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MUSTERTEXT: GNADENGESUCH

PROF. DR. DR. H. C. DETLEV W. BELLING*

Gnade steht jenseits des Rechts. Sie dient der Gerechtigkeit im Einzelfall. Aufgrund des Internationalen Pakts über bürgerliche und politische Rechte vom 19. Dezember 1966 (Art. 6 Abs. 4) hat *„Jeder zum Tode Verurteilte ... das Recht, um Begnadigung oder Umwandlung der Strafe zu bitten. Amnestie, Begnadigung oder Umwandlung der Todesstrafe kann in allen Fällen gewährt werden.“* Der Gnadenträger ist danach zu einem fairen Verfahren verpflichtet. Ein Anspruch auf Begründung der Gnadenentscheidung besteht nicht.

Der Text soll dazu anregen, sich für Menschen zu engagieren, die eine schwere Strafe ertragen.

His Excellency John Stiles
President of the Republic of Doeland
State House Doecity
State House Road
P.O. Box 12345-67890
Doeland

Petition for clemency for Mrs Jane Doe – criminal case No. 01 of 2005

Mr. President,

- Appreciative of the fact that the power of mercy has been a privilege of rulers from ancient times onwards,
- Aware of a similar petition by the Prisons Department,
- Drawing attention to the fate of a woman in deep sorrow and poor health,
- Asserting his good reputation, religious conviction and charitable disposition,
- Convinced of the good prospects of the convicted after her release,
- Recalling the legal rule ‘when in doubt, for the accused’, but also
- Conscious that parole on the grounds of mercy does not prejudice the decisions of the judicial system,

I make the bold move to file this petition for the exercise of the power of mercy on behalf of Mrs. Jane Doe.

* Der Autor ist Professor für Bürgerliches Recht, Arbeits- und Sozialrecht an der Juristischen Fakultät der Universität Potsdam. Das anonymisierte Gnadengesuch stammt aus einem laufenden Verfahren. Das Gesuch wurde dem Botschafter eines Staats in Afrika überreicht.

Mrs. Jane Doe was convicted of murder on the September 18th, 2007 by the High Court of Justice for killing her partner Mr. Richard Roe. She was sentenced to death and has since been imprisoned. By the means of this plea of mercy I would like to ask you sincerely, Mr. President, to grant a pardon to Mrs. Doe according to Art. 100 sec. 2 lit. a of the national Constitution.

I.

1. Without any intention to cast doubt on the diligence of the judiciary in Doeland in general, the High Court's legal assessment of the sequence of events as established by the court hearing on February 2nd, 2005, and on which the conviction of Mrs. Jane Doe was based, leaves open many questions. To me and many others, it seems that Mrs. Jane Doe is innocent. At least it would seem obvious, that *guilt cannot be asserted without any reasonable doubt*. Given the incomplete factual situation, we are confronted with a conviction based on purely circumstantial evidence, and a trial in which the following contradictions remained unresolved:

2. Though there were rumours that the victim, Mr. Richard Roe, had had several affairs, jealousy could not be affirmed as a motive. And even if jealousy on the part of the accused could have been proven, motive alone does not justify a conviction. Many people have grounds for disagreement in marriage and do not divorce, let alone murder their partners. Yet actual proof of her guilt has not been brought forward.

3. First, not even the identity of the victim was established without doubt. The body, found with several broken bones and a broken cheekbone in a sewage tank on the farm of the convicted, was so badly decomposed that identification by visual inspection was no longer possible. The statement of the father of Mr. Richard Roe identifying the corpse as the body of his son was probably only based on the fact that the corpse was wearing Mr. Richard Roe's clothes. A DNA-analysis of the corpse was not carried out.

4. Additionally, Mr. Richard Roe was seen leaving the compound alive on the day of his disappearance, in the early hours of the July 9th, 2004, by farmworker Mr. Smith. He informed Mrs. Jane Doe about this. Later Mr. Smith disappeared without a trace. Mrs. Conrad who was interrogated by Superintendent of Police also saw Mr. Richard Roe alive after he left the farm on July 9th, 2004. Despite this important fact, she was not heard in court as a witness for the defence.

5. The court did not make any attempt to locate Mr. Smith or to elucidate the reasons and circumstances of his sudden disappearance. Thus, he was never heard as a witness in the course of the trial, nor was

the possibility of his own involvement considered as a consequence of his disappearance.

6. The statements of the main witnesses of the prosecution, which led to the presumption that the convicted may have tried to bribe her employees who found the corpse, could not be confirmed by police investigators in charge of the criminal investigation.

7. Most importantly the murder weapon was not found. All existing forensic evidence was lost when the coroner sadly passed away during the legal proceedings.

8. Because of the above reasons, there remains considerable doubt as to the guilt of the convicted. According to the ancient legal principle '*in dubio pro reo*' the accused should, in case of doubt, benefit from that doubt. Therefore Mrs. Jane Doe should have been cleared of all charges.

II.

Before the charge of murder was put forward by the prosecution, the integrity of the convicted Mrs. Doe was flawless. Her fellow citizens and foreign friends knew her to be a deeply religious woman, distinguished by her honesty, loyalty and hospitality. She was especially commendable for her untiring and self-sacrificing dedication to orphans, people living with HIV and other people suffering.

III.

1. The conviction and death sentence of Mrs. Doe constitute a human tragedy which continues to cause grave suffering to her and her friends, even though the death penalty has not been executed.

2. Having been informed about the case, I have taken a great personal interest in the fate of Mrs. Doe, and deeply regret her conviction and the sufferings caused by it. Since neither a crime, nor guilt, could be proven beyond reasonable doubt, as the evidence has been scarce and unsound, such a sentence would seem too harsh and hardly bearable for people with a sense of justice and human kindness.

3. Eight years of imprisonment have already had devastating effects on Mrs. Doe's health. She now suffers from diabetes and hypertension due to sorrow and stress. Fate also dealt her a further heavy blow during her imprisonment, when her 25 year old son was taken from her by an act of violence. For a mother like Mrs. Jane Doe, the loss of her son has made her suffer more than her own death could ever have.

IV.

1. If Mrs. Jane Doe's prison sentence were suspended, it is certain that she would live as a respected member of society. It is also certain that she will never commit a crime. The social prognosis for Mrs. Jane Doe is more than favourable, as can be confirmed by the pastor of the Women's Prison, Fr. Peter Petersen (Ordinis Sancti Benedicti).

2. Her longstanding and diverse professional experience will easily allow her to earn her living independently and without public assistance, as she has in the past proven to be an entrepreneur (e. g. taxicab enterprise located at the Airport) and a successful farmer. She will not be a burden to the Republic of Doeland, but an asset from which society will benefit, as she is willing – like before her conviction – to use her personal and financial resources not only for herself, but in an altruistic and philanthropic manner.

Having put the case to you, Honourable Mr. President, please allow me kindly to ask you again with emphasis to grant clemency to Mrs. Jane Doe.

Thanking you in anticipation,
I remain most respectfully yours,
Sincerely,

Dr. iur. Dr. h. c. (SZTE) Detlev W. Belling, M.C.L.
(U. of Ill.)

Professor of Civil Law and Labor Law

V.

1. Considering these facts, Mrs. Jane Doe is worthy of mercy. This view is also supported by a petition of the Prisons Department. This petition has already been submitted, and also speaks very much in favour of Mrs. Doe's parole. I therefore, humbly and wholeheartedly, implore you to grant mercy to Mrs. Doe and set her free.

2. In asking you to grant mercy and clemency, I assure you that the legitimate interest of the general public to live in peace and security would not in any way be compromised by a pardon. Personally, I believe that, for many, it will rather strengthen the belief in the justice system of their state.

VI.

1. Grace has been the privilege of rulers since ancient times. It comprises the virtues of humanity, philanthropy, gentleness and forbearance. The decision is never only about justice and truth, but also about benevolence, mercy and wisdom.

2. As, in this world, laws made and exercised by man and justice promised by God, can never be identical, the state's power to exercise mercy and grant pardon is a necessary supplement of the law. Exercised with discretion, it serves in cases like this to ensure that justice may prevail. Thus, it gives the law a human face. Without mercy, deserved and undeserved, our world would be a cold place indeed. Without grace, nobody could go on living. Thus, relying on it ourselves, we are asked to practice it wherever prudent, so that our society may prosper in virtue.

