

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before:
Judge Theodor Meron, President

Registrar:
Mr. Hans Holthuis

Decision of:
27 October 2003

**ORDER OF THE PRESIDENT ON THE APPLICATION FOR THE EARLY RELEASE OF
MILAN SIMIC**

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 ("International Tribunal");

NOTING Milan Simic's Application for Early Release dated 15 September 2003 ("Application");

NOTING that, on 17 October 2002, Trial Chamber II rendered its Sentencing Judgement in *Prosecutor v. Milan Simic*, IT-95-9/2-S ("Sentencing Judgement"), in which it sentenced Milan Simic to five (5) years imprisonment;

NOTING that, pursuant to Article 7 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, 7 April 1999 ("Practice Direction"), the President of the International Tribunal determines, in consultation with the Sentencing Chamber and the Bureau, whether applications for early release should be granted;

CONSIDERING that, under the Sentencing Judgement and Rule 101(C) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), which provides that the convicted person shall be given credit for time spent in custody pending surrender to the Tribunal or pending trial or appeal, Milan Simic is entitled to credit for 835 days served in custody prior to judgement, and will therefore have completed his sentence on 3 July 2005;

CONSIDERING that, under Article 28 of the Statute of the International Tribunal, Rule 123 of the Rules and Article 1 of the Practice Direction, when a convicted person becomes eligible for early release under the law of the State in which he is serving his sentence, the enforcing State shall, in accordance with its agreement with the International Tribunal on the enforcement of sentences, notify the International Tribunal accordingly;

CONSIDERING, however, that Milan Simic is not serving his sentence in one of the States signatory to the agreement with the International Tribunal on the enforcement of sentences ("Signatory State" or, for more than one Signatory State, "Signatory States"), but rather remains in detention at the United Nations Detention Unit ("UNDU");

CONSIDERING that the Practice Direction does not specify the early release procedure when a convicted person is serving his sentence at the UNDU in The Netherlands, which is not a Signatory State;

CONSIDERING that the conditions for eligibility regarding early release applications should be applied equally;

CONSIDERING that eligibility for early release in some Signatory States starts at two-thirds of the sentence served and, in some circumstances, even earlier, and that Milan Simic's application is receivable because he will have served two-thirds of his sentence on 3 November 2003 and will therefore be eligible for early release on that date;

NOTING the Registry's confidential memorandum of 7 October 2003 ("Registry's Confidential Memorandum"), which forwards the information gathered by the Registry in accordance with Article 2 of the Practice Direction;

NOTING the 24 September 2003 report from Mr. Tim McFadden, Commanding Officer of the UNDU ("Detention Report"), in which he described Milan Simic's behaviour in detention as good, respectful of the staff and management of the UNDU, and in compliance with the rules of detention and instructions of the guards;

NOTING the internal memorandum from the Office of the Prosecutor dated 29 September 2003 concerning Milan Simic's cooperation ("Prosecutor's Memorandum");

NOTING Milan Simic's Written Submission under Article 4 of the Practice Direction, made through counsel on 10 October 2003 ("Written Submission"), in which Milan Simic acknowledges the seriousness of his crimes and recalls his voluntary expression of remorse and assistance to certain of his victims in 1992, as well as his statement at the Sentencing Hearing expressing remorse and apologizing for his actions;

NOTING that the Registry has advised that no psychological or psychiatric reports have been submitted under Article 2(b) of the Practice Directive because Milan Simic is emotionally stable;

CONSIDERING Rule 125, incorporated by reference in Article 7 of the Practice Direction, which lists some of the elements to consider when examining an application for early release, including the gravity of the offence, demonstration of rehabilitation, any substantial cooperation of the prisoner with the Prosecutor, and treatment of similarly-situated prisoners, as well as further criteria enunciated in prior Orders pertaining to early release application;

CONSIDERING the gravity of the offences committed by Milan Simic while President of the Executive Board in the Municipality of Bosanski Šamac, as detailed in the Sentencing Judgement;

CONSIDERING that Milan Simic pleaded guilty and has expressed remorse for his crimes;

CONSIDERING that Milan Simic is a paraplegic confined to a wheelchair and requires assistance on a daily basis, and the statement in the Written Submission that his wife is a trained nurse able to provide such assistance;

CONSIDERING Milan Simic's resolve to be reintegrated into society, his good behaviour in detention, his attachment to his family, and the possibility for him to obtain employment in his family's shop when released;

CONSIDERING that Milan Simic's case is no less appropriate for a grant of early release than that of other prisoners previously granted early release by the President of the International Tribunal;

CONSIDERING Milan Simic's Application, the Sentencing Judgement, the Registry's Confidential Memorandum, the Detention Report, the Prosecutor's Memorandum, and the Written Submission;

CONSIDERING that, because the Trial Chamber that initially sentenced Milan Simic cannot be reconstituted, the consultation required by Article 7 of the Practice Direction was limited to the members of the Bureau;

HAVING CONSULTED the Members of the Bureau and considered their recommendation;

CONSIDERING that, in the particular circumstances of this case, further detention of Milan Simic is unnecessary;

PURSUANT to Rules 124 and 125 of the Rules and Article 7 of the Practice Direction,

FOR THE FOREGOING REASONS,

DECIDE to grant Milan Simic's Request, effective 3 November 2003;

REQUEST the Registrar to inform the authorities at the United Nations Detention Unit of this Decision.

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

Done this 27th day of October 2003,
At The Hague,
The Netherlands.

Theodor Meron
President of the International Tribunal

[Seal of the Tribunal]