

**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-03-66-ES  
Date: 9 January 2013  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**Decision: 9 January 2013**

**PROSECUTOR**

**v.**

**HARADIN BALA**

***PUBLIC***

**PUBLIC REDACTED VERSION OF THE 28 JUNE 2012  
DECISION OF THE PRESIDENT  
ON EARLY RELEASE OF HARADIN BALA**

**The Office of the Prosecutor:**

**The Government of the French Republic**

Mr. Serge Brammertz

**Counsel for the Accused:**

Mr. Gregor Guy-Smith  
Mr. Gentian Zyberi

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 the “Motion for Early Release on Behalf of Mr. Haradin Bala” (“Application”), filed by counsel for Mr. Haradin Bala (“Bala”) on 8 November 2011, 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”).<sup>1</sup>

## I. BACKGROUND

2. The initial indictment against Bala was filed on 24 January 2003<sup>2</sup> and then amended twice, the latest iteration being filed in 2004.<sup>3</sup> Bala was charged with crimes he allegedly committed in connection with his role as commander/guard at the Lapušnik/Llapushnik Prison Camp of the Kosovo Liberation Army (“KLA”) during the conflict between ethnic Serbs and Albanians in Kosovo in 1999. In particular, Bala was charged with individual criminal responsibility for committing, ordering, or otherwise aiding and abetting: (i) imprisonment, torture, inhumane acts and murder as crimes against humanity; and (ii) cruel treatment, torture and murder as violations of the laws and customs of war.<sup>4</sup> Bala was also charged with participation in a joint criminal enterprise, the goal of which was to target Serb civilians and perceived Albanian collaborators for intimidation, imprisonment, violence, and murder.<sup>5</sup> Bala was arrested on 17 February 2003.<sup>6</sup> He pleaded not guilty to all counts in the Indictment.<sup>7</sup>

3. On 30 November 2005, Trial Chamber II of the Tribunal (“Trial Chamber”) convicted Bala of three counts: (i) torture; (ii) cruel treatment; and (iii) murder as violations of the laws and customs of war. Specifically, the Trial Chamber found that, in his role as a guard at the Lapušnik/Llapushnik Prison Camp, Bala had: “aided the torture” of a detainee; “personally mistreated” and aided in the

<sup>1</sup> IT/146/Rev.3, 16 September 2010.

<sup>2</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-I, Indictment, 24 January 2003.

<sup>3</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-PT, Second Amended Indictment, 6 November 2003 (“Indictment”). See also *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-PT, Decision to Grant Leave to Amend the Indictment, 25 March 2003; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-PT, Decision on Prosecution’s Motion to Amend the Amended Indictment, 12 February 2004; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-PT, Corrigendum to the Second Amended Indictment, 9 August 2004.

<sup>4</sup> Indictment, paras 21, 23-28, 31-37.

<sup>5</sup> Indictment, paras 3, 6-9, 12-13.

<sup>6</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Judgement, 30 November 2005 (“Trial Judgement”), paras 737, 742.

<sup>7</sup> See Trial Judgement, para. 5; Trial Judgement, Chapter XII, Annex IV: Procedural History, para. 751.

mistreatment of other detainees; played a “personal role in the maintenance and enforcement of inhumane conditions of detention” at the camp; and “personally participated in the murder of” nine detainees.<sup>8</sup>

4. The Trial Chamber sentenced Bala to 13 years of imprisonment, with credit for time served since 17 February 2003, pursuant to Rule 101(C) of the Rules.<sup>9</sup> On 27 September 2007, the Appeals Chamber dismissed Bala’s appeal in its entirety and affirmed the sentence imposed by the Trial Chamber.<sup>10</sup>

5. On 7 February 2008, France was designated as the state in which Bala was to serve his sentence.<sup>11</sup> Bala was transferred to France to serve the remainder of his sentence in May 2008.<sup>12</sup>

6. On 15 October 2010, then-President Robinson declined Bala’s request for sentence remission, citing “his very limited demonstration of rehabilitation and the high gravity of his crimes”.<sup>13</sup> 



.<sup>14</sup>

## II. THE APPLICATION

7. Bala filed the present Application on 9 November 2011, pursuant to paragraph 2 of the Practice Direction, which allows convicted persons to directly petition the President for early release. This is Bala’s first application for early release. In the Application, Bala submits that he is eligible for early release because he has completed two thirds of his prison sentence and because of: (i) his good conduct in prison and alleged demonstration of rehabilitation; (ii) the treatment of similarly-situated prisoners; and (iii) his family situation and other humanitarian grounds.<sup>15</sup> In support of his Application, Bala

<sup>8</sup> Trial Judgement, para. 741.

<sup>9</sup> See Trial Judgement, para. 742.

<sup>10</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Judgement, 27 September 2007 (“Appeal Judgement”), Chapter VII, Disposition, p. 116.

<sup>11</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Order Designating the State in Which Haradin Bala is to Serve his Prison Sentence, 7 February 2008 (made public pursuant to Order Withdrawing Confidential Status of Order Designating the State in which Haradin Bala is to Serve his Prison Sentence, 14 May 2008), p. 2.

<sup>12</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Order Withdrawing Confidential Status of Order Designating the State in which Haradin Bala is to Serve his Prison Sentence, 14 May 2008.

<sup>13</sup> *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010 (“Decision on Remission”), para. 28.

<sup>14</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Transfer, 17 December 2010 (confidential) (“Decision on Transfer”), para. 31.

<sup>15</sup> Application, pp. 4-8.

submits a series of witness statements from members of his community in Kosovo, which he asserts establish his ability to re-integrate himself easily into the life of his former community once released.<sup>16</sup>

8. On 14 November 2011, then-President Robinson directed the Registrar of the Tribunal (“Registrar”) to request relevant reports and observations from the French authorities and the Office of the Prosecutor (“Prosecution”), pursuant to paragraphs 3(b) and (c) of the Practice Direction.<sup>17</sup> In response to the Registrar’s request, the Office of the Prosecutor (“Prosecution”) submitted a memorandum on 15 December 2011, stating that Bala did not cooperate with the Prosecution at any stage of his trial or appeal or in subsequent proceedings, but omitting to state whether the Prosecution ever requested such cooperation from Bala.<sup>18</sup>

9. On 18 April 2012, the Embassy of France in the Netherlands transmitted to this Tribunal’s Registrar a *note verbale* (the “Note Verbale”).<sup>19</sup> In it, the French authorities recommend denying Bala’s Application, mainly because: (i) there can be no guarantees as to the implementation by Kosovo’s government of any conditions accompanying a possible release on parole, since Kosovo is not a party to the 1964 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders; and (ii) Bala has made little progress in terms of acknowledging the gravity of his deeds.<sup>20</sup> Attached to the Note Verbale were, *inter alia*: a letter by the French Ministry of Justice and Civil Liberties;<sup>21</sup> the opinion of the Office of the Prosecutor at the Verdun Tribunal de Grande Instance;<sup>22</sup> the opinion of the Sentence Enforcement Judge at the same French court;<sup>23</sup> the expert psychological report on Bala by Mr. François Leluc (“Leluc Report”);<sup>24</sup> the expert psychiatric evaluation of Bala by Dr. Hugues Collin (“Collin Report”);<sup>25</sup> a letter from the Directorate of Prison Administration at the French Ministry of Justice and Civil Liberties,<sup>26</sup> and a socio-educational

<sup>16</sup> Application, Annex A.

<sup>17</sup> See Memorandum from Judge Patrick Robinson, President, to Mr. John Hocking, Registrar, dated 14 November 2011, re: Haradin Bala – Application for Early Release.

<sup>18</sup> See Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 22 March 2012, *transmitting* Memorandum to the Office of the Registrar by the Senior Legal Adviser to the Prosecutor, dated 15 December 2011 (“Prosecution Memorandum”, attached hereto as “Annex 1”).

<sup>19</sup> See Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 10 May 2012, *transmitting* Letter to the Registrar by the Embassy of France to the Netherlands, dated 18 April 2012 (attached hereto as “Annex 2”).

<sup>20</sup> See Annex 2, Note Verbale, Document 1, Letter to the Tribunal by the Deputy Chief of the Office of International Assistance in Criminal Matters of the Ministry of Justice and Civil Liberties of France, dated 30 March 2012.

<sup>21</sup> See Annex 2, Note Verbale, Document 1.

<sup>22</sup> See Annex 2, Note Verbale, Document 3, dated 20 March 2012.

<sup>23</sup> See Annex 2, Note Verbale, Document 4, dated 16 March 2011.

<sup>24</sup> See Annex 2, Note Verbale, Document 5, dated 4 March 2012.

<sup>25</sup> See Annex 2, Note Verbale, Document 6, dated 21 February 2012.

<sup>26</sup> See Annex 2, Note Verbale, Document 8, dated 15 March 2012.

summary from the same Directorate, on the conditions of Bala's detention at the Montmédy Detention Centre<sup>27</sup> (collectively, "Additional Materials").

10. [REDACTED]

[REDACTED]<sup>28</sup>

### III. DISCUSSION

11. In deciding the Application, and consistent with Rule 124 of the Rules and paragraph 6 of the Practice Direction, I have consulted members of the Bureau, *i.e.*, the Vice President and the Presiding Judges of the Trial Chambers of the Tribunal.<sup>29</sup>

#### A. Applicable Law

12. 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 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.

13. Rule 125 of the Rules provides that, in making a determination upon 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.

14. Article 3(2) of the Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia ("Enforcement Agreement") provides that the conditions of imprisonment shall be governed by the law of France, subject to the supervision of the Tribunal.<sup>30</sup> Article 3(4) provides that

<sup>27</sup> See Annex 2, Note Verbale, Document 9, dated 16 January 2012.

<sup>28</sup> See *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-ES, Reply of Haradin Bala to Submissions by the French Authorities on His Application for Early Release, filed on 1 June 2012 ("Response") (confidential), para. 10.

<sup>29</sup> See Rule 23(a) of the Rules. Although, under Rule 124 of the Rules, I was also to consult "any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal," none of the permanent Judges of Bala's original sentencing Chamber remain members of the Tribunal and, thus, I have decided the Application in consultation solely with members of the Bureau.

<sup>30</sup> Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 25 February 2000 ("Enforcement Agreement"), art. 3(2).

the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate, and that the Registrar shall inform France of the President's determination.<sup>31</sup>

15. I analyze below each of the factors mentioned in Rule 125 of the Rules, as well as the factors offered by Bala in his Application.

#### B. Eligibility Under French Law

16. In one of the documents attached to the Note Verbale, the French Ministry of Justice and Civil Liberties states that Bala is eligible for release on parole, pursuant to Article 729 of the French Code of Criminal Procedure, as he has served more than half of his prison sentence.<sup>32</sup> Indeed, according to Article 729 of the *Code de procédure penale* of France,

release on parole may be granted when the length of the sentence served by the convicted person is at least equal to the length of the sentence remaining to be served.

17. As of 13 June 2012, Bala has remained incarcerated for 9 years and 105 days, *i.e.*, he has completed more than half of his sentence of 13 years and he is, thus, eligible to be released on parole, under Article 729 of the French Code of Criminal Procedure.

#### C. Gravity of Crimes

18. The crimes for which Bala was convicted are of a high gravity. The Trial Chamber found that Bala "actively participated in the physical mistreatment of individual detainees, whether as a perpetrator or an aider."<sup>33</sup> The Trial Chamber emphasized that "[i]t was his day to day running of the [Lapušnik/Llapushnik] prison that led to the deplorable and inhumane conditions of detention, particularly in the storage room and cowshed".<sup>34</sup> Most disturbing is the Trial Chamber's finding of Bala's execution of nine detainees. The Trial Chamber found that:

The remaining detainees were escorted from the prison on the last day by Haradin Bala and another. It is possible there was a third KLA guard. Having been led into the nearby Berishe/Berisa Mountains some of the detainees were released and allowed to leave. Of those that remained, it has been established that nine were executed by Haradin Bala, and the other guard or guards, acting together. At least one detainee was not executed, but

<sup>31</sup> Enforcement Agreement, art. 3(4).

<sup>32</sup> See Annex 2, Note Verbale, Document 1, p. 2.

<sup>33</sup> Trial Judgment, para. 726.

<sup>34</sup> Trial Judgment, para. 726.

death befell the majority of those remaining detainees. This is the most grave aspect of the criminal conduct of Haradin Bala.<sup>35</sup>

The Trial Chamber added that “Bala was acting under orders from a higher authority, whose identity is not established by the evidence, in marching the detainees to the mountains, releasing some, and executing nine” and that he “did not murder the nine detainees on his own initiative.”<sup>36</sup> This finding alone, however, does not undercut the seriousness of Bala’s crimes.

19. In his application, Bala does not contest the seriousness of his crimes, but contends that their gravity “has to be assessed from a general comparative perspective, so that its consideration does not result in unequal treatment for [him] vis-à-vis” other persons convicted by this Tribunal for crimes “of a gravity”, as Bala alleges, “comparable or even higher than those for which Mr. Bala has been convicted.”<sup>37</sup> This argument must fail, because the language in Rule 125 of the Rules does not appear to permit a comparative analysis of the seriousness of crimes committed by a person requesting pardon or early release. Under Rule 125 of the Rules, the “treatment of similarly-situated prisoners” is a distinct factor that must be weighed separately from “the gravity of the crimes”. Viewed alone, Bala’s crimes are of high seriousness. Their seriousness, in fact, remains undiminished even when his crimes are compared with the crimes committed by the other convicts mentioned in his Application. Indeed, none of the nine persons mentioned by Bala was convicted of committing murder.<sup>38</sup>

20. I am of the view that the high gravity of Bala’s offences weighs against his early release.

#### D. Treatment of Similarly Situated Prisoners

21. It is the practice of the Tribunal to consider convicted persons eligible for early release when they have served at least two thirds of their sentences.<sup>39</sup> 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.

<sup>35</sup> Trial Judgment, para. 727.

<sup>36</sup> Trial Judgment, para. 727.

<sup>37</sup> Application, pp. 6-7.

<sup>38</sup> [REDACTED] See *Prosecutor v. Dragan Obrenović*, IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, dated 21 September 2011, para. 14 (confidential) ([REDACTED])

[REDACTED]; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, para. 15 (“I do not consider that comparing the situations of convicted persons in this manner is appropriate because each application for early release must be dealt with on its own facts.”).

<sup>39</sup> See e.g., *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011, para. 12; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 21 October 2011, para. 15; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-

22. Bala, as noted above, has remained incarcerated, as of June 2012, for more than 9 years and, therefore, has already completed more than two thirds of his 13-year sentence. Taking into account the treatment of similarly-situated prisoners, I am of the view that the amount of time Bala has served for his crimes weighs in favour of his early release.

#### E. Demonstration of Rehabilitation

23. Rule 125 of the Rules states that the President shall take into account the prisoner's demonstration of rehabilitation. 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 enforcement State as to, *inter alia*, the behaviour of the convicted person during his or her period of incarceration and any psychiatric or psychological evaluations prepared on the detainee's mental and psychological condition. Such reports and observations have been provided by the French authorities and are attached to the Note Verbale (*see* Annex 2 to this Memorandum).

24. In his Application, Bala points to his "good behaviour" in prison, including his "work at the prison workplace," the fact that he is "courteous and friendly with other prisoners," and his effort to "follow French classes and learn the language" and generally, to "socialize and reintegrate."<sup>40</sup> The French authorities agree that Bala "has behaved in a satisfactory way in detention," since he has not been "the subject of any disciplinary proceedings [...] and that he approaches his work at the workshops earnestly", thus exhibiting the ability "to reintegrate".<sup>41</sup>

25. However, the rehabilitation factor does not only refer to a detainee's conduct in prison, or the risk of recidivism; it also covers a detainee's attitude towards the deeds for which he or she was convicted. This aspect of the rehabilitation factor, in Bala's case, seems to be weighing against his Application.

[REDACTED]

[REDACTED]

[REDACTED]<sup>42</sup> [REDACTED]

R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011, para. 13; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of the President on Early Release of Ivica Rajić, 22 August 2011, para. 12; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of the President on Early Release of Milomir Stakić, 15 July 2011, para. 22.

<sup>40</sup> Application, p. 5.

<sup>41</sup> Opinion of the Sentence Enforcement Judge at the Verdun Tribunal de Grande Instance, Annex 2, Note Verbale, Document 4, dated 16 March 2011, p. 3. *See also* Socio-Educational Summary from the Directorate of Prison Administration at the French Ministry of Justice and Civil Liberties, Annex 2, Note Verbale, Document 9, dated 16 January 2012, p. 2 (noting that "since his incarceration in the Montmédy Detention Centre, Mr. Bala has taken advantage of his detention: school, work and he has behaved in a correct way").

<sup>42</sup> Response, para. 1.

[Redacted]

43

[Redacted]

44

45

[Redacted]

46

27.

[Redacted]

47

[Redacted]

48

28.

[Redacted]

49

<sup>43</sup> Response, para. 6.  
<sup>44</sup> Leluc Report, p. 4.  
<sup>45</sup> Leluc Report, p. 4.  
<sup>46</sup> Leluc Report, p. 5.  
<sup>47</sup> Collin Report, p. 3.  
<sup>48</sup> Collin Report, p. 4.  
<sup>49</sup> Collin Report, p. 4; Leluc Report, p. 5.

[Redacted] 50

29. [Redacted] 51  
[Redacted]  
[Redacted] 52

30. [Redacted] 53  
[Redacted] 54  
[Redacted] 55  
[Redacted] 56  
[Redacted] 57

<sup>50</sup> Leluc Report, p. 5.

<sup>51</sup> Leluc Report, p. 5. *See also* Response, para. 6.

<sup>52</sup> *See* Socio-Educational Summary from the Directorate of Prison Administration at the French Ministry of Justice and Civil Liberties, Annex 2, Note Verbale, Document 9, dated 16 January 2012, p. 2 ([Redacted]); Letter by the Deputy Director of the Prison Administration, dated 15 March 2012, Annex 2 hereto, Document 9 ([Redacted]); Annex 2, Note Verbale, Document 1, p. 3.

<sup>53</sup> Decision on Transfer, para. 20.

<sup>54</sup> Decision on Transfer, para. 21.

<sup>55</sup> *See* Memorandum from Judge Patrick Robinson, President, to Mr. John Hocking, Registrar, dated 17 December 2010, re: Haradin Bala – Conditions of Detention.

<sup>56</sup> *See* Letter to the Ambassador of France to the Netherlands by the Registrar, dated 21 February 2011, .

<sup>57</sup> *Ibid.*

58

59

31. Based on the information provided to the Tribunal so far, [REDACTED] Bala's rehabilitation efforts (evidenced, *inter alia*, by his efforts to learn French and his work at the prison workshops) [REDACTED]

[REDACTED].<sup>60</sup> After careful consideration of all the above information, I am of the view that the same conclusion is warranted in Bala's case, *i.e.*, the rehabilitation factor should be of neutral value here too.

#### F. Cooperation with the Prosecution

32. Rule 125 of the Rules states that the President shall take into account any substantial cooperation of the prisoner with the Prosecution. Paragraph 3(c) of the Practice Direction states that the Registrar 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.

33. In its Memorandum to the Registrar, dated December 15 (Annex 1 hereto), the Prosecution has indicated that Bala has never cooperated with the Prosecution, either during his trial and his appeal, or "whilst serving his sentence".<sup>61</sup> I note, however, that there is no obligation for an accused or convicted person to cooperate with the prosecution absent a plea agreement to do so. Furthermore, there is nothing in the record to indicate that the Prosecution sought Bala's cooperation at any stage of the proceedings against him or after his conviction. In the Decision on Remission, then-President Robinson noted that, according to the report submitted by the Prosecution in response to Bala's earlier application for sentence remission, the Prosecution "neither sought not received cooperation from"

<sup>58</sup> *Ibid.*

<sup>59</sup> See *supra* n.53. See also Response, para. 7 (arguing that the "[REDACTED]").

<sup>60</sup> See *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of the President on Early Release of Mlado Radić, paras 16-26 (confidential).

<sup>61</sup> See Annex 1, Prosecution Memorandum, para. 2.

Bala.<sup>62</sup> There is no evidence in the record that the Prosecution has sought Bala's cooperation since the 2010 Decision on Remission.

34. In the Application, Bala states that his non-cooperation with the Prosecution should be "of neutral value in this case".<sup>63</sup> I agree and do not accord any weight to this factor.

G. Family Circumstances and Additional Considerations

35. Paragraph 8 of the Practice Direction provides that the President may consider any other information that he or she believes to be relevant to supplement the criteria specified in Rule 125 of the Rules.

36. Bala devotes a substantial part of his Application to his family circumstances, particularly the "negative effect of his absence on his close family".<sup>64</sup> Bala's incarceration has indeed put a significant strain on Bala's family life, which weighs in favour of granting his petition for early release.

H. Conclusion

37. [REDACTED]

38. Having considered the factors identified in Rule 125 of the Rules, the views of my colleagues and all relevant information on the record, I agree that [REDACTED]

<sup>62</sup> Decision on Remission, para. 27.  
<sup>63</sup> Application, p. 9, citing Decision on Remission, para. 27.  
<sup>64</sup> Application, p. 8. See also Application, p. 8; Response, paras 12-13.

39. I note that the factors that weigh in favour of granting the Application are Bala's completion of two thirds of his sentence as of June 2012 and his family circumstances. It bears reminding, of course, that the Tribunal's practice of considering detainees eligible for early release once they reach two thirds of their sentences does not necessarily mean that such detainees would be entitled to early release. That said, and according to the Tribunal's consistent past practice, the completion of two thirds of a convicted person's sentence weighs heavily in favour of early release. Therefore, taking into account the treatment of similarly-situated prisoners and the totality of the circumstances in Bala's case, I am of the view that Bala's Application should be granted, albeit not with immediate effect: Bala's early release should be postponed until the end of the present calendar year, *i.e.*, 31 December 2012, provided that he continues to exhibit good conduct as a detainee and he does not become the subject of any disciplinary proceeding while he serves the remainder of his sentence in France. The French authorities should be requested to submit a report to the Registrar of the Tribunal concerning Bala's conduct on or reasonably after 1 December 2012, so that I can determine whether Bala has satisfied the good conduct requirement and should be released. If no report is submitted, or if, in their report, the French authorities do not raise any objections to Bala's release based on Bala's conduct, then Bala shall be released on 31 December 2012. These conditions and the fact that by 31 December 2012 Bala will have served almost 10 out of the 13 years of his sentence should suffice to assuage my colleagues' concerns over Bala's lack of rehabilitation.

#### IV. DISPOSITION

40. 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, Bala is hereby GRANTED early release effective 31 December 2012.

41. The Registrar is hereby DIRECTED to inform the French authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction, and also request the French authorities to submit a report to the Registrar of the Tribunal concerning Bala's conduct on or reasonably after 1 December 2012, so that I can determine whether Bala has satisfied the good conduct requirement and should be released. If no report is submitted, or if, in their report, the French authorities do not raise any objections to Bala's release based on Bala's conduct, then Bala shall be released on 31 December 2012.

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

Done this 9th day of January 2013,  
At The Hague,  
The Netherlands.



\_\_\_\_\_  
Judge Theodor Meron  
President

[Seal of the Tribunal]