



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: 26 March 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 26 March 2013

PROSECUTOR

v.

MLADEN NALETILIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF THE 29 NOVEMBER 2012
DECISION OF THE PRESIDENT ON EARLY RELEASE
OF MLADEN NALETILIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Mladen Naletilić

The Italian Republic

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 seized of an Application for Early Release ("Application") from Mr. Mladen Naletilić ("Naletilić"), submitted to me in the form of a letter by his son, Mate Naletilić, on 14 May 2012.¹ I consider this Application 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").²

I. BACKGROUND

2. On 31 March 2003, Trial Chamber I of the Tribunal ("Trial Chamber") convicted Naletilić, under Articles 7(1) and 7(3) of the Statute, for crimes committed while he served as the commander of "Kaznejenicka Bojna" (the "Convicts' Battalion"), a unit of the Croatian army fighting against the Serb forces in Bosnia and Herzegovina during the spring of 1992. Naletilić was convicted of eight counts of persecution and torture as crimes against humanity; torture, wilfully causing great suffering or serious bodily injury to body or health, and unlawful transfer of a civilian as grave breaches of the Geneva Conventions; and unlawful labour, wanton destruction not justified by military necessity, and plunder of public or private property as violations of the laws or customs of war.³ Naletilić was sentenced to a single term of 20 years of imprisonment, and credit was given for time spent in detention.⁴

3. On appeal, the Appeals Chamber allowed, in part, three of Naletilić's grounds of appeal,⁵ but affirmed his sentence of 20 years' imprisonment.⁶

4. On 11 March 2008, Italy was designated as the state in which Naletilić was to serve his sentence.⁷ On 24 April 2008, Naletilić was transferred to Italy to serve the remainder of his sentence.⁸

¹ Letter from Mate Naletilić to Judge Theodor Meron, President, dated 14 May 2012 ("Application"). While the letter was originally submitted in B/C/S, all references herein are to the Tribunal's English translation of this document. The same is true for all communications between Naletilić and his sons, on the one hand, and the Tribunal, on the other, that are cited herein.

² IT/146/Rev.3, 16 September 2010.

³ *Prosecutor v. Mladen Naletilić, aka "Tuta", and Vinko Martinović, aka "Štela"*, Case No. IT-98-34-T, Trial Judgement, 31 March 2003 ("Trial Judgement"), para. 763.

⁴ Trial Judgement, paras 765, 770.

⁵ *Prosecutor v. Mladen Naletilić, aka "Tuta", and Vinko Martinović, aka "Štela"*, Case No. IT-98-34-A, Judgement, 3 May 2006 ("Appeal Judgement"), Disposition, p. 207.

⁶ Appeal Judgement, Disposition, pp. 207-208.

⁷ Order Designating the State in Which Mladen Naletilić is to Serve his Prison Sentence, 11 March 2008, p. 1.

5. [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED].¹¹

6. On 6 August 2011, Naletilić filed an application with the Office of the Prosecutor General of Rome for a three-year pardon of his sentence under Italian law; that application was forwarded to the Tribunal, [REDACTED].¹² [REDACTED].¹³

II. THE APPLICATION

7. Following the receipt of the Application, on 18 May 2012 I directed the Registry of the Tribunal ("Registrar") to request relevant reports and observations from the Office of the Prosecutor ("Prosecution") and the Italian authorities, pursuant to paragraph 3 of the Practice Direction.¹⁴ On 11 July 2012, the Registrar transmitted to me (i) a memorandum from the Prosecution, dated 4 June 2012; and (ii) a letter from the Italian authorities, dated 5 July 2012, [REDACTED].¹⁵

8. In accordance with paragraph 4 of the Practice Direction, this information was delivered to Naletilić on 25 July 2012.¹⁶ In accordance with paragraph 5 of the Practice Direction, Naletilić responded to these materials on 1 August 2012.¹⁷

III. DISCUSSION

9. In coming to my decision upon whether it is appropriate to grant Naletilić's Application, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

⁸ International Criminal Tribunal for the former Yugoslavia, Press Release VE/MOW/1243e, "Mladen Naletilić Transferred to Italy to Serve Sentence", 25 April 2008.

⁹ Decision on Application of Mladen Naletilić for Transfer, 24 January 2012 (confidential) ("Decision on Transfer"), para. 2.

¹⁰ Decision on Transfer, para. 3. [REDACTED]. *See id.*

¹¹ Decision on Transfer, para. 11.

¹² Decision of President on Application for Pardon of Mladen Naletilić, 26 April 2012 (confidential) ("Decision on Pardon"), paras 6, 9-13.

¹³ Decision on Pardon, para. 30.

¹⁴ Memorandum from Judge Theodor Meron, President, to John Hocking, Registrar, 18 May 2012.

¹⁵ Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, 11 July 2012 ("Memorandum of 11 July 2012"), transmitting (a) Memorandum from the Prosecution, 4 June 2012 ("Memorandum from the Prosecution"), and (b) Note Verbale from the Embassy of Italy to the Netherlands, 5 July 2012 ("July 2012 Note Verbale"), which enclosed (i) a Psychiatric Report ("Psychiatric Report"), dated 7 June 2012, (ii) a Medical Report, dated 2 July 2012 ("Medical Report"), (iii) a Psychological Report, dated 15 June 2012 ("Psychological Report"), and (iv) an Observation Team Report, dated 22 June 2012 ("Observation Team Report"). While the July 2012 Note Verbale and accompanying reports were originally submitted in Italian, all references herein are to the Tribunal's English translations of these documents, as provided by the Registrar in his Memorandum of 11 July 2012.

¹⁶ Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, 9 August 2012.

¹⁷ Letter from Naletilić to Judge Theodor Meron, President, 1 August 2012 ("August 2012 Letter").

A. Applicable Law

10. 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.

11. Rule 123 of the Rules echoes Article 28 of the Statute, and Rule 124 of the Rules provides that the President shall, upon notice from the enforcing State, determine, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, whether pardon or commutation is appropriate. Rule 125 of the Rules provides that, in making a determination on 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.

12. Paragraph 1 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the Tribunal on the enforcement of sentences and, where practicable, at least forty-five days prior to the date of eligibility, notify the Tribunal accordingly.

13. Paragraph 2 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release if he or she believes that he or she is eligible therefore. When such a petition is made, the procedures in the Practice Direction shall apply *mutatis mutandis*. Furthermore, the Tribunal shall request the enforcing State to inform the Tribunal as to whether the convicted person is eligible for pardon, commutation of sentence, or early release under the domestic law of the enforcing State.

14. Article 3(2) of the 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, dated 6 February 1997 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Italian law, subject to the supervision of the Tribunal.¹⁸ Article 8(1) of the Enforcement Agreement provides that if, pursuant to the applicable Italian law, the convicted

¹⁸ Enforcement Agreement, art. 3(2).

person is eligible for pardon or commutation of the sentence, the Minister of Justice of Italy shall notify the Registrar accordingly.¹⁹

15. In this instance, I observe that the Italian authorities did not make a determination regarding Naletilić's eligibility for early release pursuant to Italian law prior to my receipt of the Application. Consequently, I consider this Application pursuant to paragraph 2 of the Practice Direction.

B. Gravity of Crimes

16. The Trial Chamber found Naletilić guilty as a perpetrator of repeated acts of torture both as a crime against humanity and as a grave breach of the Geneva Conventions,²⁰ cruel treatment, and wilfully causing great suffering through both physical and psychological mistreatment as grave breaches of Geneva Conventions.²¹ The Trial Chamber also determined that Naletilić bore command responsibility for acts of cruel treatment, wilfully causing great suffering, torture,²² unlawful labour,²³ transfer of civilians,²⁴ wanton destruction of property not justified by military necessity,²⁵ plunder,²⁶ and persecution on political, racial and religious grounds,²⁷ all committed by members of his military unit in Bosnia and Herzegovina during the spring of 1992.

17. In determining Naletilić's sentence of twenty years, the Trial Chamber considered:

Though the role of Mladen Naletilic in the context of the conflict in the former Yugoslavia was relatively small, and his actions were restricted to the municipalities of and around Mostar, this does not automatically entitle the accused to a lesser sentence. Mladen Naletilic was a man of considerable influence in the Mostar region. He was born in Široki Brijeg, and though he later lived in Germany, retained close ties with the region and events there. Mladen Naletilic was a founding member of the KB. He was the commander of this unit, and was greatly respected and admired by his peers as well as his subordinates. The role of Mladen Naletilic in the conflict against the Serbs in Mostar earned him accolades and enhanced his stature. He was something of a legend in the region and was in a position of great influence.²⁸

18. On appeal, the Appeals Chamber affirmed the twenty-year sentence,²⁹ while setting aside Naletilić's convictions (i) for wilfully causing great suffering or serious injury to body or health as a

¹⁹ Enforcement Agreement, art. 8(1).

²⁰ Trial Judgement, paras 353-357, 366-368, 447, 449, 451, 453.

²¹ Trial Judgement, paras 369, 378-379, 450-451, 453.

²² Trial Judgement, paras 394, 403-404, 411-412, 436, 438, 453.

²³ Trial Judgement, para. 333.

²⁴ Trial Judgement, paras 532, 558, 570-571.

²⁵ Trial Judgement, para. 597.

²⁶ Trial Judgement, para. 631.

²⁷ Trial Judgement, paras 672, 701, 706, 710-715.

²⁸ Trial Judgement, para. 751.

²⁹ Appeal Judgement, para. 632, Disposition, p. 208.

grave breach of the Geneva Conventions of 1949 and (ii) for persecutions on political, racial, and religious grounds as a crime against humanity.³⁰

19. Based upon the foregoing, I am of the view that the high gravity of the crimes for which Naletilić was convicted is a factor that weighs against granting his Application.

C. Treatment of Similarly Situated Prisoners

20. It is the practice of the Tribunal to consider convicted persons eligible for early release only when they have served at least two-thirds of their sentences.³¹ 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, which may only be granted by the President as a matter of discretion.³²

21. I observe that Naletilić will have served two-thirds of his sentence of 20 years' imprisonment on approximately 18 February 2013, at which time he will be eligible for early release. Taking into account the treatment of similarly-situated prisoners, I observe that Naletilić is not presently eligible for early release pursuant to this practice. However, I note that the Application requests release on 18 February 2013, upon Naletilić's completion of two-thirds of his sentence.

22. In light of the foregoing, I am of the view that this factor weighs against Naletilić's immediate early release.

D. Demonstration of Rehabilitation

23. Rule 125 of the Rules provides that the President of the Tribunal shall take into account a prisoner's demonstration of rehabilitation in determining whether pardon or commutation is appropriate. 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 enforcing State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration.

24. The Observation Team Report submitted by the Italian authorities along with the July 2012 Note Verbale states that Naletilić has behaved in a "correct and respectful" manner and has not been

³⁰ Appeal Judgement, paras 170-171, 314, 632, Disposition, p. 207.

³¹ See Decision on Pardon, para. 17, and authorities cited therein.

³² See Decision on Pardon, para. 17, and authorities cited therein.

subjected to any disciplinary procedures.³³ It further states that Naletilić's "conduct is in full accordance with the Institute's penitentiary regime which requires awareness of one's own responsibility and capacity of self-management".³⁴ [REDACTED].³⁵

25. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹

26. These submissions suggest that Naletilić feels some remorse towards the victims of his deeds and has shown some signs of rehabilitation.⁴⁰ However, it is also clear that Naletilić's communication with the prison authorities has been severely hindered by his insufficient knowledge of the Italian language. [REDACTED].⁴¹ – [REDACTED].⁴² Due to these communications problems, it is difficult to assess the extent of Naletilić's rehabilitation. However, I am of the view that this evidence of even some remorse, combined with the positive assessment of Naletilić's conduct while in prison, weighs in his favour.

27. Based upon the foregoing, I am of the view that this factor weighs in favour of Naletilić's early release.

E. Substantial Cooperation with the Prosecution

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

29. The Prosecution states that Naletilić "did not cooperate with the [Prosecution] at any time during the course of his trial or appeal and has not cooperated with the [Prosecution] at any time while serving his sentence."⁴³

³³ Memorandum of 11 July 2012, July 2012 Note Verbale, Observation Team Report.

³⁴ Memorandum of 11 July 2012, July 2012 Note Verbale, Observation Team Report.

³⁵ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychiatric Report.

³⁶ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychological Report.

³⁷ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychological Report.

³⁸ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychological Report.

³⁹ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychological Report.

⁴⁰ Cf. Decision on Pardon, para. 26 (noting that Naletilić partly rejected responsibility for his crimes).

⁴¹ Memorandum of 11 July 2012, July 2012 Note Verbale, Psychological Report.

⁴² See Decision on Pardon, para. 26.

⁴³ Memorandum of 11 July 2012, July 2012 Note Verbale, Memorandum from the Prosecution.

30. However, I note that the Prosecution does not indicate whether it has sought such cooperation. I also note that there is no obligation on an accused or convicted person to cooperate with the Prosecution absent a plea agreement to do so. I therefore consider this factor to be neutral.

F. Other Factors: Humanitarian Concerns

31. Paragraph 8 of the Practice Direction provides that the President may consider “any other information” that the President believes to be “relevant” to supplement the criteria specified in Rule 125 of the Rules. Previous decisions have determined that the state of a convicted person’s health may be taken into account in the context of an application for early release when the seriousness of the condition makes it inappropriate for the convict to remain in prison any longer.⁴⁴

32. [REDACTED]. [REDACTED]. [REDACTED].⁴⁵ [REDACTED]. [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸ [REDACTED].⁴⁹

33. [REDACTED].⁵⁰ [REDACTED].⁵¹ [REDACTED].

34. [REDACTED].

G. Conclusion

35. I have carefully considered the factors identified in Rule 125 of the Rules as well as the particular circumstances of Naletilić’s case, *i.e.*, [REDACTED]. Taking into account the information described above, and in the interests of justice, I am of the view that Naletilić should be released. [REDACTED]. The compelling circumstances of Naletilić’s case render imperative his release upon the completion of two-thirds of his sentence on 18 February 2013.

⁴⁴ See, e.g., *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 10, and decisions cited therein; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Pavle Strugar, 16 January 2009 (public redacted version), para. 12.

⁴⁵ See Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, 4 April 2012, *transmitting* Note Verbale from the Embassy of Italy to the Netherlands, dated 2 April 2012, enclosing a Medical Report on Mladen Naletilić, dated 24 February 2011 (“February 2011 Medical Report”).

⁴⁶ February 2011 Medical Report.

⁴⁷ Decision on Transfer, paras 4-5, 7, 11. See also Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, 16 April 2012, *transmitting* Note Verbale from the Embassy of Italy to the Netherlands, dated 16 April 2012.

⁴⁸ See Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, 17 May 2012, *transmitting* Note Verbale from the Embassy of Italy to the Netherlands, dated 8 May 2012, enclosing a Letter from Dr. Fabio Caliendo, dated 19 April 2012 (“[REDACTED]”).

⁴⁹ [REDACTED].

⁵⁰ August 2012 Letter.

⁵¹ Memorandum of 11 July 2012, July 2012 Note Verbale, Medical Report [REDACTED].

36. I note that the majority of my colleagues, whom I consulted on this matter, share my view that Naletilić should be granted early release upon the completion of two-thirds of his sentence.

IV. DISPOSITION

37. 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, I hereby **GRANT** the Request.

38. The Registrar is hereby **DIRECTED** to inform the Italian authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction.

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

Done this 26th day of March 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]