

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-95-9-ES
Date: 15 February 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 15 February 2011

PROSECUTOR

v.

BLAGOJE SIMIĆ

CONFIDENTIAL

DECISION OF PRESIDENT ON EARLY RELEASE OF BLAGOJE SIMIĆ

Office of the Prosecutor:
Mr. Serge Brammertz

Mr. Blagoje Simić

United Kingdom of Great Britain and Northern Ireland

1. 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") is in receipt of a notification from the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") regarding the eligibility of Mr. Blagoje Simić for early release.

A. Background

2. On 1 November 2010, the Registry informed me of a notification received from the United Kingdom, pursuant to Article 28 of the Statute of the Tribunal ("Statute"); Rule 123 of the Rules of Procedure and Evidence of the Tribunal ("Rules"); paragraph 1 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, IT/146/Rev.3, 16 September 2010 ("Practice Direction"); and Article 7 of the Agreement Between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, 11 March 2004 ("Enforcement Agreement"). The notification states that, if Mr. Blagoje Simić were a domestic prisoner serving a similar 15-year sentence, he would be eligible for release at the two-thirds stage of his sentence, on 11 March 2011.¹ The notification attaches a Case Manager Overview, dated 16 September 2010, with information related to the conditions of Mr. Simić's detention and his behaviour while in detention.²

3. On 11 November 2010, the Prosecutor submitted a memorandum on the co-operation of Mr. Simić with the Office of the Prosecutor.³

4. On 5 January 2011, the United Kingdom submitted a letter regarding the psychological status of Mr. Simić.⁴

5. All of the above materials were furnished to Mr. Simić, who responded via letter on 20 January 2011.⁵

¹ Memorandum from Deputy Registrar to President, 1 November 2010 ("Memorandum of 1 November 2010") (Letter from United Kingdom to Registrar, 20 October 2010).

² Memorandum of 1 November 2010 (Case Manager Overview, 16 September 2010).

³ Memorandum from Deputy Registrar to President, 17 January 2011 (Memorandum from Prosecutor to Deputy Registrar, 11 November 2010).

⁴ Memorandum from Deputy Registrar to President, 17 January 2011 (Memorandum from United Kingdom to Registrar, 5 January 2011).

⁵ Letter from Blagoje Simić to President, 20 January 2011.

B. Proceedings before the Tribunal

6. The initial indictment against Mr. Simić was issued on 29 June 1995.⁶ Amended indictments were confirmed on 24 June 1998,⁷ 19 November 1998,⁸ 24 April 2001,⁹ and 9 January 2002.¹⁰ The final indictment was issued on 30 May 2002,¹¹ in which the Prosecution alleged that Mr. Simić—in his role as the President of the Serbian Democratic Party, Vice-Chairman of the Town Assembly, Deputy of the Assembly of the self-declared “Serb Autonomous Region of Northern Bosnia,” President of the Serb Crisis Staff or War Presidency of the Serbian Municipality of Bosanski Šamac, President of the Šamac Municipal Assembly, and highest ranking civilian official in the municipality of Bosanski Šamac—was individually criminally responsible under Article 7(1) of the Statute for persecutions, as crimes against humanity pursuant to Article 5 of the Statute, of the Bosnian Croat, Bosnian Muslim, and other non-Serb civilian residents of the municipalities of Bosanski Šamac and Odžak.¹²

7. Mr. Simić was taken into the custody of the Tribunal on 12 March 2001 and detained at the United Nations Detention Unit (“UNDU”).¹³

8. In its Judgement of 17 October 2003, the Trial Chamber convicted Mr. Simić of a single count of persecution, as a crime against humanity pursuant to Article 5 of the Statute, based upon the unlawful arrest and detention of Bosnian Muslim and Bosnian Croat civilians; cruel and inhumane treatment, including beatings, torture, forced labour assignments, and confinement under inhumane conditions; and deportation and forcible transfer.¹⁴ Mr. Simić was sentenced to 17 years’ imprisonment and was given credit for the time already served since 12 March 2001.¹⁵

9. The Appeals Chamber reclassified Mr. Simić’s mode of individual criminal responsibility¹⁶ and set aside his conviction for persecutions through cruel and inhumane treatment in the form of beatings and torture.¹⁷ Nevertheless, the Appeals Chamber affirmed Mr. Simić’s conviction under Article 7(1) of the Statute for aiding and abetting the crime of persecutions, as crimes against humanity, through the unlawful arrests and detention of non-Serb civilians; the confinement under

⁶ *Prosecutor v. Slobodan Miljković et al.*, Case No. IT-95-9-I, Indictment, 29 June 1995.

⁷ *Prosecutor v. Milan Simić et al.*, Case No. IT-95-9-PT, First Amended Indictment, 24 June 1998.

⁸ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-PT, Second Amended Indictment, 19 November 1998.

⁹ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-PT, Third Amended Indictment, 24 April 2001.

¹⁰ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Fourth Amended Indictment, 9 January 2002.

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¹² *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Fifth Amended Indictment, 30 May 2002, paras 1, 4-9, 11-13.

¹³ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-T, Judgement, 17 October 2003 (“Trial Judgement”), para. 1127.

¹⁴ Trial Judgement, para. 1115.

¹⁵ Trial Judgement, paras 1118, 1127.

¹⁶ *Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-A, Judgement, 28 November 2006 (“Appeal Judgement”), paras. 74, 190, 301.

inhumane conditions of non-Serb prisoners; the forced labour of Bosnian Croat and Bosnian Muslim civilians; and the forcible displacements of non-Serb civilians.¹⁸ The Appeals Chamber reduced his sentence to 15 years of imprisonment, subject to credit received under Rule 101(C) of the Rules for the period he had been detained at the UNDU.¹⁹

10. On 27 March 2007, Mr. Simić was transferred to the United Kingdom to serve the remainder of his sentence.²⁰

C. Applicable Law

11. 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. Rule 123 of the Rules echoes Article 28, and Rule 124 of the Rules provides that the President shall, upon such notice, 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 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 co-operation of the prisoner with the Prosecution.

12. Article 8 of the Enforcement Agreement provides that, if, pursuant to the applicable national law of the United Kingdom, the sentenced person is eligible for early release, pardon, or commutation of sentence, the United Kingdom shall notify this to the Registrar of the Tribunal, in advance of such eligibility, and shall include in any such notification all the circumstances pertaining to the eligibility for early release, pardon, or commutation of the sentence. The President of the Tribunal shall determine, in consultation with the Judges of the Tribunal, whether any early release, pardon, or commutation of the sentence is appropriate. The Registrar shall inform the United Kingdom of the President's determination. If the President determines that an early release, pardon, or commutation of the sentence is not appropriate, the United Kingdom shall act accordingly.

¹⁷ Appeal Judgement, paras 190, 301.

¹⁸ Appeal Judgement, para. 189, 301.

¹⁹ Appeal Judgement, paras 300-301.

²⁰ Order Designating the State in which Blagoje Simić is to Serve his Prison Sentence, 23 January 2007; *see* Order Withdrawing Confidential Status of Order Designating the State in which Blagoje Simić is to Serve his Prison Sentence, 9 April 2008.

13. Article 9 of the Enforcement Agreement provides that the competent authorities of the United Kingdom shall terminate the enforcement of the sentence as soon as they are informed by the Registrar of the Tribunal of any decision or measure as a result of which the sentence shall cease to be enforceable. After enforcement of the sentence has ceased in accordance with the Enforcement Agreement, the United Kingdom may transfer the convicted person as appropriate and in accordance with its international obligations.

D. Discussion

14. In coming to my decision upon whether it is appropriate to grant early release, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal.

1. Gravity of Crimes

15. Article 125 of the Rules requires me to take into account the gravity of the crimes committed.

16. The Appeals Chamber found in respect of *unlawful arrests, detention, and confinement under inhumane conditions* that a reasonable trier of fact would be satisfied beyond reasonable doubt that Mr. Simić's deliberate denial of adequate medical care to the detainees in various detention facilities lent substantial assistance to the confinement under inhumane conditions prevailing therein.²¹ The Appeals Chamber recalled that Mr. Simić "was aware of the discriminatory context in which the unlawful arrests and detention in Bosanski Šamac Municipality were carried out and that he knew that his assistance to these acts had a substantial effect on the perpetration thereof."²²

17. The Appeals Chamber found in respect of *forced labour assignments* that Mr. Simić "had the power to dismiss the head of the Municipal Department of Defence, which body administered and assigned the forced labour programme", but that, "[i]nstead of using his authority to impede the continuation of this practice, after he had dismissed Miloš Bogdanović as its Secretary, [Mr. Simić] himself contributed to the continuation of the forced labour programme by assigning Božo Ninković as the new head of the Municipal Department of Defence."²³ The Appeals Chamber therefore found that "a reasonable trier of fact would be satisfied beyond reasonable doubt that through this conduct [Mr. Simić] lent substantial assistance to the forced labour of Bosnian Croat

²¹ Appeal Judgement, para. 134.

²² Appeal Judgement, para. 136.

²³ Appeal Judgement, para. 155.

and Bosnian Muslim civilians as an underlying act of persecutions.”²⁴ The Appeals Chamber also found that Mr. Simić “was aware that Bosnian Croats and Bosnian Muslims were forced to perform dangerous or humiliating work and he did not take sufficient measures to prevent these incidents from happening, although the Crisis Staff was ultimately responsible for managing the forced labour programme.”²⁵

18. The Appeals Chamber found in respect of *forcible displacement* that Mr. Simić was aware of the non-Serb ethnicity of the forcibly displaced persons and that he participated in the exchange procedure and was informed about it over a period of many months.²⁶ The Appeal Chamber therefore was of the view that Mr. Simić “was aware of the discriminatory context in which the forcible displacements were committed and that he knew that his support had a substantial effect on their perpetration” and concluded that “a reasonable trier of fact would be satisfied beyond reasonable doubt that the Appellant [was] responsible as an aider and abettor of persecutions for the forcible displacement of ... seventeen non-Serb civilians.”²⁷

19. Based upon the foregoing, I am of the view that Mr. Simić’s offences are of a very high gravity and that this is a factor that weighs against granting him early release.

2. Treatment of Similarly-situated Prisoners

20. The United Kingdom has notified the Registry that Mr. Simić will be eligible for release at the two-thirds stage of his sentence on 11 March 2011.²⁸ It is the practice of the Tribunal to consider convicted persons to be eligible for early release when they have served at least two-thirds of their sentences.²⁹ The two-thirds practice has been applied consistently in the past,

²⁴ Appeal Judgement, para. 155.

²⁵ Appeal Judgement, paras 158-159, 292.

²⁶ Appeal Judgement, para. 186.

²⁷ Appeal Judgement, paras 186, 188.

²⁸ Memorandum of 1 November 2010 (Letter from United Kingdom to the Registrar dated 20 October 2010).

²⁹ *Prosecutor v. Darko Mrda*, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrda, 1 February 2011, para. 15; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 31 January 2011, para. 14; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-ES, Decision of President on Early Release of Zoran Žigić, 8 November 2010, para. 12; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 14; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of the President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010, para. 13; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, 23 April 2010, paras 12-13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; *Prosecutor v. Dragan Jokić*, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 13

notwithstanding the domestic law in enforcement states, although I note that a convicted person reaching two-thirds of his sentence is merely eligible for early release and not entitled to such a release. Pursuant to Rule 125 of the Rules, which requires me to take into account the treatment of similarly situated prisoners, I am of the view that the time that Mr. Simić has served for his crimes militates in favour of his early release.

3. Demonstration of Rehabilitation

21. Rule 125 of the Rules provides that the President shall take into account the prisoner's demonstration of rehabilitation. Paragraph 3(b) of the Practice Direction states that the Registry shall request reports and observations from the relevant authorities in the enforcement state as to the behaviour of the convicted person during his or her period of incarceration.

22. In the Case Manager Overview of 16 September 2010, the United Kingdom acknowledges that "Mr. Simic does not cause any security concerns within his current environment" and has not "incurred any misconduct reports." Mr. Simić was employed in the catering department and wood machinery department of the detention facility and has received excellent reports on his work and attendance. He has attended the education department, studying art and literacy for English and Speakers of Other Languages ("ESOL"). He has recognised the need to learn English during the course of his detention and has attended ESOL classes since admission into the detention facility.³⁰

23. I note that the Case Manager Overview of 16 September 2010 acknowledges that "Mr Simic states that the offences were committed against the background of a civil war while leading and protecting his country. Through discussion over the years, Mr. Simic has expressed remorse for his crimes and has stated he was sorry for all the victims of the war and that he regretted his offences."³¹ The Case Conference of 21 August 2008 states, "When asked for his views on the offences he had been found guilty of, Blagoje stated that he is quite ok with what he was charged with, denying what happened and stated that he never hit anyone, never hurt anyone, and never pushed anyone. He said that he was leading and protecting his country."³²

24. In the event he is granted early release, Mr. Simić "plans to return to his homeland and his family and hopes [that he] will be able to provide for them through employment in his chosen field studying epidemiology. He is confident he will be able to renew his licence and practice once again

January 2010, para. 14; *Prosecutor v. Biljana Plavšić*, 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.

³⁰ Memorandum of 1 November 2010 (Case Manager Overview of 16 September 2010).

³¹ Memorandum of 1 November 2010 (Case Manager Overview of 16 September 2010).

³² Memorandum of 1 November 2010 (Case Conference of 21 August 2008) (internal quotation marks omitted).

in this area of medical research.” The Case Manager Overview of 16 September 2010
Simić “has a positive supportive relationship with his family.”³³

25. Mr. Simić states in his letter of 20 January 2011 that his behaviour towards the inmates and prison staff has been exemplary and that he has never had an incident with other inmates or the prison staff. He states that he has been actively engaged in a programme of prison rehabilitation and work activity and that, throughout his incarceration, he has engaged in humanitarian work, for example, in helping sick children in a nearby hospital. Mr. Simić states that he has become fluent in English and that this has enabled him to have continuous communication with other inmates and prison staff. It is also submitted by Mr. Simić that, despite the difficulties caused by his incarceration, his family has remained stable and is a healthy, progressive, and intellectual family that will in the future, after his return, “make a great contribution to the society and each member will make their maximum contribution in their respective professions.
is released, he will significantly help with his family’s financial situation, education, and upbringing and will “try to make an active contribution to reconciliation and [the] creation of good neighbourly relations”. Mr. Simić intends to return to the practice of medicine and, in this way, earn enough money to further assist his family. Finally, Mr. Simić expresses “regret and remorse for the victims of war, especially for the victims of [his] political activity”.³⁴

26. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement states regarding the psychological condition of the convicted person during his incarceration, and 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.

27. The Case Manager Overview of 16 September 2010 states that Mr. Simić “has never shown any signs of anger or loss of control during his time in custody.”³⁵

28. On 5 January 2011, the United Kingdom submitted a letter regarding the psychological status of Mr. Simić. In this letter, it is stated that Mr. Simić has been the subject of annual integrated case management case conferences from which there have been no concerns in relation to mental health or psychiatric issues. It is also stated that there are no mental health or psychiatric reports commissioned or conducted in relation to Mr. Simić, who continues in a positive manner and causes no discipline or security concerns within his current location.³⁶

³³ Memorandum of 1 November 2010 (Case Manager Overview of 16 September 2010).

³⁴ Letter from Mr. Simić to President, 20 January 2011.

³⁵ Memorandum of 1 November 2010 (Case Manager Overview of 16 September 2010).

³⁶ Memorandum from Deputy Registrar to President, 17 January 2011 (Memorandum from United Kingdom to Registrar, 5 January 2011).

29. In assessing whether Mr. Simić has demonstrated rehabilitation, I express my concern that he seems to attempt to attenuate his individual criminal responsibility through his statements that his crimes were committed against the backdrop of a "civil war" and that he was only trying to protect his country. But I also take note of the fact that Mr. Simić has expressed remorse for the suffering that he has caused, has actively engaged in humanitarian work during his incarceration, and intends to return to the practice of medicine in order to contribute to his community. I also note that his behaviour while in detention has been very good and that there are no concerns about his psychological state. Based upon all the foregoing, I am of the view that Mr. Simić has demonstrated clear signs of rehabilitation and that this is a factor that weighs in favour of granting him early release.

4. Substantial Co-operation with the Prosecution

30. Rule 125 of the Rules states that the President shall take into account any substantial co-operation of the prisoner with the ICTY Prosecutor. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof.

31. On 11 November 2010, the Prosecutor submitted a memorandum stating that Mr. Simić has not co-operated with the Prosecution in the course of his trial, appeal, or enforcement of his sentence.³⁷ I consider the factor of co-operation to be a neutral one.

5. Conclusion

32. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while the gravity of Mr. Simić's crimes is very high, the time that he has served in detention and his demonstration of rehabilitation militate in favour of his release. I am therefore of the view that Mr. Simić should be granted early release.

33. I note that my colleagues unanimously share my view that Mr. Simić should be granted early release.

³⁷ Memorandum from Deputy Registrar to President, 17 January 2011 (Memorandum from Prosecutor to Deputy Registrar, 11 November 2010).

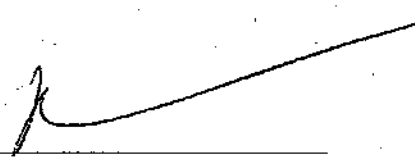
E. Disposition

34. 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, Blagoje Simić is hereby GRANTED early release.

35. This decision shall take effect on Wednesday, 16 March 2011.

36. The Registrar is hereby DIRECTED to lift the confidentiality of this decision, once Blagoje Simić has been released.

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



Judge Patrick Robinson
President

Dated this fifteenth day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]