



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-95-10-ES
Date: 28 May 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision: 28 May 2013

PROSECUTOR

v.

GORAN JELISIĆ

PUBLIC REDACTED VERSION

**DECISION OF THE PRESIDENT
ON SENTENCE REMISSION OF GORAN JELISIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Mr. Goran Jelisić

The Italian Republic

1. I, Theodor Meron, 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 ("Tribunal"), have been advised by the authorities of the Italian Republic ("Italy") 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 Goran Jelisić ("Jelisić") is eligible for partial remission of his sentence under the national law of Italy.²

I. BACKGROUND

2. Jelisić was charged with fifteen counts of crimes against humanity, sixteen counts of violations of the laws or customs of war, and one count of genocide, all in relation to crimes that took place in May 1992 in Brčko, a town in Bosnia and Herzegovina.³

3. Jelisić was arrested on 22 January 1998 and was immediately transferred to the United Nations Detention Unit in The Hague. On 29 October 1998, Jelisić pleaded guilty to thirty-one counts of crimes against humanity and violations of the laws or customs of war; he pleaded not guilty to genocide.⁴

4. Trial Chamber I of the Tribunal ("Trial Chamber") accepted Jelisić's guilty plea, and trial proceedings were limited to the single count of genocide.⁵ On 19 October 1999, the Trial Chamber issued an oral judgement pursuant to Rules 98*bis* and 98*ter* of the Rules, convicting Jelisić of the counts alleging crimes against humanity and violations of the laws or customs of war, pursuant to his guilty plea, and acquitting him of genocide.⁶ The Trial Chamber issued a written judgement on 14 December 1999 and sentenced Jelisić to 40 years of imprisonment.⁷

5. On 5 July 2001, the Appeals Chamber affirmed the sentence imposed by the Trial Chamber.⁸

¹ IT/146/Rev.3, 16 September 2010.

² Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 17 May 2012, transmitting, *inter alia*, a Note Verbale from the Embassy of Italy to the Netherlands, dated 8 May 2012 ("Note Verbale").

³ See Trial Judgement, paras 2, 18.

⁴ Trial Judgement, paras 11, 24.

⁵ See Trial Judgement, paras 11, 26, 58.

⁶ T. 19 October 1999 p. 2341.

⁷ Trial Judgement, para. 139.

⁸ See *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 ("Appeal Judgement"), p. 41.

6. On 2 April 2003, Italy was designated as the State in which Jelisić was to serve his sentence.⁹ On 29 May 2003, Jelisić was transferred to Italy to serve his sentence.¹⁰

II. THE NOTIFICATION

7. On 17 May 2012, the Registrar of the Tribunal (“Registrar”) transmitted to me a Note Verbale from the Embassy of Italy to the Netherlands, informing me that Jelisić had earned a reduction of his sentence by 180 days, in accordance with Italian law, due to his participation in a rehabilitation programme.¹¹

8. Pursuant to paragraphs 3 and 4 of the Practice Direction, the Registrar requested and, on 7 November 2012, provided to me: (i) an additional note verbale from the Embassy of Italy, dated 22 October 2012, transmitting to me materials concerning Jelisić’s conduct in prison, his general conditions of imprisonment, and evaluations of his physical and mental condition;¹² and (ii) a memorandum from the Office of the Prosecutor of the Tribunal (“Prosecution”), dated 4 June 2012, concerning the Prosecution’s view on Jelisić’s cooperation with the Prosecution during the proceedings against him and during his detention.¹³

9. All of the above materials were provided to Jelisić in the Bosnian/Croatian/Serbian language, in accordance with paragraph 4 of the Practice Direction.¹⁴ Jelisić did not submit a response to these materials, as he was entitled to do under paragraph 5 of the Practice Direction.¹⁵

⁹ See Amended Order Designating the State in Which Goran Jelisić is to Serve His Sentence, 2 April 2003 (“Order Designating a State”), p. 2 (issued confidentially, made public pursuant to the Order Withdrawing the Confidential Status of Order Designating the State in Which Goran Jelisić is to Serve His Prison Sentence, 29 October 2008). Because Jelisić was sentenced to 40 years of imprisonment, the Order Designating a State reserved the right of the Tribunal to terminate the enforcement of Jelisić’s sentence in Italy and order its continuation in another State. *See ibid.*

¹⁰ See Press Release, JL/P.I.S./758-e, Goran Jelisić Transferred to Italy to Serve Prison Sentence, 29 May 2003, available at <http://www.icty.org/sid/8239>.

¹¹ See Note Verbale.

¹² See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 7 November 2012 (“7 November Memorandum”), transmitting, *inter alia*, Note Verbale from the Embassy of Italy, dated 22 October 2012 (“October 2012 Note Verbale”), to which were attached, *inter alia*, (a) the Updated Summary of the First Observation and Treatment Programme, submitted by the Head of the Education Centre at the Tolmezzo Detention Facility, dated 21 September 2012 (“Summary of Treatment”); (b) a report by Jelisić’s Treatment and Observation Team at the Tolmezzo Detention Facility, dated 21 September 2012 (“Treatment Report”); and (c) a report of the Health Service Psychiatrist at the Infirmary Office of the Tolmezzo Detention Facility, dated 3 August 2012 (“Psychiatric Report”). I note that, although the most recent reports attached to the October 2012 Note Verbale are from authorities of the Tolmezzo Detention Facility in Italy, Jelisić is now serving his sentence in a detention facility located in Massa, Italy. *See* Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 28 November 2012.

¹³ See 7 November Memorandum, transmitting, *inter alia*, Internal Memorandum from Michelle Jarvis, Senior Legal Adviser to the Prosecutor, to Martin Petrov, Chief, Office of the Registrar, dated 4 June 2012 (“Prosecution Memorandum”).

¹⁴ See Internal Memorandum from John Hocking, Registrar, to Judge Theodor Meron, President, dated 17 December 2012 (“17 December Memorandum”), para. 2.

¹⁵ 17 December Memorandum, para. 2.

III. APPLICABLE LAW

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 of the Tribunal, in consultation with the Judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

11. Rules 123 and 124 of the Rules echo Article 28 of the Statute, and Rule 124 of the Rules further provides that the President of the Tribunal, upon notice of a convicted person's eligibility for pardon or commutation of sentence under national law, shall 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 a determination on pardon or commutation of sentence, the President of the Tribunal shall take into account, *inter alia*, the gravity of the crime or 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.

12. Paragraph 1 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the Tribunal on the enforcement of sentences and, where practicable, at least forty-five days prior to the date of eligibility, notify the Tribunal accordingly.

13. The above provisions apply to requests for sentence remissions, as reductions of a prisoner's sentence due to good conduct while in detention amount, in essence, to commutations of the sentence.

14. Article 3(1) of the Agreement Between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 6 February 1997 ("Enforcement Agreement"), provides that the Italian authorities shall be bound by the duration of the sentence imposed by the Tribunal. Article 3(2) of the Enforcement Agreement further states that the conditions of imprisonment shall be governed by the law of Italy, subject to the supervision of the Tribunal. Article 3(3) of the Enforcement Agreement states that, if a detainee becomes eligible for non-custodial measures, working activities outside the prison, or conditional release under Italian law, the Italian Minister of Justice is to notify the President of the Tribunal; under Article 3(4), the Registrar shall inform the Italian Minister of Justice of the President's determination as to whether the requested measure is appropriate or not.

Article 8 of the Enforcement Agreement provides, *inter alia*, that, following notification from the Italian authorities of a detainee's eligibility for pardon or commutation of sentence under Italian law, the President of the Tribunal shall determine, in consultation with the Judges of the Tribunal, whether pardon or commutation of the sentence is appropriate, and the Registrar shall inform the Italian Minister of Justice of the President's determination accordingly.

IV. DISCUSSION

15. In coming to this decision, I have consulted the Judges of the Bureau, including the Vice-President, and the permanent Judges of the sentencing Chambers who remain Judges of the Tribunal, consistent with Rule 124 of the Rules and paragraph 6 of the Practice Direction.¹⁶

1. Eligibility under Italian Law and Treatment of Similarly-Situated Prisoners

16. Pursuant to the Note Verbale, Jelisić has become eligible for a reduction of his sentence by 180 days due to his participation in a rehabilitation programme.¹⁷ The Summary of Treatment attached to the October 2012 Note Verbale further states that Jelisić has already been "granted, so far, 1170 days of early release time [(i.e., sentence remission)] for the semesters served up to 21 January 2012".¹⁸

17. I note that according to Article 3 of the Enforcement Agreement, Italy is bound to respect the duration of the sentence of persons convicted by the Tribunal, as imposed by the Tribunal.¹⁹ According to the provisions of Article 3(3) and Article 8 of the Enforcement Agreement, the Italian Minister of Justice must notify the Tribunal whenever a person convicted by the Tribunal serving his sentence in Italy becomes eligible for any kind of measure that affects the duration or the nature of his sentence, such as pardon, commutation of sentence, non-custodial measures, or conditional early release. In this respect, the Italian authorities may not approve such measures without first informing the President of the Tribunal, who retains the discretion to determine, in consultation with the Judges of the Tribunal, whether the suggested measures are appropriate, in light of the Tribunal's Statute, Rules, and practice.²⁰

18. In this regard, I further observe that, despite a detainee's eligibility for sentence remission under national law, the practice of the Tribunal is to consider convicted persons eligible for pardon, commutation of sentence, or early release only when they have served at least two-thirds of their

¹⁶ See also Rule 23(a) of the Rules.

¹⁷ Note Verbale.

¹⁸ Summary of Treatment, p. 4.

¹⁹ See Enforcement Agreement, Article 3(1).

²⁰ See Enforcement Agreement, Articles 3(3), 3(4), and 8.

sentence.²¹ Persons convicted by the Tribunal have the right, under paragraph 2 of the Practice Direction, to petition directly the President of the Tribunal for early release upon the completion of two-thirds of the sentence imposed.

19. I note that previous Presidents of the Tribunal have recognized, in principle, domestic systems of sentence remission, provided that such remissions remain subject to the supervision of the Tribunal, in accordance with the relevant enforcement agreements.²² In such circumstances, sentence remissions may be recognized “provisionally and may be withdraw[n] at a subsequent time”.²³ In the event that these sentence remissions cause a person convicted by the Tribunal to become eligible for early release under the law of the enforcement State, the national authorities must notify the President of the Tribunal, who will determine the detainee’s eligibility under the Statute, the Rules, and the practice of the Tribunal.²⁴ In determining whether early release is appropriate, the President of the Tribunal has the discretion to recognize the remissions granted under domestic law and consider the detainee eligible for early release under the Tribunal’s practice.²⁵

20. In this regard, I also note that sentence remissions are generally regarded as a tool of prisoner management in domestic systems and that non-Tribunal prisoners in domestic prisons largely benefit from them. If the Tribunal did not recognize any sentence remissions to which a detainee is entitled under national law, it would result in discriminatory treatment of Tribunal prisoners vis-à-vis other prisoners in the same prisons and would, in addition, render more difficult their management by prison authorities.

21. In the present case, Jelisić has been granted 1170 days of sentence remission under Italian law and is eligible for further remission of 180 days.²⁶ I note that Jelisić is not considered to have completed two-thirds of his sentence, even with all the remissions he is entitled to receive under Italian law counted towards his sentence. As explained above, these remissions are not final and are subject to the final approval of the Tribunal. Therefore, and consistent with the Tribunal’s past practice, I would provisionally recognize the sentence remissions for which Jelisić has become

²¹ See, e.g., *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010 (“*Bala Decision*”), paras 13-14, and authorities cited therein.

²² See, e.g., *Bala Decision*, para. 15; *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Public Redacted Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009 (“*Šantić Decision*”), paras 7-8.

²³ *Bala Decision*, para. 15.

²⁴ See *Bala Decision*, para. 15.

²⁵ For example, in the *Šantić Decision*, then-President Patrick Robinson noted that, although Šantić had not yet served two-thirds of his sentence by the time the decision was issued, he, nonetheless, had qualified “through work and good behaviour, for 302 days of ‘benefit’, which amount[ed] to time off his sentence” so that, with those “benefit” days considered pursuant to the provisions of the enforcement State where he was serving his sentence, Šantić had “effectively completed two-thirds of his sentence” before the *Šantić Decision* was issued. *Šantić Decision*, para. 8.

²⁶ See Note Verbale; Summary of Treatment, p. 4.

eligible under Italian law, provided that the other criteria of Rule 125 of the Rules also militate in favour of this recognition.²⁷

2. Gravity of the Crimes

22. Jelisić pleaded guilty to and was convicted for crimes of a high gravity, all of which related to his participation in attacks against the non-Serb civilian population in Brčko.²⁸ According to witness testimony, Jelisić would call himself the “Serbian Adolf” and claimed to have gone to Brčko to kill Muslims.²⁹ He also presented himself as “Adolf” at his initial hearing before the Trial Chamber.³⁰

23. The Trial Chamber found that Jelisić’s crimes “were committed under particularly aggravating circumstances”.³¹ The Trial Chamber emphasized “the repugnant, bestial and sadistic nature of Goran Jelisić’s behaviour” and went on to state:

His cold-blooded commission of murders and mistreatment of people attest to a profound contempt for mankind and the right to life.

[...] Goran Jelisić enthusiastically committed his crimes and took advantage of the opportunity afforded to him by the feeling of power to impose his own will on the defenceless victims and to decide who would live and who would die.

Furthermore, the Trial Chamber holds that the impact of the accused’s behaviour goes well beyond the great physical and psychological suffering inflicted on the immediate victims of his crimes and on their relatives. All the witnesses to the crimes who were at Goran Jelisić’s mercy suffered as well.³²

24. The Trial Chamber concluded that “in Goran Jelisić’s case, the aggravating circumstances far outweigh the mitigating ones and this is why a particularly harsh sentence has been imposed on him”.³³

25. I am therefore of the view that the very high gravity of the crimes for which Jelisić was convicted, and to which he pleaded guilty, weighs against recognizing the remission of his sentence.

3. Demonstration of Rehabilitation

26. Rule 125 of the Rules provides that the President of the Tribunal shall take into account a prisoner’s demonstration of rehabilitation in determining whether pardon or commutation is

²⁷ See *Bala* Decision, para. 16.

²⁸ Trial Judgement, para. 57.

²⁹ Trial Judgement, para. 102.

³⁰ Trial Judgement, para. 102.

³¹ Trial Judgement, para. 129.

³² Trial Judgement, paras 130-132.

³³ Trial Judgement, para. 134.

appropriate. In addressing the convicted person's rehabilitation, paragraph 3(b) of the Practice Direction states that the Registrar shall

request reports and observations from the relevant authorities in the enforcing 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, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

27. According to the Summary of Treatment submitted by the Tolmezzo prison authorities, Jelisić has shown "proper conduct" while in detention, has "observ[ed] the disciplinary and penitentiary regulations", and his "personal relationships with other inmates are in line with the norms of civil cohabitation".³⁴ [REDACTED]³⁵ [REDACTED]

[REDACTED]³⁶

28. [REDACTED]³⁷

29. [REDACTED]³⁸

30. Having carefully reviewed the materials before me, I take note of the fact that Jelisić's behaviour in detention has been proper and has not given rise to any disciplinary complaints. I also note that Jelisić appears to acknowledge responsibility for his crimes, to which he pleaded guilty, even though he identifies himself as a soldier who was "educated to obey blindly" and to believe in "the idea of war and nationalist ideas".³⁹ [REDACTED] In this context, I am of the opinion that Jelisić has demonstrated signs of rehabilitation and thus consider that this factor weighs in favour of recognizing the sentence remission for which he is eligible under Italian law.

4. Substantial Cooperation with the Prosecution

31. Rule 125 of the Rules states that the President of the Tribunal shall take into account any "substantial cooperation" of the prisoner with the Prosecution. 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 Prosecution and the significance thereof.

³⁴ Summary of Treatment, p. 4.

³⁵ Summary of Treatment, p. 5.

³⁶ Summary of Treatment, p. 5.

³⁷ Treatment Report, p. 12.

³⁸ Psychiatric Report, p. 15.

³⁹ Summary of Treatment, p. 5.

32. According to the Prosecution, Jelisić “has not cooperated” with it “at any point while serving his sentence”.⁴⁰ The Prosecution also denies that Jelisić “substantially cooperate[d]” with the Prosecution “at any point during the course of his trial or appeal”.⁴¹ The Prosecution notes that the Trial Chamber expressly refused to mitigate Jelisić’s sentence on the basis of that cooperation.⁴²

33. I consider, however, that the entry of a guilty plea by an accused person constitutes cooperation with the Prosecution, due to the impact of such a plea on the efficient administration of justice.⁴³ Furthermore, there is nothing on the record to indicate that the Prosecution sought Jelisić’s cooperation at any stage of the proceedings against him or after his conviction. The Prosecution appears to acknowledge that Jelisić has provided *some* cooperation, but it denies that the cooperation was substantial.⁴⁴ I take note of the Trial Chamber’s express refusal to take into account Jelisić’s cooperation as a mitigating circumstance in determining his sentence,⁴⁵ but, on balance, I am of the view that this factor provides some support for recognizing the remission of Jelisić’s sentence.

5. Conclusion

34. Taking all the foregoing into account and having considered those factors identified in Rule 125 of the Rules, as well as all relevant information on the record, I am of the view that the sentence remissions for which Jelisić is eligible under Italian law (*i.e.*, the 180 days requested by the Italian authorities, as well as the 1170 days already granted to Jelisić) should be recognized by the Tribunal on a provisional basis and without prejudice to the President’s full discretion not to count these remissions in calculating the amount of time served for other purposes, including in determining whether Jelisić has completed two-thirds of his sentence.⁴⁶

35. I note that the majority of my Colleagues, whom I have consulted before issuing my decision, support the provisional recognition of Jelisić’s sentence remission.

V. DISPOSITION

36. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, paragraph 8 of the Practice Direction, and Article 8(2) of the Enforcement Agreement, I

⁴⁰ Prosecution Memorandum, para. 2.

⁴¹ Prosecution Memorandum, para. 2.

⁴² See Prosecution Memorandum, para. 2.

⁴³ See *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012, para. 21.

⁴⁴ See Prosecution Memorandum, para. 2.

⁴⁵ See Trial Judgement, para. 127.

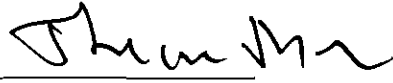
⁴⁶ See *Bala* Decision, para. 15.

hereby provisionally recognize the sentence remissions of 180 and 1170 days granted to Goran Jelisić by the Italian authorities.

37. The Registrar is hereby **DIRECTED** to inform the Italian 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.

~~Done this 28th day of May 2013,~~
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]