



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-96-23/2-ES
Date: 10 June 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 10 June 2010

PROSECUTOR

V.

DRAGAN ZELENOVIĆ

PUBLIC

**DECISION OF PRESIDENT ON APPLICATION FOR PARDON OR
COMMUTATION OF SENTENCE OF DRAGAN ZELENOVIĆ**

Office of the Prosecutor
Mr. Serge Brammertz

The Kingdom of Belgium

Mr. Dragan Zelenović

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 Kingdom of Belgium that Mr. Dragan Zelenović will become eligible for conditional release, pursuant to Article 25.2 of the Law of Belgium, as of 21 August 2010.

I. Background

2. On 19 May 2010, the Registry informed me of a notification received from the Ministry of Justice of Belgium—pursuant to Article 28 of the Statute of the Tribunal (“Statute”), Rule 123 of the Rules of Procedure and Evidence of the Tribunal (“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 Mr. Zelenović, pursuant to Article 25.2 of the Law of Belgium, will become eligible for conditional release as of 21 August 2010, after having served one-third of his prison sentence.²

3. Pursuant to paragraph 3(b) of the Practice Direction, the Registry has provided me with behavioural reports from the Belgian authorities regarding Mr. Zelenović.³

4. Pursuant to paragraph 3(c) of the Practice Direction, the Registry has provided me with the Prosecution’s report of any cooperation Mr. Zelenović provided to the Office of the Prosecutor and the significance thereof.⁴

5. Pursuant to paragraph 5 of the Practice Direction, all of the above materials were furnished to Mr. Zelenović on 4 June 2010.⁵

II. Proceedings Before the Tribunal

6. The initial indictment of 18 June 1996 against Mr. Zelenović was confirmed on 26 June 1996 and included seven other persons.⁶ The indictment was amended on 5 October 1999.⁷ A

¹ IT/146/Rev.2, 1 September 2009.

² Letter from the Belgian Authorities to the President, 7 May 2010.

³ Letter from the Belgian Authorities to the Registrar, 28 May 2010; Letter from the Belgian Authorities to the Registrar, 1 June 2010.

⁴ Memorandum of 3 June 2010.

⁵ Memorandum from the Deputy Registrar to the President, 4 June 2010.

⁶ *Prosecutor v. Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovać, Zoran Vuković, Dragan Zelenović, Dragoljub Kunarac, Radovan Stanković*, Case No. IT-96-23, Indictment, 19 June 1996, and Review of Indictment Pursuant to Article 19(1) of the Statute, 26 June 1996.

redacted version of the amended indictment (“Indictment”) was filed on 20 April 2001.⁸ The Indictment charged Mr. Zelenović with seven counts of torture and rape as crimes against humanity and seven counts of torture and rape as violations of the laws or customs of war.⁹

7. Mr. Zelenović lived in hiding until he was arrested on 22 August 2005.¹⁰ On 8 June 2006, Mr. Zelenović was transferred to Bosnia and Herzegovina. On 10 June 2006, he was transferred to the Tribunal and detained at the United Nations Detention Unit (UNDU).¹¹

8. On 14 December 2006, the Prosecution and the Defence jointly filed a motion for consideration of a plea agreement pursuant to Rule 62 *ter*.¹² According to this plea agreement, Mr. Zelenović agreed to plead guilty to seven counts of crimes against humanity, three of which charged torture under Article 5(f) of the Statute and four of which charged rape under Article 5(g) of the Statute.¹³ In the plea agreement, Mr. Zelenović agreed to cooperate with the Prosecution, including by testifying at any trial before the Tribunal, and the Prosecution agreed to withdraw the remaining charges against him at the time of the Trial Chamber’s acceptance of the guilty plea.¹⁴ Following a hearing on 16 January 2007, at which the Trial Chamber requested the parties to clarify certain points of the plea agreement, the parties filed an annex thereto, consisting of a redacted and revised copy of the Indictment reflecting the charges and underlying incidents to which Mr. Zelenović had agreed to plead guilty.¹⁵

9. On 17 January 2007, Mr. Zelenović pleaded guilty to seven counts of rape and torture as crimes against humanity.¹⁶ On 4 April 2007, the Trial Chamber accepted the guilty plea, and found Mr. Zelenović guilty in accordance with his pleas.¹⁷ For his crimes, Mr. Zelenović was sentenced

⁷ *Prosecutor v. Gojko Janković, Janko Janjić, Zoran Vuković, Dragan Zelenović, Radovan Stanković*, Case No. IT-96-23-I, Amended Indictment, 7 October 1999.

⁸ *Prosecutor v. Gojko Janković, Dragan Zelenović, Radovan Stanković*, Case No. IT-96-23/2-I, Redacted Version of the Amended Indictment, 20 April 2001 (“Indictment”). Janko Janjić was excluded from this redacted version as he had died in the meantime. On 16 February 2000, the Trial Chamber had ordered the severance of the case against Zoran Vuković. *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-PT & IT-96-23/1-PT, Order for Severance and Combined Case Number, 16 February 2000.

⁹ Indictment, paras 5.9, 6.14, 7.26, 9.3.

¹⁰ *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-S, Sentencing Judgement, 4 April 2007, para. 4 (“Sentencing Judgement”).

¹¹ Sentencing Judgement, para. 4.

¹² Sentencing Judgement, para. 10; Joint Motion for Consideration of Plea Agreement between Dragan Zelenović and the Office of the Prosecutor Pursuant to Rule 62 *ter*, 14 December 2006 (“Plea Agreement”).

¹³ Sentencing Judgement, para. 10; Plea Agreement, para. 2.

¹⁴ Sentencing Judgement, para. 10; Plea Agreement, paras 3, 9.

¹⁵ Sentencing Judgement, paras 11-12; Joint Submission of Annex to Plea Agreement, 16 January 2007.

¹⁶ Sentencing Judgement, para. 13.

¹⁷ Sentencing Judgement, paras 13, 71.

to 15 years' imprisonment and was given credit for the time already served since 22 August 2005, pursuant to Rule 101(C) of the Rules.¹⁸

10. On 31 October 2007, the Appeals Chamber dismissed Mr. Zelenović's appeal and affirmed his 15-year sentence.¹⁹

11. On 27 February 2008, Mr. Zelenović was transferred to Belgium to serve the remainder of his sentence.²⁰

III. Discussion

12. 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 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.

13. On 7 May 2010, the Belgian authorities notified the Tribunal that, according to Belgian law, Mr. Zelenović would be eligible for conditional release as of 21 August 2010, having served one-third of his custodial sentence.²¹ Despite the fact that Mr. Zelenović will have served one-third of his sentence on 21 August 2010 and will thus be eligible for conditional release under domestic Belgian law, the practice of the Tribunal is to consider the eligibility of a convicted person only after he has served two-thirds of his sentence.²² Therefore, taking into account the treatment of

¹⁸ Sentencing Judgement, paras 71-72.

¹⁹ *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-A, Judgement on Sentencing Appeal, 31 October 2007, sec. V.

²⁰ *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Order Designating the State in Which Dragan Zelenović Is to Serve His Prison Sentence, 7 December 2007.

²¹ Memorandum of 19 May 2010.

²² See, e.g., *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010, para. 13; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, 23 April 2010, paras 12-13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; *Prosecutor v. Dragan Jokić*, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Public Redacted Version of Decision of President on Case No. IT-96-23/2-ES

similarly-situated prisoners, I am of the view that the amount of time that Mr. Zelenović has served for his crimes does not militate in favour of pardon or commutation of sentence.

14. I note that Mr. Zelenović will have served two-thirds of his sentence on approximately 21 August 2015.

15. In respect of the gravity of Mr. Zelenović's offences, I note that he was convicted of the following crimes:

- a. aiding and abetting the rape of victim FWS-75 as a crime against humanity;
- b. committing the torture and rape of victim FWS-87 as crimes against humanity;
- c. coperpetrating the rape of victim FWS-87 and two unidentified women as crimes against humanity;
- d. committing (three times) the rape and torture of victim FWS-75 and victim FWS-87 as crimes against humanity;²³
- e. committing the rape and torture of victim FWS-87 as crimes against humanity;²⁴
- f. coperpetrating the rape of victim FWS-75 and two unidentified women as crimes against humanity; and
- g. committing the rape of victim FWS-87 as a crime against humanity.²⁵

16. These crimes were committed in the Foča Municipality and its surrounding municipalities in Bosnia and Herzegovina, beginning on or about 3 July 1992 until about 3 August 1992.²⁶ After Serb forces completed a takeover of Foča and its surrounding municipalities in July 1992, Mr. Zelenović, a soldier and *de facto* military policeman, committed the crimes during and following interrogations of Muslim women at a temporary detention facility named Buk Bijela, and in three other locations.²⁷ I find it instructive to quote the Sentencing Judgement (footnotes removed):

Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 13 January 2010, para. 14; *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10.

²³ Sentencing Judgement, para. 13.

²⁴ Sentencing Judgement, para. 13.

²⁵ Sentencing Judgement, para. 13.

²⁶ Sentencing Judgement, paras 17-28.

²⁷ Sentencing Judgement, paras 17-28.

The crimes which Mr. Zelenović has pleaded guilty to were part of a pattern of sexual assaults that took place over a period of several months, and in four different locations, and involved multiple victims. Mr. Zelenović took direct part in the sexual abuse of victims in a number of detention facilities, including the multiple rape of victims FWS-75 and FWS-87. Mr. Zelenović has been found guilty of personally committing nine rapes, eight of which were qualified as both torture and rape. He has also been found guilty of two instances of rape through co-perpetratorship, one of which was qualified as both torture and rape, and one instance of torture and rape through aiding and abetting. Four of the instances of sexual abuse were gang rapes, committed together with three or more other perpetrators. In one of those instances he participated as aider and abettor in the rape of FWS-75 by at least ten soldiers, which was so violent that the victim lost consciousness. He participated as co-perpetrator in an incident during which the victim was threatened with a gun to her head while being sexually abused.²⁸

17. Based upon the foregoing, I am of the view that the gravity of Mr. Zelenović's offences is high and that this is a factor that weighs against pardon or commutation of sentence.

18. Paragraph 3(b) of the Practice Direction states that the Registry shall request reports and observations from the relevant authorities in the enforcement state as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned. The 1 June 2010 report from the Belgian authorities informs the Tribunal that (a) Mr. Zelenović's conduct while in detention has been "above reproach", (b) he has no disciplinary reports on file, (c) he is studying French, (d) he completed the vocational training school, (e) he has worked at the "servery" to the satisfaction of the rehabilitation staff, (f) he is staying on a "workers' floor" and enjoys a more progressive regimen, and (g) the Office of Foreign Nationals has indicated that he will be accommodated at the time of release with a view towards repatriation, if possible.²⁹ Based upon the foregoing, Mr. Zelenović has shown good behaviour while serving his sentence, and there are indications of his rehabilitation. I therefore am of the view that he has demonstrated some rehabilitation, which weighs in favour of pardon or commutation of sentence.

19. 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 Office of the Prosecutor and the significance thereof. According to the Prosecution report, the Prosecution has received no cooperation from Mr. Zelenović. However, the report does not indicate whether the Prosecution has sought any cooperation from Mr. Zelenović.³⁰ Under these circumstances, I consider the factor of cooperation to be a neutral one.

²⁸ Sentencing Judgement, para. 38.

²⁹ Letter from the Belgian Authorities to the Registrar, 28 May 2010.

³⁰ Memorandum of 3 June 2010.

20. While Mr. Zelenović has displayed some evidence of rehabilitation, there remain significant factors that weigh against granting him pardon or commutation of his sentence, including the high gravity of his offences and the fact that he has served only one-third of his sentence. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am of the view that Mr. Zelenović should not be granted pardon or commutation of his sentence.

21. I note that my colleagues unanimously share my view that Mr. Zelenović's application should be denied.

22. In light of the urgency of this matter, I have decided to issue my decision on Zelenović's application in advance of receiving his response to the materials, which were sent to him on 4 June 2010.³¹ However, I will order below that, if Mr. Zelenović wishes to request that I set aside my decision in light of any arguments he may choose to advance, he may do so within seven days of receipt of this decision, and I will entertain such a request.

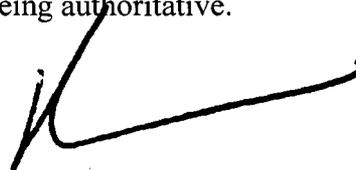
IV. Disposition

23. 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, Mr. Zelenović is hereby DENIED pardon or commutation of sentence.

24. In the event that Mr. Zelenović wishes to request that I set aside my decision in light of any arguments he may choose to advance, he may do so within seven days of receipt of this decision.

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

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



Judge Patrick Robinson
President

Dated this tenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

³¹ Memorandum from the Deputy Registrar to the President, 4 June 2010.