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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-02-60-ES
Date: 3 February 2012
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 3 February 2012

PROSECUTOR

v.

VIDOJE BLAGOJEVIĆ

CONFIDENTIAL

**DECISION OF THE PRESIDENT ON
EARLY RELEASE OF VIDOJE BLAGOJEVIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Mr. Vidoje Blagojević:

Mr. Vladimir Domazet

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 (“International Tribunal”), am seised of “Defence of Mr. Vidoje Blagojević [sic] Request for Early Release” (“Request”), filed confidentially on 11 August 2011 pursuant to Article 28 of the Statute of the International Tribunal (“Statute”), Rules 124 and 125 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) and paragraph 2 of the relevant Practice Direction.¹

A. Background

2. Vidoje Blagojević’s (“Blagojević”) initial indictment was filed by the Office of the Prosecutor (“OTP”) on 30 October 1998.² He was charged under both Article 7(1) and Article 7(3) of the Statute of the following crimes: genocide and, in the alternative, complicity to commit genocide; extermination as a crime against humanity; murder as a crime against humanity and a violation of the laws or customs of war; and persecutions on political, racial and religious grounds as a crime against humanity.³ The Initial Indictment was amended on 27 October 1999, adding the charges of deportation as a crime against humanity and inhumane acts based on forcible transfer as a crime against humanity.⁴

3. Blagojević was arrested in Bosnia and Herzegovina on 10 August 2001⁵ and transferred to the United Nations Detention Unit the same day.⁶ He pled not guilty to all counts.⁷

4. On 15 January 2002, the Trial Chamber ordered the joinder of Blagojević’s indictment with those of Dragan Jokić and Dragan Obrenović,⁸ and on 22 January 2002, the OTP submitted an

¹ Request, pp. 1-2; 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.3, 16 September 2010 (“Practice Direction”).

² *Prosecutor v. Radislav Krstić et al.*, Case No. IT-98-33-I, Indictment, 30 October 1998 (“Initial Indictment”). *See also Prosecutor v. Vidoje Blagojević & Dragan Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005 (“Trial Judgement”), para. 863.

³ Initial Indictment, paras 24-31, 33-34. *See also* Trial Judgement, para. 863.

⁴ *Prosecutor v. Radislav Krstić et al.*, Case No. IT-98-33/I, Amended Indictment, 27 October 1999, paras 32-33.

⁵ Trial Judgement, para. 864.

⁶ *Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1-I, Order of the President Assigning a Case to a Trial Chamber, 16 August 2001, p. 2. *See also Prosecutor v. Vidoje Blagojević*, Case No. IT-98-33/1-PT, Order for Detention on Remand, 16 August 2001.

⁷ Trial Judgement, para. 864.

⁸ *Prosecutor v. Vidoje Blagojević et al.* Case No. IT-98-33/1-PT, Written Reasons Following Oral Decision of 15 January 2002 on the Prosecution’s Motion for Joinder, 16 January 2002, para. 3 and Disposition, p. 8.

amended indictment to reflect the joinder.⁹ The joinder indictment dropped the charge of genocide against Blagojević.¹⁰

5. Following an OTP motion, the Trial Chamber issued a decision on 17 May 2002 to join the case of Momir Nikolić to that of Blagojević, Dragan Obrenović, and Dragan Jokić.¹¹ On 27 May 2002, the OTP filed an amended joinder indictment against the four co-accused, and the charges against Blagojević remained the same.¹²

6. On 7 May 2003 and 20 May 2003, the Trial Chamber accepted guilty pleas in the case of Momir Nikolić¹³ and Dragan Obrenović,¹⁴ respectively.

7. On 17 January 2005, the Trial Chamber delivered its judgement, finding Blagojević guilty, under Article 7(1) of the Statute, of complicity to commit genocide, murder as a crime against humanity, murder as a violation of the laws or customs of war, persecutions as a crime against humanity, and inhumane acts. The Trial Chamber sentenced him to 18 years' imprisonment, with credit for time served since 10 August 2001.¹⁵

8. On 9 May 2007, the Appeals Chamber reversed Blagojević's conviction for complicity to commit genocide and reduced his sentence of 18 years' imprisonment to 15 years' imprisonment.¹⁶ Blagojević was transferred to Norway to serve the remainder of his sentence.¹⁷

B. The Request

9. Blagojević seeks early release from prison, having served two-thirds of his sentence as of 10 August 2011.¹⁸

10. On 11 August 2011, then President Patrick Robinson ("President Robinson") directed the Registry of the International Tribunal ("Registry") to request the relevant reports and observations from the Norwegian authorities and the OTP, pursuant to paragraphs 3(b) and (c) of the Practice

⁹ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-53-PT, Motion to File Joinder Indictment Pursuant to the Oral Directive of the Trial Chamber on 15 January 2002, 22 January 2002.

¹⁰ *Prosecutor v. Vidoje Blagojević et al.*, Case No IT-02-53-PT, Joinder Indictment, 22 January 2002.

¹¹ *Prosecutor v. Vidoje Blagojević et al.*, Case No IT-02-60-PT, Decision on Prosecution's Motion for Joinder, 17 May 2002, paras. 1, 19. See also *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Motion to File Amended Joinder Indictment Pursuant to Order of 17 May 2002, 27 May 2002, pp. 1-2.

¹² *Prosecutor v. Vidoje Blagojević et al.*, Case No IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

¹³ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Motion Hearing, 7 May 2003, T. 293-294.

¹⁴ *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-T, Motion Hearing, 21 May 2003, T. 560.

¹⁵ Trial Judgement, Disposition, p. 304.

¹⁶ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007, Disposition, p. 137.

¹⁷ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-ES, Order Designating the State in which Vidoje Blagojević is to Serve His Prison Sentence, 16 November 2007 (confidential and *ex parte*) ("Order Designating State"), pp. 1-2.

Direction.¹⁹ On 17 November 2011, the Registry forwarded to me: (i) a report from the OTP on any cooperation that the OTP has received from Blagojević; and (ii) a letter from the Norwegian Ministry of Justice and Police concerning Blagojević's eligibility for early release under Norwegian law, his custodial behaviour, and his mental condition during detention.²⁰ The Registry conveyed this information to Blagojević on 21 November 2011, in accordance with paragraph 4 of the Practice Direction, and Blagojević submitted a response dated 25 November 2011, pursuant to paragraph 5 of the Practice Direction ("Response").²¹

C. Applicable Law

11. 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 International 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 mirrors 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 International Tribunal, whether pardon or commutation of sentence is appropriate. Rule 125 of the Rules provides that, in determining whether pardon or commutation is appropriate, the President shall take into account, *inter alia*: (i) the gravity of the crime or crimes for which the prisoner was convicted; (ii) the treatment of similarly-situated prisoners; (iii) the prisoner's demonstration of rehabilitation; and (iv) any substantial cooperation of the prisoner with the OTP.

12. Paragraph 2 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release if he or she believes that he or she is eligible therefor. When such a petition is made, the procedures in the Practice Direction shall apply *mutatis mutandis*.

13. Article 3(2) of the Agreement between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia

¹⁸ Request, pp. 2-3.

¹⁹ Memorandum from President Patrick Robinson to the Registrar, Mr. John Hocking, 11 August 2011.

²⁰ Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 17 November 2011, transmitting Memorandum from the OTP to the Registrar, Mr. John Hocking, 25 August 2011 ("Memorandum from the OTP") and Letter from the Royal Norwegian Ministry of Justice and the Police, 4 November 2011 ("Letter from Norwegian Ministry of Justice").

²¹ Memorandum from the Registrar, Mr. John Hocking, to President Theodor Meron, 2 December 2011, transmitting Letter from Mr. Vidoje Blagojević to the Registry, 25 November 2011.

("Enforcement Agreement")²² provides that the conditions of imprisonment shall be governed by the law of Norway, subject to the supervision of the International Tribunal. Article 8 of the Enforcement Agreement sets out the procedure to be followed when a convicted person becomes eligible for pardon or commutation of sentence.

D. Discussion

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

1. Eligibility under Norwegian Law

15. According to the Norwegian authorities, under Norwegian law, a person can be released on probation after having served two-thirds, and not less than 60 days, of his or her sentence. A person will not be released on probation if, after an overall assessment, such release is not considered advisable. In making this determination, particular weight is attached to the convicted person's conduct while serving the sentence and whether there is reason to assume that the convicted person will commit new crimes during the probation period. In the case of Blagojević, the authorities state that he applied for release on probation on 23 March 2010, served two-thirds of his sentence as of 10 August 2011, and was ultimately denied release due to "the serious crimes that Mr. Blagojevic [*sic*] was convicted for, the universal sense of justice and the fact that there are 5 years left before the sentence is being completed." They further note that Blagojević's appeal of this decision will not be reviewed.²³

16. I consider that the Norwegian authorities' denial of Blagojević's application for release on probation, despite the fact that Blagojević was eligible to be considered for such release under Norwegian law, is a factor that weighs against his early release.

2. Treatment of Similarly-Situated Prisoners

17. It is the practice of the International Tribunal to consider convicted persons eligible for early release when they have served at least two-thirds of their sentences.²⁴ I note that a convicted person

²² Agreement Between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, 24 April 1998.

²³ Letter from Norwegian Ministry of Justice, pp. 1-2.

²⁴ See e.g., *Prosecutor v. Vinko Martinović*, Case No. IT-98-34-ES, Decision of the President on Early Release of Vinko Martinović, 16 December 2011, para. 12; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 21 October 2011, para. 15; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011, para. 13; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 22 August

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

3. Gravity of the Crimes

18. With regard to the gravity of Blagojević's crimes, I note the Trial Chamber's finding that the crime of persecutions is "particularly grave because it incorporates manifold acts committed with discriminatory intent."²⁵ I also observe that the acts underlying Blagojević's conviction for persecutions include murder, cruel and inhumane treatment, terrorising the civilian population and forcible transfer.²⁶

19. The Trial Chamber observed that "[t]he campaign of persecutions ... was enormous in scale and encompassed a criminal enterprise to murder over 7,000 Bosnian Muslim men and forcibly transfer more than 25,000 Bosnian Muslims."²⁷ The Trial Chamber also noted the vulnerability of the victims, who were "all in a position of helplessness" and included women, children, and elderly persons, as well as captured and wounded men.²⁸ The Trial Chamber further noted the impact of the Srebrenica events, including the disappearance of family members, on the lives of the families, which has created what is known as the "Srebrenica syndrome."²⁹

20. At the same time, the Trial Chamber considered that Mr. Blagojević's role in the commission of the crimes was limited. In this regard, the Trial Chamber stated:

835. In relation to Vidoje Blagojević, the Trial Chamber finds that he was not one of the major participants in the commission of the crimes. The Trial Chamber has found that while commanders of the Main Staff and the MUP played the key roles in designing and executing the common plan to kill thousands of Bosnian Muslim men and to forcibly transfer over 30,000 Bosnian Muslims, Vidoje Blagojević's contribution to the commission of the crimes was primarily through his substantial assistance to the forcible transfer – assistance which the Trial Chamber found was rendered without him having knowledge of the organised murder operation – and due to his knowledge of the objective to eliminate the Bosnian Muslim enclave of Srebrenica.³⁰

The Trial Chamber further stated:

848. The Trial Chamber has found that the role of Vidoje Blagojević in relation to the crime for which he has been convicted was not that of a commanding officer issuing orders, but the role of a commander who facilitated the use of Bratunac Brigade personnel and assets under his command.

2011, para. 12; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 15 July 2011, para. 22.

²⁵ Trial Judgement, para. 834.

²⁶ Trial Judgement, paras 752-759.

²⁷ Trial Judgement, para. 837.

²⁸ Trial Judgement, para. 844.

²⁹ Trial Judgement, para. 845.

³⁰ Trial Judgement, para. 835 .

Therefore, the Trial Chamber considers the role of Vidoje Blagojević in the commission of the crimes to have been a limited one.³¹

21. I consider that although Blagojević's role in the commission of the crimes for which he was convicted was limited, the gravity of the crimes, which relate to the Srebrenica genocide, is nevertheless extremely high. I therefore consider this a factor that weighs against his early release.

4. Demonstration of Rehabilitation

22. In addressing the convicted person's rehabilitation, paragraph 3(b) of the Practice Direction provides that the Registry shall request reports and observations from the relevant authorities in the enforcing State regarding the behaviour of the convicted person during his or her period of incarceration, the general conditions under which he or she was imprisoned, and his or her psychological condition during incarceration. A letter from the Norwegian Ministry of Justice and Police states that according to the Governor of the prison where Blagojević is serving his sentence, "Blagojevic's [*sic*] behavior in the prison has been very good. He has not caused any breaches of rules or regulations during his detention."³² The letter also states that Blagojević has not had any psychiatric or psychological evaluations during his detention.³³

23. I consider that Blagojević's "very good" behaviour during detention demonstrates a degree of rehabilitation that weighs in favour of his early release.

5. Cooperation with the OTP

24. Paragraph 3(c) of the Practice 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 OTP and the significance thereof. According to the OTP, "Mr. Blagojević did not cooperate with the OTP in the course of his trial or appeal. Nor has he cooperated with the OTP at any point whilst serving his sentence".³⁴ I note, however, that the OTP did not indicate whether it ever sought such cooperation. I further note that there is no obligation on an accused or convicted person to cooperate with the OTP absent a plea agreement to do so. Based upon the foregoing, I place neither negative nor positive weight on this factor.

³¹ Trial Judgement, para. 848.

³² Letter from Norwegian Ministry of Justice, p. 2.

³³ Letter from Norwegian Ministry of Justice, p. 2.

³⁴ Memorandum from the OTP, para. 2.

6. Conclusion

25. I consider that, while Blagojević has demonstrated a degree of rehabilitation and has served almost six months beyond two-thirds of his sentence, his crimes are of extremely high gravity – a factor that the Norwegian authorities took into account in denying his application for release on parole. In these circumstances, taking into account the situation of similarly-situated prisoners, I am of the view that Blagojević's Request should be denied at this time but that he should be granted early release effective 31 December 2012.

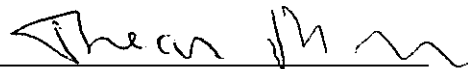
E. Disposition

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 8 of the Enforcement Agreement, Blagojević is hereby GRANTED early release effective 31 December 2012.

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

28. The Registrar is hereby DIRECTED to lift the confidentiality of this decision once Blagojević has been released.

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



Judge Theodor Meron
President

Dated this 3rd day of February 2012,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]