



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-98-30/1-ES
Date: 8 November 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking, Registrar
Decision: 8 November 2010

PROSECUTOR

v.

ZORAN ŽIGIĆ

PUBLIC

DECISION OF PRESIDENT ON EARLY RELEASE OF ZORAN ŽIGIĆ

Office of the Prosecutor:
Mr. Serge Brammertz

Counsel for Zoran Žigić:
Mr. Slobodan Stojanović

Republic of Austria

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 Republic of Austria that Mr. Zoran Žigić is eligible for conditional release under the Austrian Penal Code and Penal Law.

A. Background

2. On 7 September 2010, the Registry informed me of a notification received from the Embassy of Austria dated 17 August 2010, 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 stated that Mr. Zoran Žigić would be eligible for conditional release under Austrian law [*§46, paragraph 1 StGB (Strafgesetzbuch) and §152, paragraph 1, lit. 2 StVG (Strafvollzugsgesetz)*] as of 16 October 2010, after having served one-half 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. Žigić with the Austrian Federal Ministry of Justice on 14 June 2010. Accompanying the notification, in satisfaction of paragraph 3(b) of the Practice Direction, were the following reports: (a) a report submitted by the Correctional Institute Graz-Karlau concerning Mr. Žigić’s behaviour, dated 29 July 2010; (b) a psychological opinion dated 20 July 2010; (c) a psychiatric report dated 27 July 2010; (d) a medical opinion dated 21 July 2010; and (e) reports of infractions dated 20 August 2007, 9 October 2008, and 26 April 2010.²

3. On 27 September 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. Žigić has provided to the Office of the Prosecutor.³

4. Pursuant to paragraphs 4 and 5 of the Practice Direction, all of the above materials were furnished to Mr. Žigić on 30 September 2010, who provided a response by letter dated 19 October 2010 in which he addresses the report of the Prosecution.⁴

¹ IT/146/Rev.3, 16 September 2010.

² Memorandum from Deputy Registrar to President, 7 September 2010 (Letter from Austria to Tribunal, 17 August 2010).

³ Memorandum from Deputy Registry to President, 27 September 2010.

⁴ Memorandum from Deputy Registrar to President, 21 October 2010 (Letter from Zoran Žigić to President, 19 October 2010).

B. Proceedings before the Tribunal

5. The amended indictment against Mr. Žigić, Miroslav Kvočka, Milojica Kos, Dragoljub Prać, and Mlađo Radić was filed on 9 November 1998.⁵ Mr. Žigić was arrested and transferred to the Tribunal on 16 April 1998, and pleaded not guilty to all charges at his initial appearance on 20 April 1998. The indictment was further amended on 26 October 2000 in which Mr. Žigić was charged with crimes committed for events at the Keraterm, Omarska, and Trnopolje camps in the municipality of Prijedor, Bosnia and Herzegovina.⁶

6. The case proceeded to trial, and the Trial Chamber ultimately found Mr. Žigić guilty of various counts of crimes against humanity and violations of the laws or customs of war.⁷ The Trial Chamber noted the extreme gravity of the crimes committed by Mr. Žigić and sentenced him to twenty-five years of imprisonment with credit for time served while in detention from 16 April 1998, pursuant to Rule 101(C) of the Rules.⁸

7. Mr. Žigić appealed his conviction and sentence. The Appeals Chamber allowed Mr. Žigić's appeal in part and reversed his convictions for murder and torture at the Omarska camp, but affirmed the remainder of his convictions. Mr. Žigić's sentence was affirmed.⁹

8. Mr. Žigić was transferred on 8 June 2006 from The Hague to the Correctional Institute Graz-Karlau in Austria to serve the remainder of his sentence.

C. Applicable Law

9. 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, 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,

⁵ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-I, Amended Indictment, 9 November 1998. The initial indictment against Mr. Žigić was confirmed on 21 July 1995 under case number IT-95-8-PT.

⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30-I, Amended Indictment, 26 October 2000.

⁷ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001 (“*Kvočka* Trial Judgement”), para. 764.

⁸ *Kvočka* Trial Judgement, paras 748-750.

⁹ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/I-A, Judgement, 28 February 2005 (“*Kvočka* Appeal Judgement”), para. 716, p. 243.

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.

10. The Agreement between the United Nations and the Federal Government of Austria on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia ("Enforcement Agreement"), dated 23 July 1999, provides at Article 3(1) that, in enforcing the sentence pronounced by the Tribunal, the competent national authorities of Austria shall be bound by the duration of the sentence and at Article 3(2) that the conditions of imprisonment shall be governed by the law of Austria, subject to the supervision of the Tribunal. Articles 8(1) and (2) of the Enforcement Agreement provide that, if, pursuant to the applicable national law of Austria, the sentenced person is eligible for early release, pardon, or commutation of sentence, Austria shall notify the Registrar accordingly and shall inform the Registrar of all the circumstances pertaining to such eligibility. Article 8(3) provides that, if the President of the Tribunal determines that an early release, pardon, or commutation of sentence is not appropriate, Austria shall act accordingly. Article 9(3) provides that Austria shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

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, 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.

D. Discussion

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

1. Treatment of Similarly-situated Prisoners

12. In respect of the time that Mr. Žigić has spent in detention, Austria has notified the Registry that Mr. Žigić was eligible for conditional release under Austrian law as of 16 October 2010, after having served one-half of his prison sentence. However, it is the practice of the Tribunal to consider

convicted persons to be eligible for early release when they have served at least two-thirds of their sentences.¹⁰ Pursuant to Rule 125 of the Rules, which requires me to take into account the treatment of similarly situated prisoners, the amount of time that Mr. Žigić has served for his crimes does not militate in favour of his early release.

13. I note that Mr. Žigić will have served two-thirds of his sentence on approximately 16 December 2014.

2. Gravity of Crimes

14. Article 125 of the Rules requires me to take into account the gravity of the crimes committed. Mr. Žigić was ultimately found to be guilty of persecutions on political, racial, or religious grounds, a crime against humanity (count 1); murder, a violation of the laws or customs of war (count 7); and torture, a violation of the laws or customs of war (count 12) at the Keraterm camp. Mr. Žigić was found to be guilty of cruel treatment, a violation of the laws or customs of war (count 13) at the Trnopolje camp. In dismissing Mr. Žigić's appeal against his sentence and affirming the sentence of twenty-five years imposed by the Trial Chamber, the Appeals Chamber emphasised "the seriousness and gravity of the crimes committed by Žigić". The Appeals Chamber noted:

that Žigić, of all the Appellants, was the one who physically committed the highest number of crimes. The Appeals Chamber further notes that Žigić, apart from a minor function in the Keraterm camp, held no official function in the camps, but entered the camps for the sole purpose of abusing detainees. The Appeals Chamber especially wishes to emphasize the seriousness and gravity of the crimes committed by Žigić, and thus affirms the sentence imposed by the Trial Chamber.¹¹

15. Based upon the foregoing, I am of the view that Mr. Žigić's crimes are of a high gravity and that this is a factor that weighs against granting him early release.

¹⁰ 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, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 26 July 2010, para. 14; *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; *Prosecutor v. Duško Sikirica*, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of the 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.

¹¹ *Kvočka* Appeal Judgement, para. 716.

3. Demonstration of Rehabilitation

16. Rule 125 of the Rules provides that the President shall take into account the prisoner's demonstration of rehabilitation. 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.

17. The relevant reports describe Mr. Žigić's behaviour as "good ... during most of his prison term"¹² and "mostly good" with "minor infractions". He is described as "calm and adapted"¹³ and worked in the book bindery department where his performance has been "good" and his behaviour "quiet and appropriate".¹⁴ According to the prison report, Mr. Žigić has committed three minor infractions in August 2007, September 2008, and April 2010, which were for possession of unauthorised objects and resulted in a €25 fine and reprimands.¹⁵ Although I am concerned with what appears to be a consistent pattern of minor infractions by Mr. Žigić during his detention, his behaviour has otherwise been good, and the prison management "explicitly supports" Mr. Žigić's conditional release.¹⁶

18. Paragraph 3(b) of the Practice Direction envisages reports from the enforcement states 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. The psychological report states that "no clinically relevant abnormalities could be determined for Mr. Žigić during his time in prison so far" and that "[t]here are no indications of an existing psychological disorder." The report notes that "[a] prison neurosis or a psychotic disorder can be ruled out" and that the conduct of Mr. Žigić "support[s] the impression of mental stability". The report, however, does make a qualification that the opinion "cannot provide a comprehensive forensic and prognostic risk assessment in relation to a possible conditional release."¹⁷ The psychiatric report states that Mr.

¹² Memorandum from Deputy Registrar to President, 7 September 2010 (Letter from Austria to Tribunal, 17 August 2010).

¹³ Memorandum from Deputy Registrar to President, 7 September 2010 (Report of Federal Ministry of Justice, 12 August 2010, p. 1).

¹⁴ Memorandum from Deputy Registrar to President, 7 September 2010 (Letter from Austria to Tribunal, 17 August 2010).

¹⁵ The Correctional Institute Graz-Karlau records two minor offences. See Memorandum from Deputy Registrar to President, 7 September 2010 (Instructions for the conditional release of a prisoner, 14 June 2010, p. 1).

¹⁶ Memorandum from Deputy Registrar to President, 7 September 2010 (Report of Federal Ministry of Justice, 12 August 2010, para. 1).

¹⁷ Memorandum from Deputy Registrar to President, 7 September 2010 (Opinion by Psychological Service of the JA/Correctional Institute/Graz-Karlau, 20 July 2010).

Žigić did not contact the psychiatric service nor was he sent there.¹⁸ Based upon the fact that Mr. Žigić 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.

19. Despite Mr. Žigić's consistent pattern of minor infractions while incarcerated, his good behaviour and work performance while serving his sentence are some—albeit very limited—evidence of his demonstration of rehabilitation.

4. Co-operation with the Prosecution

20. Rule 125 of the Rules states that the President shall take into account any substantial co-operation of the prisoner with the ICTY Prosecutor. 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.

21. According to the Prosecution report, Mr. Žigić did not cooperate with the Office of the Prosecutor in the course of his trial or appeal, nor has he cooperated at any point while serving his sentence.¹⁹ Mr. Žigić contends that the Prosecution never requested cooperation and that he had offered to cooperate with the Prosecution, but that his offers were rejected.²⁰ Under these circumstances, I consider the factor of co-operation with the Prosecution to be a neutral one.

5. Conclusion

22. Taking all of the foregoing into account and having considered those factors identified in Rule 125 of the Rules, I consider that, while Mr. Žigić has displayed some—albeit very limited—evidence of rehabilitation, there remain significant factors that weigh against granting him early release: the gravity of Mr. Žigić's crimes is high, and I do not consider that the amount of time that Mr. Žigić has served in detention militates in favour of his release. I am therefore of the view that Mr. Žigić should not be granted early release.

23. I note that my colleagues unanimously share my view that Mr. Žigić should be denied early release.

¹⁸ Memorandum from Deputy Registrar to President, 7 September 2010 (Psychiatric Report, 27 July 2010).

¹⁹ Memorandum from Deputy Registrar to President, 27 September 2010 (Memorandum from Office of Prosecutor to Deputy Registrar, 23 September 2010, para. 2).

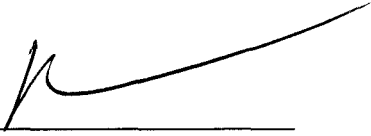
²⁰ Memorandum from Deputy Registrar to President, 21 October 2010 (Letter from Zoran Žigić to President, 19 October 2010, para. 4).

E. Disposition

24. 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 of the Enforcement Agreement, Zoran Žigić is hereby DENIED early release.

25. 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.

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



Judge Patrick Robinson
President

Dated this eighth day of November 2010
At The Hague
The Netherlands

[Seal of the Tribunal]