

UNITED
NATIONS

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30 March 2005

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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: IT-98-30/1-A
Date: 30 March 2005
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Theodor Meron, President

Registrar: Mr Hans Holthuis

Decision of: 30 March 2005

PROSECUTOR

v

MIROSLAV KVOČKA

**DECISION ON APPLICATION FOR PARDON OR COMMUTATION OF
SENTENCE**

Counsel for the Prosecutor:

**Mr Anthony Carmona
Ms Helen Brady
Ms Norul Rashid
Mr David Re
Ms Kelly Howick**

Counsel for the Defence:

Mr Krstan Simić for Miroslav Kvočka

1. On 2 November 2001, the Trial Chamber rendered its decision in *Prosecutor v Miroslav Kvočka et al.* Kvočka was convicted by the Trial Chamber for individual criminal responsibility pursuant to Article 7(1) of the Statute of the International Tribunal for the Former Yugoslavia (“Statute of the Tribunal”) for co-perpetrating persecutions (count 1), as a crime against humanity under Article 5 of the Statute, and murder (count 5) and torture (count 9) as a violation of the laws or customs of war under Article 3 of Statute. The offences for which Kvočka was convicted arose from his participation in the Omarska camp in Bosnia and Herzegovina. Kvočka appealed his convictions and on 28 February 2005, the Appeals Chamber rendered its judgment

2. On Appeal, the Appeals Chamber allowed Kvočka’s appeal in so far as it related to his conviction as a co-perpetrator for rape and sexual assault under count 1 and reversed his conviction under count 1 (persecution, a crime against humanity), in so far as that conviction related to the underlying crimes of rape and sexual assault. The Appeals Chamber affirmed his remaining conviction under count 1. Under count 5, (murder as a violation of the laws or customs of war) the Appeals Chamber allowed his appeal in so far as it related to the murders of Ahil Dedić and Isemt Hodzić, and affirmed his conviction under count 5 for the murder of Mehmedalija Nasić and Bećir Mdeunjanin. The Appeals Chamber upheld his conviction for torture under count 9 of the Indictment and affirmed the sentence of seven years imposed by the Trial Chamber.

3. On 3 March 2005, Miroslav Kvočka filed a motion requesting his early release pursuant to Article 28 of the Statute of the Tribunal, and Rules 124 and 125 of the Rules of Evidence and Procedure (“Rules”).¹ Kvočka has been held in the United Nations Detention Unit from 9 April to 19 December 2003. He was granted provisional release, and then detained again from 19 March 2004. Two-third’s of Kvočka’s sentence was served on 13 January 2004, and the sentence will be served in its entirety on 25 November 2006.

4. Article 28 of the Tribunal’s Statute states that the President of the Tribunal can consider a request for pardon or a commutation of sentence only if the convicted person is eligible for pardon or commutation “pursuant to the applicable law of the State in which the convicted person is imprisoned”. The Statute of the Tribunal, nor the appropriate Rules of

Procedure and Evidence (“Rules”), or the implementing Practice Direction on the Procedure for the Determination of Application for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal (“Practice Direction”) address the situation where the convicted person is serving his sentence at the UNDU and not in one of the enforcement states. However, as I have stated in previous decisions, the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal. As such, the eligibility of individuals serving their sentence at the UNDU must be determined by reference to the equivalent conditions for eligibility established by the enforcement states.²

5. The eligibility for pardon or commutation of sentence in the enforcement states generally starts at two-thirds of the sentence served. Kvočka had served two-thirds of his sentence on 13 January 2004, and upon this basis I consider that Kvočka is eligible to be considered for commutation of sentence.

6. Rule 125 stipulates that in determining whether pardon or commutation is appropriate account should be taken of the gravity of the crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, as well as any substantial co-operation of the prisoner with the Prosecutor.

7. The crimes with which Kvočka was convicted are particularly grave. However, in sentencing Kvočka the Trial Chamber was persuaded that he was normally a person of good character and prior to the offences was a competent, professional policeman. The prior professional integrity shown by Kvočka indicates that Kvočka has the capacity for rehabilitation.

8. Pursuant to Article 2 of the Practice Direction, the Registrar has provided me with the report of the Prosecution and the report of the United Nations Detention Unit (“UNDU”). In her report the Prosecutor states that Kvočka has not provided any co-operation with her. However, the Prosecutor gives no indication that any such co-operation was ever sought from

² Order of the President on the Application for the Early Release of Simo Zarić, IT-95-9, 21 January 2004, at p. 3; Order of the President on the Application for the Early Release of Milan Simić, IT-95-9/2, 27 October 2003, at p. 3; Order of the President in Response to Zdravko Mucić’s Request for Early Release, IT-96-21-A *bis*, 9 July 2003, at p. 3; Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 24 June 2004.

Kvočka. The report of the Commanding Officer of the UNDU is favourable to Kvočka. It states that Kvočka has shown good respect for management and staff and complied with the Rules of detention and instructions of the guards. At all times he has maintained cordial relations with his fellow detainees and his physical and mental health is good. Kvočka's behaviour in the UNDU persuades me that Kvočka has demonstrated a strong possibility of rehabilitation.

9. Rule 124 and Article 5 of the Practice Direction directs me to circulate this material to the remaining Judges of the sentencing Chamber and the members of the Bureau, along with my views on the application. None of the members of the original sentencing Trial Chamber remain members of the Tribunal. I have, however, consulted with the members of the Appeals Chamber in addition to the members of the Bureau.

10. Not all of the Judges consulted support Kvočka's application for commutation of his sentence. However, a clear majority are persuaded that Kvočka's request should be granted, for the reasons I have already given.

11. Article 4 of the Practice Direction gives an opportunity to the convicted person to examine the information provided to me by the Registrar and to make representations to me. However, given that my decision is favourable to Kvočka, I do not consider that he suffers any prejudice by not being heard.

12. On the basis of the foregoing, Kvočka's request for commutation of his sentence is granted. The Registrar is directed to inform the Commanding Officer of the UNDU of the decision and to ensure that all steps are taken to implement the decision within a reasonably practicable time.

Done in French and English, the English version being authoritative.
Done this 30th day of March 2005,
At The Hague,
The Netherlands.



Theodor Meron
President of the International Tribunal

[Seal of the Tribunal]