



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-95-8-ES
Date: 21 June 2010
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THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision of: 21 June 2010

PROSECUTOR

V.

DUŠKO SIKIRICA

CONFIDENTIAL

DECISION OF PRESIDENT ON EARLY RELEASE OF DUŠKO SIKIRICA

Office of the Prosecutor
Mr. Serge Brammertz

Republic of Austria

Mr. Duško Sikirica

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 Mr. Duško Sikirica will become eligible as of 25 June 2010 for conditional release under Austrian law.

I. Background

2. On 12 April 2010, the Registry informed me of a notification received from the Embassy of Austria dated 23 March 2010 ("notification"), pursuant to Article 28 of the Statute of the Tribunal ("Statute"), Rule 123 of the Rules of Procedure and Evidence ("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 The notification states that Mr. Sikirica is eligible for conditional release under Austrian law as of 25 June 2010, after having served two-thirds of his prison sentence. It further informs that the Director of the Correctional Institute Graz-Karlau filed an application for the conditional release of Mr. Sikirica with the Austrian Federal Ministry of Justice on 12 February 2010.² Accompanying the notification, pursuant to paragraphs 3(b) and 4 of the Practice Direction, were the following reports: (a) a report submitted by the Correctional Institute Graz-Karlau concerning Mr. Sikirica's behaviour, dated 12 February 2010; (b) a psychological report dated 9 March 2010; (c) a psychiatric report dated 10 March 2010; and (d) a health report dated 12 March 2010.

3. On 21 May 2010, pursuant to paragraph 3(c) of the Practice Direction, the Registry provided me with the report of the Prosecution on the co-operation that Mr. Sikirica has provided to the Office of the Prosecutor.³

4. All of the above materials were furnished to Mr. Sikirica on 31 May 2010. After receiving the materials, Mr. Sikirica responded that he places himself at the disposal of the President and that he hopes that he will be granted early release.⁴

¹ IT/146/Rev.2, 1 September 2009.

² Memorandum from the Registry to the President, 12 April 2010; Letter from the Embassy of Austria to the International Criminal Tribunal for the former Yugoslavia, 23 March 2010 ("Austrian Embassy Letter").

³ Memorandum from the Registry to the President, 21 May 2010.

⁴ Memorandum from the Deputy Registrar to the President, 9 June 2010.

II. Proceedings Before the Tribunal

5. The initial indictment against Mr. Sikirica, Damir Došen, Dragan Kolundžija, and ten other co-accused, was filed on 21 July 1995.⁵ Mr. Sikirica, as Commander of the Keraterm camp, was indicted for violations of the laws or customs of war, genocide, and crimes against humanity for events at the Keraterm camp in the municipality of Prijedor, Bosnia and Herzegovina. He was arrested and transferred to the Tribunal on 25 June 2000, and pleaded not guilty to all charges at his initial appearance on 7 July 2000.⁶

6. The indictment was amended in August 1999, which led to a series of motions.⁷ The second amended indictment ("indictment") was filed on 3 January 2001 against Mr. Sikirica, Damir Došen, Dušan Fuštar, Dragan Kolundžija, Nenad Banović, and Predrag Banović.⁸ Mr. Sikirica was charged with genocide and complicity to commit genocide; crimes against humanity in the form of persecutions, inhumane acts, and murder; and violations of the laws or customs of war in the form of outrages upon personal dignity and murder or, in the alternative, cruel treatment.⁹

7. The case proceeded to trial; and, at the close of the Prosecution's case, all three accused filed motions for acquittal pursuant to Rule 98 *bis* on 8 June 2001.¹⁰ The Trial Chamber rendered an oral decision in respect to the motion, and a written decision followed on 3 September 2001.¹¹ Upon finding that the specific intent required for genocide could not be inferred, the Trial Chamber dismissed the counts of genocide and complicity in genocide against Mr. Sikirica.¹² After Mr. Sikirica had presented his defence case on the other charges, he and the Prosecution reached a plea agreement. Mr. Sikirica appeared before the Trial Chamber on 19 September 2001 and entered a plea of guilty to Count 3 of the Indictment (persecution, a crime against humanity), which the Trial Chamber accepted.¹³ The remaining counts against Mr. Sikirica were withdrawn.¹⁴

⁵ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-I, Indictment, 21 July 1995.

⁶ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-S, Sentencing Judgement, 13 November 2001, para. 4 ("Sentencing Judgement").

⁷ Stemming from the motions was a decision issued by the Trial Chamber requiring the Prosecution to file an amended version of a confidential attachment to the indictment. The amended attachment was filed on 9 March 2000, to which the Došen Defence raised an argument regarding its scope. The issue was resolved by an agreement between the parties. Sentencing Judgement, para. 5.

⁸ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-PT, Second Amended Indictment, 3 January 2001, para. 5 ("Indictment").

⁹ Indictment, paras 12-13, 15; Sentencing Judgement, para. 6.

¹⁰ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-T, Submission of Duško Sikirica under Rule 98 *bis*, 8 June 2001 (confidential).

¹¹ *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-T, Judgement on Defence Motions to Acquit, 3 September 2001, para. 2 ("Acquittal Judgement").

¹² Acquittal Judgement, paras 97, 172.

¹³ Sentencing Judgement, para. 39.

8. The Trial Chamber sentenced Mr. Sikirica to fifteen years of imprisonment with credit for time served while in detention pursuant to Rule 101(C). No appeal was taken.¹⁵

9. Mr. Sikirica was transferred on 10 May 2002 from The Hague to the Correctional Institute Graz-Karlau in Austria to serve the remainder of his sentence.¹⁶

III. Discussion

10. 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 of the Statute, 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.

11. In coming to my decision upon whether early release is appropriate, I have consulted the Judges of the Bureau and the Judges of the sentencing Chambers who remain Judges of the Tribunal.

12. Sections 46(1) and (2) of the Austrian Penal Code (*Strafgesetzbuch*) provide:

§ 46 (1) If the prisoner has served half of a prison sentence imposed or determined in a pardon, or half of the portion of such a sentence that has not been conditionally remitted, being a minimum of three months, the rest of the sentence can be conditionally remitted,

¹⁴ Sentencing Judgement, paras 14-15. On 7 September 2001, submissions had been made on behalf of Mr. Sikirica and Mr. Došen informing the Trial Chamber of agreements reached between them as to the entry of a guilty plea by each to Count 3 (persecution) and, contingent upon the Chamber's acceptance of those pleas, the withdrawal of all other counts against them. Joint Submission of the Prosecution and the Accused Duško Sikirica Concerning a Plea Agreement and Admitted Facts, filed 7 September 2001 ("Sikirica Plea Agreement").

¹⁵ Sentencing Judgement, paras 236, 245. Mr. Sikirica received credit for 1 year, 4 months, and 19 days. The Prosecution and Defence had agreed that neither party would appeal a sentence imposed by the Trial Chamber between 10 and 17 years of imprisonment. Sentencing Judgement, para. 25; Sikirica Plea Agreement, para. 17.

¹⁶ Instructions for the Release on Parole of a Prisoner, submitted by the Correctional Institute Graz-Karlau, 12 February 2010, p. 2 ("Prison Behavioural Report"); *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-T, Order Designating the State in Which Duško Sikirica Is to Serve His Prison Sentence, 1 February 2002; *Prosecutor v. Duško Sikirica et al.*, Case No. IT-95-8-ES, Order Withdrawing Confidential Status of Order Designating the State in Which Duško Sikirica Is to Serve His Prison Sentence, 30 January 2008.

with a period of probation, as soon as it can be assumed, with regard to the effect of the measures foreseen in §§ 50 to 52, that the prisoner is no more likely to commit crimes than if he were to serve the rest of his sentence.

§ 46 (2) If the prisoner has served half, but not yet two-thirds of his sentence, he is not to be conditionally released, despite having fulfilled the conditions set forth in para. 1, if, in view of the gravity of his crime, the full sentence is exceptionally needed to impede others from committing crimes.

13. The Austrian authorities have notified the Tribunal that Mr. Sikirica will have served two-thirds of his sentence on 25 June 2010 and thus will become eligible for conditional release as of that date under Austrian law. The practice of the Tribunal is to review the eligibility of a convicted person only after he has served two-thirds of his sentence.¹⁷ Taking into account the treatment of similarly-situated prisoners, I am of the view that the amount of time that Mr. Sikirica has served militates in favour of his release.

14. Rule 125 mandates that I take into account the gravity of the crimes for which the prisoner was convicted. In the plea agreement, the Prosecution and Mr. Sikirica agreed that the count of persecution, as a crime against humanity, encompassed the following offences at the Keraterm camp: murder; torture and beating; sexual assault and rape; harassment, humiliation, and psychological abuse; and confinement of Bosnian Muslims, Bosnian Croats, and other non-Serbs in inhumane conditions.¹⁸ The criminal conduct underlying the guilty plea stems from events that took place at the Keraterm camp over a period of about two months in the summer of 1992.¹⁹ Mr. Sikirica admitted to having been the Commander of Security at the Keraterm camp, but states that he had no power to punish subordinates.²⁰ Although he was not responsible for ensuring that detainees had adequate food, clothing, water, medical assistance, and accommodation, he had certain discretionary powers (for example, permitting others to give food to detainees). Moreover, it was acknowledged that he had a "technical duty" to prevent the entry of persons from outside the

¹⁷ See, e.g., *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; *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 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.

¹⁸ Sentencing Judgement, para. 18 (internal citation omitted).

¹⁹ Sentencing Judgement, para. 50.

²⁰ Sentencing Judgement, para. 19.

camp who were responsible for some of the mistreatment.²¹ Mr. Sikirica also admitted to personally murdering one detainee at Keraterm.²²

15. Based upon the foregoing, I am of the view that the gravity of Mr. Sikirica's offences is high, which is thus a factor that weighs against his early release.

16. In consideration of Mr. Sikirica's demonstration of rehabilitation, I note first that Mr. Sikirica pled guilty to persecution under Count 3. I find it instructive to quote from the statement he made at his sentencing hearing:

I fully understand that these events had destructive consequences and that they still affect Muslims today, some of whom were my friends.

After I saw and understood the consequences, I wish to tell the Trial Chamber that I deeply regret everything that happened in Keraterm while I was there. I feel only regret for all the lives that have been lost and the lives that were damaged in Prijedor, in Keraterm, and unfortunately, I contributed to the destruction of these lives.

I am especially sorry that I did not have enough moral courage and power to prevent some or all of the terrible things that happened. I would like to be able to turn back the clock and act differently.

I understand that by taking responsibility for my role in these events I have to be punished²³

17. Although this statement was taken into consideration in mitigation of Mr. Sikirica's sentence,²⁴ it nevertheless still indicates that Mr. Sikirica accepted responsibility for his crimes, and I agree with the Trial Chamber that his expression of remorse was sincere.²⁵ In addition, because guilty pleas can help contribute to truth-finding, Mr. Sikirica's guilty plea and subsequent expression of sincere remorse for his crimes should be given some credit.²⁶

²¹ Sentencing Judgement, paras 19-22.

²² Sentencing Judgement, paras 21, 120, 138; Sikirica Plea Agreement, para. 10(a).

²³ Sentencing Hearing, T. 5718-5719 (8 October 2001) (Open Session).

²⁴ See Sentencing Judgement, paras. 148, 152, 234.

²⁵ See Sentencing Judgement, para. 152.

²⁶ See Sentencing Judgement, paras 148-152; *Prosecutor v. Stevan Todorović*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001, para. 81 ("A guilty plea is always important for the purpose of establishing the truth in relation to a crime."); *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009, para. 11 (considering the fact that Mr. Šantić's acceptance of the level of guilt "demonstrates an initial degree of rehabilitation"); *Prosecutor v. Biljana Plavšić*, Case Nos. 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. 8 (giving favourable consideration to Mrs. Plavšić's guilty plea and expression of remorse as evidence of rehabilitation); *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-ES, Decision of the President on Commutation of Sentence, 3 September 2008, para. 13 (considering Mr. Banović's guilty plea and "consistent good behaviour during the course of his subsequent incarceration" as "substantial evidence of rehabilitation").

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. The report submitted by Correctional Institute Graz-Karlau notes that Mr. Sikirica has exhibited “very good behaviour in the Institute”.²⁷ He worked in the handicraft department from May 2002 until March 2003, and has since been employed in the prison laundry, where his work performance has been “very good”.²⁸ The letter from the Austrian Embassy noted that his behaviour has been “quiet and appropriate.” According to the prison’s report, Mr. Sikirica has committed three administrative offences. The letter from the Austrian Embassy contains a slight discrepancy in the number of offences, referring to “four minor infractions”. The Embassy also provides more detail than the prison, stating that these infractions, which took place in March 2005, March 2008, and February 2009, were for possession of unauthorised objects and resulted in €20 and €15 fines, as well as two reprimands.²⁹ Although I am concerned with these infractions by Mr. Sikirica during his detention, his behaviour has otherwise been good, and the prison management “firmly supports” Mr. Sikirica’s early release.³⁰

19. Paragraph 3(b) of the Practice Direction envisages reports from an enforcement state regarding the mental condition of the convicted person during his incarceration, and paragraph 8 of the Practice Direction provides that the President may consider any other information that he or she believes to be relevant to supplement the criteria specified in Rule 125.³¹ The psychological report states that Mr. Sikirica “appeared to be free of psychological stress”, at least to the extent possible to ascertain given the language barrier. The language barrier also precluded a criminal recidivism assessment because it would have required a linguistic exchange with the inmate, which was not possible. The report did note, however, that Mr. Sikirica “left a solid and stable impression” in relation to his personality and that he did not exhibit any psychological or behavioural irregularities.³² The psychiatric report states that Mr. Sikirica displayed a “regular *status psychicus*” during his consultation on 10 March 2010, and that he had not consulted the psychiatric service at the Correctional Institute on his own accord since 14 February 2010.³³ Based upon the fact that Mr. Sikirica does not appear to be suffering any psychological difficulties, I consider that his mental condition is not a factor that bears upon my decision regarding his early release.

²⁷ Prison Behavioural Report, p. 1. The Austrian Embassy Letter similarly noted that Mr. Sikirica “has shown very good behaviour during most of his prison term.”

²⁸ Austrian Embassy Letter; Prison Behavioural Report, p. 2.

²⁹ Austrian Embassy Letter.

³⁰ Prison Behavioural Report, 12 February 2010.

³¹ *Prosecutor v. Biljana Plavšić*, Case No. 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, para. 11.

³² Report on Duško Sikirica’s Psychological State During Imprisonment, 9 March 2010.

³³ Psychiatric Opinion, 10 March 2010.

20. Overall, the combination of Mr. Sikirica's guilty plea and expression of sincere remorse and his very good behaviour and work performance while serving his sentence is some evidence of his demonstration of rehabilitation, which weighs in favour of his early release.

21. Paragraph 3(c) of the Practice Direction states that the Registry shall request the Prosecutor to submit a detailed report of any co-operation 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 co-operation from Mr. Sikirica that might be taken into account when considering his application for early release.³⁴ Thus, I consider the factor of co-operation with the Prosecution to be a neutral one.

22. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I am of the view that Mr. Sikirica should be granted early release, despite the high gravity of his crimes.

23. I note that my colleagues unanimously share my view that Mr. Sikirica should be granted early release.

IV. Disposition

24. 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, Duško Sikirica is hereby GRANTED early release.

25. This decision shall take effect four weeks from the date of its issuance, as requested by the Austrian authorities.

26. 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.

³⁴ Memorandum from the Office of the Prosecutor to the Registry, 21 May 2010.

27. The Registrar is hereby DIRECTED to lift the confidentiality of this decision, once Duško Sikirica has been released.

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



Judge Patrick Robinson
President

Dated this twenty-first day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]