



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-96-23&23/1-ES
Date: 11 March 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President
Registrar: Mr. Hans Holthuis
Decision of: 11 March 2008

THE PROSECUTOR

v.

ZORAN VUKOVIĆ

CONFIDENTIAL

DECISION OF THE PRESIDENT ON COMMUTATION OF SENTENCE

Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Defence:

Mrs. Jelena D. Lopacic-Jancic

1. On 22 February 2001, the Trial Chamber found Zoran Vuković (“Vuković”) guilty of rape and torture as crimes against humanity as well as violations of the laws and customs of war perpetrated against a 15 and a half year old girl in Foča (Bosnia and Herzegovina).¹ The fact that his offences were committed against a particularly vulnerable and defenceless girl was considered in aggravation of his sentence.² There were no mitigating circumstances. He was given a single sentence of 12 years,³ with credit for time served in the International Tribunal’s custody, *i.e.*, from 23 December 1999. On 12 June 2002, the Appeals Chamber rejected Vuković’s appeal against his convictions and, while finding that his family situation was a matter to be taken in mitigation of his sentence, upheld the sentence imposed by the Trial Chamber.⁴ On 28 November 2002, Vuković was transferred to Norway for the enforcement of his sentence. On 19 November 2007, the Norwegian authorities notified the Registrar pursuant to Rule 124 of the Rules of Evidence and Procedure (“Rules”) that Vuković would be eligible for early release under Norwegian law as of 24 December 2007.⁵

2. Following the notification by the Norwegian authorities of Vuković’s eligibility for early release, the Registry undertook the steps prescribed in Article 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 Tribunal (IT/146/Rev.1) (“Practice Direction”) and requested reports from the Norwegian prison authorities and from the Prosecutor of the Tribunal. On 21 December 2007, the Registrar forwarded those reports to me and to Vuković. On 28 December 2007, Vuković filed a response to those reports in accordance with Article 4 of the Practice Direction.⁶

3. Upon consideration of the above materials, and pursuant to Rule 124 of the Rules and Article 5 of the Practice Direction, I circulated all the documents to the members of the Bureau and the permanent members of the Sentencing Chambers on 14 January 2008 and entered into a process of consultation with those Judges.

¹ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001, para. 888 (“Trial Judgement”).

² *Ibid.*, para. 879.

³ *Ibid.*, para. 890.

⁴ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, p. 127.

⁵ Letter of 19 November 2007 to the Registrar from Kari Melling, Assistant-Director General and Ingeborg Margrethe Svanes, Advisor, The Royal Ministry of Justice and the Police.

⁶ Application of Defence Counsel for Zoran Vuković for Pardon or Commutation of Sentence, 28 December 2007 (“Response”).

4. The reports of the Norwegian authorities note that there have been no breaches of discipline by Vuković and that he is “regarded as a positive and stabilizing element on the ward”.⁷ He spent the first years of his sentence in a high security ward, which only permitted his leaving the prison on few occasions for medical appointments. In September 2004, he was transferred to the progression ward and has been permitted out on escorted leave on numerous occasions. He has not received any visits from family and friends during his sentence. The report notes that the conditions under which Vuković is serving his sentence are difficult. The lack of language skills has made communication with prison staff and other inmates problematic.⁸ The primary report notes that, since being moved to the progressive ward, Vuković has taken part in weekly excursions such as cycling trips, football matches, community work for a football club, fishing trips, skiing trips and mountain walks. He has been permitted a computer in his own room due to his language difficulties. It is noted that “there has been no reason to criticize his behavior during the serving of his sentence”.⁹ No psychologist or psychiatrist assessments have been carried out.¹⁰

5. The report of the Prosecutor states that the Office of the Prosecutor has not received any cooperation from Vuković but does not advise as to whether any cooperation was even in fact sought by the Prosecutor.¹¹

6. In his response to the reports, Vuković claims that “he is completely rehabilitated” and that this is borne out by the reports of the prison authorities.¹² He further notes that, during his term of imprisonment, he has not received visits from any family members or friends due to economic constraints and that, despite the difficulties he faced in serving his sentence due to language and cultural differences, his behavior is exemplary.¹³ He advises that he would like to return to his family, to whom he still retains a close connection, and that he will continue with his job when he returns home.¹⁴

7. Rule 125 of the Rules provides the factors to be taken into account for determining whether commutation of sentence is 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

⁷ Report of Helge Hansen, Advisor, The Correctional Service Central Administration, 7 December 2007; Report of Senior Officer, The Correctional Service, Bodø Prison, 7 December 2007

⁸ *Ibid.*

⁹ Report of Senior Officer, The Correctional Service, Bodø Prison, 7 December 2007.

¹⁰ Letter of 11 December 2007 from Kari Melling, Assistant Director General and Ingeborg Margrethe Svanes, Advisor, Royal Ministry of Justice and the Police.

¹¹ Report of Carla Del Ponte, Zoran Vuković, Application for Early Release, 12 December 2007.

¹² Response, paras. 7-8.

¹³ *Ibid.*, paras. 9-10.

prisoner's demonstration of rehabilitation, as well as any substantial co-operation of the prisoner with the Prosecutor".

8. With respect to the gravity of the crimes for which Vuković was convicted, I consider that the counts of rape and torture committed against a young and defenceless girl to be of a particularly serious nature. The Trial Chamber finds that the rape of FWS-50 "led to serious mental and physical pain for the victim"¹⁵ and that force or compulsion was used prior to rape.¹⁶ The Trial Chamber also found that there were no mitigating circumstances. On Appeal, however, the Appeals Chamber finds that the fact that Vuković was married and had two children was a factor that the Trial Chamber should have considered in mitigation, but did not consider it sufficient to warrant a reduction in the sentence imposed by the Trial Chamber.

9. While I consider the crimes for which Vuković was convicted to be very serious, the reports of the Norwegian authorities are indicative of rehabilitation. The prison authorities have stressed that Vuković has faced considerable difficulties while serving his sentence but has been an active participant in prison activities and a positive element in the prison. Thus, while Vuković has suffered considerable hardship due to the enforcement of his sentence in a foreign country, he has not allowed those difficulties to impact upon his behaviour. In spite of those difficulties, he has made a positive contribution to the prison environment and, as such, I find the reports of the Norwegian authorities to be strongly in favour of early release.

10. While the report of the Prosecutor is not favourable to Vuković, in that there is no evidence of cooperation with it, the fact that the Prosecutor has not indicated that it ever requested any such assistance means that its report must be considered as neutral.

11. I also note that Vuković had served two-thirds of his sentence on 24 December 2007 and, while not a rule, early release has been granted to a number of convicted accused at this Tribunal on the serving of two-thirds of their sentence where their behaviour in prison has been exemplary and signs of rehabilitation established. Additionally, I consider the fact that Vuković intends to return to his family and to his work to be a factor supporting his early release.

¹⁴ *Ibid.*, para. 11.
¹⁵ Trial Judgement, para. 815.
¹⁶ *Ibid.*, para. 817.

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12. The discretion as to whether to grant provisional release falls to me as the President of this Tribunal. In this respect, I must note that not all Judges support my exercising discretion *in favour* of early release in light of the information received.

13. While I appreciate the views expressed by some of my colleagues, for the reasons already identified above, I am satisfied that, at this point in time, Vuković is entitled to benefit from the provisions for early release under Norwegian law, taking into account the fact that he has already spent a little more than two-thirds of his sentence in custody. The Registrar is therefore directed to advise the Norwegian authorities of my decision and assist as necessary in the release of Zoran Vuković from the custody of the Norwegian authorities.

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

Done this 11th day of March 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]