



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-02-65/1-ES  
Date: 9 October 2008  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Fausto Pocar, President  
**Registrar:** Mr. Hans Holthuis  
**Order of:** 9 October 2008

**PROSECUTOR**

v.

**PREDRAG BANOVIĆ**

*PUBLIC*

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**ORDER ISSUING A PUBLIC REDACTED VERSION OF THE 10 MARCH 2006  
PRESIDENT'S DECISION ON THE COMMUTATION OF PREDRAG BANOVIĆ'S  
SENTENCE**

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**Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Predrag Banović:**

Mr. Jovan Babić

**I, FAUSTO POCAR**, 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 (“International Tribunal”),

**NOTING** the “Decision of the President on Commutation of Sentence”, filed on 10 March 2006, in which I dismissed Predrag Banović’s request for commutation of sentence (“Decision”);


**CONSIDERING** that Paragraph 6 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”)<sup>1</sup> provides that the President may authorize disclosure of otherwise confidential information collected pursuant to Paragraphs 2 through 5 of the Practice Direction for the purpose of rendering a public decision;

**CONSIDERING** that some of the information contained in the Decision is to remain confidential;

**HEREBY ISSUE** a Public Redacted Version of the Decision.

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

Done this 9<sup>th</sup> day of October 2008,  
At The Hague,  
The Netherlands.

  
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Judge Fausto Pocar  
President

**[Seal of the International Tribunal]**

<sup>1</sup> IT/146/Rev. 1, 15 August 2006.



International Tribunal for the  
Prosecution of Persons Responsible  
for Serious Violations of International  
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**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Fausto Pocar, President of the Tribunal**

**Registrar: Mr. Hans Holthuis**

**Decision of: 10 March 2006**

**PROSECUTOR v. PREDRAG BANOVIĆ**

*PUBLIC REDACTED*

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**DECISION OF THE PRESIDENT ON COMMUTATION OF SENTENCE**

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**Counsel for Predrag Banović**

**Ms. Dijana Dukić**

1. On 28 October 2003, Predrag Banović (“Banović”) was sentenced to eight years of imprisonment following his entering of a guilty plea pursuant to a plea agreement with the Prosecution.<sup>1</sup> Banović pled guilty to being individually criminally responsible pursuant to Article 7(1) of the Statute of the Tribunal (“Statute”) for a crime against humanity, persecutions based on political, racial or religious grounds, punishable under Articles 5(h) of the Statute, for his participation in a joint criminal enterprise to persecute the Bosnian Muslims, Bosnian Croats and other non-Serbs in the Keraterm camp.<sup>2</sup> The acts underlying the persecutions included murder, beatings, confinement in inhumane conditions, harassment, humiliation and psychological abuse.<sup>3</sup>

2. Banović was arrested and transferred to the Tribunal on 9 November 2001 and, pursuant to Rule 101 (C) of the Rules of Evidence and Procedure (“Rules”), is entitled to credit for the time spent in detention pending his surrender to the Tribunal. Pursuant to this Rule, the Trial Chamber accorded Banović credit for the 716 days he had spent in detention prior to the passing of his sentence.<sup>4</sup> On 14 April 2004, the President of the Tribunal ordered Banović transferred to France to serve the sentence imposed.<sup>5</sup> On 28 July 2004 Banović was transferred.

3. Rule 123 of the Rules provides that, in accordance with Article 28 of the Statute, “if according to the law of the State of imprisonment, a convicted person is eligible for pardon or commutation of sentence, the State shall ... notify the Tribunal of such eligibility”. On 27 October 2005, the French authorities informed the Tribunal that Banović was eligible to have his sentence commuted under French law.<sup>6</sup> The Judge responsible for the enforcement of sentences advised that Banović’s status has been frozen since 1 January 2005, and that since

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<sup>1</sup> *Prosecutor v Predrag Banović*, Case IT-02-65/1-S, Sentencing Judgement, 28 October 2003 (“Sentencing Judgement”), para. 95.

<sup>2</sup> *Ibid.*, para. 9.

<sup>3</sup> *Ibid.* para. 7.

<sup>4</sup> *Ibid.* para. 94.

<sup>5</sup> Confidential Order Designating the State in Which Predrag Banović is to Serve his Sentence, 14 April 2004.

<sup>6</sup> Letter from Court of Appeals at Rouen, Patricia Piolet, Judge responsible for the enforcement of sentences, to The Prosecutor of the Republic, 27 September 2005 (“Judge Piolet Letter”); Letter from The Prosecutor of the Republic, Jean Berkani, to the Prosecutor General at the Court of Appeals at Rouen, forwarding the Judge Piolet Letter and requesting that the Judge Piolet Letter be forwarded to the Registry of the International Tribunal, 4 October 2004 (“Jean Berkani Letter”); Letter from Deputy Public Prosecutor, S. Guittard, to the Ministry of Justice, Division of Criminal Matters and Pardons, Office for International Assistance in Criminal Matters, forwarding the Judge Piolet Letter and the Jean Berkani Letter, 12 October 2005; Letter from the French Embassy in the Netherlands, Jean Michel, Chargé d’affaires *ad interim*, to Mr. Hans Holthuis, Registrar of the Tribunal, transmitting the above correspondence, 27 October 2005.

that date, he has received no credit in respect of a reduction of sentence. The Judge advised further that Banović was entitled to claim commutation of sentence of 21 months' under French law.<sup>7</sup>

4. Upon receipt of this notification, I requested the Registry to provide the relevant materials in accordance with 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) ("Practice Direction").<sup>8</sup> The Registry forwarded those reports to me on 8 December 2005.

5. [Redacted]

6. The reports of the French authorities are that since his arrival at the detention centre, Banović was found fit to undertake various functions and has taken remedial evening classes. He visits the social worker but is always accompanied by another detainee who can interpret for him as he does not speak French. His visits to the social worker are especially to be informed of the status of his case. However, this cannot be discussed as the language barrier makes it impossible for him to be spoken to alone. The report states that despite this difficulty, Banović has always behaved correctly.<sup>9</sup>

7. On 8 December 2005, the Registrar forwarded the report of the Prosecution and the documents received from the French authorities regarding the behaviour and psychological condition of Banović during his incarceration in France to Banović. Pursuant to Article 4 of the Practice Direction, Banović is afforded 10 days in which to comment on the above reports. In the letter of 8 December, the Registrar advised Banović that he had until 2 January 2006, to make his comments on the reports. No filing was received from Banović by that date. On 24 February, the Registry inquired with the French prison authorities whether Banović had received the reports. On 27 February, the French authorities advised that they had been received and served on Banović. The French authorities further advised that at the time of serving the documents, Banović was verbally questioned as to whether he had taken

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<sup>7</sup> Judge Piolet Letter.

<sup>8</sup> 7 April 1999.

<sup>9</sup> Report of Ms. Launay, Advisor for rehabilitation and probation; Penal Record of Predrag Banović from the Ministry of Justice, Office of Prison Administration; and Letter from the Warden to Ms. Piolet, Judge

any concrete steps with the Tribunal either directly, or through his lawyer. Banović advised that he was certain that his lawyer had taken the necessary steps with the Tribunal.<sup>10</sup>

8. Considering that Banović had not commented on the reports sent to him, the Registry was advised to contact his lawyer to ascertain whether he had waived his right to do so. The lawyer for Banović advised that he would like the opportunity to comment and would do so by Wednesday 8 March 2006. As no filing was made at that time, I consider that Banović has waived his right to respond to the reports.

9. Rule 124 provides that upon receiving notification of a State pursuant to Rule 123 of a convicted person being eligible for release, the President shall, in consultation with any permanent Judges of the sentencing Chamber and the members of the Bureau, consider whether pardon or commutation is appropriate. Pursuant to Article 5 of the Practice Direction, I have consulted these Judges on the notification of the French authorities with regard to Banović indicating my provisional views as to whether commutation of his sentence should be granted.

10. Upon that consultation, some of the Judges requested that they be given further details concerning the regime of commutation of sentence pursuant to French national law. I instructed the Registry to provide these details and was advised as follows: Article 721 and 721-1 of the Code of Criminal Procedure, 9 March 2004, are the provisions dealing with remission on penalties applicable to prisoners. Article 721 provides that convicted prisoners benefit from a remission of sentence, which is calculated from the duration of the sentence imposed and not from the sentence effectively served. The remission is of three months for the first year of imprisonment and two months for the following years. Article 721-1 provides that an additional remission may be granted to inmates who demonstrate serious signs of social readjustment. If the convicted person is not in a legal situation of a recidivist, the additional remission granted amounts to a maximum of three months per year of incarceration. It is granted in instalments if the incarceration is for more than one year.

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responsible for the enforcement of sentences, regarding the criminal status of detainee Predrag Banović, 29 August 2005.

<sup>10</sup> Letter from the Warden, Val De Reuil, to the attention of Sam Lowery, dated 27 February 2006.

11. The date on which Banović's remissions began to accrue was the date of his incarceration at the Tribunal, 9 November 2001, and the Judge responsible for enforcing sentences in France advised the Tribunal that Banović is entitled to claim 17 months automatic credit and a total of four additional months of reduced sentence for good conduct under French law while in detention.<sup>11</sup> If commutation is granted, Banović's sentence will be completed on 9 February 2008. If commutation is not granted, the sentence of eight years imposed by the Tribunal will be completed on 9 November 2009. This information was communicated to the Judges of the sentencing Chamber and the Bureau members. All Judges consulted communicated their views on the request of Banović and those views have been taken into account in rendering my decision.

11. In addition, I have considered Rule 125, incorporated by reference in Article 7 of the Practice Direction, which enumerates some of the factors to be taken into account when examining an application for early release, such as the gravity of the offence, demonstration of rehabilitation, any substantial cooperation with the Prosecution, treatment of similarly situated prisoners, and further criteria identified in prior orders and decisions relating to early release.

12. Having considered all the circumstances, I am not convinced that the commutation requested should be granted in this case. In his plea agreement, Banović admitted to being a guard at Keraterm Camp between 20 June and 6 August 1992, and participating in the mistreatment, beating and killing of detainees in the camp.<sup>12</sup> In particular, Banović admitted to being responsible for participating in five murders, and being responsible for the beating of twenty-five detainees and the shooting of two others.<sup>13</sup> In addition, the Trial Chamber found that he "abused his position of authority over the detainees while on duty, mistreating and beating them in total disregard for human life and dignity," and that this constituted an aggravating factor in sentencing.<sup>14</sup>

14. I have assessed the gravity of the crimes for which Banović was convicted against the evidence of rehabilitation [Redacted]. I find that there is no clear evidence of rehabilitation,

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<sup>11</sup> Judge Piolet Letter.

<sup>12</sup> Sentencing Judgement, para. 28.

<sup>13</sup> *Ibid.*, paras 29-30.

<sup>14</sup> *Ibid.*, para. 55.

[Redacted]. I have also considered the situation of similarly situated prisoners and am not persuaded that that consideration warrants my taking a different view of this case.

14. On the basis of the foregoing, commutation of sentence in this case is refused at this time. However, I note that this decision does not preclude Banović from making an application in the future for commutation of sentence in light of changed circumstances.

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

Done this 10<sup>th</sup> day of March 2006,  
At The Hague,  
The Netherlands.

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Fausto Pocar  
President of the International Tribunal

**[Seal of the Tribunal]**