



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-02-60-ES
IT-05-88-R77.1-ES
Date: 13 January 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision of: 13 January 2010

PROSECUTOR V. DRAGAN JOKIĆ

AND

CONTEMPT PROCEEDINGS AGAINST DRAGAN JOKIĆ

PUBLIC REDACTED VERSION

**PUBLIC REDACTED VERSION OF DECISION OF PRESIDENT ON APPLICATION
FOR PARDON OR COMMUTATION OF SENTENCE OF DRAGAN JOKIĆ
OF 8 DECEMBER 2009**

Office of the Prosecutor
Mr. Serge Brammertz

Counsel for Dragan Jokić
Ms. Branislava Isailović

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, pursuant to Article 28 of the Statute of the Tribunal (“Statute”) and Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), Dragan Jokić was eligible for conditional release under Austrian law as of 6 October 2008.¹
2. The Austrian authorities have informed the Registry that Jokić filed an application for early release on 30 June 2009.² The Registry proceeded to request the relevant documentation from the Austrian authorities and the Office of the Prosecutor, in accordance with paragraphs 3(b) and 3(c) 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”).³ On 21 October 2009, the Registry submitted a memorandum from the Office of the Prosecutor regarding Jokić’s cooperation with the Office of the Prosecutor, as required under paragraph 3(c) of the Practice Direction.⁴ The Registry also indicated that the Prosecution report had been translated into the language of the convicted person and would be forwarded to him and that the Registry was still awaiting behavioural and medical reports from the Austrian authorities.⁵
3. On 19 November 2009, the Registry submitted the behavioural and medical reports from the Austrian authorities, pursuant to paragraph 3(b) of the Practice Direction.⁶
4. On 3 December 2009, Jokić made submissions regarding this matter.⁷

I. Background

5. The initial indictment against Jokić was issued on 28 May 2001.⁸ The indictment alleged that in July 1995 Jokić was the Chief of Engineering of the 1st Zvornik Infantry Brigade and held

¹ Memorandum of 1 October 2009 from the Registry to the President of the Tribunal (“Memorandum of 1 October 2009”).

² The Austrian authorities have also requested four weeks notice of any favourable action taken on Jokić’s early release. Memorandum of 1 October 2009.

³ IT/146/Rev.2, 1 September 2009.

⁴ Memorandum of 21 October 2009 from the Registry to the President of the Tribunal (“Memorandum of 21 October 2009”).

⁵ Memorandum of 21 October, paras 3–4.

⁶ Memorandum of 19 November 2009 from the Registry to the President of the Tribunal (“Memorandum of 19 November 2009”).

⁷ *Prosecutor v. Jokić*, Case No. IT-02-60-ES, confidential Submission Regarding the Conditional Release of Mr Dragan Jokić with Confidential Annex A, 3 December 2009 (“Jokić Submissions”).

⁸ *Prosecutor v. Jokić*, Case No. IT-01-44-I, Indictment, 28 May 2001.

the rank of Major. From the morning of 14 July 1995 through the morning of 15 July 1995, Jokić was the designated representative of the Brigade Commander or Chief of Staff/Deputy Commander. The indictment contained four counts, charging Jokić with extermination, murder, and persecution of thousands of Bosnian Muslims.

6. Jokić voluntarily surrendered to the Tribunal on 15 August 2001.⁹ On 15 January 2002, the Trial Chamber rendered an oral decision, granting a Prosecution motion for joinder of the case of Blagojević and Obrenović with Jokić's case, followed by written reasons.¹⁰ On 17 May 2002, the Trial Chamber granted a joinder of Nikolić with Blagojević, Obrenović, and Jokić.¹¹ Jokić was then indicted with Nikolić, Blagojević, and Obrenović in an amended joinder indictment,¹² which contained four counts against Jokić, alleging extermination, murder, and persecutions.¹³ Following the guilty pleas of Nikolić and Obrenović, the proceedings were separated, and Jokić and Blagojević remained the only accused on that indictment.¹⁴ The Prosecutor filed the third joinder indictment on 26 May 2003.¹⁵

7. On 17 January 2005, Trial Chamber I convicted Jokić of extermination, as a crime against humanity; murder, as a violation of the laws or customs of war; and persecutions, as a crime against humanity. He was sentenced to nine years of imprisonment.¹⁶ On 9 May 2007, the Appeals Chamber dismissed Jokić's appeal in its entirety.¹⁷ On 10 October 2007, Austria was designated as the state in which Jokić would serve his sentence.¹⁸

8. On 29 August 2007, Jokić had been subpoenaed to appear before the Trial Chamber to give oral testimony in the case of *Prosecutor v. Popović et al.*¹⁹ Jokić argued that he was unable to

⁹ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005 ("Trial Judgement"), p. 312.

¹⁰ *Prosecutor v. Blagojević, Obrenović, and Jokić*, Case Nos. IT-98-33/1-PT, IT-01-43-PT, & IT-01-44-PT, Written Reasons Following Oral Decision of 15 January 2002 on the Prosecution's Motion for Joinder, 16 January 2002.

¹¹ *Prosecutor v. Nikolić, Blagojević, Obrenović, and Jokić*, Case Nos. IT-2-53-PT & IT-56-PT, Decision on Prosecution's Motion for Joinder, 17 May 2002.

¹² *Prosecutor v. Blagojević, Obrenović, Jokić, and Nikolić*, Case No. IT-02-60-PT, Amended Joinder Indictment, 27 May 2002.

¹³ Trial Judgement, para. 15.

¹⁴ Trial Judgement, paras 876–77.

¹⁵ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Third Amended Joinder Indictment, 26 May 2003.

¹⁶ Trial Judgement, p. 305.

¹⁷ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007 ("Appeal Judgement"), p. 137. Jokić's sentence was imposed subject to credit given under Rule 101(C) of the Rules for the period already spent in detention in the United Nations Detention Unit ("UNDU"). At sentencing and taking into account the time of his provisional release, Jokić had been detained in the UNDU for a total of 917 days. Trial Judgement, p. 312.

¹⁸ *Prosecutor v. Jokić*, Case No. IT-02-60-ES, Order Designating the State in Which Dragan Jokić is to Serve His Prison Sentence, 10 October 2007.

¹⁹ *Contempt Proceedings Against Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 March 2009 ("Contempt Trial Judgement"), para. 2.

testify [REDACTED].²⁰ On 27 March 2009, the Trial Chamber convicted Jokić of contempt of the Tribunal, finding that [REDACTED] and that Jokić had willfully interfered with the administration of justice and deprived the Trial Chamber of relevant evidence in the *Popović et al.* trial. The Trial Chamber imposed a sentence of four-months of imprisonment to run consecutively to his other sentence.²¹ The Appeals Chamber affirmed the Trial Chamber's decision.²² It was decided that Mr. Jokić would serve the new sentence for contempt in Austria.²³

9. On 22 December 2008, Jokić was transferred to Austria to serve his sentence of nine years' imprisonment.²⁴

II. Discussion

10. Under Article 28 of the Statute, a convicted person becomes eligible for pardon or commutation of sentence pursuant to the applicable law of the state in which he or she is imprisoned. Following Jokić's application for early release on 30 June 2009, the Austrian authorities notified the Registry that, pursuant to the relevant Austrian legislation, he had become eligible for a conditional release on 6 October 2008, after having served two-thirds of his combined, consecutive sentences. Austria further informed the Registry that Jokić had shown "very good behavior during detention" and recommended that he be released.²⁵

11. Pursuant to Rule 124 of the Rules and Article 28 of the Statute, upon notification from the enforcement state regarding eligibility for early release, the President of the Tribunal, in consultation with the Bureau and the Judges of the sentencing Chamber who remain Judges of the Tribunal, will decide whether pardon or commutation is appropriate "on the basis of the interests of justice and the general principles of law." 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 as well as any substantial cooperation of the prisoner with the Prosecution."

²⁰ Contempt Trial Judgement, para. 3.

²¹ Contempt Trial Judgement, paras 24–26, 37, 40, 42.

²² *Contempt Proceedings Against Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009 ("Contempt Appeal Judgement"), p. 18.

²³ *Contempt Proceedings Against Jokić*, Case No. IT-05-88-R77.1-ES, Order Designating State in Which Dragan Jokić is to Serve His Sentence, 6 July 2009, para. 7.

²⁴ Jokić's transfer to Austria was somewhat delayed due to the contempt proceedings.

²⁵ Memorandum of 1 October 2009.

12. 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.

13. The crimes for which Jokić was convicted are of a high gravity: extermination, as a crime against humanity; murder, as a violation of the laws or customs of war; and persecutions, as a crime against humanity. Contempt of the Tribunal is also a serious crime. Jokić, himself, acknowledges that he has been convicted of serious crimes, although he makes the point that contempt is of a lesser gravity than those specifically enumerated in the Statute.²⁶ I consider that the seriousness of the crimes for which Jokić has been convicted, including contempt, are factors weighing against his early release.

14. As of 6 October 2008, Jokić had served two-thirds of his sentences. Considering that other convicted persons similarly situated have been eligible for early release after serving two-thirds of their sentence, this factor supports his eligibility for early release.²⁷

15. In respect of rehabilitation, I note that the behavioural report indicates that Jokić's conduct in the ward has been described by the officer in charge as "quiet and proper". Jokić has committed no offences during his incarceration. Moreover, the Austrian authorities recommend his early release.²⁸ I acknowledge the views expressed by some of my colleagues that Jokić's good behaviour while in detention either should not be considered an indication of his rehabilitation or should not overcome his failure to obey the subpoena in the *Popović et al.* case, which thus deprived the Trial Chamber of valuable evidence and demonstrates a lack of rehabilitation. However, I am of the view that Jokić's good behaviour while serving his sentence is indeed evidence of his rehabilitation and that his refusal to testify in the *Popović et al.* case and subsequent conviction for contempt do not necessarily reflect a lack of rehabilitation, especially due to the fact that [REDACTED]. I therefore consider that Mr. Jokić has shown signs of rehabilitation and that this weighs in favour of his early release.

16. According to the Prosecution report, Jokić has not cooperated with the Office of the Prosecutor in "any meaningful way." The Prosecution notes that, during his interviews prior to his arrest, Jokić was "less than candid" about his participation in the crimes at Srebrenica and has not given any other interviews to the Prosecution, either before or after his trial. He also refused to

²⁶ Jokić Submissions, paras 13–15.

²⁷ *Prosecutor v. 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 ("*Plavšić Decision*"), para. 10. See also Jokić Submissions, paras 16–17.

²⁸ Memorandum of 1 October 2009; see also Jokić Submissions, paras 18–20.

testify in the *Popović et al.* case, which, according to the Prosecution report, “deprived the Trial Chamber of key evidence on several significant points.”²⁹

17. Some of my colleagues have expressed the view that Jokić’s failure to cooperate with the Prosecution should be considered an important factor against his early release. However, I note that the Trial Chamber in the *Blagojević and Jokić* case considered that Jokić had cooperated with the Prosecution by appearing for two interviews with the Prosecution and voluntarily surrendering to the Tribunal and that this therefore mitigated his sentence. The Prosecution challenged this finding, but the Appeals Chamber held that the Trial Chamber had committed no error.³⁰ In upholding the Trial Chamber, the Appeals Chamber held that an accused is not obliged to assist the Prosecution in proving its case and that any evidence of willingness on the part of an accused to be voluntarily interviewed by the Prosecution is evidence of a degree of cooperation, which he is entitled to withhold without adverse inference being drawn therefrom.³¹ In light of the foregoing, although the Prosecution has reported a lack of any substantial cooperation from Jokić, I do not consider that this should hold sway among the relevant factors to be considered.

18. [REDACTED]

19. I note that a majority of my colleagues support favourable action upon Jokić’s application for early release, which is also endorsed by the Austrian authorities.

20. 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 Jokić is appropriate, notwithstanding the gravity of the offences for which he was convicted.

III. Disposition

21. 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 Dragan Jokić should be granted early release in accordance with Austrian law.

22. 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.

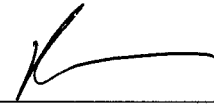
²⁹ Memorandum of 21 October 2009.

³⁰ Appeal Judgement, paras 343–344. *See also* Jokić Submissions, paras 21–23.

³¹ Appeal Judgement, para. 344 (quoting *Prosecutor v. Stanišić*, Case No. IT-03-69-AR65.1, Decision on Prosecution’s Appeal Against Decision Granting Provisional Release, 17 October 2005, para. 14).

23. 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 thirteenth day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]