

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-95-12-ES
Date: 22 August 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision: 22 August 2011

PROSECUTOR

v.

IVICA RAJIĆ

CONFIDENTIAL

**DECISION OF PRESIDENT ON EARLY RELEASE OF
IVICA RAJIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Ivica Rajić

Kingdom of Spain

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") has been advised by the authorities of the Kingdom of Spain ("Spain") that Mr. Ivica Rajić is eligible for early release in accordance with Spanish law.

A. Background

2. On 6 April 2011, the Registry informed me of a notification received from the Embassy of Spain transmitting an order of the Spanish National High Court stipulating that Mr. Ivica Rajić was eligible for early release in accordance with Spanish law as of 2 April 2011.¹ This notification was received from Spanish authorities, pursuant to Article 28 of the Statute of the Tribunal ("Statute"), Rule 123 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), and 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 ("Practice Direction").²

3. On 22 June 2011, the Registrar, pursuant to paragraphs 3(b) and 3(c) of the Practice Direction, provided me with the following documentation: (a) a report submitted by Spain's Ministry of the Interior, General Directorate for Prisons, concerning Mr. Rajić's custodial behaviour, dated 18 May 2011, (b) a psychological health report submitted by Spain's Ministry of the Interior, General Secretariat for Prisons, dated 23 May 2011, (c) a medical report,³ and (d) a memorandum from the Prosecutor dated 19 May 2011 regarding the extent of Mr. Rajić's co-operation with the Office of the Prosecutor.⁴

4. All of the above materials were furnished to Mr. Rajić on 4 July 2011.⁵ On 15 July 2011, Mr. Rajić provided a short response.⁶

B. Proceedings Before the Tribunal

5. On 23 August 1995, Mr. Rajić was initially indicted on six counts of serious violations of international humanitarian law.⁷ On 29 August 1995, Judge Sidhwa confirmed the indictment.⁸ On 13 September 1996, the Trial Chamber reconfirmed the initial indictment and issued an

¹ Memorandum from the Registrar to the President, 6 April 2011 ("Memorandum of 6 April 2011").

² IT/146/Rev.3, 16 September 2010.

³ Memorandum from the Registrar to the President, 22 June 2011 ("Memorandum of 22 June 2011").

⁴ Memorandum of 22 June 2011 (Memorandum from the Senior Legal Adviser to the Prosecutor to the Immediate Office of the Registrar Regarding Mr. Rajić's Co-operation with the OTP, dated 19 May 2011).

⁵ Memorandum from the Registrar to the President, 15 July 2011 ("Memorandum of 15 July 2011").

⁶ Memorandum of 15 July 2011 (Mr. Rajić's Response dated 9 July 2011).

⁷ *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12, Indictment, 23 August 1995.

⁸ *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-I, Review of the Indictment, 29 August 1995.

international arrest warrant.⁹ Mr. Rajić was arrested in the Republic of Croatia on 5 April 2003, and was transferred to the Tribunal and detained at the United Nations Detention Unit on 24 June 2003.¹⁰ On 14 January 2004, the Prosecution filed an amended indictment charging Mr. Rajić with five grave breaches of the Geneva Conventions of 1949 and five violations of the laws or customs of war.¹¹

6. On 26 October 2005, Mr. Rajić pleaded guilty to four counts of grave breaches of the Geneva Conventions of 1949 under Article 2 of the Statute.¹² The Trial Chamber accepted that plea and entered a finding of guilt on those four counts:

- Count 1: wilful killing, Article 2(a) of the Statute;
- Count 3: inhuman treatment, Article 2(b) of the Statute;
- Count 7: appropriation of property, Article 2(d) of the Statute; and
- Count 9: extensive destruction not justified by military necessity and carried out unlawfully and wantonly, Article 2(d) of the Statute.¹³

7. The plea agreement required Mr. Rajić's full and substantial co-operation with the Prosecution.¹⁴

8. On 8 May 2006, the Trial Chamber delivered its Sentencing Judgement, sentencing Mr. Rajić to 12 years' imprisonment.¹⁵ He was given credit for the time already served since 5 April 2003, pursuant to Rule 101(C) of the Rules.¹⁶ On 13 April 2007, Mr. Rajić was transferred to Spain to serve the remainder of his sentence.¹⁷

C. Applicable Law

9. 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

⁹ *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 September 1996.

¹⁰ *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006 ("Sentencing Judgement"), para. 3.

¹¹ *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-PT, Amended Indictment, 14 January 2004.

¹² Sentencing Judgement, paras 9, 13; *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-PT, Plea Hearing, 26 October 2005, p. 164. ("Plea Hearing"); see also *Prosecutor v. Ivica Rajić a.k.a. Viktor Andrić*, Case No. IT-95-12-PT, Plea Agreement Between Ivica Rajić and the Office of the Prosecutor, 25 October 2005, para. 4 ("Plea Agreement").

¹³ Plea Hearing, p. 164.

¹⁴ Plea Agreement, para. 17.

¹⁵ Sentencing Judgement, Disposition.

¹⁶ Sentencing Judgement, para. 183, Disposition.

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 this determination, the President shall take into account, *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 co-operation of the prisoner with the Prosecution.

10. Article 3 of the Agreement Between the United Nations and the Kingdom of Spain on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 28 March 2000 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by Spanish law, subject to supervision of the Tribunal, and that, if, pursuant to the applicable Spanish law, the convicted person is eligible for early release, Spain shall notify the Registrar of the Tribunal accordingly. The President of the Tribunal shall then determine, in consultation with the Judges of the Tribunal, whether any early release is appropriate.

D. Discussion

11. In coming to my decision upon whether it is appropriate to grant early release, I have consulted with the Judges of the Bureau and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

1. Treatment of Similarly-situated Prisoners

12. Mr. Rajić has served over eight years of his 12-year sentence, including time spent in custody up to and including the date of sentencing, thereby having completed two-thirds of his sentence. It is the practice of the Tribunal to consider the eligibility of convicted persons for early release only when they have served two-thirds of their sentence.¹⁸ I note that a convicted person

¹⁷ ICTY Press Release, CT/MOW/1155e, Ivica Rajić Transferred to Serve Sentence in Spain, 13 April 2007.

¹⁸ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 15 July 2011, para. 22; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011, para. 21; *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-ES.1, Decision of President on Early Release of Veselin Šljivančanin, 5 July 2011, para. 20; *Prosecutor v. Johan Tarčulovski*, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 23 June 2011, para. 13; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-ES, Decision of President on Early Release of Blagoje Simić, 15 February 2011, para. 20; *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,

reaching two-thirds of his sentence is merely eligible for early release and not entitled to such a release. Taking into account the treatment of similarly-situated prisoners, I am of the view that the time that Mr. Rajić has served for his crimes militates in favour of his early release.

2. Gravity of Crimes

13. With respect to gravity, I note that the Trial Chamber in its Sentencing Judgement recalled that Mr. Rajić's crimes were committed in the towns of Vareš, Stupni Do, and Bogoš Hill, in Bosnia and Herzegovina, beginning on or about 21 October 1993 until about 3 November 1993.¹⁹ From 12 May 1993 to at least 22 November 1993, Mr. Rajić was Commander of the Second Operational Group, one of three operational wings of the Central Bosnia Operative Zone of the Croatian Defence Council ("HVO").²⁰ He had command or superior responsibility, and exercised operational and effective command and control, over the commanders and members of the Bobovac Brigade, Kostromanić Brigade, and Ban Josip Jelačić Brigade, as well as the Maturice and Apostoli special units.²¹ Knowing that these units had committed crimes against Bosnian Muslim villages in earlier operations, he nevertheless ordered them to participate in operations in the area of Vareš, Stupni Do, and Bogoš Hill in October 1993.²² The Trial Chamber found that Mr. Rajić was aware that, by ordering these attacks and by ordering his subordinates to round up and detain military-aged Muslim men, there was a substantial likelihood that crimes would be committed, and yet he still gave the orders.²³

14. During the attacks mentioned above, at least twenty-seven men, women, children, and elderly persons were murdered by those under Mr. Rajić's command.²⁴ During a standoff with United Nations Protection Force ("UNPROFOR"), HVO forces under the command of Mr. Rajić

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; *Prosecution v. Dragain 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, Public Redacted Version of 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, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 12 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; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010.

¹⁹ Sentencing Judgement, paras 34-53.

²⁰ Sentencing Judgement, paras 27-29.

²¹ Sentencing Judgement, para. 33.

²² Sentencing Judgement, paras 38-40.

²³ Sentencing Judgement, para. 42.

fired at UNPROFOR armoured personnel carriers and at the UNPROFOR headquarters in Vareš municipality.²⁵ After Mr. Rajić left Vareš town on 26 October 1993, HVO commanders and soldiers under his command continued to commit crimes including looting and robbing Muslim property and sexually assaulting Muslim women.²⁶ Later, Mr. Rajić participated in a cover-up of the crimes committed during the attacks in and around Vareš, which included a false investigation and Mr. Rajić changing his name to "Viktor Andrić" in order to create the appearance that Mr. Rajić had been punished for his actions and that "Andrić" had replaced him in his command.²⁷

15. I find it instructive to quote the Sentencing Judgement:

In determining the seriousness of these crimes, the Trial Chamber examined the nature of the offences committed, their scale and brutality, the role played by Ivica Rajić, and the overall impact of the crimes upon the victims and their families. It concluded that the sentence should reflect the fact that the crimes were committed on a large scale, were of a particularly violent nature and caused severe pain to the victims and their relatives. The sentence should also reflect the importance of the role played by Ivica Rajić in the events who, following orders of his own superiors, planned and ordered the attacks and further ordered the rounding up of more than two hundred and fifty Bosnian Muslim men, knowing the substantial likelihood that criminal acts would ensue following his orders.

Moreover, the Trial Chamber found that the special vulnerability of certain victims was a relevant aggravating circumstance to the crimes. However, it considered that Ivica Rajić's positions of authority and as a superior were not aggravating factors in the present case, but elements inherent in the gravity of the crimes. Finally, the Trial Chamber rejected the Prosecution's arguments that the participation in a cover-up and in obstructing justice for almost eight years constitutes aggravating factors.

The Trial Chamber gave consideration to a number of mitigating circumstances which were afforded appropriate weight when considering the sentence: Ivica Rajić's guilty plea before the trial, his remorse and his cooperation with the Prosecution. Moreover, the Trial Chamber accorded limited additional weight in mitigation of sentence to Ivica Rajić's personal circumstances.²⁸

16. Based upon the foregoing, I am of the view that Mr. Rajić's crimes are of a very high gravity and that this is a factor that weighs against granting him early release.

3. Demonstration of Rehabilitation

17. 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.

²⁴ Sentencing Judgement, para. 50.

²⁵ Sentencing Judgement, para. 52.

²⁶ Sentencing Judgement, para. 53.

²⁷ Sentencing Judgement, paras 57-65.

²⁸ Sentencing Judgement, paras 179-181.

18. By letter dated 18 May 2011, the General Directorate for Prisons addressed Mr. Rajić's behaviour during incarceration, stating that "[h]e is well-mannered", acts as the manager of a painting workshop, works as a prison cleaner, and "learns Spanish and practices sports".²⁹ Additionally, Mr. Rajić belongs to the Committee on Peaceful Coexistence and Conflict Resolution as part of a prison program called Workshops for Respect.³⁰ Prison officials note that Mr. Rajić maintains a "positive attitude" and that "[h]is interests and motivations focus on obtaining early parole as well as on his family."³¹

19. In relation to Mr. Rajić's acceptance of guilt for the crimes for which he was convicted, the report by the General Directorate for Prisons provides that "admission of the crime is not appreciated since he says he did not commit any crime. He says the crime was committed by his subordinates."³² I note, however, that in Mr. Rajić's reply he clearly states that he has "accepted his sentence with full responsibility".³³ I therefore find the assessment of Mr. Rajić's acceptance of guilt by the General Directorate for Prisons to be a neutral factor in relation to Mr. Rajić's demonstrated rehabilitation.

20. 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 of the Rules. The Spanish authorities transmitted a report dated 23 May 2011 in relation to Mr. Rajić's psychological condition, which records that no psychological assessment of Mr. Rajić has been made since his arrival at the prison.³⁴ Observations of Mr. Rajić indicate that he has made "favourable and constant adaptation to [his] environment", noting in particular his participation in a scheduled tour to the mountains of Madrid for which "[c]onfidence in the balanced behaviour of the subject [wa]s crucial".³⁵

²⁹ Memorandum of 22 June 2011 (Memorandum from the General Directorate for Prisons Regarding Mr. Rajić's Custodial Behaviour, dated 18 May 2011).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Memorandum of 15 July 2011 (Mr. Rajić's Response, dated 9 July 2011).

³⁴ Memorandum of 22 June 2011 (Memorandum from the General Secretariat for Prisons Regarding Mr. Rajić's Psychological Health, dated 23 May 2011); *see also* Memorandum of 22 June 2011 (Medical Report on Ivica Rajić, dated 18 May 2011).

³⁵ Memorandum of 22 June 2011 (Memorandum from the General Secretariat for Prisons Regarding Mr. Rajić's Psychological Health, dated 23 May 2011).

21. Based upon the information provided, I am of the view that Mr. Rajić's good behaviour while serving his sentence evidences some rehabilitation, which weighs in favour of his early release.

4. Substantial Co-operation with the Prosecution

22. 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.

23. According to the Prosecution's report, Mr. Rajić has fulfilled his obligations to co-operate with the Prosecution pursuant to his plea agreement, and his co-operation with the Prosecution "has been substantial and in good faith", although this co-operation has not been "over and above that required to fulfil the Plea Agreement".³⁶ Based upon the foregoing, I am of the view that Mr. Rajić's co-operation militates in favour of his early release.

5. Conclusion

24. 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. Rajić's crimes is very high, the time that he has served in detention, his demonstration of some rehabilitation, and the fact that he has provided the co-operation required of his plea agreement militates in favour of Mr. Rajić's early release. I am therefore of the view that Mr. Ivica Rajić should be granted early release.

25. I note that my colleagues unanimously share my view that Mr. Rajić should be granted early release.

E. Disposition

26. 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 3 of the Enforcement Agreement, Mr. Ivica Rajić is hereby GRANTED early release.

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

³⁶ Memorandum of 22 June 2011 (Memorandum from Senior Legal Adviser to the Prosecutor to Chief, Immediate Office of the Registrar Regarding Mr. Rajić's Co-operation with the OTP, dated 19 May 2011), para. 4.

28. The Registrar is hereby DIRECTED to lift the confidentiality of this decision, once Mr. Ivica Rajić has been released.

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



Judge Patrick Robinson
President

Dated this twenty-second day of August 2011,
At The Hague,
The Netherlands.

[Seal of the Tribunal]