



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 Nos.: IT-98-32-ES
Date: 12 March 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 12 March 2010

PROSECUTOR

V.

MITAR VASILJEVIĆ

PUBLIC REDACTED VERSION

**PUBLIC REDACTED VERSION OF DECISION OF PRESIDENT ON APPLICATION
FOR PARDON OR COMMUTATION OF SENTENCE OF MITAR VASILJEVIĆ**

Office of the Prosecutor
Mr. Serge Brammertz

Republic of Austria

Mr. Mitar Vasiljević

This is a public redacted version of a confidential decision issued on 12 February 2010.

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 Austrian authorities that Mitar Vasiljević was eligible for conditional release under Austrian law as of 25 January 2010.
2. On 5 November 2009, the Registry informed me of a notification received from the Embassy of Austria—pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence (“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”)¹—that (a) Vasiljević would be eligible for conditional release under Austrian law as of 25 January 2010 and that the Director of the detention facility in Austria had filed an application for his early release; (b) Vasiljević “has shown very good behaviour during most of his prison term” (attaching supporting material); and (c) Austria would request at least four weeks to prepare for any early release.
3. On 17 December 2009, the Registry provided me with the Prosecution’s report of Vasiljević’s co-operation with the Office of the Prosecutor, pursuant to paragraph 3(c) of the Practice Direction.
4. On 14 January 2010, the Registry, pursuant to paragraphs 3(b) and 4 of the Practice Direction, transmitted to me two psychiatric/psychological reports in relation to Vasiljević during his detention.
5. On 29 January 2010, Vasiljević, having been furnished with copies of all the above materials, sent a response, stating that he had nothing to add to the matter of his early release.

I. Background

6. On 21 October 1998, an initial indictment was issued against Vasiljević, Milan Lukić, and Sredoje Lukić.² The indictment alleged that Vasiljević, as a member of Milan Lukić’s paramilitary unit, committed several counts of crimes against humanity and violations of the laws or customs of war.³ The Prosecution subsequently submitted two amended indictments.⁴ Vasiljević pleaded not

¹ IT/146/Rev.2, 1 September 2009.

² *Prosecutor v. Milan Lukić, Sredoje Lukić, and Mitar Vasiljević*, Case No. IT-98-32-I, Indictment, 21 October 1998 (“Indictment”).

³ Indictment, paras 12, 18–30, 32–36.

guilty in relation to all counts, and the case proceeded to trial.⁵ At the time of Vasiljević's trial, the Lukić cousins had not been transferred to the custody of the Tribunal, and their trial thus was ordered to be conducted separately.⁶

7. On 29 November 2002, Trial Chamber II convicted Vasiljević, as a co-perpetrator, of crimes in relation to the Drina River incident: (a) persecution, as a crime against humanity, for the murder of five Muslim men and the inhumane acts inflicted on two other Muslim men and (b) murder, as a violation of the laws or customs of war, for the murder of the same five Muslim men.⁷ He was sentenced to twenty years of imprisonment and credit was given for time already spent in detention.⁸

8. On 25 February 2004, the Appeals Chamber set aside the above convictions and re-convicted Vasiljević of the same charges, but this time through the mode of responsibility of aiding and abetting.⁹ For these convictions, Vasiljević was sentenced to fifteen years of imprisonment.¹⁰ He was given credit for his imprisonment since 25 January 2000.¹¹

9. On 25 May 2004, Austria was designated as the state in which Vasiljević was to serve his sentence.¹²

II. Discussion

10. 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

⁴ *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-I, Indictment, 6 January 2000; *Prosecutor v. Milan Lukić, Sredoje Lukić, and Mitar Vasiljević*, Case No. IT-98-32-I, Amended Indictment, 12 July 2001.

⁵ *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002, Annex I, para. 4 ("Trial Judgement").

⁶ Trial Judgement, para. 10.

⁷ *Ibid.* para. 307.

⁸ *Ibid.* paras 309–310.

⁹ *Prosecutor v. Mitar Vasiljević*, Judgement, Case No. IT-98-32-A, 25 February 2004, pp. 60–61 ("Appeal Judgement").

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Prosecutor v. Mitar Vasiljević*, Order Designating the State in Which Mitar Vasiljević is to Serve his Sentence, Case No. IT-98-32-ES, 25 May 2004.

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 cooperation of the prisoner with the Prosecution.

11. In coming to my decision upon whether pardon or commutation is appropriate, I have consulted the Judges of the Bureau and the Judges of the sentencing Chambers who remain Judges of the Tribunal.

12. The Embassy of Austria notified the Registry that, pursuant to the relevant Austrian legislation, Vasiljević was eligible for a conditional release on 25 January 2010, after having served two-thirds of his sentence.

13. The crimes for which Mr. Vasiljević was convicted are of a very high gravity: (a) persecution, as a crime against humanity, for the murder of five Muslim men and the inhumane acts inflicted on two other Muslim men in relation to the Drina River incident and (b) murder, as a violation of the laws or customs of war, for the murder of the same five Muslim men in relation to the Drina River incident. I consider that this is a factor that weighs against his early release.

14. As of 25 January 2010, Vasiljević had served two-thirds of his sentence. Considering that other convicted persons similarly situated have been eligible for early release after serving two-thirds of their sentence, I am of the view that this factor supports his eligibility for early release.

15. The Austrian Embassy states that Vasiljević "has shown very good behaviour during most of his prison term". The report of the correctional facility indicates that

[s]ince his arrival, [Vasiljević] has been working in the kitchen of the correctional institute and has achieved good results in his work. His conduct during his time in prison here has been described by the officials in charge as very good. During his time in prison, the prisoner committed two infractions.

In relation to the two infractions, the report of the correctional facility does not provide any substantive information, but I note that one resulted in a 25 euro fine and the other a reprimand, with no fine. Despite these infractions, the officials of the detention facility approved and presented Vasiljević's file to the appropriate authorities on the basis that the conditions for his early release had been fulfilled. I consider that Vasiljević has demonstrated good behaviour while serving his sentence and that this is evidence of his rehabilitation, which weighs in favour of his early release.

16. According to the Prosecution Report, [REDACTED].

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. Based upon the foregoing, [REDACTED]. I therefore consider that Vasiljević has provided some substantial cooperation with the Prosecution and that this weighs in favour of his early release.

21. Paragraph 3(b) of the Practice Direction envisages reports from enforcement states regarding the mental 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 125.¹³ The Austrian authorities have transmitted two psychiatric/psychological reports in relation to Vasiljević during his detention. These reports inform that Vasiljević does not display any signs of psychiatric/psychological difficulties and has never availed himself of the in-house psychiatric services at the detention facility. Based upon the fact that Vasiljević does not appear to be suffering any psychological difficulties, I consider that his mental condition is not a factor that bears upon his early release.

22. I note that a majority of my colleagues supports favourable action upon Vasiljević's application for early release, which is also endorsed by the Austrian authorities. One of my colleagues expressed concern over the fact that more information on the psychological assessment of Vasiljević was not available. However, based upon the information presented, and the fact that all the other Judges supported favourable action upon Vasiljević's early release, I did not consider that further information on this issue was necessary in order to decide the matter.

23. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am of the view that the early release of Vasiljević is appropriate, notwithstanding the gravity of the offences for which he was convicted.

¹³ *Prosecutor v. Biljana Plavšić*, Case Nos. IT-00-39 & IT-40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 11.

III. Disposition

24. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, and paragraphs 8 and 11 of the Practice Direction, I am satisfied that Mitar Vasiljević should be granted early release in accordance with Austrian law.

25. The Registrar is hereby directed to inform the Austrian authorities of this decision as soon as practicable, as prescribed in paragraph 11 of the Practice Direction.

26. This decision shall take effect four weeks from the date of its issuance, as requested by the Austrian authorities.

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



Judge Patrick Robinson
President

Dated this twelfth day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]