



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-01-42/1-ES
Date: 1 September 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President
Registrar: Mr. Hans Holthuis
Decision of: 1 September 2008

THE PROSECUTOR

v.

MIODRAG JOKIĆ

PUBLIC

DECISION OF THE PRESIDENT ON REQUEST FOR EARLY RELEASE

Counsel for the Miodrag Jokić:

Mr. Žarko Nikolić
Mr. Eugene O'Sullivan

1. On 10 June 2008, Miodrag Jokić's counsel filed on his behalf a request for early release at the completion of two-thirds of his sentence on 24 July 2008, pursuant to Article 28 of the Statute of the International Tribunal ("Statute") and Rules 123, 124, and 125 of the Rules of Procedure and Evidence of the International Tribunal ("Rules").¹ On 11 June 2007, the Danish authorities also formally notified the International Criminal Tribunal for the former Yugoslavia ("Tribunal") pursuant to Rule 123 of the Rules that Mr. Jokić would be eligible for release on parole under Danish national law after completing two-thirds of his sentence on 24 July 2008.²

2. On 11 June 2008, I requested that the Registry undertake to procure the relevant reports from the Prosecutor of the Tribunal and the Danish prison authorities, as prescribed in 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 Tribunal ("Practice Direction").³ On 26 June 2008, the Registrar forwarded to me a report prepared by the Office of the Prosecutor.⁴ On 10 July 2008, the Registrar forwarded to me the relevant materials prepared by the Danish Prison and Probation Service.⁵

3. On 17 July 2008, pursuant to Article 4 of the Practice Direction,⁶ Jokić responded by letter to the reports submitted by the Office of the Prosecutor and the Danish Prison and Probation Service.⁷

BACKGROUND

4. The initial indictment against Miodrag Jokić was issued on 23 February 2001. The indictment alleged that following Croatia's declaration of independence from the Socialist Federal Republic of Yugoslavia, the Yugoslav Peoples' Army ("JNA") conducted a military campaign against the Dubrovnik region on the coast of Croatia. Mr. Jokić was identified as the commander of the Ninth Naval Sector of the JNA, the naval forces on the Adriatic Sea participating in the attack on the Dubrovnik region, responsible for the naval blockade of the area and involved in the shelling the Old City of Dubrovnik on several occasions between 1 October 1991 and 6 December 1991.

5. On 27 August 2003, pursuant to a plea agreement with the Prosecutor, Mr. Jokić pleaded guilty to six counts of violations of the laws or customs of war under Article 3 of the Statute, including murder, cruel treatment, unlawful attack on civilians and civilian objects, devastation not

¹ *Confidential* Request on Behalf of Miodrag Jokić for Early Release, 10 June 2008 ("Request").

² Letter of 26 June 2008 to the Registrar from T. Engelbrecht Ising, Danish Ministry of Justice.

³ Memorandum of 11 June 2008 to the Deputy Registrar; IT/146/Rev. 1, 15 August 2006.

⁴ Memorandum of 26 June 2008 from the Deputy Registrar.

⁵ *Ibid.*

⁶ 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, 15 August 2006.

⁷ Letter of 17 July 2008 from M. Jokić to the President of the Tribunal.

justified by military necessity, and destruction or wilful damage to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments, and works of art and science. Accepting responsibility for aiding and abetting under Article 7(1) of the Statute and for superior responsibility under Article 7(3) of the Statute, Mr. Jokić admitted to knowing of the unlawful shelling of the Old Town of Dubrovnik on 6 December 1991, but failing to prevent, mitigate or stop the attack or to discipline those responsible under his command. On 18 March 2004, the Trial Chamber sentenced Mr. Jokić to seven years of imprisonment, calculated considering several mitigating factors including his voluntary surrender, guilty plea, sincere remorse, and active cooperation with the Prosecutor. On 30 August 2005, the Appeals Chamber vacated Mr. Jokić’s convictions under Article 7(3) of the Statute, but upheld the remaining convictions under Article 7(1) of the Statute and affirmed the sentence imposed by the Trial Chamber. The sentence was imposed subject to credit being given under Rule 101(C) of the Rules for 116 days spent in detention prior to final sentencing. Mr. Jokić was transferred to Denmark for the enforcement of his sentence on 5 October 2006. Two-thirds of his sentence was served as of 24 July 2008.

SUBMISSIONS

6. In the Request, Mr. Jokić’s counsel submits that early release would be appropriate given the particular circumstances of his case. The Request first asserts that Mr. Jokić is eligible for early release since he meets the requirements for parole under Danish national law.⁸ The Request next argues that evidence of Mr. Jokić’s good character and rehabilitation should support his application. Insisting that Mr. Jokić has always shown the highest respect for the Tribunal, the Request emphasizes that Mr. Jokić pleaded guilty to his crimes and substantially cooperated with the Prosecution by testifying in the trial of Pavle Strugar.⁹ The Request also stresses that the Trial Chamber previously took judicial notice that Mr. Jokić’s had demonstrated sincere regret and remorse, both immediately following the crimes and throughout the proceedings against him.¹⁰ Emphasizing Mr. Jokić’s capacity for rehabilitation, the Response also quotes the Trial Chamber’s earlier observation that Mr. Jokić had “high rehabilitative potential” and notes that he has demonstrated exemplary behaviour during the course of his incarceration.¹¹ Finally, the Request argues that Mr. Jokić’s application for early release is supported by the fact that other similarly-situated individuals have previously been granted early release.¹²

⁸ Request, paras 15-18.
⁹ *Ibid.*, paras 19-21.
¹⁰ *Ibid.*, para. 20.
¹¹ *Ibid.*, paras 22-24.
¹² *Ibid.*, para 25.

7. In the 11 June 2008 letter to the Tribunal, the Danish Ministry of Justice formally notified the Registrar of Mr. Jokić's eligibility for parole under Danish national law.¹³ The notification letter indicates that under Section 38(1) of the Danish Criminal Code, a convicted person may be released on parole after completing two-thirds of his sentence.¹⁴ Although Section 38(5) of the Danish Criminal Code prohibits parole in cases where release would be "inadvisable" due to a particular individual's potential for recidivism, the notification letter insists that parole is "presupposed as a regular part of the enforcement of prison sentences" of three months or longer.¹⁵ The notification letter further states that the East Jutland State Prison recommends that Mr. Jokić be released on parole under Section 38(1) and that the Danish authorities do not find his release to be inadvisable under Section 38(5) of the Danish Criminal Code.¹⁶

8. Recommending probation, the Danish Prison and Probation Service report cites Mr. Jokić's good behaviour, his advanced age, his potential for reintegration, and the length of time which has passed since he committed the underlying crimes as factors supporting his eligibility for parole.¹⁷ The report notes that Mr. Jokić is "quiet and calm" and has caused no problems in the prison.¹⁸ Indicating that Mr. Jokić has been employed in the prison's textile centre, the report describes him as a "very stable worker" who has demonstrated an aptitude for the trade.¹⁹ The report also indicates that he has maintained a polite and friendly relationship with the prison staff and has developed a positive relationship with the other inmates, serving as an authoritative "father" figure for some of the younger inmates in the prison workshop.²⁰ The report further indicates that Mr. Jokić has made arrangements to live as an old-age pensioner with his wife and daughter in Serbia after release.²¹ The Danish prison authorities have also notified the Registry that no psychiatric or psychological evaluations have been conducted because Mr. Jokić has not demonstrated signs of any problems.²²

9. The Prosecution's report notes that Mr. Jokić "fully and substantially" cooperated with the Prosecution after his conviction, testifying as an "important Prosecution witness" in the trial of Pavle Strugar.²³ Additionally, the Prosecution seeks to place before me other matters not relevant to Mr. Jokić's post-conviction cooperation. In particular, the Prosecution's report outlines the relevant

¹³ Letter of 11 June 2008 to the Registrar from M. Hoffgaard, Danish Department of Prisons and Probation ("Notification Letter"), p. 2.

¹⁴ *Ibid.*, p. 1.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, pp 1-2.

¹⁷ Danish Prison and Probation Service Recommendation about Release on Parole Pursuant to Section 38(1) of the Criminal Code, 27 March 2008 ("Prison Report"), p. 3.

¹⁸ *Ibid.*, p. 2.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*, pp 1-2.

²² Letter of 3 July 2008 to the Registrar from T. Engelbrecht Ising, Danish Ministry of Justice.

²³ Prosecution Submission with Regard to Miodrag Jokić's Co-Operation with the Prosecution and Other Matters Regarding His Early Release, 20 June 2008 ("Prosecution Report"), p. 2.

elements of Danish national law to be applied,²⁴ comments on the gravity of Mr. Jokić's crimes and the evidence of his rehabilitation,²⁵ and warns of potential gaps in the enforcement of Mr. Jokić's sentence if he returns to the region of the former Yugoslavia after release without certain conditions of parole and supervision.²⁶

10. The Practice Direction indicates that the Prosecution is to file a report on any cooperation provided by the convicted person and on the significance of that cooperation. It does not permit the Prosecution to make submissions on other matters unless I specifically request them to do so pursuant to Article 2(d) of the Practice Direction. It has not been my practice to consider that the Prosecution can provide more relevant information on these matters than what has been provided by the enforcement State and what can be derived from the Tribunal's judgements.²⁷ Further, I do not consider it appropriate at this stage of the Tribunal's proceedings to change its longstanding practice by allowing the Prosecution to make submissions on a convicted accused's application for early release. Accordingly, I do not believe that the additional material submitted by the Prosecution should be considered in rendering a determination on this Request, since it goes beyond the information identified in the Practice Direction.

11. In response to the submissions by the Prosecution and the Danish prison authorities, Mr. Jokić argues that he has satisfied the conditions for early release prescribed by the Rules of the Tribunal and Danish national law and that his release would be in the interests of justice.²⁸ He cites his "democratic and peace-loving" character, his remorse and rehabilitation, his guilty plea, and his advanced age as evidence of his potential for peaceful reintegration into society.²⁹ He also insists that he would be returning to a stable life as a pensioner with his family in Serbia and that future supervision by domestic authorities there would be unnecessary.³⁰ He finally emphasizes that the current democratic reformist government in Serbia has created a "suitable and appropriate environment" for him to live in there.³¹

DISCUSSION

12. Under Article 28 of the Statute, the President of the Tribunal shall consider granting early release to a convicted person when he or she becomes eligible for pardon or commutation of

²⁴ *Ibid.*, p. 2.

²⁵ *Ibid.*, pp 2-3.

²⁶ *Ibid.*, p. 3.

²⁷ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Duško Tadić, 17 July 2008, para. 10; *Prosecutor v. Hazim Delić*, Case No. IT-96-21-ES, Decision on Hazim Delić's Motion for Commutation of Sentence, 24 June 2008, para. 10.

²⁸ Letter of 17 July 2008 from M. Jokić to the President of the Tribunal, p. 1.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

sentence under the applicable law of the enforcement State. In determining whether early release is appropriate, Article 28 of the Statute indicates that the President is to evaluate the application “on the basis of the interests of justice and the general principles of law”. More specifically, Rule 125 of the Rules provides that the President should 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 of the prisoner with the Prosecutor.

13. Addressing the preliminary issue of Mr. Jokić’s eligibility for release under Danish national law, I am satisfied based on the correspondence from the Danish authorities and the report prepared by the Danish Prison and Probation Service that Mr. Jokić is eligible for parole under Sections 38(1) and 38(5) of the Danish Criminal Code.

14. Evaluating Mr. Jokić’s eligibility for early release under Rule 125 of the Rules, I first consider the evidence of his rehabilitation. I initially note that much of the evidence of Mr. Jokić’s rehabilitation described in the Request appears to have occurred prior to sentencing, including his guilty plea and his vocal expression of regret and remorse from an early stage. Although evidence of this sort is compelling, I note that this behaviour was already considered to be a mitigating factor during the sentencing phase and should not necessarily be relied upon again at the early release stage. However, I consider that Mr. Jokić’s ongoing good behaviour during the course of his incarceration is evidence that his rehabilitation has been sincere and enduring. In particular, Mr. Jokić’s positive relationship with the prison staff and the other inmates in the textile shop is evidence that this rehabilitation has led to considerable capacity for social reintegration. As a result, I consider that Mr. Jokić’s model behaviour during his incarceration is indicative of ongoing rehabilitation and weighs heavily in favour of his application for early release.

15. I also consider that Mr. Jokić’s full and honest cooperation with the Prosecution and his willingness to testify against Pavle Strugar weighs in favour of his application for early release.

16. Finally, I note that Mr. Jokić has currently served more than two-thirds of his sentence. Considering that other convicted persons similarly situated have been granted early release after serving two-thirds of their sentences, this factor further supports his eligibility for early release.


17. 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 Appeals Chamber that remain Judges of the Tribunal and offered my views on this Request, as expressed above, for consideration by my colleagues.

18. All Judges consulted agreed with my assessment that in the circumstances of this case, early release should be granted. I note that Vice-President, Judge Parker, who is currently absent from the seat of the Tribunal has requested not to be consulted on applications for early release during his absence.

19. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am satisfied that the Request should be granted effective immediately. The Registrar is requested to transmit this decision to the relevant authorities of the Government of Denmark as soon as practicable, as prescribed in Article 10 of the Practice Direction.

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

Done this 1st day of September 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]