



**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: IT-98-30/1-A

Date: 13 July 2005

Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr Hans Holthuis

Decision of: 13 July 2005

THE PROSECUTOR

v.

MLADO RADIĆ

DECISION ON REQUEST FOR PROVISIONAL RELEASE

The Office of the Prosecutor

Mr Norman Farrell

Counsel for the Defence

Mr Toma Fila

1. Mlado Radić (“Radić”) has filed an application before me requesting that I grant him provisional release for the period of 15th July 2005 until the 22nd July 2005.¹ Radić requests that he be released during this period so that he may attend the church wedding of his eldest son and the christening of his grandchild.²

2. Radić was first transferred to the Tribunal on 9 April 1998. He was tried and convicted for his role in events at the Omarska camp while a shift leader of the guards and sentenced by the Trial Chamber on 2 November 2001, to twenty years imprisonment for persecution as a crime against humanity based on the underlying crimes of murder, torture and beating, sexual assault and rape, harassment, humiliation and psychological abuse and confinement in inhumane conditions; murder as a violation of the laws or customs of war; and two counts of torture as a violation of the laws or customs of war. Following his unsuccessful appeal to the Appeals Chamber, his sentence was confirmed on 28 February 2005. Radić is currently detained at the United Nations Detention Unit (“UNDU”) awaiting transfer to an enforcement State in which he will serve the remainder of his sentence.

3. In filing this Request before me, Radić has not identified any provision of the Rules of Procedure and Evidence (“Rules”) which empower the President to grant a convicted accused awaiting transfer to an enforcement State a right to provisional release. Indeed, under the Rules of this Tribunal there is no provision which permits a convicted accused to request such a release from the President, and accordingly I do not have the authority to consider the Request of Radić.³ The decision in *Krnjelac* relied upon by the Appellant is inapposite to this case.⁴ In that instance the Appeals Chamber was seised of Krnjelac’s appeal, and thus Krnolejac was entitled to make an application for provisional release to the Appeals Chamber pending the outcome of his appeal pursuant to Rule 65.

4. However, even if I had determined that I did have the authority to consider Radić’s request for provisional release, I would not have granted the Request. I am not persuaded that the fact Radić has suffered family misfortune with the death of his brothers, has had limited contact with his family due to

¹ Defence Request for Provisional Release, 8 July 2005 (“Request”), par 21.

² *Ibid*, par 21.

³ The powers of the President under the Statute of the Tribunal and the Rules is to grant a request for pardon or commutation of sentence where an enforcement State has advised the President pursuant to Rule 123 that a detainee convicted by the Tribunal has become eligible for early release pursuant to the laws of the national jurisdiction enforcing the sentence of the Tribunal. As transfer of detainees to enforcement States is often a lengthy process, I have determined in previous decisions that the application of Rule 123 applies to detainees held at the UNDU.

⁴ Request, par 16.

the fact that they cannot afford the travel expenses to the UNDU, or that the family of Radić and Radić himself would be overjoyed if he could attend his son's wedding and the christening of his grandchild are sufficient reasons to justify a grant of release to an accused convicted of such serious crimes.⁵ I also do not consider the fact that Radić is "unusually sad and depressed" or that his family suffers from his imprisonment to be grounds sufficient to warrant a grant of provisional release. Nor do I consider the amendment of the Tribunal's Rules to concentrate on most senior leaders to be of any relevance to Radić's conviction by this Tribunal of particularly serious crimes involving numerous victims.⁶

5. On the basis of the foregoing the Request is **DISMISSED**.

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

Dated this 13th day of July 2005,
At The Hague,
The Netherlands.

Judge Theodor Meron
President

[Seal of the Tribunal]

⁵ *Ibid*, pars 6-15.

⁶ *Ibid*, pars 17-20.