds eligibility threshold should not apply in this case.

29. In light of the foregoing, I am of the view that this factor weighs against Krajišnik's eligibility for early release.

E. Demonstration of Rehabilitation

30. Rule 125 of the Rules provides that the President of the Tribunal shall take into account a prisoner's demonstration of rehabilitation in determining whether pardon or commutation is appropriate. In addressing the convicted person's rehabilitation, paragraph 3(b) of the Practice Direction states that the Registrar shall

> request reports and observations from the relevant authorities in the enforcing State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration.

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[55] *Obrenović* Decision, para. 28.
[56] *Šantić* Decision, para. 8. *See also ibid*, para. 7.
[57] *See* Request, pp. 4-5. Krajišnik suggests that "the time that [he] has spent in solitary confinement under strict measures" could "be treated as a bonus period replacing the requirement for two-thirds of the sentence to be served." Request, p. 5. Yet I note that, pursuant to Article 3(2) of the Enforcement Agreement, Krajišnik's conditions of imprisonment shall be governed by the law of the UK, subject to the supervision of the Tribunal. It is therefore not within this Tribunal's competence to determine whether days spent in solitary confinement may be counted as a "bonus" to Krajišnik. *See also Šantić* Decision, paras 7-8.
[58] *Obrenović* Decision, para. 28. *See also infra* Section III.F.

31. The SPR Report states that Krajišnik's behaviour "has been exemplary."[59] It notes that, since his transfer to the Usk prison in November 2011, Krajišnik "has settled in well and is happy with the more relaxed regime than that he experienced at his previous establishment."[60] The SPR Report states that Krajišnik makes "very productive use of his time" and states that he "uses the gymnasium facilities and is a regular attendee at a small Bible study group with a visiting Chaplain."[61] The SPR Report further notes that, upon release, Krajišnik wishes to return to his home in Pale, in Republika Srpska,[62] Bosnia-Herzegovina "where he would be able to be close to his family who are very supportive of him."[63] According to the SPR Report, Krajišnik is "fully appreciative of the dangers inherent to him of a return to the political arena" and "has stated that he would be happy to offer help to bring the separate factions" in the region together.[64] The SPR Report concludes that "the risk that Mr. Kraji[š]nik presents at the current time would be safe to be managed outside of a custodial environment"[65] and recommends "that it is now an appropriate time for Mr. Kraji[š]nik to be released back into the community."[66] Krajišnik's conduct in prison was similarly reported to be positive in connection with previous proceedings concerning his potential early release.[67]

32. In the Request, Krajišnik states that he has been "down graded to [a] C Category [prison]" which "stands as evidence of [his] rehabilitation."[68] In the Response, Krajišnik states that the category level reflects the fact that Krajišnik "is in the lowest security category available to him at the present time."[69] Krajišnik contends that he "can achieve nothing further in custody",[70] and contends that he "has been effectively rehabilitated by the prison system" and has "met all of his targets".[71]

33. Moreover, in his 10 July 2012 Letter, Krajišnik appears to acknowledge and accept the Tribunal's final judgement in his case (even though he admits that he is actively collecting evidence in

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[59] SPR Report, para. 6.1.
[60] SPR Report, para. 6.1.
[61] SPR Report, para. 6.2.
[62] I note that in the Addendum, Krajišnik states that there is a typographical error in paragraph 7.1 of the SPR Report. Krajišnik states that paragraph 7.1 of the SPR Report reads "Serbia" when it should read "Republika Srpska". *See* Addendum, p. 1.
[63] SPR Report, para. 7.1.
[64] SPR Report, para. 7.2.
[65] SPR Report, para. 11.1.
[66] SPR Report, para. 12.1.
[67] *See* 2011 Decision on Early Release, paras 24-25; 2010 Decision on Early Release, paras 21-22.
[68] Request, p. 6.
[69] Response, para. 7.
[70] Response, para. 7.
[71] Response, para. 19.

support of a request for a review of his conviction).[72] He also expresses his "compassion for the people who have been expelled from their homes" and states that he "feel[s] miserable for the suffering of many non-Serbs, not only in the cases of which [he] was found guilty, but in general."[73]

34. Finally, I note that, although paragraph 3(b) of the Practice Direction envisages psychiatric or psychological evaluations prepared by the prison authorities on a prisoner's mental condition, no such reports have been submitted in this case – nor were any submitted in prior proceedings concerning Krajišnik's previous applications for early release.[74] The absence of such materials here appears to be due to the fact that Krajišnik neither sought to see a psychologist or a psychiatrist, nor was he referred to one by the prison authorities. As a result, I consider the absence of a psychiatric or psychological evaluation of Krajišnik's mental condition to be a neutral factor.

35. Based upon the foregoing, I am of the view that Krajišnik, through his good behaviour during his detention has demonstrated some rehabilitation, which militates in favour of his early release.

F. Substantial Cooperation with the Prosecution

36. Rule 125 of the Rules states that the President of the Tribunal shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any cooperation that the convicted person has provided to the Prosecution and the significance thereof.

37. Krajišnik's cooperation with the Prosecution is a contentious issue in this proceeding. The Prosecution argues that it has neither sought nor received any cooperation from Krajišnik.[75] Krajišnik disagrees and, in a series of submissions, asserts that before his arrest, he cooperated substantively with the Prosecution on various matters, including access to Karadžić.[76]

38. Krajišnik's arguments were raised, in nearly identical form, in previous early release proceedings involving Krajišnik and have been considered and rejected by then-President Robinson in two previous decisions on Krajišnik's potential early release.[77] In the 2011 Decision on Early Release, then-President Robinson found Krajišnik's arguments "either unsubstantiated or irrelevant to the issue

[72] 10 July 2012 Letter, p. 5. Krajišnik states that he does "not believe that [he is] innocent and this will be [his] position until the Tribunal favourably decides on [his] request for judicial review". *Ibid.*
[73] 10 July 2012 Letter, p. 5.
[74] *See* 2011 Decision on Early Release, para. 27; 2010 Decision on Early Release, para. 23.
[75] Prosecution Memorandum, para. 2. *See also* Second Prosecution Memorandum, para. 2.
[76] *See* Addendum pp. 1-2. *See also supra* nn. 31-32.
[77] *See* 2011 Decision on Early Release, paras 31-33; 2010 Decision on Early Release, paras 28-29.

of co-operation with the Prosecution."[78] Since Krajišnik simply reiterates before me the arguments raised in those earlier proceedings, I find that, in this proceeding too, Krajišnik has not proved any substantial cooperation with the Prosecution.

39. However, I note that there is no obligation on an accused or convicted person to cooperate with the Prosecution absent a plea agreement to do so and I conclude that, since the Prosecution has never sought Krajišnik's cooperation, this factor should be of neutral weight here.[79]

G. Request for Oral Hearing

40. Finally, I note that in the Response, Krajišnik submits that the Request merits an oral hearing before any decision is made.[80]

41. Paragraph 5 of the Practice Direction states a convicted person "shall be given ten [...] days to examine the information [submitted to the Registrar by the Prosecution or the enforcement State], following which the President shall hear him or her either through written submissions or, alternatively, by video- or telephone-link." Here, Krajišnik has been sufficiently heard through his extensive written submissions. Therefore, I am of the view that a video- or telephone-conference with Krajišnik (which, pursuant to paragraph 5 of the Practice Direction, shall only be permitted as an alternative to written submissions) is not necessary.

42. Accordingly, I hereby deny Krajišnik's request for an oral hearing.

H. Conclusion

43. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I am of the view that Krajišnik should not be released at this point. Although there is evidence that Krajišnik has been rehabilitated and that the risk of his committing a new crime once released is low, Krajišnik was convicted of crimes of a very high gravity, involving widespread displacement of the non-Serb population in Bosnia and Herzegovina, which caused great suffering. Moreover, Krajišnik will not have served two-thirds of his sentence until 3 August 2013, and the practice of the Tribunal is to consider the eligibility of a convicted person only after he has served two-thirds of his sentence. Krajišnik alleges that at least two exceptions to this practice have been allowed

[78] *See* 2011 Decision on Early Release, para. 32. *See also* 2011 Decision on Early Release, paras 31, 33.
[79] *Cf. Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011 (made public on 9 January 2012), para. 23.
[80] Response, para. 20.

in the past, but, as I noted above, only one of the cases cited deviated from the Tribunal's practice, and that case is clearly distinguishable from this case.[81] The need for me to take into account the treatment of similarly-situated persons thus weighs against his early release at this point. Accordingly, I am of the view that Krajišnik's Request should be denied.

44. I note that my colleagues unanimously share my view that Krajišnik should be denied early release.

IV. DISPOSITION

45. 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 8 of the Enforcement Agreement, I hereby **DENY** the Request.

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

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

Done this 8th day of November 2012,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Tribunal]

[81] *See supra* Section III.D.