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UNITED
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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-04-82-ES
Date: 8 April 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 8 April 2013

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION OF PRESIDENT ON EARLY RELEASE
OF JOHAN TARČULOVSKI**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Johan Tarčulovski

The Federal Republic of Germany

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"), have been advised by the authorities of the Federal Republic of Germany ("Germany") that Johan Tarčulovski ("Tarčulovski") is eligible for early release in accordance with German law.¹ I consider Tarčulovski's eligibility for early release 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

I. BACKGROUND

2. On 10 July 2008, Trial Chamber II of the Tribunal ("Trial Chamber") found Tarčulovski guilty, pursuant to Article 7(1) of the Statute, of murder, wanton destruction of private property, and cruel treatment, all of which constituted violations of the laws or customs of war.³ These offences were committed on 12 August 2001 in the village of Ljuboten in the Former Yugoslav Republic of Macedonia ("FYROM"). Tarčulovski was at the relevant time a police officer acting as an Escort Inspector in the President's Security Unit in the FYROM Ministry of Interior.⁴ The victims were all ethnic Albanian residents of Ljuboten.⁵ Tarčulovski was sentenced to 12 years imprisonment and was given credit for time already served from 16 March 2005, pursuant to Rule 101(C) of the Rules.⁶

3. On 19 May 2010, the Appeals Chamber dismissed Tarčulovski's appeal in its entirety and affirmed his sentence of 12 years, with credit given for time spent in detention.⁷

4. On 23 August 2010, the then-President of the Tribunal, Judge Robinson, designated Germany as the State in which Tarčulovski was to serve his sentence.⁸ On 7 July 2011, Tarčulovski was transferred to Germany to serve his sentence.⁹

¹ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 14 February 2013, transmitting, *inter alia*, Note Verbale from the Embassy of the Federal Republic of Germany in the Netherlands, dated 5 February 2013 ("Note Verbale").

² IT/146/Rev.3, 16 September 2010.

³ See *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-T, Judgement, 10 July 2008 ("Trial Judgement"), para. 607.

⁴ Trial Judgement, paras 4, 589.

⁵ Trial Judgement, para. 589.

⁶ Trial Judgement, para. 608. Tarčulovski was arrested on 14 March 2005 and was transferred to the UNDU on 16 March 2005. See *ibid.*, para. 609.

⁷ See *Prosecutor v. Ljube Boškosi and Johan Tarčulovski*, Case No. IT-04-82-A, Judgement, 19 May 2010, p. 100 (disposition).

5. On 23 June 2011, then-President Robinson denied Tarčulovski's application for early release.¹⁰ At that time, Tarčulovski had completed only one-half of his sentence and was still in detention at the United Nations Detention Unit.¹¹

II. THE NOTIFICATION

6. On 14 February 2013, the Registrar of the Tribunal ("Registrar") transmitted to me the Note Verbale from the Embassy of Germany, advising that Tarčulovski would become eligible for early release in accordance with the national law of Germany upon completion of two-thirds of his sentence on 15 March 2013.¹² Attached to the Note Verbale were, *inter alia*, (i) a letter from the Attorney General of the Rhineland Palatinate, dated 16 October 2012, explaining the position of the German authorities on Tarčulovski's eligibility for early release under German law ("16 October Letter"); (ii) a letter from the Head of the Diez prison at the Rhineland Palatinate, dated 8 August 2012, concerning the state of enforcement of Tarčulovski's sentence ("8 August Letter"); and (iii) an English version of a "Psychological Statement to the Question of the Release on Probation", dated 12 July 2012 ("Psychological Statement").

7. On 15 March 2013, the Registrar transmitted to me two memoranda from the Office of the Prosecutor ("Prosecution") regarding Tarčulovski's cooperation with the Prosecution – one dated 14 March 2013, and another dated 6 April 2011 and submitted in connection with Tarčulovski's first early release proceeding.¹³ The 15 March Memorandum also informed me that the accompanying memoranda from the Prosecution, along with the materials received from the German authorities, would be translated into the Macedonian language and then forwarded to Tarčulovski according to Article 4 of the Practice Direction.¹⁴ On 2 April 2013, the Registrar informed me that Tarčulovski reviewed these materials and declined to provide any comments.¹⁵

⁸ See Order Designating State in Which Johan Tarčulovski is to Serve His Sentence, 23 August 2010, pp. 2-3 (issued confidentially but made public pursuant to the President's order as contained in the same order).

⁹ See Press Release, VE/MOW/PR1425e, Johan Tarčulovski Transferred to Germany to Serve Sentence, 7 July 2011, available at <http://www.icty.org/sid/10726>.

¹⁰ See Decision of President on Early Release of Johan Tarčulovski, 23 June 2011 ("2011 Decision on Early Release").

¹¹ See 2011 Decision on Early Release, paras 12-13, 29.

¹² See *supra*, n. 1.

¹³ Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 15 March 2013 ("15 March Memorandum"), transmitting (i) Internal Memorandum from Michelle Jarvis, Senior Legal Adviser to the Prosecutor, to Martin Petrov, Chief, Office of the Registrar, dated 14 March 2013 ("Prosecution Memorandum"), and (ii) Internal Memorandum from Serge Brammertz, Prosecutor, to John Hocking, Registrar, dated 6 April 2011 ("2011 Prosecution Memorandum").

¹⁴ 15 March Memorandum, para. 3.

¹⁵ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 2 April 2013, transmitting Letter from John Tarčulovski to Martin Petrov, Chief, Immediate Office of the Registrar, dated 28 March 2013.

III. APPLICABLE LAW

8. 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.

9. Rules 123 and 124 of the Rules echo Article 28 of the Statute, and Rule 124 of the Rules further provides that the President, upon notice of a convicted person's eligibility for early release under national law, shall 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.

10. 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.

11. Article 2(2) of the *ad hoc* Agreement Between the International Criminal Tribunal for the former Yugoslavia and the Government of the Federal Republic of Germany concerning the enforcement of Tarčulovski's sentence, dated 16 June 2011 ("Enforcement Agreement"), provides that the conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the Tribunal. Article 2(3) of the Enforcement Agreement provides that if, pursuant to the applicable national law of Germany, and in particular section 57 of the German Criminal Code, Tarčulovski is eligible for early release, Germany shall notify the Registrar accordingly. Lastly, Article 2(4) of the Enforcement Agreement provides that, following notification of eligibility for early release under German law, the President shall determine, in consultation with the Judges of the Tribunal, whether early release is appropriate, and the Registrar shall inform the competent national authorities of the President's determination accordingly.

IV. DISCUSSION

12. In coming to my decision upon whether it is appropriate to release Tarčulovski, I have consulted the Judges of the Bureau, including the Vice-President, and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

1. Eligibility under German Law

13. According to the Note Verbale and other materials received from the German authorities, Tarčulovski has met the requirements for conditional early release under Section 57, paragraph 1, sentence 1 of the German Criminal Code.¹⁶ That article allows for the conditional early release of a detainee if (i) the detainee has completed two-thirds of his sentence, (ii) the release is appropriate considering public security interests, and (iii) the detainee consents to the early release.¹⁷ According to the German authorities, Tarčulovski meets all of these conditions¹⁸ and is thus eligible for early release under German law.

2. Gravity of the Crimes

14. The gravity of the crimes for which Tarčulovski was convicted is very high. The Trial Chamber found that on 12 August 2001, a force of well-armed reserve police, led by Tarčulovski, committed offences against ethnic Albanians in the village of Ljuboten in the FYROM.¹⁹ The offences perpetrated by the police forces included killing three men; deliberately destroying or damaging by fire the houses of 12 residents; and very cruelly beating, injuring, or threatening 13 men who had taken shelter in the basements of the two houses.²⁰ The Trial Chamber found that the victims of these offences were unarmed and posed no physical threat or resistance to the police.²¹ The Trial Chamber summarized the impact of these crimes on the victims as follows:

For the victims who died, the consequences of the conduct of the police were absolute. Close family members must carry the burden of the loss of their loved ones. For the victims who survived, it is apparent that the physical and mental suffering has often been considerable and prolonged. Obviously 12 families suffered the financial and personal loss of their homes and possessions.²²

15. I note the Trial Chamber's finding that Tarčulovski was not the person that originated the plan for the police operation in Ljuboten, nor was he the actual perpetrator of any of the offences or

¹⁶ See Note Verbale, pp. 1-2; 16 October Letter, p. 3.

¹⁷ See 16 October Letter, p. 2.

¹⁸ See Note Verbale, pp. 1-2; 16 October Letter, p. 3.

¹⁹ Trial Judgement, paras. 589-590.

²⁰ Trial Judgement, para. 590.

²¹ Trial Judgement, para. 592.

²² Trial Judgement, para. 593.

a participant in a joint criminal enterprise to commit the offences.²³ Tarčulovski's role, however, was to plan the offences, incite the reserve police he had assembled to carry out the offences, and order them to perpetrate the crimes.²⁴ The Trial Chamber stated that "[h]is role in ordering the commission of the offences fully and adequately reflects the real gravity of his conduct".²⁵

16. Following previous practice, I am of the view that the high gravity of the crimes for which Tarčulovski was convicted weighs against his early release.

3. Treatment of Similarly-Situated Prisoners

17. 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.²⁶ 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.²⁷

18. As of the date of this Order, Tarčulovski has already served more than two-thirds (*i.e.*, eight years) of his 12-year sentence, including time spent in custody up to and including the date of sentencing.²⁸ Taking into account the treatment of similarly-situated prisoners and the practice of the Tribunal, I consider that Tarčulovski's completion of two-thirds of his sentence weighs in favour of his eligibility for early release.

4. Demonstration of Rehabilitation

19. 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.

20. The Psychological Report notes that Tarčulovski does not harbour any "negative opinions or beliefs towards the Albanian minority" in the FYROM, nor does he demonstrate any

²³ Trial Judgement, para. 594.

²⁴ Trial Judgement, para. 594.

²⁵ Trial Judgement, para. 594.

²⁶ See 2011 Decision on Early Release, para. 13, and authorities cited therein.

²⁷ See, e.g., *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012 ("*Zelenović* Decision"), para. 14.

²⁸ See 2011 Decision on Early Release, para. 14; Note Verbale, p. 2.

“psychopathological signs”.²⁹ On the other hand, the Psychological Report points out Tarčulovski’s “lack of remorse [for] his offences”³⁰ and makes reference to his sense that “he was convicted for others” and that he “was not the actor but the com[m]ander”.³¹

21. According to the head of the prison where Tarčulovski is held, Tarčulovski has behaved in accordance with the prison rules, and his conduct has given rise to no complaints.³² The prison director also notes the absence of any “severe personality or impulse control problems”³³ and recommends Tarčulovski’s early release upon completion of the two-thirds of his sentence, “taking the safety interest of the general public into due account” and assuming that Tarčulovski will live in the FYROM after his release.³⁴

22. In this regard, I also note that, since late 2011, Tarčulovski has been serving his sentence in an open prison and is entitled to 12 hours of standard release per week and, since January 2012, additional conditional leaves from detention, two of which he has spent with his family in the town where the correctional facility is located, *i.e.*, Diez, Germany.³⁵ Tarčulovski also maintains regular contact with his family (wife and two children), who live in the FYROM.³⁶

23. On balance, I find that there is evidence that Tarčulovski has demonstrated rehabilitation to the extent that he would not pose a societal threat if released, despite the absence of any evidence indicating remorse for his crimes or acknowledgement of responsibility for his deeds. Tarčulovski appears to be a well-behaved prisoner, enjoying a wide range of privileges available to him based upon his good conduct in prison. I thus accept the prison authorities’ assessment that Tarčulovski will not pose any risk to public security in the FYROM, where he is to be released. Accordingly, I am of the view that Tarčulovski’s good behaviour during detention and the absence of any evidence that he would pose a threat to public security and to the reconciliation process among the ethnic groups in the FYROM militate in favour of his early release.

5. Cooperation with the Prosecution

24. 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

²⁹ Psychological Report, p. 7.

³⁰ Psychological Report, p. 10.

³¹ Psychological Report, p. 7.

³² See 8 August Letter, p. 2.

³³ 8 August Letter, p. 2.

³⁴ 8 August Letter, p. 3. The Note Verbale also makes reference to the prison authorities’ assessment that Tarčulovski’s release is appropriate considering public security interests. See Note Verbale, p. 2.

³⁵ See 8 August Letter, p. 2; Psychological Report, p. 5.

³⁶ See 8 August Letter, p. 2.

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.

25. According to the Prosecution, Tarčulovski “did not cooperate with the [Prosecution] in the course of his trial or appeal” or “at any point while serving his sentence”.³⁷ I note, however, that there is no obligation for an accused or convicted person to cooperate with the Prosecution absent a plea agreement to do so. Moreover, there is nothing in the record to indicate that the Prosecution sought Tarčulovski’s cooperation at any stage of the proceedings against him or after his conviction.

26. I therefore consider this factor to be of neutral weight.³⁸

6. Conclusion

27. Taking all of the foregoing into account and having considered the factors identified in Rule 125 of the Rules, I consider that Tarčulovski should be released now. Tarčulovski’s eligibility for early release under both German law and the Tribunal’s practice of considering detainees eligible for early release upon the completion of two-thirds of their sentence, in combination with Tarčulovski’s good behaviour in prison and the prison authorities’ assessment that he would pose no public security risk if released, weigh in favour of his early release, despite the gravity of his crimes.

28. I note that a majority of my Colleagues, whom I have consulted in reaching my decision, do not oppose granting Tarčulovski early release.

³⁷ 2011 Prosecution Memorandum, para. 2. *See also* Prosecution Memorandum, para. 2.

³⁸ *Cf. Zelenović* Decision, para. 21; *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011 (made public on 9 January 2012), para. 23.

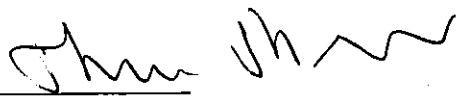
V. DISPOSITION

29. 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(2) of the Enforcement Agreement, Johan Tarčulovski is hereby **GRANTED** early release.

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

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

Done this 8th day of April 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]