



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: 3 September 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 3 September 2008

PROSECUTOR

v.

PREDRAG BANOVIĆ

PUBLIC

DECISION OF THE PRESIDENT ON COMMUTATION OF SENTENCE

Counsel for Predrag Banović:

Mr. Jovan Babić

1. On 4 June 2008, the Registrar advised me that the French authorities had notified the International Criminal Tribunal for the former Yugoslavia ("Tribunal") that Predrag Banović had submitted a request for early or conditional release ("Request"), pursuant to Article 28 of the Statute of the International Tribunal ("Statute") and Rule 123 of the Rules of Procedure and Evidence ("Rules").¹ In particular, the Registry forwarded a notification letter from Judge Piolet dated 21 December 2007 indicating that Mr. Banović had applied for «*libération conditionnelle avec expulsion*», or conditional release with deportation to Serbia, and that the Request was admissible. Unfortunately, the notification letter has taken over four months to be transmitted to the Registry by the French authorities.

2. Upon notification of a convicted person's eligibility for early release, the Registry is to request relevant reports from the prison authorities of the enforcing State and the Prosecutor of the Tribunal as prescribed in 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 Tribunal ("Practice Direction").² Although the Registry had previously compiled such reports in connection with two earlier applications by Mr. Banović, I asked the Registry to request updated information to supplement the prior reports. The Registry forwarded an updated report from the Prosecution as to the status of Mr. Banović's cooperation on 21 July 2008.³ Although the French authorities have not formally provided any further reports in connection with the present request, I consider the 14 November 2007 report from Val de Reuil Prison, included with the French notification letter, to be sufficient to constitute updated information.

3. On 6 July 2008, pursuant to Article 4 of the Practice Direction, Mr. Banović responded to the notification letter from the French authorities.⁴

BACKGROUND

4. The initial indictment against Predrag Banović was issued on 21 July 1995. The Indictment alleged that following the forcible take-over of the town of Prijedor by the Bosnian Serb police and army in April 1992, the Bosnian Serb authorities detained more than 7,000 Bosnian Muslims, Bosnian Croats and other non-Serbs in several detainment camps in the area. Mr. Banović was identified as a prison guard at the Keraterm camp who allegedly

¹ Memorandum of 4 June 2008 from the Deputy Registrar.

² IT/146/Rev. 1, 15 August 2006.

³ Memorandum of 21 July 2008 from the Deputy Registrar.

⁴ Letter of 6 July 2008 from P. Banović to the President of the Tribunal.

participated in the brutal and inhumane treatment of the detainees in that camp between 24 May 1992 and 30 August 1992.

5. On 26 June 2003, pursuant to a plea agreement with the Prosecutor, Mr. Banović pleaded guilty to one count of persecution as a crime against humanity pursuant to Articles 5(h) and 7(1) of the Statute.⁵ As part of the plea agreement, Mr. Banović admitted to having directly participated in murdering five detainees, severely beating 25 detainees, and shooting two additional detainees.⁶ Mr. Banović also admitted to having participated in a joint criminal enterprise with the common purpose of mistreating the detainees in the camp by subjecting them to physical and psychological abuse under brutal, inhumane and degrading conditions.⁷ On 28 October 2003, the Trial Chamber sentenced Mr. Banović to eight years of imprisonment after finding that the sentence agreed upon by the Prosecution and the Defence was appropriate.⁸ The sentence was imposed subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention from 9 November 2001.⁹ Mr. Banović was transferred to France for the enforcement of his sentence on 28 July 2004. Two-thirds of his sentence was served as of 9 March 2007.

SUBMISSIONS

6. In the 14 November 2007 report from Val de Reuil Prison, the French prison authorities indicate that they would support Mr. Banović's application for parole or conditional release with deportation to Serbia.¹⁰ The report notes Mr. Banović's good behaviour throughout the period of his detention, despite an ongoing language barrier with the social workers and other inmates.¹¹ The report also indicates that Mr. Banović has been regularly employed at the prison and has been taking French language courses.¹² In addition, the report confirms that Mr. Banović has made the arrangements necessary for his potential release and deportation, indicating that he would reside with his family in Obrenovac, Serbia and that he has secured in advance a position working at a restaurant in the same town.¹³

⁵ *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003, para. 9.

⁶ *Ibid.*, paras 29-30.

⁷ *Ibid.*, para. 28.

⁸ *Ibid.*, para. 94.

⁹ *Ibid.*, para. 95.

¹⁰ *Synthèse Socio-Educative*, 14 November 2007, from the *Service Pénitentiaire D'Insertion et de Probation* of the Val de Reuil Prison ("SPIP Report"), p. 3.

¹¹ *Ibid.*

¹² *Ibid.*, pp. 2-3.

¹³ *Ibid.*, p. 3.

7. In the updated report on the status of Mr. Banović's cooperation after conviction, the Prosecutor of the Tribunal reiterated that Mr. Banović had agreed under the terms of his plea agreement to cooperate as a witness in the *Mejakić et al.* trial, which was subsequently referred by the Tribunal to the State Court of Bosnia and Herzegovina under Rule 11*bis* of the Rules.¹⁴ While earlier reports had indicated that his status as a witness in these proceedings was pending, the updated report confirmed that the trial concluded in May 2008 and that "the BiH Prosecutor did not need to call Mr. Banović as a witness".¹⁵

8. As noted above, Mr. Banović responded to the submission of the French authorities in a letter dated 6 July 2008. Expressing his "most sincere repentance, remorse and regret" for his crimes, Mr. Banović emphasized the extent of his present rehabilitation and stressed the hardship that his continuing incarceration places on his wife and children.¹⁶

DISCUSSION

9. Under Article 28 of the Statute, the President of the Tribunal shall consider granting early release to a convicted person when he or she becomes eligible for pardon or commutation of sentence under the applicable law of the enforcement State. In determining whether early release is appropriate, Article 28 of the Statute indicates that the President is to evaluate the application "on the basis of the interests of justice and the general principles of law". More specifically, Rule 125 of the Rules provides that the President should consider *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 by the prisoner with the Prosecutor.

10. Although I have previously denied two separate applications for commutation of Mr. Banović's sentence, I note that the domestic legal basis for the present request appears to be distinctly different from the prior applications. On 27 October 2005, the French authorities initially notified the Tribunal that Mr. Banović was eligible for the commutation or remission of his sentence by 21 months pursuant to Articles 721 and 721-1 of the French Code of Criminal Procedure.¹⁷ On 10 March 2006, I denied the commutation of his sentence on the grounds that Mr. Banović had not yet adequately demonstrated sufficient rehabilitation or cooperation with the Prosecutor at such an early stage to justify the remission or commutation

¹⁴ Internal Memorandum of 11 July 2008 from the Office of the Prosecutor to the Deputy Registrar.

¹⁵ *Ibid.*

¹⁶ Letter of 6 July 2008 from P. Banović to the President of the Tribunal, p. 1

of his sentence under Rule 125 of the Rules.¹⁸ On 5 March 2007, Mr. Banović applied directly to the Tribunal for commutation or remission of his sentence.¹⁹ Even though Mr. Banović had served two-thirds of his sentence at that point, his application was denied because he was no longer eligible for the remission of sentence under Article 721 of the French Code of Criminal Procedure.²⁰ The French authorities indicated that this provision was only available at the commencement of the convicted person's sentence and that it had been waived upon the denial of the previous application.²¹ As a result, I expressed concern at the seeming incompatibility between the French system of granting remission primarily at the commencement of the sentence and the Tribunal's practice of awarding a commutation only after a significant portion of the sentence has been served.²²

11. The present notification, however, addresses Mr. Banović's eligibility for parole and conditional release with expulsion to Serbia. Although the notification letter does not specify the statutory basis of this procedure, the conditional release would presumably be conducted pursuant to Articles 729 and 729-2 of the French Code of Criminal Procedure.²³ Unlike under Article 721, the convicted person only becomes eligible for parole or conditional release under Articles 729 and 729-2 once he has served at least half of his sentence. As a result, the procedural incompatibility underlying the denial of Mr. Banović's previous requests is not a concern in the review of the present application.

12. Although the French authorities have not issued a final ruling on his eligibility for conditional release under French national law, I note that Mr. Banović has met many of the requirements. In particular, I note that the French authorities have already issued a deportation order for his expulsion to Serbia upon release.²⁴ I also note that the prison

¹⁷ Decision of the President on Commutation of Sentence, 10 March 2006 ("First Commutation Decision"), paras 10-11.

¹⁸ *Ibid.*, paras 12-14.

¹⁹ Decision of the President on Commutation of Sentence, 4 September 2007 ("Second Commutation Decision"), para. 4.

²⁰ *Ibid.*, para. 12.

²¹ *Ibid.*

²² *Ibid.*, para. 13.

²³ Article 729 of the French Code of Criminal Procedure provides that "[c]onvicted persons who have to serve one or more custodial sentences may be granted parole if they show serious efforts towards social reintegration, especially if they can prove that they work, or prove their regular attendance at teaching or training courses, or work experience or a temporary job with a view to their social reintegration, or their essential participation in family life, or of their need to undergo treatment or their efforts with regard to compensating their victims...[P]arole may be granted when the length of the sentence served by the convicted person is at least equal to the length of the sentence remaining to be served." Article 729-2 of the French Code of Criminal Procedure provides that "[w]here an alien sentenced to a custodial sentence is subject to banishment from French territory, to an order escorting him back to the border, expulsion or extradition, his parole is subject to the execution of this measure. It may be decided without his consent".

²⁴ Arrêté préfectoral portant expulsion du territoire français N° 07/27-/05, 31 July 2007.

authorities support his application and that he has made the necessary arrangements for appropriate accommodations and employment upon his return.²⁵

13. Evaluating Mr. Banović's eligibility for early release under Rule 125 of the Rules, I consider first that he appears to have demonstrated substantial evidence of rehabilitation. Although previously taken into consideration at the time of his sentencing, Mr. Banović's guilty plea indicates that he accepted responsibility for his crimes from an early stage of the proceedings. Mr. Banović's consistent good behaviour during the course of his subsequent incarceration is also evidence of continuing rehabilitation. Although the language barrier continues to provide a substantial impediment to his interaction with prison officials and other prisoners, Mr. Banović's participation in French language classes seems to indicate a sincere attempt at social reintegration. In addition to his regular employment in the prison during the period of his incarceration, he also appears to have made a substantial effort to return to being a productive member of society by arranging in advance for employment upon deportation to Serbia. Finally, Mr. Banović's 6 July 2008 letter to the Tribunal further demonstrates the extent of his rehabilitation by expressing substantial remorse for the crimes he committed.

14. Additionally, Mr. Banović appears to have been willing to cooperate with both the Prosecutor of the Tribunal and with the State Prosecutor of Bosnia and Herzegovina after his conviction. Although he was not needed as a witness in the *Mejakić et al.* trial, I note that Mr. Banović has demonstrated his readiness to testify despite not being called to do so.²⁶ I also note Mr. Banović's earlier submission indicating that he provided a statement in connection with those proceedings to the State Prosecutor of Bosnia and Herzegovina on 23 May 2007.²⁷ Although this may not necessarily constitute substantial cooperation, I consider that his ongoing willingness to cooperate should weigh in favour of his request for early release.

15. Notwithstanding the gravity of his crimes, I also note that Mr. Banović has currently served more than two-thirds of his sentence. Considering that other convicted persons similarly situated have been granted early release after serving two-thirds of their sentences, this factor further supports his eligibility for early or conditional release.

²⁵ SPIP Report, p. 3.

²⁶ Second Commutation Decision, para. 7.

²⁷ *Ibid.*, para. 8.

16. In accordance with Article 5 of the Practice Direction and Rule 124 of the Rules, I attached the information collected by the Registrar for the consideration of the Bureau and the Judges of the sentencing Chamber and Appeals Chamber that remain Judges of the Tribunal and offered my views on this Request, as expressed above, for consideration by my colleagues.

17. All of those Judges consulted agreed with my assessment that Mr. Banović should be granted early release. I note that the Vice-President of the Tribunal, Judge Parker, who is currently absent from the seat of the Tribunal, has requested not to be consulted on applications for early release during his absence.

18. In light of the above, and having considered those factors identified in Rule 125 of the Rules, I am satisfied that the Request should be granted effective immediately. The Registrar is requested to transmit this decision to the relevant authorities of the Government of France as soon as practicable, as prescribed in Article 10 of the Practice Direction.

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

Done this 3rd day of September 2008,
At The Hague,
The Netherlands.



Fausto Pocar
President of the International Tribunal

[Seal of the Tribunal]