



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-01-47-T
Date: 11 April 2006
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 11 April 2006

PROSECUTOR

v.

**ENVER HADŽIHASANOVIĆ &
AMIR KUBURA**

CONFIDENTIAL

**DECISION OF THE PRESIDENT ON AMIR KUBURA'S
REQUEST FOR EARLY RELEASE**

Counsel for Amir Kubura

Mr. Fahrudin Ibrišimović
Mr. Rodney Dixon

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1. On 15 March 2006, Counsel for Amir Kubura (“Kubura”) filed before me a “Request on Behalf of Amir Kubura for Early Release” (“Request”) pursuant to Rules 124 and 125 of the Rules of Procedure and Evidence of the International Tribunal (“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” (“Practice Direction”).¹

2. Kubura was transferred to the custody of the United Nations Detention Unit (“UNDU”) of the International Tribunal to stand trial on 4 August 2001.² The Trial Chamber subsequently convicted him on 15 March 2006 for incidents of plunder of public or private property committed by his subordinates during the armed conflict between the Croatian Defence Council and the Army of Bosnia and Herzegovina in central Bosnia in 1993. The Trial Chamber found these incidents to be in violation of the laws or customs of war under Article 3(e) of the Statute of the International Tribunal. Kubura was held criminally responsible as a commander under Article 7(3) of the Statute for failing to take necessary and reasonable measures to punish plundering by his subordinates in the villages of Šušanj/Ovnač/Brajkovići/Grahovčiči in June 1993 and for failing to take necessary and reasonable measures to prevent or punish plundering by his subordinates in the village of Vareš in November 1993. Kubura was acquitted on charges of murder, cruel treatment, and wanton destruction committed during the conflict.³

3. Accordingly, the Trial Chamber sentenced Kubura to two and a half years imprisonment subject to credit for time already spent in detention pursuant to Rule 101(C) of the Rules, which the Trial Chamber calculated to be 828 days as of the date of its Judgement.⁴ This number reflects the fact that, while in detention, Kubura was allowed provisional release five separate times.⁵ As a consequence, Kubura’s sentence will be served in full by 2 June 2006.

¹ IT/146, 7 April 1999.

² *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-T, Judgement, 15 March 2006, para. 2094.

³ *Id.*, pp. 659-686, 716-718, 725-727.

⁴ *Id.*, para. 2094.

⁵ Report on the Behavior of Amir Kubura Whilst in Custody from the Commanding Officer of the UNDU, 23 March 2006.

4. Upon receipt of Kubura's Request, on 17 March 2006, I requested the Registry of the International Tribunal to provide the relevant materials in accordance with Article 2 of the Practice Direction. On 24 March, the Registry forwarded to me the Prosecution's memorandum of 20 March 2006 attaching the "Prosecution Response to Request on Behalf of Amir Kubura for Early Release" filed on 17 March 2006 ("Prosecution's Response"), and the "Report on the Behaviour of Amir Kubura Whilst in Custody" dated 23 March 2006 by the Commanding Officer of the UNDU ("UNDU Report"). The Registry also informed me that copies had been made available to Kubura for comment on 23 March pursuant to Article 4 of the Practice Direction. The next day, Counsel for Kubura informed the Registry that Kubura waived his right to have the reports translated, was briefed as to their content by Counsel, and indicated that he did not have any comments to make.⁶

5. Thereafter, upon considering the materials provided to me by the Registry, I circulated them to the members of the Bureau and the permanent Judge of the sentencing Chamber on 28 March 2006 for consultation purposes pursuant to Rule 124 of the Rules⁷ and Article 5 of the Practice Direction.

6. Rule 125 enumerates some of the factors to be taken into account by the President when examining whether early release would be appropriate. These include, *inter alia*, "the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor."

7. In the UNDU Report, the Commanding Officer indicated that during the time that Kubura has been in the custody of the UNDU, he has shown good respect for the management and staff of the UNDU, has complied with the Rules of Detention and instructions of the guards, and has always had cordial relations with his fellow detainees. In its Response, the Prosecution stated that Kubura has offered no substantial cooperation to the Office of the Prosecutor. However, the Prosecution did not indicate whether any such cooperation has been sought and, as such, I treat this as a neutral factor.

⁶ Letter from Mr. Fahrudin Ibrišimović, Counsel for Amir Kubura, to Mr. John Hocking, Deputy Registrar, 24 March 2006.

⁷ Under Rule 124, "[t]he 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."

8. Having considered all the circumstances of this case, I am satisfied that early release should be granted. The crimes for which Kubura was convicted all related to the plunder and misappropriation of property by subordinates under his command. Crimes against property, while serious, may be considered less serious than crimes committed against the person. Kubura was acquitted on the more serious charges of murder and cruel treatment as well as wanton destruction, which may be considered as a more serious crime against property than plunder. On the basis of the crimes for which Kubura was convicted, the Trial Chamber assessed his level of criminality as warranting a sentence of two and a half years of which he has already served over 90 per cent. While in detention, Kubura has displayed good behaviour and signs of rehabilitation. I note that the majority of Judges consulted share my view that early release in this case would be appropriate.

9. On the basis of the foregoing, Kubura's Request is granted. The Registry is requested to take all necessary steps to ensure implementation of this decision as soon as is possible.

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

Done this 11th day of April 2006,
At The Hague,
The Netherlands.



Fausto Pocar
President of the International Tribunal

[Seal of the International Tribunal]