



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*

---

**ORDER ISSUING A PUBLIC REDACTED VERSION OF 4 SEPTEMBER 2007  
DECISION ON THE COMMUTATION OF PREDRAG BANOVIĆ'S SENTENCE**

---

**Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Predrag Banović:**

Mr. Jovan Babić

74

**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 4 September 2007, in which I dismissed Predrag Banović’s request for early release (“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.

  
\_\_\_\_\_  
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  
Humanitarian Law Committed in the  
Territory of The Former Yugoslavia  
since 1991

Case No.: IT-02-65/1-ES  
Date: 4 September 2007  
Original: English

---

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

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

**Registrar: Mr. Hans Holthuis**

**Decision of: 4 September 2007**

**PROSECUTOR v. PREDRAG BANOVIĆ**

*PUBLIC REDACTED*

---

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

---

**Counsel for Predrag Banović**

**Mr. Jovan Babić**

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> Pursuant to the plea agreement, Banović was convicted of individual criminal responsibility pursuant to Article 7(1) of the Statute of the Tribunal (“Statute”) for persecutions based on political, racial or religious grounds as a crime against humanity, punishable under Article 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 charge of persecution included murder, beatings, confinement in inhumane conditions, harassment, humiliation and psychological abuse.<sup>3</sup>

2. Following his arrest, Banović was transferred to the Tribunal on 9 November 2001. Pursuant to Rule 101 (C) of the Rules of Evidence and Procedure of the Tribunal (“Rules”), he is entitled to credit for the time spent in detention pending his conviction by the Tribunal. The Trial Chamber therefore 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. At the time of that transfer, he had spent two years, eight months and 19 days in custody. Accordingly, he will have served his full sentence on 9 November 2009 and two-thirds of his sentence was served on 8 March 2007.

3. Rule 123 of the Rules provides, in accordance with Article 28 of the Statute, that “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> In a Decision rendered on 10 March 2006, I

---

<sup>1</sup> *Prosecutor v Predrag Banović*, Case IT-02-65/1-S, Sentencing Judgement, 28 October 2003 (“Sentencing Judgement”), paras. 94-96.

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

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

<sup>4</sup> *Ibid.* paras 95-96.

<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 of Rouen, Patricia Piolet, Judge responsible for the enforcement of sentences, to The Prosecutor of the Republic, 27 September 2005 (“Judge Piolet’s Letter”); Letter from The Prosecutor of the Republic, Jean Berkani, to the Prosecutor General at the Court of Appeals of Rouen, forwarding Judge’s Piolet Letter and requesting that Judge’s Piolet Letter be forwarded to the Registry of the International Tribunal, 4 October 2004 (“Jean Berkani’s 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 Judge Piolet’s Letter and Jean Berkani’s Letter, 12 October 2005; Letter from Jean Michel, Chargé

refused commutation of Banović's sentence based on the circumstances that existed at that time.<sup>7</sup> However, I explicitly noted that my refusal did not preclude Banović from making an application in future in light of changed circumstances.<sup>8</sup>

4. On 5 March 2007, Counsel for Banović filed an Application before me again, seeking commutation of sentence.<sup>9</sup> In this instance, the notification envisaged by Rule 123 of the Rules was made by Banović personally. While the Rules do not recognize the right of a convicted person to make application in his personal capacity, past practice of this Tribunal has been to deal with such an application in accordance with the Rules applicable to notifications pursuant to Rule 124 of the Rules.<sup>10</sup> As such, upon receipt of Banović's Application, 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>11</sup> The Registry forwarded those reports to me on 25 July 2007.

5. In his Application, Banović identifies a number of factors he considers relevant to the consideration of his application, some of which he characterises as changed circumstances; he plead guilty for the crimes committed; he showed repentance for the crimes committed; his exemplary behaviour at both the United Nations Detention Unit and while serving his sentence in France demonstrates his rehabilitation; his personal circumstances, in particular the fact that he was very young at the time of the commission of the crimes he was convicted for; [Redacted]; according to French law, he is entitled to a reduction of sentence of 21 months; and finally, in other cases at the Tribunal, where the circumstances were similar to his, a reduction of sentence was approved after around two-thirds of a sentence had been served.<sup>12</sup>

---

d'affaires *ad interim* at the French Embassy in the Netherlands, to Mr. Hans Holthuis, Registrar of the Tribunal, transmitting the above correspondence, 27 October 2005.

<sup>7</sup> Decision of the President on Commutation of Sentence, 10 March 2006 ("Decision of 10 March 2006").

<sup>8</sup> Decision of 10 March 2006, para. 14.

<sup>9</sup> Application for Pardon and Commutation of Sentence, 5 March 2007 ("Application").

<sup>10</sup> See *Prosecutor v. Drago Josipović*, Case No. IT-95-16-ES, *Confidential* and *Ex Parte* Decision of the President on the Application for Pardon or Commutation of Sentence of Drago Josipović, 30 January 2006, paras 4 and 6; *Prosecutor v. Stefan Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stefan Todorović, 22 June 2005, para. 5.

<sup>11</sup> 7 March 2007.

<sup>12</sup> Application, paras. 7- 8, subparas. (i) –(v).

6. However, while Banović claims in his Application that he is entitled to remission of 21 months under French law, the reports of the French authorities express the view that Banović could not benefit from the remission of sentence provided under Article 721 of the Code of Criminal Procedure. The reason is that remission is only applicable at the commencement of a convicted person's sentence and its application at that time was refused in my Decision on 10 March 2006. While French law no longer permits the application of Article 721, the French authorities suggest that Banović could potentially benefit from an "additional remission of sentence" of three months applying for the periods 2 November 2004 - 2 November 2005 and 2 November 2005 - 2 November 2006, *i.e* six months in total, pursuant to Article 721-1 of the Code of Criminal Procedure. Under this provision, remission is granted to inmates "who demonstrate serious signs of social readjustment, especially where they successfully sit for school, university or professional examination showing the acquisition of new knowledge or justifying real progress within the framework of tuition or training or by making efforts to compensate victims". In this respect, the French prison authorities, while noting Banović's difficulties of communication due to language barriers, report that he is taking French classes, has volunteered for painting and menial jobs and is participating in a workshop. The general assessment of Banović's behaviour is, however, relatively neutral.

7. [Redacted]

8. [Redacted]

9. Pursuant to Article 4 of the Practice Direction, the reports of the Prosecutor and the French authorities were provided to Banović and he was accorded the opportunity to respond.<sup>13</sup> On 24 July 2007, Banović sent his Response.<sup>14</sup> [Redacted]. Further, he should not be penalised for a failure of the French authorities to notify the Tribunal of his eligibility for early release.

10. Rule 124 of the Rules provides that upon receiving notification of a State of a convicted person being eligible for release pursuant to Rule 123 of the Rules, the President shall, in consultation with any permanent Judges of the sentencing Chamber and the members

---

<sup>13</sup> Correspondence, 20 July 2007.

<sup>14</sup> Letter from Jovan Babić, Defence Counsel to John Hocking, Deputy Registrar, 24 July 2007 ("Response").

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 Application of Banović indicating my provisional views as to whether commutation of sentence should be granted. In addition, I have considered Rule 125 of the Rules, referred to 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.

11. 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>15</sup> In particular, Banović admitted to being responsible for participating in five murders, and for the beating of twenty-five detainees and the shooting of two others.<sup>16</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>17</sup>

12. [Redacted], I am not persuaded that there are further facts than those considered in my Decision of 10 May 2006, providing demonstration of Banović’s rehabilitation. I also note that the report of the French authorities only suggests the possibility of remission of sentence; it does not clearly indicate that Banović would now be definitely eligible for such remission under French law. In that regard, it appears that the remission to which he was previously entitled is treated by the French authorities as nullified following my Decision of 10 March 2006. Absent a notification by the French authorities of such eligibility, I consider it inappropriate to order such commutation as requested by Banović. Accordingly, commutation of sentence is refused at this time.

13. While refusing Banović’s Application, I share, however, the concern of a number of the Judges I consulted about the systematic incompatibility of the French system with that of

---

<sup>15</sup> Sentencing Judgement, para. 28.

<sup>16</sup> *Ibid.*, paras. 29-30.

<sup>17</sup> *Ibid.*, para. 55.

the Tribunal's, which will result in unequal treatment of French detainees compared to other Tribunal's convicts serving their sentence in other countries. This incompatibility arises from the French practice of awarding periods of remission of sentence to convicted detainees at the commencement of their sentence, while the Tribunal's system is to permit the application of such rewards only after a significant part of that sentence has been served. In this respect, although I am satisfied that no such inequality of treatment is currently being suffered by Banović, a future application may cause me to take a different view. In that regard, it would be extremely beneficial if the French authorities could accommodate in their system of sentence remission the practice of the Tribunal of granting commutations of sentence only following a significant serving of that sentence, that is, allowing for the application of the remissions accorded under Article 721 of the Code of Criminal Procedure to be claimed upon the serving of a significant portion of the sentence imposed. Such accommodation would avoid any possibility of inequality of treatment accruing to convicted accused whose sentence is being served in France.

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

Done this 4<sup>th</sup> day of September 2007,  
At The Hague,  
The Netherlands.

---

Fausto Pocar  
President of the International Tribunal

**[Seal of the Tribunal]**