



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-05-87-ES.1
Date: 29 August 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 29 August 2013

PROSECUTOR

v.

DRAGOLJUB OJDANIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF THE 10 JULY 2013
DECISION OF THE PRESIDENT
ON EARLY RELEASE OF DRAGOLJUB OJDANIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for General Ojdanić

Mr. Tomislav Višnjić

Mr. Peter Robinson

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"), am seised of a Petition for Early Release ("Application") from Mr. Dragoljub Ojdanić ("Ojdanić"), filed on 3 April 2013.¹ I consider this Application pursuant to Article 28 of the Statute of the Tribunal ("Statute"), Rules 124 and 125 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), and paragraph 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 International Tribunal ("Practice Direction").²

I. BACKGROUND

2. On 26 February 2009, Trial Chamber III of the Tribunal ("Trial Chamber") convicted Ojdanić pursuant to Article 7(1) of the Statute for crimes committed while he served as the Chief of the General Staff of the Yugoslav Army ("VJ").³ Specifically, Ojdanić was found guilty of two counts of aiding and abetting forcible transfer and deportation and other inhumane acts as crimes against humanity.⁴ The Trial Chamber sentenced Ojdanić to 15 years of imprisonment.⁵ The Appeals Chamber confirmed Ojdanić's withdrawal from his appeal on 31 January 2013.⁶ Ojdanić has served his entire sentence at the United Nations Detention Unit in The Hague ("UNDU").

3. On 3 April 2013, Ojdanić filed a motion requesting that I grant him early release on the serving of two-thirds of his sentence on 29 August 2013.⁷

II. THE APPLICATION

4. Following receipt of the Application, I directed the Registrar of the Tribunal ("Registrar") to undertake the steps prescribed by paragraph 3 of the Practice Direction. On 1 May 2013, the Registrar conveyed to me (i) a report from the UNDU, dated 25 April 2013, on Ojdanić's behaviour and on the general conditions of his detention ("UNDU Report"); (ii) a report from the Reporting Medical Officer at the UNDU, dated 24 April 2013, on the physical and mental health of Ojdanić

¹ Petition for Early Release, 3 April 2013 ("Application").

² IT/146/Rev.3, 16 September 2010.

³ *Prosecutor v. Nikola Šainović*, Case No. IT-05-87-T, Judgement, 26 February 2009 ("Judgement").

⁴ Judgement (Vol. 3 of 4), para. 1209.

⁵ Judgement (Vol. 3 of 4), para. 1209.

⁶ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Final Decision on "Notice of Withdrawal of Dragoljub Ojdanić's Appeal Against the Judgement of Trial Chamber III Dated 26 February 2009" and "Notice of Withdrawal of Prosecution's Appeal Against the Judgement of Trial Chamber III dated 26 February 2009 in Relation to the Accused Dragoljub Ojdanić", 31 January 2013.

⁷ Application, para. 14.

("Medical Report"); and (iii) a declaration by Ojdanić, dated 24 April 2013, consenting to the release of any medical and psychological reports and evaluations carried out during his detention.

5. On 6 May 2013, the Registrar conveyed to me a report from the Office of the Prosecutor ("Prosecution"), dated 3 May 2013, regarding Ojdanić's cooperation with the Prosecution ("Prosecution Memorandum"). Ojdanić submitted a written response to the materials on 14 May 2013, in accordance with paragraph 5 of the Practice Direction.⁸

III. DISCUSSION

6. In coming to my decision upon whether it is appropriate to grant Ojdanić's Application, I have consulted the Judges of the Bureau and the permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, pursuant to Rule 124 of the Rules.

A. Applicable Law

7. Article 28 of the Statute provides that if a convicted person is eligible for pardon or commutation of his sentence "pursuant to the applicable law of the State in which [the person] is imprisoned [...], the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law."

8. Rule 124 of the Rules provides that the President, upon receipt of such a notification, 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.

9. Rule 125 of the Rules provides that the President shall take into account, *inter alia*, the following factors when making a determination on pardon or commutation of a sentence: (i) the gravity of the crimes for which the prisoner was convicted, (ii) the treatment of similarly-situated prisoners, (iii) the prisoner's demonstration of rehabilitation, and (iv) any substantial cooperation of the prisoner with the Prosecution.

10. Rule 102(A) of the Rules provides that:

The sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on

⁸ *Prosecutor v. Dragoljub Ojdanić*, Case No. IT-05-87-ES.1, Comments on Information on Early Release, 14 May 2013 (confidential) ("Response").

the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64 [of the Rules].

Therefore, once an appeal is pending and while a convicted person remains detained at the UNDU, provisional release by the Appeals Chamber assigned to his appeal is the procedural avenue to be taken for a request for release from detention.⁹ However, in the situation where there is no appeal pending and a convicted person is still detained at the UNDU, a request for release may be entertained by the President of the Tribunal.¹⁰ In such circumstances, although the Statute, Rules and Practice Directions do not address the situation where a convicted person is detained at the UNDU, rather than in one of the enforcement states, “the conditions for eligibility regarding pardon, or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal” and “the eligibility of individuals serving their sentences at the UNDU must be determined by reference to the equivalent conditions for eligibility established by enforcement states.”¹¹

11. Paragraph 2 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release if he or she believes that he or she is eligible therefor.

12. Paragraph 8 of the Practice Direction provides that the President may consider “any other information” he finds relevant, in addition to the factors set forth in Rule 125 of the Rules.

B. Gravity of the Crimes

13. The Trial Chamber convicted Ojdanić of two counts of aiding and abetting deportation and other inhumane acts. Specifically, the Trial Chamber found Ojdanić guilty of providing practical assistance, encouragement, or moral support to members of the VJ whom he knew intended to commit deportation and forcible transfer.¹² Ojdanić’s conduct had a substantial effect on the actual commission of these crimes by VJ forces.¹³ The Trial Chamber found that Ojdanić, in addition to issuing orders and allowing the VJ to be in the locations where the crimes were committed, also refrained from taking effective measures at his disposal, such as specifically enquiring into the forcible displacement, despite his awareness of such incidents.¹⁴

⁹ See, e.g., *Prosecutor v. Shefqet Kabashi*, Decision of President on Early Release of Shefqet Kabashi, Case No. IT-04-84-R77.1-ES, 28 September 2011 (“*Kabashi* Early Release Decision”), para. 11, citing to *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010 (“*Gvero* Early Release Decision”), para. 7.

¹⁰ See, e.g., *Kabashi* Early Release Decision, para. 11, citing to *Gvero* Early Release Decision, para. 7.

¹¹ See, e.g., *Kabashi* Early Release Decision, para. 11, citing to *Gvero* Early Release Decision, para. 7.

¹² Judgement (Vol. 3 of 4), paras 623, 625-626, 628.

¹³ Judgement (Vol. 3 of 4), para. 628.

¹⁴ Judgement (Vol. 3 of 4), para. 626.

14. Based on the foregoing, I am of the view that the gravity of the crimes for which Ojdanić was convicted is a factor that weighs against granting the Application for early release.

C. The Treatment of Similarly-Situated Prisoners

15. It is the practice of the Tribunal to consider a convicted person eligible for early release when he has served at least two-thirds of his sentence.¹⁵ I note, however, that a convicted person having served two-thirds of his sentence is merely eligible for early release and not entitled to such release, which may only be granted by the President as a matter of discretion. As noted above, Ojdanić will have served two-thirds of his sentence as of 29 August 2013.

16. Taking account of the practice of the Tribunal to allow early release at two-thirds of the sentence, this is a factor that weighs in favour of Ojdanić's release.¹⁶

D. The Prisoner's Demonstration of Rehabilitation

17. In his Application, Ojdanić submits that he recognises the gravity of the crimes for which he was convicted.¹⁷ Ojdanić states that he hopes that I will take into consideration his "limited role and *mens rea*", the fact that he was not convicted of having been a member of the joint criminal enterprise, nor of the most serious crimes charged in the indictment, namely murder and persecution.¹⁸ Ojdanić asserts that he has demonstrated his rehabilitation by his acceptance of the Trial Chamber's findings through the withdrawal of his appeal and his expressions of regret to the victims.¹⁹ Ojdanić submits that his "exemplary conduct during his trial and 10 years at the [UNDU]" are further proof of his rehabilitation.²⁰

18. The UNDU Report notes that Ojdanić was the subject of a single disciplinary incident in relation to inappropriate behaviour toward a staff member.²¹ Notwithstanding, the UNDU Report reflects that during his time in custody, Ojdanić "has at all times shown respect for the management and staff of the unit and has complied with both the Rules of Detention and the instructions of the Detention Officers."²² The UNDU Report states that, while Ojdanić has withdrawn "slight[ly]" from the majority of detainees since 2009, he has "consistently maintained good relations with his

¹⁵ See, e.g., *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-ES, Decision of President on Early Release of Dragan Zelenović, 30 November 2012, para. 14; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of the President on Early Release of Momčilo Krajišnik, 8 November 2012 (public with confidential annex), para. 23.

¹⁶ See *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision of the President on Early Release of Haradin Bala, 28 June 2012 (confidential), para. 39.

¹⁷ Application, para. 9.

¹⁸ Application, para. 9.

¹⁹ Application, para. 11.

²⁰ Application, para. 11.

²¹ UNDU Report.

²² UNDU Report.

fellow detainees” and is well integrated into the routine of the UNDU whilst trying to improve his health and fitness.²³ The UNDU Report reflects that Ojdanić participates regularly in Orthodox services and has recently joined music classes.²⁴ According to the UNDU Report, he has further maintained good relationships with his family throughout his time in detention, which has “helped him to maintain his emotional stability.”²⁵

19. Taking into account Ojdanić’s submissions with respect to his rehabilitation and the UNDU Report, I am of the view that Ojdanić’s acceptance of the Trial Chamber’s findings as evidenced by the withdrawal of his appeal, his expressions of regret to the victims, and his generally good and productive behaviour whilst detained at the UNDU are positive indicators of Ojdanić’s rehabilitation. I therefore consider that this factor weighs in favour of his early release.

E. Cooperation with the Prosecution

20. The Prosecution Memorandum states that Ojdanić did not cooperate with the Prosecution in the course of his trial or appeal. Similarly, the Prosecution Memorandum notes that Ojdanić has not cooperated with the Prosecution while serving his sentence at the UNDU. Ojdanić considers that he cooperated with the Prosecution by entering into an agreement to dismiss his appeal and by expressing his regret to the victims who suffered as a result of the conduct for which he was convicted.²⁶

21. I note that neither the Rules nor the Statute oblige an accused or convicted person to cooperate with the Prosecution during the course of his trial or appeal. Furthermore, there is nothing on the record to indicate that the Prosecution sought Ojdanić’s cooperation at any stage of the proceedings against him or after his conviction. Lastly, I note that Ojdanić’s decision to withdraw his appeal was taken into account when considering his rehabilitation. I am of the view that his decision to withdraw does not demonstrate assistance on the part of Ojdanić to the Prosecution. I therefore consider the absence of assistance of Ojdanić to the Prosecution to be a neutral factor and, accordingly, irrelevant to the overall assessment of Ojdanić’s Application for early release.

²³ UNDU Report.

²⁴ UNDU Report.

²⁵ UNDU Report.

²⁶ Response, para. 4.

F. Additional Considerations

22. [REDACTED].²⁷ [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].
[REDACTED].³¹ [REDACTED].³² [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵

23. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸

24. I am of the view that humanitarian concerns, including Ojdanić's age [REDACTED], militate in favour of his early release.

G. Conclusion

25. I conclude that there are three factors which weigh in favour of Ojdanić's early release. Specifically, Ojdanić will have served two-thirds of his sentence on 29 August 2013, there exist positive indicators of his rehabilitation while in prison and there exist humanitarian concerns which militate in favour of early release. I recall that it is the Tribunal's practice to consider detainees eligible for early release once they have served two-thirds of their sentence, but it does not confer any entitlement to early release upon a detainee. Nevertheless, past practice demonstrates that the completion of two-thirds of a detainee's sentence weighs strongly in favour of his early release.

26. In light of the above, and having considered the factors identified in Rule 125 of the Rules, the views of the Judges, the majority of whom are in favour of granting Ojdanić's Application, as well all relevant information on the record, I am of the view that Ojdanić's application for early release should be granted.

IV. DISPOSITION

27. For the foregoing reasons and pursuant to Article 28 of the Statute, Rules 124 and 125 of the Rules, and paragraph 8 of the Practice Direction, Dragoljub Ojdanić is hereby **GRANTED** early release effective 29 August 2013.

²⁷ Medical Report.

²⁸ Medical Report.

²⁹ Medical Report.

³⁰ Medical Report.

³¹ Medical Report.

³² Medical Report.

³³ Medical Report.

³⁴ Medical Report.

³⁵ Medical Report.

³⁶ Application, Annex A, Letter by Ojdanić to myself ("Annex A"), p. 1.

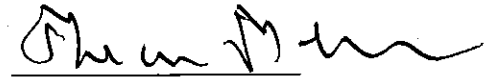
³⁷ Annex A, p. 2.

³⁸ Annex A, p. 3.

28. The Registrar is hereby **DIRECTED** to inform the UNDU authorities of this decision as soon as practicable.

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

Done this 29th day of August 2013,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Tribunal]