



International Tribunal for the Prosecution
of Persons Responsible for Serious
Violations of International Humanitarian
Law Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-4-PT

Date: 20 October 1998

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Almiro Simões Rodrigues

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of: 20 October 1998

THE PROSECUTOR

v.

MIROSLAV KVOČKA

DECISION REJECTING A MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Michael J. Keegan

Defence Counsel:

Mr. Krstan Simić
Mr. Miljkan Pucar

TRIAL CHAMBER I (hereinafter “the Trial Chamber”) 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 (hereinafter “the Tribunal”);

NOTING the redacted indictment issued by the Prosecutor against *inter alia* Miroslav Kvočka (hereinafter “the accused”) on 2 June 1998,

NOTING the motion for provisional release presented by the Defence Counsel for the accused and recorded on 30 September 1998,

NOTING the Defence motion for the assignment of a Trial Chamber in order to put an end to detention, addressed to the President of the Tribunal and recorded on the same day,

NOTING the addendum to the motion for the provisional release of the accused, recorded on 5 October 1998,

NOTING the response of the Prosecutor to the motion for the provisional release of the accused, recorded on 16 October 1998,

PURSUANT to Rules 54, 57, 62, and 65 of the Rules of Procedure and Evidence (hereinafter “the Rules”),

CONSIDERING that the accused has been detained at the United Nations Detention Unit in The Hague since 9 April 1998,

CONSIDERING that, pursuant to Rule 62, the case *The Prosecutor v. Miroslav Kvočka* has been assigned to the Trial Chamber,

CONSIDERING that, pursuant to Rule 65, provisional release shall be ordered by a Trial Chamber,

CONSIDERING that the Trial Chamber is of the opinion that the provisional release of the accused must depend both on its ascertainment of the existence of exceptional circumstances, supported by the two-fold certainty that, once released, the accused will continue to appear at trial and will exert no pressure and pose no danger to any victim, witness or other person, and on the conditions which the Trial Chamber may deem appropriate,

CONSIDERING HOWEVER that, although the Defence submits that the accused is innocent of the crimes with which he is charged and that he was always concerned about the detention conditions of the prisoners at the Omarska camp, the examination of the issue of the accused's presence at the scene of the alleged crimes and of his possible involvement in the offences is not relevant at this stage of the proceedings and shall be addressed at trial,

CONSIDERING that the national law governing provisional release in the State, of which the accused is a citizen, is not applicable to the Tribunal which, in the case in point, is bound solely by the relevant provisions of its Rules,

CONSIDERING that a joinder of accused, provided for under Rule 48, should this ever be decided, may in no way constitute the legal basis for a provisional release, which remains governed by the strict provisions of Rule 65,

CONSIDERING that the Defence asserts that a provisional release of the accused would result in creating "confidence" in the Tribunal among the "accused" and the "citizens",

CONSIDERING that the United Nations Security Council, acting on behalf of the international community under Chapter VII of the Charter of the United Nations, has entrusted the Tribunal with the mandate of judging those persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

CONSIDERING that Miroslav Kvočka is in the custody of the Tribunal solely because he was arrested; that he is offering no solid guarantee which permits the Trial

Chamber to be certain that, once released, he would appear at trial and would not pose a danger to any victim, witness, or other person, nor exert any type of pressure; that the risk is that much greater since the accused is being charged in his capacity as a superior,

CONSIDERING that the Defence offers no proof of the existence of exceptional circumstances demonstrating that the circumstances of the accused are not compatible with detention,

FOR THE FOREGOING REASONS

REJECTS the Defence motion for the provisional release of the accused.

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

(Signed)

Claude Jorda
Presiding Judge Trial Chamber I

Done this twentieth day of October 1998
At The Hague
The Netherlands

(Seal of the Tribunal)