



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-01-42-ES
Date: 16 January 2009
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Acting Registrar: Mr. John Hocking

Decision of: 16 January 2009

PUBLIC-REDACTED

**DECISION OF THE PRESIDENT ON THE APPLICATION FOR
PARDON OR COMMUTATION OF SENTENCE OF PAVLE
STRUGAR**

Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Mr. Pavle Strugar

Mr. Goran Rodić
Mr. Vladimir Petrović

1. On 21 November 2008, Counsel for Pavle Strugar filed a Confidential Request seeking early release (“Request”),¹ accompanied by a letter requesting that his transfer to [redacted] be delayed. Mr. Strugar is currently serving his sentence at the United Nations Detention Unit (“UNDU”).

2. On 24 November 2008, I requested relevant reports from the Registrar and stopped Mr. Strugar’s transfer from the UNDU in light of fresh concerns expressed by the Deputy Registrar, after consultations with the UNDU Medical Officer, regarding the effect of the transfer on Strugar’s health condition. On 15 December 2008, I received documents from the Registry pursuant to 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 (IT/146/Rev.1) (“Practice Direction”).

I. BACKGROUND

3. The initial indictment against Pavle Strugar was issued on 23 February 2001.² The indictment alleged that Mr. Strugar was the commander of the JNA Second Operational Group, exercising formal and *de facto* control over the campaign in the Dubrovnik area between 1 October 1991 and 7 December 2001. It charged Mr. Strugar and his co-accused with murder, cruel treatment and attacks on civilians,³ unjustified devastation, attacks on civilian objects and willful damage to historic monuments and institutions dedicated to religion⁴ and extensive destruction of property in and around Dubrovnik.⁵

4. Mr. Strugar voluntarily surrendered to the International Tribunal on 4 October 2001⁶ and was convicted by Trial Chamber II pursuant to Article 7(3) of the Statute of attacks on civilians and destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science, in his capacity as a Senior Officer of the JNA during an artillery attack by JNA forces under his command on the Old Town of Dubrovnik on 6 December 2001.⁷ The acts were in violation of the laws or customs of war under Article 3 of the Statute. On 31 January 2005, Mr. Strugar was sentenced to eight years of imprisonment. The sentence was imposed subject to credit for the 457 days he had already spent in

¹ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-ES, Defence Request Seeking Early Release, 21 November 2008.

² *Prosecutor v. Pavle Strugar et al.*, Case No. IT-01-42, Indictment, 23 February 2001 (“Indictment”).

³ Indictment, paras 22-27.

⁴ Indictment, paras 28-31.

⁵ Indictment, paras 32-36.

⁶ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Judgement, 31 January 2005, para. 472 (“Trial Judgement”).

⁷ Trial Judgement, para. 478.

detention.⁸ Mr. Strugar has remained in the custody of the UNDU since then and throughout his appeal. On 17 July 2008, the Appeals Chamber rendered its Judgement, replacing his sentence of eight years with one of seven and a half years subject to credit under Rule 101(C).⁹

II. DISCUSSION

5. Under Article 28 of the Statute of the International Tribunal, when a convicted person becomes eligible for early release under the law of the State in which he is serving his sentence (“enforcement State”), the enforcement State shall notify the International Tribunal accordingly, and the President of the International Tribunal shall determine whether a grant of early release is appropriate. In the absence of laws governing early release in an enforcement State, the President’s determination must be made in light of the practice and Rules of the International Tribunal.

6. Mr. Strugar is not serving his sentence in an enforcement State but remains in the UNDU. Therefore, his Request must be considered in light of the practice and Rules of the International Tribunal. The Statute, Rules, and 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”) are silent as to the early release procedure applicable to individuals who have not been transferred to an enforcement State to serve their sentences. However, previous decisions have determined that in the event of a request for early release from a convicted person in the UNDU, the same procedure should be followed as that which applies to prisoners serving their sentences in enforcement States.¹⁰ Accordingly, such procedure will apply to Mr. Strugar’s Request.

7. Article 28 of the Statute indicates that the President of the International Tribunal shall evaluate an application for pardon or commutation of sentence “on the basis of the interests of justice and the general principles of law.” Furthermore, pursuant to Rule 125 of the Rules, the President must consider, *inter alia*, the gravity of the crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, and any substantial cooperation by the prisoner with the Prosecutor.

⁸ Trial Judgement, para. 482.

⁹ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, p. 146.

¹⁰ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac, 21 June 2005; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Order of the President on the Application for the Early Release of Tihomir Blaškić, 29 July 2004; *Prosecutor v. Simo Zarić*, Case No. IT-95-9, Order of the President for the Early Release of Simo Zarić, 21 January 2004; *Prosecutor v. Miroslav Tadić*, Case No. IT-95-9, Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 3 November 2004; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision of the President on the Early Release of Miroslav Kvočka, 13 December 2002.

8. A previous request by Mr. Strugar for early release was denied on the basis that the appeal from his Trial Judgement was ongoing.¹¹ The circumstances of the current Request are fundamentally different due to the completion of the appeals process on 17 July 2008.

9. The rules in many enforcement States allow for early release once a convicted person has served two-thirds of his or her sentence.¹² On 16 February 2009, Mr. Strugar will have served two thirds of the sentence determined by the Appeals Chamber. As the Rules state that “the President shall take into account... the treatment of similarly situated prisoners...”, it is important to consider the treatment of other prisoners who have applied for early release from the UNDU and consequently have not been able to submit their eligibility based on the specific laws of an enforcement State. Given the need to treat prisoners equally,¹³ the fact that Mr. Strugar has served two-thirds of his sentence is relevant in considering this Request.

10. The “Behaviour Report” of the Acting Commander of the UNDU attests to Mr. Strugar’s good behaviour during his detention at the UNDU. According to this Report, Mr. Strugar has “at all times shown good respect for the management and staff of the unit and has complied with both the Rules of Detention and the instructions of the guards.” In addition, he has been “cordial with his fellow detainees”.¹⁴ This good behaviour, particularly considering Mr. Strugar’s prompt surrender to the International Tribunal in October 2001, demonstrates a degree of rehabilitation.

11. The reports of the Medical Officers who have been responsible for treating Mr. Strugar suggest that his health is gradually deteriorating. While his various ailments are considered relatively normal for his advanced age, they are nevertheless significant. For instance, [redacted].¹⁵

12. Although the Rules admit no direct consideration of the health and mental wellbeing of a prisoner,¹⁶ in Mr. Strugar’s case, his medical situation is particularly relevant. [redacted]. This

¹¹ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-ES, Decision of the President on Pavle Strugar’s Request for Early Release, 26 June 2007.

¹² See e.g., *Prosecutor v. Simo Zarić*, Case No. IT-95-9, Order of the President for the Early Release of Simo Zarić, 21 January 2004; *Prosecutor v. Zoran Vuković*, Case No. IT-96-23&23/1-ES, Decision of the President on Commutation of Sentence of Zoran Vuković, 11 March 2008.

¹³ See *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-E, Decision of the President on Commutation of Sentence, 4 September 2007, para. 13.

¹⁴ See Memorandum of 10 December 2008 from the Acting Commanding Officer. See also Memorandum of 20 April 2007 from Chief of Detention.

¹⁵ See Memorandum of 28 November 2008 from Paulus Falke, UNDU Medical Officer.

¹⁶ *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac, 21 June 2005.

raises valid concerns about the potential effect of any transfer to a different environment to serve the remainder of his sentence.


13. The Report of the Prosecutor states that the Office of the Prosecutor has not received any cooperation from Mr. Strugar but does not advise as to whether any cooperation was in fact sought by the Prosecutor.¹⁷ Accordingly, I have treated this as a neutral factor in my consideration of the Request.

14. In accordance with Article 5 of the Practice Direction and Rule 124 of the Rules, I attached the information collected by the Registrar for the consideration of the Bureau and the Judges of the sentencing Chamber and the Appeals Chamber that remain Judges of the International Tribunal and offered my views on this Request, as expressed above, for consideration by my colleagues. All of the Judges consulted agreed with my assessment that Mr. Strugar should be granted early release.

15. In light of the foregoing, and having considered those factors identified in Rule 125 of the Rules, as well as Mr. Strugar's deteriorating medical condition and the potential impact of any transfer, I am satisfied that the Request should be granted effective 20 February 2009.

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

Done this 16th day of January 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]

¹⁷ See Report of Gavin Ruxton, Pavle's [sic] Strugar request for early release, 5 December 2008.