

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-16-98-ES

Date: 29 July 2020

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambaou

Decision of: 29 July 2020

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

**DECISION ON THE EARLY RELEASE
OF DRAGOMIR MILOŠEVIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Dragomir Milošević:

Mr. David Hooper

Republic of Estonia

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a notification from the Republic of Estonia (“Estonia”) regarding Mr. Dragomir Milošević’s (“Milošević”) eligibility under Estonian law to be considered for release on parole under electronic surveillance, received by the Registry of the Mechanism (“Registry”) on 24 May 2019, and conveyed to me on 30 May 2019;¹

BEING FURTHER SEISED of a motion filed by Milošević on 15 August 2019,² wherein he requests either commutation of sentence or early release with conditions, in light of his age, declining health, and family situation;³

NOTING that, on 3 December 2004, Milošević voluntarily surrendered to the authorities of the then-State Union of Serbia and Montenegro, and was transferred to the United Nations Detention Unit in The Hague, the Netherlands;⁴

NOTING that, on 12 December 2007, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Milošević and sentenced him to 33 years of imprisonment,⁵ and, on 12 November 2009, the Appeals Chamber of the ICTY reduced this sentence to 29 years of imprisonment;⁶

NOTING that, on 22 March 2011, Milošević was transferred to Estonia to serve the remainder of his sentence;⁷

NOTING that in the Notification, the Estonian authorities indicate that: (i) the Estonian Penal Code permits a court to release on parole under electronic surveillance certain categories of offenders

¹ See Internal Memorandum from the Deputy Chief of Registry to the President, dated 30 May 2019 (confidential) transmitting the Notice, 24 May 2019. See also Registrar’s Submission of Notification Transmitted by the Republic of Estonia, 25 March 2020 (public, with public redacted Annex) (“Notification”).

² Application for Commutation of Sentence or Early Release, 15 August 2019 (confidential, with confidential Annexes 1, 2A-2D, 3) (“Confidential Direct Petition”); Application for Commutation of Sentence or Early Release, 15 August 2019 (public redacted version) (“Direct Petition”). As the paragraph numbers in the Direct Petition differ from those in the Confidential Direct Petition, the Confidential Direct Petition is cited when necessary.

³ Direct Petition, paras. 1-3, 51.

⁴ See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgement, 12 December 2007 (“Trial Judgement”), paras. 3, 1009; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009 (“Appeal Judgement”), p. 141.

⁵ Trial Judgement, paras. 1006, 1008.

⁶ Appeal Judgement, p. 128. Judge Theodor Meron and Judge Liu Daqun were among the Judges designated to form the Bench hearing the appeal. Appeal Judgement, p. 142.

⁷ See ICTY Press Release, Dragomir Milošević Transferred to Estonia to Serve Sentence, 22 March 2011, <https://www.icty.org/en/press/dragomir-milo%C5%A1evi%C4%87-transferred-estonia-serve-sentence>. See also *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-ES, Order Designating State in which Dragomir Milošević is to Serve his Sentence, 14 February 2011 (confidential, made public pursuant to instructions contained therein).

who have served half of the imposed punishment and who agree to electronic surveillance;⁸ (ii) on 3 June 2019 Milošević will have served half of his sentence and, as of that date, an Estonian court would be entitled to consider whether or not to grant his release on parole;⁹ (iii) Milošević provided the requisite consent to electronic surveillance on 23 May 2019;¹⁰ and (iv) if the court decides that release on parole is justified, upon release from prison, Milošević would be subject to expulsion from Estonia as he does not have a place of residence in Estonia, a prerequisite for electronic surveillance;¹¹

NOTING that in the Direct Petition, Milošević submits, *inter alia*,¹² that: (i) he is eligible for release under Estonian law;¹³ (ii) he is willing to be released subject to restrictive conditions, including home restriction and electronic monitoring, which he understands the Republic of Serbia is willing to put into effect;¹⁴ (iii) the conditions of imprisonment in Estonia are problematic in light of his age, and the prison’s distance from his family limits the possibility of visits;¹⁵ and (iv) he is in ill health and his family faces “difficulties”;¹⁶

NOTING that, on 11 June 2020, Milošević filed correspondence from the Republic of Serbia related to his early release;¹⁷

RECALLING that pursuant to Article 25 of the Statute of the Mechanism (“Statute”), imprisonment in an enforcement State shall be in accordance with the applicable law of the State concerned, subject to the Mechanism’s supervision;

RECALLING FURTHER that pursuant to Article 26 of the Statute: (i) if a convicted person is becomes eligible for pardon or commutation of sentence pursuant to the law of the enforcement State, that State shall notify the Mechanism accordingly; and (ii) there shall only be pardon or

⁸ Notification, p. 1 (*referring to* Penal Code of Estonia, clause 76(2)(1)).

⁹ Notification, pp. 1-2.

¹⁰ Notification, p. 1.

¹¹ Notification, p. 2.

¹² Milošević also submits that he accepts the seriousness of his crimes and, although he acknowledges that his Direct Petition cannot be an appeal against his sentence, he emphasises that at trial and appeal no mitigating factors were presented by his defence, which was unusual given that mitigating material exists. *See* Direct Petition, paras. 19-21, 45-50. *See also* Confidential Direct Petition, Annex 1.

¹³ Direct Petition, para. 1.

¹⁴ Direct Petition, paras. 3, 15-17.

¹⁵ Direct Petition, paras. 30, 34-36, 38-39.

¹⁶ Direct Petition, paras. 3, 30-39, 51. *See* Confidential Direct Petition, paras. 40-42; Annexes 2A-D.

¹⁷ Submission of Correspondence Addressed to the President, Judge Carmel Agius from the Ministry of Justice for the Republic of Serbia with Annex A, 11 June 2020 (confidential) (“Correspondence from Serbia”).

commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law;¹⁸

RECALLING that Article 3(3) of the Enforcement Agreement between the United Nations and the Government of Estonia¹⁹ which applies *mutatis mutandis* to the Mechanism,²⁰ provides that the conditions of imprisonment shall be governed by Estonian law, subject to the Mechanism’s supervision;

RECALLING FURTHER that Article 8 of the Enforcement Agreement provides, *inter alia*, that if a convicted person has become eligible for early release under Estonian law, the President will provide his views as to whether such early release is appropriate, and Estonia will consider these views and respond to the President before taking any decision on the matter;²¹

RECALLING that, in the Mechanism’s first decision on early release, the two-thirds mark was described as being “in essence, an admissibility threshold”;²²

RECALLING FURTHER that all convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for early release upon having served two-thirds of their sentences, irrespective of: (i) whether the person was convicted by the International Criminal Tribunal for Rwanda (“ICTR”), the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether an early release matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State;²³

¹⁸ While Article 26 of the Statute does not specifically mention requests for early release of convicted persons, the President’s power to deal with such requests is reflected in the Rules of Procedure and Evidence of the Mechanism (“Rules”). See Rules 149-151 of the Rules; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted version) (“*Brđanin Decision*”), paras. 24-25; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted version) (“*Bralo Decision*”), paras. 17-18.

¹⁹ Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 11 February 2008 (“Enforcement Agreement”).

²⁰ See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4. See also Rule 128 of the Rules.

²¹ Enforcement Agreement, Articles 8(1), 8(2).

²² *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version), para. 19.

²³ See *Brđanin Decision*, para. 29; *Bralo Decision*, para. 22; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted version) (“*Krstić Decision*”), paras. 16, 18. See also Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”), para. 8.

CONSIDERING that even if an Estonian court decides that releasing Milošević on parole is justified, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;²⁴

CONSIDERING that, as Milošević will not have served two-thirds of his sentence of 29 years' imprisonment until March 2024,²⁵ he is not yet eligible to be considered for early release by the Mechanism;

RECALLING that in compelling or exceptional circumstances, early release may be granted prior to the serving of two-thirds of the sentence;²⁶

CONSIDERING that nothing in Milošević's submissions concerning his ill health or his family "difficulties", or in the supporting documentation, demonstrates compelling or exceptional circumstances that would warrant granting early release;²⁷

CONSIDERING that, as Milošević is not yet eligible to be considered for early release and that no compelling or exceptional circumstances have been demonstrated, it is not necessary to consider additional information before reaching a conclusion on the Notification and the Direct Petition;²⁸

CONSIDERING that, in accordance with Rule 150 of the Rules, I have consulted with Judges who imposed the sentence in Milošević's case and who are Judges of the Mechanism, namely Judge Meron and Judge Liu,²⁹ and they unanimously share my opinion that early release at this stage is inappropriate;

FOR THE FOREGOING REASONS,

HEREBY DENY the Notification and the Direct Petition; and

²⁴ See e.g. *Krstić* Decision, para. 24; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) ("*Lukić* Decision"), para. 14; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (public redacted), para. 16.

²⁵ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

²⁶ See e.g. *Krstić* Decision, para. 17; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019, p. 3, fn. 17; *Lukić* Decision, para. 16, fn. 15 and references cited therein.

²⁷ Direct Petition, paras. 30-39. See Confidential Direct Petition, paras. 40-42, Annexes 2A-D.


²⁸ See e.g. Practice Direction, para. 10; Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, ICTY, or the Mechanism, MICT/3/Rev.2, 20 February 2019, para. 4 (I note that this is the version that was in effect when the Notification and the Direct Petition were filed).

²⁹ See *supra* fn. 6.

DIRECT the Registrar to provide the authorities of the Republic of Serbia with a copy of this decision as soon as practicable.

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

Done this 29th day of July 2020,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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