

**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-98-34-ES
Date: 22 January 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 22 January 2010

CONFIDENTIAL

**DECISION OF THE PRESIDENT ON THE APPLICATION FOR
PARDON OR COMMUTATION OF SENTENCE OF VINKO
MARTINOVIĆ**

Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Mr. Vinko Martinović

Mr. Želimir Par
Mr. Kurt P. Kerns

1. On 27 February 2009, counsel for Vinko Martinović (Mr. Martinović) filed a confidential request seeking early release ("Motion"), including a copy of a decision rendered by the Appeals Court of Rome ("Italian Appeal Decision").¹ In this instance, the notification envisaged by Rule 123 of the Rules of Procedure and Evidence ("Rules") was made by Mr. Martinović 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.²

2. On 4 March 2009, I requested that the then Acting Registrar ("Registrar") obtain the relevant reports from the enforcing State and the Office of the Prosecutor, as prescribed under 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 International Tribunal ("Practice Direction").³ On 20 March 2009, the Registrar informed me that pursuant to my request, he would request and collate the relevant information. The Registrar also informed me that there is a discrepancy between the Italian Appeal Decision and the Judgement of the Appeals Chamber of the International Tribunal⁴ with regard to the date that Mr. Martinović began serving his sentence. Specifically, the Registrar explained that pursuant to the Appeals Chamber Judgement, Mr. Martinović is entitled to credit for time spent in detention since 9 August 1999, the date of his transfer to the International Tribunal. However, the Italian Appeal Decision indicates that Mr. Martinović is entitled to credit for time served since 26 February 1997.⁵ The Registrar had previously explained that 26 February 1997 is the date of Mr. Martinović's arrest in Croatia in relation to separate ongoing domestic proceedings.⁶ Furthermore, the Registrar noted that then President Pocar and the Italian authorities were both informed of this discrepancy prior to Mr. Martinović's transfer to Italy in 2008. Attached to his memorandum, the Registrar included a copy

¹ *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-ES, *Confidential Motion to Credit Vinko Martinović for Time Already Served*, 26 February 2009, p. 9.

² 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.

³ IT/146/Rev.1, 15 August 2006. Note that a revised practice direction was issued on 1 September 2009. See IT/146/rev.2. See also Memorandum from the President to the Registrar dated 4 March 2009.

⁴ *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, *Judgement*, 3 May 2006 ("Appeals Chamber Judgement").

⁵ See Memorandum from the Registrar to the President dated 20 March 2009

⁶ See Email from the Registry to the President dated 26 February 2009.

of relevant correspondence in this regard, which was sent to the Embassy of Italy on 13 March 2008.⁷

3. On 7 May 2009, and again on 19 June 2009, noting that the Motion was still outstanding, I asked the Registrar to follow up with the Italian authorities and forward the relevant reports as soon as possible.⁸ As requested, the Registrar followed up with the Italian authorities on 18 May 2009 and 23 June 2009, respectively.⁹ Furthermore, on 29 June 2009, the Registrar informed me that in a meeting with the Italian authorities on 25 June 2009, he was told that the delays in relation to Mr. Martinović's Motion were due to the fact that the Enforcement Agreement concluded between the United Nations and Italy ("Enforcement Agreement")¹⁰ does not regulate situations, such as in the instant case, whereby a convicted person petitions the President directly for early release and the President inquires about the status of that person under national law. Rather, under Article 3(3) of the Enforcement Agreement, if the convicted person is entitled to conditional release under applicable national law, the Minister of Justice will notify the President who will determine whether early release is appropriate. Additionally, under Italian law, decisions on conditional release fall under the authority of the Italian judiciary, which can only be seized of such a request by the convicted person directly. The Italian authorities informed the Registrar that Mr. Martinović had only recently submitted his Motion to the proper Italian judicial authority.¹¹

4. On 19 August 2009, I again requested the Registrar to follow up with the Italian authorities and to forward the relevant information as soon as possible.¹² On 27 October 2009, pursuant to Articles 2(b) and 2(c) of the Practice Direction, the Deputy Registrar forwarded a medical report and a behavioural report received from the Italian prison authorities as well as a submission prepared by the Prosecutor of the International Tribunal.¹³

5. On 1 December 2009, the Registry informed me via email that on 30 November 2009, the Embassy of Italy had forwarded the Registry documents from the Ministry of Justice and Court of Appeal in Rome regarding Mr. Martinović's Motion, that the documents had been sent for

⁷ See Memorandum from the Registrar to the President dated 20 March 2009.

⁸ See Memorandum from the President to the Registrar dated 7 May 2009; Memorandum from the President to the Registrar dated 19 June 2009.

⁹ See Memorandum from the Registrar to the Ambassador of the Republic of Italy dated 18 May 2009; Memorandum from the Registrar to the Ambassador of the Republic of Italy dated 23 June 2009.

¹⁰ See Agreement Between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, 6 February 1997 ("Enforcement Agreement").

¹¹ See Memorandum from the Registrar to the President dated 29 June 2009.

¹² See Memorandum from the President to the Registrar dated 19 August 2009.

translation into English, and that they would be forwarded to me once the translation was received. The Registry forwarded me the English translation, including a Note Verbale from the Italian Embassy,¹⁴ on 14 January 2010.¹⁵

I. BACKGROUND

6. The initial indictment against Mr. Martinović and his co-accused, Mladen Naletilić, was issued on 18 December 1998.¹⁶ Mr. Martinović, who was detained in Croatia, was transferred to the International Tribunal on 9 August 1999 pursuant to a decision by the Zagreb County Court issued on 8 June 1999.¹⁷

7. On 31 March 2003, Trial Chamber I issued its Judgement, sentencing Mr. Martinović to 18 years' imprisonment, subject to credit pursuant to Rule 101(C) of the Rules for time served since 9 August 1999, the date he was taken into custody.¹⁸ On 3 May 2006, the Appeals Chamber affirmed Mr. Martinović's sentence.¹⁹

II. SUBMISSIONS

8. In his Motion, Mr. Martinović requests an order commuting his sentence to twelve years, which represents two-thirds of his original sentence; and accordingly releasing him from prison on 26 February 2009.²⁰ In support of his Motion, Mr. Martinović relies upon the Italian Appeal Decision, which found that Mr. Martinović was sentenced to a term of 18 years of imprisonment and began serving that sentence on 26 February 1997.²¹ He further submits that he has been rehabilitated during his twelve years in prison and that the International Tribunal routinely grants convicted accused credit for such rehabilitation by commuting sentences.²²

III. DISCUSSION

9. Pursuant to Article 28 of the Statute of the International Tribunal and Rule 123 of the Rules, a convicted person's application for pardon or commutation of sentence can only be granted where

¹³ See Memorandum from the Deputy Registrar to the President dated 27 October 2009.

¹⁴ See Letter from the Embassy of Italy dated 30 November 2009 ("Note Verbale").

¹⁵ See Memorandum from the Deputy Registrar to the President dated 14 January 2010.

¹⁶ *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-I, Indictment, 18 December 1998 ("Indictment").

¹⁷ Trial Judgement, paras 761 and 770; Appeal Judgement, para. 595.

¹⁸ Trial Judgement, paras 769-770.

¹⁹ Appeal Judgement, p. 208.

²⁰ Motion, pp. 11-13.

²¹ Motion, pp. 9-10.

²² Motion, p. 11.


that person would be eligible for such treatment pursuant to the laws of the State of imprisonment. The Note Verbal from the Italian Embassy states that “[t]he Attorney General advises against granting pardon, based on the explicit exclusion of pardon for crimes included under Article 2(2)(e) of Law n. 241/2006, that is in case of the aggravating circumstances provided for under Article 3, Law n. 205/1993”.²³

10. Furthermore, pursuant to Rule 125 of the Rules, in determining whether pardon or commutation of sentence is appropriate, I must take into account, *inter alia*, the treatment of similarly situated persons. As stated in previous decisions, eligibility for pardon or commutation of sentence in enforcement States generally starts at two-thirds of the sentence served. It has thus been the established practice of the International Tribunal to consider a convicted person eligible for commutation of sentence only after two-thirds of the sentence has been served.²⁴

11. Although Mr. Martinović submits that he will have served two-thirds of his sentence on February 26, 2009, I note that this estimation is based on erroneous information. Contrary to the information contained in the Italian Appeal Decision, as found in the Trial Judgement and affirmed in the Appeal Judgement, Mr. Martinović began serving his eighteen year sentence on 9 August 1999, the date he was taken into custody by the International Tribunal. He therefore will not have served two-thirds of his sentence until 9 August 2011. Under the circumstances, and in line with the established practice of the International Tribunal, I conclude that Mr. Martinović is not yet eligible for a pardon or commutation of sentence.

For the foregoing reasons, I **DISMISS** Mr. Martinović’s Motion.

Done this 22nd day of January 2010,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]

²³ See Note Verbale.

²⁴ See e.g. Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10; Case No. IT-97-25-ES, 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, 23 July 2009, para. 22; *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-ES, Decision of the President on Request for Early Release, 1 September 2008, para. 16; IT-95-9, Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 24 June 2004, para. 4.