



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-95-16-ES
Date: 30 January 2006
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 30 January 2006

PROSECUTOR v. DRAGO JOSIPOVIĆ

CONFIDENTIAL AND *EXPARTE*

**DECISION OF THE PRESIDENT ON THE APPLICATION
FOR PARDON OR COMMUTATION OF SENTENCE
OF DRAGO JOSIPOVIĆ**

Counsel for the Applicant:

Ms. Jadranka Sloković

1. On 10 August 2005, Drago Josipović (“Josipović”) filed an application before the President requesting his pardon or commutation of sentence pursuant to Article 28 of the Statute of the International Tribunal (“Statute”),¹ Rules 123, 124 and 125 of the Rules of Procedure and Evidence (“Rules”) and 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”).

2. Josipović surrendered to the International Tribunal in October 1997 and pled not guilty at his initial appearance. Following his trial, he was convicted by a Trial Chamber on 14 January 2000, for persecution, murder and other inhumane acts as crimes against humanity and was sentenced to 10, 15 and 10 years respectively to be served concurrently.² Josipović appealed his conviction and sentence.

3. On 23 October 2001, the Appeals Chamber upheld Josipović’s convictions for persecution, murder and other inhumane acts and overturned his acquittals for violations of the laws and customs of war, murder and cruel treatment, respectively.³ The Appeals Chamber reduced Josipović’s overall sentence from 15 years to 12 years with credit for time served⁴ on the basis that:
 - (i) The Trial Chamber erred, based on evidence before it, in making the factual finding that Josipović was in a command position.
 - (ii) Having found that the Amended Indictment was defective in its failure to plead the attack on the home of Nazif Ahmić, the basis for Josipović’s conviction under count 1 (persecution) is now reduced.⁵

4. In support of his Request, Josipović argues that on 6 October 2005 he will have served eight years or two-thirds of his sentence.⁶ He notes that Rule 123 of the Rules provides that the State in which the convicted person is serving his sentence has the responsibility of notifying the International Tribunal when the convicted person becomes eligible for pardon or commutation of sentence pursuant to that State’s law, and that no such notification had been made on his behalf at the time of filing his Request. However, he says that this is because under the law of the State in which he is serving his detention, Spain, a person generally becomes eligible for pardon or

¹ Application for Pardon or Commutation of Sentence of Drago Josipović, 10 August 2005 (“Request”).

² *Prosecutor v Kupreškić et al*, Case No.IT-95-16-T, Trial Judgement, paras. 808-824.

³ *Prosecutor v Kupreškić et al*, Case No. IT-95-16-A, Appeal Judgement (“Appeal Judgement”), para. 172.

⁴ Appeal Judgement, paras. 438-439.

⁵ Appeal Judgement, para. 173.

⁶ Request, para. 3.

commutation of sentence only upon the serving of three-quarters of their sentence unless exceptional circumstances exist.⁷ He then claims that exceptional circumstances do exist in his case⁸ and, on the basis that other convicted persons have become eligible for early release after serving two-thirds of their sentences in other countries,⁹ asks that I grant his Request.¹⁰

5. Upon receipt of Josipović's Request, I asked the Registrar of the International Tribunal to provide me with the relevant reports pursuant to Article 2 of the Practice Direction. On 8 November 2005, the Deputy Registry forwarded to me reports obtained from the Office of the Prosecutor and from the Spanish Authorities. The Deputy Registrar also forwarded the relevant reports to Josipović pursuant to Article 4 of the Practice Direction to allow him the opportunity to comment. On 18 November 2005, Josipović submitted his Response.¹¹

6. As Josipović noted in his Request, Rule 123 of the Rules provides that the State in which the convicted person is serving his sentence shall notify the International Tribunal when that convicted person becomes eligible for pardon or commutation of sentence according to that State's laws. In this case, initially, there was no such notification by the State of Spain. Under the law of Spain, a convicted person generally becomes eligible for conditional release only upon the serving of three-quarters of their sentence, but the Spanish penal code does allow, in exceptional circumstances, conditional release after two-thirds of a sentence has been served. Exceptional circumstances may be found to exist if a detainee has progressed through three grades of prisoner status and displayed good behaviour and a high likelihood of successful reintegration into society.¹² In the first communication with Spain, the authorities stated that no exceptional circumstances existed in this case and that Josipović was not eligible for conditional release.¹³ However, on 22 November 2005, the Spanish Ministry of the Interior advised the International Tribunal in a second communication that Josipović had been reclassified to the "third grade" of prisoners in accordance with Spanish prison regulations.¹⁵ This reclassification makes Josipović eligible for conditional release under Spanish law.¹⁶

⁷ *Ibid.*, para. 5.

⁸ *Ibid.*, paras. 5-7.

⁹ *Ibid.*, para. 6.

¹⁰ *Ibid.*, para. 8.

¹¹ The Submission of Drago Josipović Regarding the Received Documents Relating to Application for Early Release, 18 November 2005 ("Response").

¹² Virgilio Valero García, General Sub Director of Penitentiary Treatment and Management, Spanish Ministry of the Interior, 30 August 2005, ("Communication of 30 August 2005").

¹³ *Ibid.*

¹⁵ Communication from the Spanish Ministry of Interior, General Directorate of Penitentiary Institutions, 22 November 2005, ("Communication of 22 November 2005").

7. Article 28 of the International Tribunal's Statute states that the President can only consider a request for pardon or commutation of sentence if the convicted person is eligible "pursuant to the applicable law of the state in which the convicted person is imprisoned." Josipović's Request would have therefore failed had not the International Tribunal received the second communication from the Spanish authorities of Josipović's eligibility for conditional release under the laws of Spain.

8. It should be noted that following the reclassification of Josipović to the third category of prisoner, a Spanish Magistrate purported to grant Josipović's application for early release, subject to a rectifying decision issued on the same day which recognised that the "Decision to Grant Parole...subject to his expulsion from national territory to his home country, Croatia, cannot be enforced until such time as authorisation is granted by the Presiding Judge of the International Criminal Court for the Former Yugoslavia".¹⁸

9. While the Spanish authorities' reclassification of Josipović makes him eligible for conditional release under the laws of Spain, serving two-thirds of a sentence alone is not sufficient to grant an early release at this International Tribunal; other special circumstances must be present. According to Rule 125 of the Rules, incorporated by reference in Article 7 of the Practice Direction, the President should take into account additional factors, such as the gravity of the offence, demonstration of rehabilitation, any substantial co-operation with the Office of the Prosecutor, treatment of similarly situated prisoners, and further criteria identified in prior orders and decisions relating to early release.

10. The report of the Office of the Prosecutor on the cooperation of Josipović is to the effect that no cooperation has been requested or received by it from Josipović and on that basis, must be considered neutral to Josipović.¹⁹

11. The communications from the Spanish authorities are, however, favourable to Josipović. The Spanish Director of the Segovia Penitentiary Centre states that no restrictive or limiting measures have been applied to Josipović and his conduct is good. The report also notes that Josipović is

¹⁶ Communication of 30 November 2006.

¹⁸ In Re: Release on Parole 000048B/2004 0001, National Court, Central Minors' Court, 12 January 2006

¹⁹ Gavin Ruxton, Chief Prosecutions, 20 October 2005.

withdrawn and does not participate in any activities but has not required psychiatric treatment.²⁰ The report from the Spanish psychologist claims that though subject to a very restrictive regime, Josipović “caused no problems in respect for the rules and living with other people, acceptance of loss of liberty and regimented restrictions” and that “he demonstrated a positive attitude towards the officials and the institution and a low level of conflict behaviour”.²¹ In addition, the Director of Penitentiary Institutions, which reclassified Josipović to the third category of prisoner states that:

[F]rom the assessment it may be inferred that there has been a certain positive evolution in the inmate’s conduct taking into consideration personal and penitentiary circumstances that enable him to live under a regime of semi-liberty where adequate control and protection measures are applied. This is so for the following reasons: Even though his participation in activities may be considered to be limited, in the specific environment in which the prisoner finds himself and in view of the concurrence of other factors in this case, his behaviour, attitude and demonstration of the acceptance of responsibility stemming from the crimes committed may be considered sufficient to grant him advancement to a higher grade of treatment and the serving of the rest of his sentence in his own country.²²

11. The Response filed by Josipović was with respect to the original communication received by the Spanish authorities that Josipović was not eligible for early release under the laws of Spain and much of his Response was directed towards the unfairness of his prisoner classification.²³ However, he also submits that his isolation and his inability to communicate in Spanish is the reason why he is withdrawn and unable to engage in many activities.²⁴ He states that he has made many requests to be given work and these requests have been rejected. He claims that when he was detained in the United Nations Detention Unit, he was included in all kinds of activities, sports and learning English, because he was able to communicate with his fellow inmates.²⁵ He also urges that exceptional circumstances exist in his case. He surrendered to the International Tribunal after learning of the indictment against him. While in detention he has always behaved well, complied with prison regulations and obeyed orders of prison officials. He has maintained good relations with other inmates and this behaviour “is a good guarantee for high likelihood of successful reintegration in society”.²⁶ He refers to the fact that he is a family man with two sons who are

²⁰ Report, Director, Segovia Penitentiary Centre, 25 August 2005.

²¹ Report, Psychologist, León, 18 November 2004.

²² Communication of 22 November 2005.

²³ Response, paras. 9-6.

²⁴ *Ibid.*, para. 4.

²⁵ *Ibid.*, para. 5.

²⁶ *Ibid.*, para. 7.

students and need his support and a wife who has taken on the role as sole provider for the family. Further, he refers to his qualification as a chemist and claims that he would be a useful member of his family and the community to which he wishes to return. Finally, he asks that the mitigating circumstance considered by the Trial Chamber in sentencing him, namely that he saved two Muslims during the attack on the village of Ahmići be considered as evidence that his return to his community would not cause any disruption.²⁷

12. Upon consideration of the relevant materials received from the Deputy Registrar, pursuant to Rule 124 of the Rules and Article 5 of the Practice Direction, I circulated this material, and my provisional view that the material proffered by the Spanish authorities demonstrated that Josipović's early release should be granted, to the members of the Bureau and to that member of the Appeals Chamber that remains a Judge of this Tribunal, besides me.²⁸ All Judges consulted were in favour of granting Josipović's Request. However, some members were concerned that his Request had already been granted by the Spanish authorities, albeit, subject to my authorisation, prior to the rendering of my decision. I share that concern. Pursuant to the agreement on the enforcement of sentences the State is to notify the International Tribunal of a prisoners' eligibility for pardon or commutation of sentence and the decision as to whether that should be granted finally rests with the President of the International Tribunal.²⁹

12. On the basis of the foregoing, Josipović's Request for early release is granted. As discussed previously, his release is permitted under Spanish law. While the crimes for which Josipović was convicted are undoubtedly serious, Josipović has displayed good conduct while serving his sentence and demonstrated rehabilitation. Further, the likelihood of his successful reintegration into society appears to be high.

13. The Registrar is directed to inform the Spanish Authorities of this decision and to ensure that all steps are taken to implement the decision within a reasonably practicable time.

²⁷ *Ibid.*, para. 9

²⁸ None of the Judges who were members of the original sentencing Trial Chamber remain members of the International Tribunal.

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

Done this 30th day of January 2006,
At The Hague,
The Netherlands.



Fausto Pocar
President of the International Tribunal

[Seal of the International Tribunal]

²⁹ Agreement Between the United Nations and the Kingdom of Spain on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, 28 March 2000, Article 3.