



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-97-25-ES  
Date: 23 July 2009  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Patrick Robinson, President**

**Registrar: Mr. John Hocking**

**Decision of: 23 July 2009**

**PUBLIC**

**ORDER ISSUING A PUBLIC REDACTED VERSION OF THE 9  
JULY 2009 DECISION OF THE PRESIDENT ON THE  
APPLICATION FOR PARDON OR COMMUTATION OF  
SENTENCE OF MILORAD KRNOJELAC**

**Office of the Prosecutor**

Mr. Serge Brammertz

**Counsel for Mr. Milorad Krnojelac**

Mr. Mihajlo Bakrač

**I, PATRICK ROBINSON**, 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** the “Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac”, issued by myself on 9 July 2009, in which I granted Milorad Krnojelac’s request for early release (“Decision”);

**CONSIDERING** that Paragraph 6 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 Tribunal (“Practice Direction”)<sup>1</sup> provides that the President may authorize disclosure of otherwise confidential information collected pursuant to Paragraphs 2 through 5 of the Practice Direction for the purpose of rendering a public decision;

**CONSIDERING** that some of the information contained in the Decision is to remain confidential;

**HEREBY ISSUE** a Public Redacted Version of the Decision.

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

Done this 23rd day of July 2009,  
At The Hague,  
The Netherlands.

  
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Judge Patrick Robinson  
President

[Seal of the International Tribunal]

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<sup>1</sup> IT/146/Rev.1, 15 August 2006.

**UNITED  
NATIONS**

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**DECISION OF THE PRESIDENT ON THE APPLICATION FOR  
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KRNOJELAC**

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1. On 18 November 2008, Counsel for Milorad Krnojelac filed his fourth confidential application seeking early release (“Fourth Application”).<sup>2</sup> In this instance, the notification envisaged by Rule 123 of the Rules of Procedure and Evidence (“Rules”) was made by Mr. Krnojelac personally. While the Rules do not specifically recognize the right of a convicted person to make this application in his personal capacity, past practice of this Tribunal has been to deal with such an application in accordance with the Rules applicable to notifications pursuant to Rule 124 of the Rules.<sup>3</sup>

2. Three applications for Mr. Krnojelac’s early release have previously been denied. In his first application, he argued that his early release from the United Nations Detention Unit (“UNDU”) was warranted given that [redacted].<sup>4</sup> This application was denied in light of advice from the Deputy Registrar that he could receive adequate treatment while detained at the UNDU.<sup>5</sup> His second and third applications were denied on the basis that he was not eligible for early release under Italian law.<sup>6</sup>

3. At the time of his third application, despite repeated requests,<sup>7</sup> the Italian authorities were unable to confirm Mr. Krnojelac’s eligibility for early release under Italian law. The Italian authorities undertook to advise the Registry of any judicial decision that confirmed his eligibility.<sup>8</sup>

<sup>2</sup> *Confidential Urgent Defence Request Seeking Milorad Krnojelac’s Early Release & Request to Exceed Word Limit*, 18 November 2008 (“Fourth Application”).

<sup>3</sup> See *Confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac*, 12 November 2008, para. 1 (“Decision on Third Application”); *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-ES, *Confidential Decision of the President on Commutation of Sentence*, 4 September 2007, para. 4; *Prosecutor v. Drago Josipović*, Case No. IT-95-16-ES, *Confidential and Ex Parte Decision of the President on the Application for Pardon or Commutation of Sentence of Drago Josipović*, 30 January 2006, paras 4 and 6; *Prosecutor v. Stefan Todorović* Case No. IT-95-9/1-ES, *Decision of the President on the Application for Pardon or Commutation of Sentence of Stefan Todorović*, 22 June 2005, para. 5.

<sup>4</sup> *Confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac*, 21 June 2005 (“Decision on First Application”), para. 6. (citing Application of the Convicted Milorad Krnojelac for pardon or Commutation of Sentence, 24 May 2005, paras 6-9).

<sup>5</sup> *Decision on First Application*, para. 18.

<sup>6</sup> *Confidential Decision of the President on Krnojelac’s Second Application for Pardon or Commutation of Sentence*, 31 October 2007, p. 2; *Decision on Third Application*, para. 7.

<sup>7</sup> See Memorandum from the Deputy Registrar to the President of the Tribunal dated 22 May 2008 (stating that, in response to the President’s memorandum of 10 April 2008, requesting the Registry to contact the Italian authorities to ascertain Mr. Krnojelac’s eligibility for early release, the Registry contacted the Italian authorities but was still awaiting a response); Memorandum from the Deputy Registrar to the President of the Tribunal dated 5 August 2008 (stating that on 3 July 2008, the Registry again wrote to the Italian authorities, requesting their assistance to expedite the provision of information regarding Mr. Krnojelac’s eligibility for early release under Italian national law; and that the Registry again contacted the Italian authorities on 4 August 2008, and was informed that the matter had been referred to a panel on the enforcement of sentences within the Italian judicial system, that the Italian authorities would inform the Tribunal as soon as the judicial authorities had made a determination, and noting that given the judicial recess in Italy, no such information could be provided prior to mid-September 2008); Memorandum from the Deputy Registrar to the President of the Tribunal dated 5 November 2008 (stating that, following a number of requests by the Registry since 14 April 2008, the Registry again contacted the Italian authorities on 7 October 2008 to ascertain Mr. Krnojelac’s eligibility for early release pursuant to Italian national law; that in response, the Italian authorities sent a Note Verbale to the Registry,

4. On 24 November 2008, in consideration of the Fourth Application, I sent a letter to the Italian authorities requesting clarification of Mr. Krnojelac's entitlement to early release under Italian law ("Letter of 24 November 2008"). In the Letter I noted, *inter alia*, that a cursory reading of Article 176 of the Italian Penal Code ("Article 176) indicates that, under this provision, an accused sentenced to imprisonment may be released on probation if: (1) during the term of serving his or her sentence, "(s)he showed and proved his/her repentance and acknowledgement of the mistake that (s)he had made"; and (2) "(s)he served the imprisonment sentence of minimum 30 months or at least a half of the pronounced sentence if the remaining part of the sentence does not exceed five years." I also noted my conclusion, based on the information provided to the Registry by the Italian Embassy, that although Mr. Krnojelac had not been determined eligible for pardon or commutation of sentence under Italian law, neither has his eligibility been ruled out. In this regard, I observed that as required under Article 176: (1) Mr. Krnojelac has served half of his sentence, having been transferred to the seat of the International Tribunal on 15 June 1998, where he was subsequently sentenced to 15 years of imprisonment; and (2) having served over ten years of his sentence, the remaining part of his sentence does not exceed five years. In view of the foregoing, I asked the Italian authorities to inform me as to whether consideration of Mr. Krnojelac's eligibility for pardon or commutation of sentence under Article 176 or any other provision of Italian law is still pending before the panel on enforcement of sentences.<sup>9</sup>

5. While my request for this information was made on 24 November 2008, it was not until 25 March 2009 that I received a copy of a letter from the Italian authorities dated 13 March 2009 ("Letter of 13 March 2009"), in which they indicated that Mr. Krnojelac is not entitled to early release under Italian law. Three documents were attached to the letter, including: (1) a medical report dated 16 February 2009 on Krnojelac's health condition ("Medical Report of 16 February 2009"); (2) a decision by the Office for Sentence Enforcement of Milan, granting Mr. Krnojelac a 90-day reduction in sentence under Article 54 of the Italian Penitentiary Law; and (3) a decision from the Supervising Magistrate of Milan finding that Mr. Krnojelac does not meet the requirements for deferment of penalty under Articles 146 and 147 of the Italian Penal Code.

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and that, finding this material inconclusive, the Registry again contacted the Italian authorities; and that, on 30 October 2008, the Registry received an email from the Italian authorities confirming that although Mr. Krnojelac was entitled to reduction in sentence of 810 days, "from the information in hand" it could not be argued that Mr. Krnojelac was entitled to early release under domestic law, although the Italian authorities would keep the Registry informed of any judicial decision in this regard).

<sup>9</sup> Memorandum from the Deputy Registrar to the President of the Tribunal dated 5 November 2008.

6. On 20 May 2009, I sent a letter to the Registrar, in which I explained that because the Letter of 13 March 2009 did not specifically address Mr. Krnojelac's eligibility for early release under Article 176, I considered it incomplete. I accordingly requested that the Registrar contact the Italian authorities as a matter of urgency to ascertain Mr. Krnojelac's eligibility under that provision. The Registrar complied with my request on 28 May 2009. [redacted]. The Registrar further pointed out that if the President considered that Mr. Krnojelac's early release was appropriate, he could proceed pursuant to Article 9(2) of the Agreement between Italy and the United Nations on the enforcement of the Tribunal's sentences ("Italian Enforcement Agreement"), which provides that "[t]he International Tribunal may at any time decide to request the termination of the enforcement in the requested State and transfer the convicted person to another state or to the International Tribunal".<sup>10</sup>

7. On 15 April 2009, the Registry sent to Mr. Krnojelac copies of documents that it had provided to me to assist me in determining the Fourth Application, including a medical report dated 24 January 2009 ("Medical Report of 24 January 2009") and the Medical Report of 16 February 2009 (collectively, "Medical Reports"), as well as the decisions of the supervising Magistrate of Milan dated 12 September 2008 and 25 November 2008. The Registry also informed Mr. Krnojelac of his right to make additional written submissions concerning these documents. The Registry received an additional submission from Mr. Krnojelac on 18 May 2009 ("Additional Submission"), which it transmitted to me the same day.

8. In a letter dated 30 June 2009, [redacted].<sup>11</sup>

## I. BACKGROUND

9. The initial indictment against Milorad Krnojelac was issued on 6 June 1997. It alleged that after Serb military forces took control of the town of Foča in 1992, they began to detain and hold mostly male Muslim and other non-Serbian civilians in the Foča Kazneno-Popravni Dom ("KP Dom") detention facility. At KP Dom, the prison personnel and members of the Serb armed forces allegedly subjected the detainees to unlawful imprisonment under inhumane conditions, persecution, torture, beatings, forced labour, killings and deportation. Mr. Krnojelac was identified as the commander of the KP Dom from April 1992 until at least August 1993.

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<sup>9</sup> Memorandum from the President of the Tribunal to the Acting Registrar dated 24 March 2009.

<sup>10</sup> Memorandum from the Registrar to the President of the Tribunal dated 29 June 2009.

<sup>11</sup> [redacted].

10. On 15 March 2002, Trial Chamber II issued its Judgement. It found Mr. Krnojelac guilty of crimes against humanity (imprisonment, inhumane acts, cruel treatment, torture, murder, persecutions and violations of the laws and customs of war (murder) arising out of acts and omissions perpetrated while warden of the KP Dom). The Trial Chamber sentenced him to seven years of imprisonment. On 17 September 2003, the Appeals Chamber increased Mr. Krnojelac's sentence to 15 years of imprisonment subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention from the time of his arrest on 15 June 1998. The increase followed a successful appeal by the Prosecution against the Trial Chamber's acquittal of Mr. Krnojelac of the offence of forced labour, and the Trial Chamber's characterization of Mr. Krnojelac's criminal responsibility as that of an aider and abettor. The Appeals Chamber found that Mr. Krnojelac's conduct was better characterized as that of a co-perpetrator. Mr. Krnojelac was transferred to Italy for the enforcement of his sentence on 11 April 2006. Two-thirds of his sentence has been served as of 15 June 2008 (*i.e.* 10 years of the 15 year sentence imposed).

## II. SUBMISSIONS

11. In the Fourth Application, Counsel for Mr. Krnojelac ("Defence") submits that Mr. Krnojelac's early release is warranted given that on 20 December 2008, he will have served a half year more than two-thirds of his prison sentence, leaving only four and a half years of time remaining to be served,<sup>12</sup> and in addition, as prescribed by Article 176 of the Italian Penal Code, Mr. Krnojelac has only four and a half years of his prison sentence remaining.<sup>13</sup> It also submits that his early release is justified given his critical state of health.<sup>14</sup> In support of its argument, the Defence asserts that that it has been the practice of the Tribunal to grant early release to all detainees after two-thirds of their sentences have been served, and that in such cases, no detainee has had health problems as serious as those suffered by Mr. Krnojelac.<sup>15</sup> It further asserts that under the Tribunal's jurisprudence, "special circumstances, such as a convicted person's critical state of health, may justify an even earlier release than that is provided in the Statute and Rules".<sup>16</sup>

<sup>12</sup> Fourth Application, paras 14 and 27. Note that Krnojelac served half a year more than two-thirds of his sentence on 15 December 2008 rather than 20 December 2008, as indicated in the Fourth Application, given that he was transferred to the seat of the Tribunal on 15 June 1998 and subsequently sentenced by the Appeals Chamber to fifteen years of imprisonment.

<sup>13</sup> Fourth Application, para. 39.

<sup>14</sup> Fourth Application, paras 29-31.

<sup>15</sup> Fourth Application, paras 29 and 39.

<sup>16</sup> Fourth Application, para. 30.

12. In this regard, the Defence notes that since the rendering of the Appeals Judgement, Mr. Krnojelac has [redacted].<sup>17</sup> The Defence also asserts that Mr. Krnojelac's health has significantly worsened since the filing of his Third Application and that the current conditions in an Italian prison have impeded his recovery, given that he has no support from persons who speak his native language, and his family has been unable to visit him on a regular basis due to financial constraints.<sup>18</sup>

13. The Defence argues that Mr. Krnojelac has demonstrated rehabilitation, as shown by: (1) a report dated 30 November 2006 from the Italian Ministry of Justice, which states that Mr. Krnojelac's "behaviour is correct and regular, without disciplinary violations"; and (2) the fact that Mr. Krnojelac's sentence was reduced a total of 810 days under Article 54 of the Italian Criminal Code, due to his participation in re-socialisation activities.<sup>19</sup> The Defence also emphasizes that "the purpose of the punishment has been achieved" in Mr. Krnojelac's case, given that the severity of his punishment was magnified by his illness, which was not known to the Appeals Chamber at the time of sentencing.<sup>20</sup> The Defence points out that "early release is commonly envisaged by state legislations where the competent body is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds."<sup>21</sup>

14. The Defence further notes that the Prosecution never requested Mr. Krnojelac's cooperation, and submits that nevertheless, the fact that Mr. Krnojelac gave an interview to the Office of the Prosecutor demonstrates that he would have provided his cooperation had he been asked.<sup>22</sup>

15. Finally, the Defence requests that, if the Italian authorities disagree that Mr. Krnojelac is entitled to early release, the President "have Mr. Krnojelac transferred to the Tribunal as envisaged by Article 9(2) of the Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the [Tribunal]", and that upon transfer, "the President determines Mr. Krnojelac's eligibility for early release, based on humanitarian grounds, and in the interests of justice and equity."<sup>23</sup>

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<sup>17</sup> Fourth Application, paras 15-17.

<sup>18</sup> Fourth Application, paras 19-21 and 24.

<sup>19</sup> Fourth Application, paras 33-34.

<sup>20</sup> Fourth Application, paras 30-31.

<sup>21</sup> Fourth Application, para. 31.

<sup>22</sup> Fourth Application, para. 36.

<sup>23</sup> Fourth Application, para. 40.

16. In his Additional Submission, Mr. Krnojelac explains that his poor health is exacerbated by the fact that: (1) [redacted]; (2) [redacted]; (3) [redacted]; (4) he has problems understanding people due to his poor knowledge of the language; and (5) [redacted].<sup>24</sup>

### III. DISCUSSION

17. Under Article 28 of the Statute, the President of the Tribunal shall consider granting early release to a convicted person when he or she becomes eligible for pardon or commutation of sentence under the applicable law of the enforcement State. In determining whether early release is appropriate, Article 28 of the Statute indicates that the President is to evaluate the application “on the basis of the interests of justice and the general principles of law”. More specifically, Rule 125 of the Rules provides that the President should consider, *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 cooperation by the prisoner with the Prosecutor.

18. Although the Italian authorities have not yet informed me of any final ruling on his eligibility for early release under Article 176, I note, as previously indicated, that Mr. Krnojelac has served the requisite amount of his sentence to qualify for early release under this provision.<sup>25</sup>

19. Pursuant to Article 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 Tribunal (“Practice Direction”), in relation to Mr. Krnojelac’s third application for early release, the Registry forwarded to me a submission and a corrigendum to the submission prepared by the Prosecutor.<sup>26</sup> In addition, in relation to the same application, the Registry provided me with two reports from the Italian authorities on Mr. Krnojelac’s conduct and penitentiary treatment.<sup>27</sup> Although the Prosecutor and Italian authorities have not formally provided any further reports in connection with the Fourth Application, I consider that these reports provide sufficient relevant information regarding the issues of Mr. Krnojelac’s cooperation with the Prosecution and rehabilitation to inform my determination of the Fourth Application.

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<sup>24</sup> Additional Submission, p. 1.

<sup>25</sup> See *infra*, para. 4.

<sup>26</sup> Memorandum from the Deputy Registrar to the President of the Tribunal dated 22 May 2008; Memorandum from the Deputy Registrar to the President of the Tribunal dated 26 June 2008.

<sup>27</sup> Memorandum from the Deputy Registrar to the President of the Tribunal dated 26 August 2008.

20. Evaluating Mr. Krnojelac's eligibility for early release under Rule 125 of the Rules, I note first that he appears to have demonstrated substantial evidence of rehabilitation. Reports from the Italian authorities indicate that Mr. Krnojelac "has always behaved in a correct and respectful manner in the prison facility" and that for this reason, he was granted a reduction in his punishment of 810 days.<sup>28</sup> Furthermore, I observe that in order to qualify for this reduction in his sentence, Mr. Krojelac was required to participate in re-socialisation activities.<sup>29</sup> In addition, I note that the Medical Reports indicate that Mr. Krnojelac is [redacted]. In July 2007, it was determined that [redacted]. Nevertheless, it has been determined that [redacted].<sup>30</sup> I consider that Mr. Krnojelac's exemplary behaviour during incarceration despite his prolonged illness, which has caused him severe pain and discomfort, is a persuasive indication of his rehabilitation.

21. The Prosecution's submission indicates that Mr. Krnojelac has not provided substantial co-operation following his conviction but also concedes that no such co-operation has been sought.<sup>31</sup> Given that the Prosecution has not requested such assistance, this consideration is neutral.

22. I further note that Mr. Krnojelac has served more than two-thirds of his sentence. Considering that other similarly situated but healthy prisoners have been granted early release after serving two-thirds of their sentences, this factor further supports his eligibility for early release.

23. In accordance with Article 5 of the Practice Direction, I attached the information collected by the Registrar for consideration by the Bureau and the Judges of the sentencing Chamber and Appeals Chamber that remain Judges of the Tribunal and offered my views on the Fourth Application, as expressed above, for consideration by my colleagues. All of the Judges agreed with my assessment that Mr. Krnojelac should be granted early release notwithstanding the lack of a final determination by the Italian authorities regarding his eligibility for early release under Italian law.

24. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am satisfied that the Fourth Application should be granted immediately. Specifically,

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<sup>28</sup> Behavioural Report from the Italian Ministry of Justice, Department of Penitentiary Administration, Directorate Prison of Milan-Opera, Educational Office dated 11 April 2008 (attached to Memorandum from the Deputy Registrar to the President of the Tribunal dated 26 August 2008).

<sup>29</sup> Decision of the Office for Sentence Enforcement of Milan dated 11 September 2008 (attached to Letter of 13 March 2009).

<sup>30</sup> Medical Report of 16 February 2009, p. 2; Medical Report of 24 January 2009, p. 2.

<sup>31</sup> Prosecution Submission with Regard to Milorad Krnojelac's Co-operation with the Prosecution and Other Matters regarding his Early Release, 24 April 2008, p. 2.

pursuant to Article 9(2) of the Italian Enforcement Agreement, which provides that “[t]he International Tribunal may at any time decide to request the termination of the enforcement in the requested State and transfer the convicted person to another state or to the International Tribunal”, I instruct the Registrar to: (1) terminate the enforcement of Mr. Krnojelac’s sentence and to transfer him to Bosnia-Herzegovina, his country of domicile, and (2) ensure that all steps are taken to implement this decision within a reasonably practicable time.

Done this 9th day of July 2009,  
At The Hague,  
The Netherlands.

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Judge Patrick Robinson  
President

**[Seal of the International Tribunal]**