

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-17-111-R90

Date: 13 May 2019

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun

Registrar: Mr. Olufemi Elias

Decision of: 13 May 2019

IN THE CASE AGAINST

**PETAR JOJIĆ
VJERICA RADETA**

PUBLIC

WITH CONFIDENTIAL AND PUBLIC REDACTED ANNEXES

**DECISION RE-EXAMINING THE REFERRAL
OF A CASE TO THE REPUBLIC OF SERBIA**

Office of the Prosecutor:

Mr. Serge Brammertz

Amicus Curiae Prosecutor:

Ms. Diana Ellis

Mr. Sam Blom-Cooper

Government of the Republic of Serbia

I, **LIU DAQUN**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

NOTING that on 30 October 2012 a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) issued an order *in lieu* of an indictment, charging Petar Jojić and Vjerica Radeta (collectively, “Accused”) with contempt of the ICTY for having threatened, intimidated, offered bribes to or otherwise interfered with witnesses in the case of *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67;²

NOTING that on 29 November 2017 the ICTY President ordered that the case against the Accused be transferred to the Mechanism in light of the imminent closure of the ICTY;³

NOTING that on 18 January 2018 a Single Judge of the Mechanism found that the Mechanism has jurisdiction over the case against the Accused in accordance with Article 1(4) of the Statute of the Mechanism (“Statute”);⁴

NOTING that on 5 February 2018 the Registrar appointed an *Amicus Curiae* Prosecutor in the case against the Accused;⁵

NOTING that, having considered submissions by the Republic of Serbia (“Serbia”) and the *Amicus Curiae* Prosecutor, on 12 June 2018 a Single Judge of the Mechanism ordered the case against the Accused to be referred to the authorities of Serbia for trial and issued warrants of arrest directing the authorities and officers and agents of all Member States of the United Nations to secure the arrest, detention, and transfer of the Accused to Serbia;⁶

NOTING that on 12 December 2018 the Appeals Chamber of the Mechanism found that the *Amicus Curiae* Prosecutor had not raised before the Single Judge the issue of “the unwillingness of

¹ Order Replacing a Single Judge, 17 December 2018.

² *Prosecutor v. Svetozar Džigurski et al.*, Case No. IT-03-67-R77.5, Decision Issuing Order in Lieu of Indictment, 30 October 2012 (confidential and *ex parte*), Annex, p. 3. See *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order Lifting Confidentiality of Order in Lieu of Indictment and Arrest Warrants, 1 December 2015. The Order in Lieu of Indictment was further revised, in part due to the deaths of the other co-accused, and the operative indictment in this case is dated 17 August 2017. See *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Revised Order in Lieu of Indictment, 17 August 2017 (public with confidential and *ex parte* annex A, confidential annex B, and public annex C), Annex C; *Prosecutor v. Svetozar Džigurski et al.*, Case No. IT-03-67-R77.5, Further Decision on Order in Lieu of Indictment, 5 December 2014 (confidential and *ex parte*).

³ *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order of Transfer to the International Residual Mechanism for Criminal Tribunals, 29 November 2017, p. 4. See also *Prosecutor v. Petar Jojić and Vjerica Radeta*, Case Nos. MICT-17-111-R90 & IT-03-67-R77.5, Certificate, 4 December 2017, Annex (confidential and *ex parte*).

⁴ Decision on Jurisdiction, 18 January 2018, p. 2.

⁵ Decision, 5 February 2018, Registry Pagination (“RP.”) 29.

the witnesses to testify if the case is tried in Serbia” and remanded the matter to me to consider further submissions on this issue from the *Amicus Curiae* Prosecutor, Serbia, and, if necessary, the Witness Support and Protection Unit of the Mechanism (“WISP”);⁷

NOTING the submissions filed by the *Amicus Curiae* Prosecutor on 8 February 2019, arguing that there is no prospect that a trial of the serious allegations of contempt in this case could take place in Serbia, as “important witnesses” are not willing or prepared to cooperate with the Serbian authorities, in any form, due to their genuine and well-founded fears for their safety;⁸

NOTING ALSO that the *Amicus Curiae* Prosecutor provides statements from witnesses, which, in her submission, demonstrate that: the witnesses are “categorically unwilling” to be witnesses in proceedings in Serbia due to fears for the safety of themselves and their family members, including fear of being killed or seriously physically harmed; the witnesses are aware that the evidence they can provide concerns powerful political figures within Serbia, who are closely connected to the Serbian authorities; they are also aware of the range of protective measures that would be available to them if the case were transferred to Serbia, including the ability to give evidence *via* video-link from outside Serbia, and notwithstanding they do not trust that the Serbian authorities could, or would, ensure that their identities and whereabouts, and that of their family members, would not be revealed, and thereby be endangered; in some instances the witnesses have been exposed to interference, threats, and intimidation directed at themselves, their family members, and property; and each of the witnesses wishes to continue to cooperate with the Mechanism to ensure that the evidence they can provide is considered;⁹

NOTING FURTHER the *Amicus Curiae* Prosecutor’s submission that a referral decision is premised on the basis that witnesses will attend the proceedings in the designated state and that, where the evidence demonstrates that witnesses have genuine and well-founded fears to participate in a trial conducted by the Serbian authorities, it must follow that the conditions for referral are not met because there can be no trial in Serbia;¹⁰

⁶ Public Redacted Version of the 12 June 2018 Order Referring a Case to the Republic of Serbia, 12 June 2018 (with public redacted versions of confidential Annexes A and B) (“Referral Order”), p. 5, Annexes A and B.

⁷ Decision on *Amicus Curiae*’s Appeal Against the Order Referring a Case to the Republic of Serbia, 12 December 2018 (“Decision of 12 December 2018”), paras. 22-24.

⁸ Submissions Pursuant to the Decision of the Appeals Chamber Dated 12 December 2018, 8 February 2019 (confidential and *ex parte* with Annex A and confidential and *ex parte* annexes B-F) (“*Amicus Curiae* Prosecutor’s Submissions of 8 February 2019”), paras. 1-16. The *Amicus Curiae* Prosecutor filed on the same date a public redacted version of these submissions. The *Amicus Curiae* Prosecutor also submits that the safeguarding provision of deferral will not be effective as Serbia has stated that it will not transfer the Accused to the Mechanism as it lacks jurisdiction to do so under its own laws. See *Amicus Curiae* Prosecutor’s Submissions of 8 February 2019, para. 14.

⁹ *Amicus Curiae* Prosecutor’s Submissions of 8 February 2019, para. 6.

¹⁰ *Amicus Curiae* Prosecutor’s Submissions of 8 February 2019, para. 13.

RECALLING my order for submissions filed on 20 February 2019, inviting Serbia and the WISP to address the arguments made in the *Amicus Curiae* Prosecutor’s Submissions of 8 February 2019;¹¹

NOTING the submissions filed by Serbia on 14 March 2019, arguing that: the submissions of the *Amicus Curiae* Prosecutor are “unfounded”, “erroneous”, and “arbitrary”; there is no valid reason prohibiting the conduct of the trial in Serbia; the legal framework on witness protection in Serbia can adequately address any security concerns by the witnesses; the “insinuations” made that the Accused are closely connected with the Serbian authorities are false as the case merely involves “two members of a political party who hold no positions of executive power”; and Serbia has demonstrated its willingness to cooperate with the ICTY by “handing over” a number of persons holding much more significant positions than the Accused in this case;¹²

NOTING the Registrar’s submissions filed on 20 March 2019 with a confidential and *ex parte* Annex, stating that the WISP has contacted each of the witnesses listed in the *Amicus Curiae* Prosecutor’s Submissions of 8 February 2019 to verify their statements and confirms that, having discussed the matter with them, each of the witnesses stated that they do not trust the authorities in Serbia and would not provide evidence if the proceedings were referred to Serbia;¹³

NOTING ALSO the Registrar’s submission that the information from the witnesses raises serious concern as to the possible impact a trial in Serbia might have on the safety, privacy, and wellbeing of the witnesses and their families and that the witnesses were only willing to testify if the proceedings continued before the Mechanism;¹⁴

NOTING the submissions filed in reply to Serbia by the *Amicus Curiae* Prosecutor on 21 March 2019,¹⁵ arguing that: Serbia’s readiness to try this case has no bearing on issues arising out of the fears and concerns of the witnesses in this case; notwithstanding the legal framework in Serbia concerning witness protection, there is nothing preventing members of the prosecuting authorities from having access to information concerning the identities of the witnesses, which directly relates

¹¹ Order for Submissions, 20 February 2019, p. 2. *See also* Decision on a Request for an Extension of Time to File Further Submissions, 1 March 2019, p. 2.

¹² Response of the Republic of Serbia to the Order of the Single Judge of 20 February 2019, 14 March 2019 (confidential) (“Serbia’s Submission”), RP. 548-543. Serbia also submits that it is not obliged to arrest and transfer to the Mechanism persons accused of contempt as the obligation to cooperate, in terms of arrest and transferring individuals to the Mechanism exists only in relation to the crimes constituting serious violations of international humanitarian law as explicitly envisaged by the ICTY Statute. *See* Serbia’s Submission, RP. 543, 542.

¹³ Registrar[’s] Submission in Compliance with the Order of 20 February 2019, 20 March 2019 (“Registrar[’s] Submission”), RP. 556-553.

¹⁴ Registrar[’s] Submission, RP. 556, 553.

¹⁵ Leave to Reply and Submissions in Reply to the Response of the Republic of Serbia Concerning Witness Protection, 21 March 2019 (“Submissions in Reply”), paras. 1-20.

to the fears that they have of participation in proceedings conducted by the Serbian authorities; the lack of acknowledgment of and dismissive attitude to the seriousness of the witnesses' fears by the Serbian authorities constitutes a "troubling indication" of how such concerns would, or would not, be catered for within Serbia; and Serbia misrepresents the importance of the Accused and attempts to diminish their influence within Serbia;¹⁶

RECALLING the Order of 8 April 2019, in which I instructed the *Amicus Curiae* Prosecutor to file further submissions demonstrating specifically the importance of the witnesses in question and the impact that their non-appearance may have on the presentation of the Prosecution's case;¹⁷

NOTING the submissions filed by the *Amicus Curiae* Prosecutor on 15 April 2019 that two of the witnesses are respectively the sole source of direct evidence supporting two counts of the indictment and that the viability of the third count of the indictment depends on the account of one of these witnesses, and that, therefore, there can be no sustainable conviction against either of the Accused on any of the charges against them without the evidence of these witnesses who, however, are not willing to provide evidence if the proceedings were referred to Serbia;¹⁸

RECALLING that Article 1(4) of the Statute provides, in relevant part, that before proceeding to try a person for contempt, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the Statute, taking into account the interests of justice and expediency;

RECALLING further that Article 6(6) of the Statute provides that, where conditions for referral are not met and it is in the interests of justice, the order for referral may be revoked;

¹⁶ See Submissions in Reply paras. 13-16. In particular, the *Amicus Curiae* Prosecutor submits that Vjerica Radeta: is a member of the Serbian Parliament and has been for some two decades; was most recently elected to the Parliament in June 2016 as a member of the Serbian Radical Party; is the Deputy Head of the Serbian Radical Party Parliamentary Committee and the Deputy Speaker of the National Assembly, a member of the Committee on Constitutional and Legislative Issues, a member of the Committee on the Judiciary, Public Administration and Local Self-Government, and a member of the Committee on the Rights of the Child and a Deputy Member of the Committee on Administrative, Budgetary, Mandate and Immunity Issues. See Submissions in Reply, paras. 13, 14. The *Amicus Curiae* Prosecutor also submits that Petar Jojić: is also a member of the Serbian Parliament and has been for some two decades; was most recently re-elected in June 2016 as member of the Serbian Radical Party; is former Minister of Justice; and is presently a member of the Serbian Radical Party Parliamentary group, deputy member of the Committee on Constitutional and Legislative Issues, the Committee on the Judiciary, Public Administration and Local Self-Government, and the Environmental Protection Committee. See Submissions in Reply, para. 15.

¹⁷ Order for Further Submissions, 8 April 2019 ("Order of 8 April 2019").

¹⁸ Response to Order for Submissions Concerning the Importance of Witness Evidence & the Impact on Proceedings of Witness Non-Appearance at Trial, 15 April 2019 (strictly confidential & *ex parte*) ("Further Submissions"), paras. 9-40. A public redacted version of the Further Submissions was filed on the same day.

CONSIDERING the importance of ensuring that witnesses important to the case will appear to testify;¹⁹

CONSIDERING the statements by the witnesses in which they express serious concerns regarding their safety and security as well as that of their family members and unequivocally confirm their unwillingness to testify should the case proceed to trial in Serbia;

CONSIDERING that the operative indictment against the Accused contains three counts and that each of these counts critically relies for support on the evidence of the witnesses who have declared their unwillingness to cooperate with the Serbian authorities;²⁰

CONSIDERING that, in these circumstances, the *Amicus Curiae* Prosecutor has demonstrated that the witnesses' evidence is paramount to the viability of the prosecution in this case and that the witnesses are unwilling to provide evidence should the case proceed to trial in Serbia;²¹

CONSIDERING ALSO that the witnesses are not willing to disclose their personal information to Serbian authorities for fear of their life and personal safety and security and that this renders the conduct of the proceedings in Serbia impossible;

CONSIDERING FURTHER that the unwillingness of the witnesses to testify in Serbia would significantly undermine the prosecution's ability to present its case and would frustrate the proceedings;

FINDING that, in light of the above and pursuant to Article 6(6) of the Statute, the conditions for referral of this case to Serbia are not met and that it is in the interests of justice to revoke the Referral Order;

FOR THE FOREGOING REASONS,

¹⁹ Decision of 12 December 2018, para. 23, referring to Article 20 of the Statute, Rule 86 of the Rules of Procedure and Evidence of the Mechanism ("Rules"). See also *The Prosecutor v. Ryandikayo*, Case No. ICTR-95-1E-R11bis, Decision on Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 20 June 2012, para. 42; *The Prosecutor v. Ladislas Ntaganzwa*, Case No. ICTR-96-9-R11bis, Decision on Prosecutor's Request for Referral of the Case to the Republic of Rwanda, 8 May 2012, para. 39; *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal Against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 ("Uwinkindi Decision of 16 December 2011"), para. 61.

²⁰ In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta, Case No. IT-03-67-R77.5, Revised Order in Lieu of Indictment, 17 August 2017 (public with confidential and *ex parte* annex A, confidential annex B, and public annex C), Annex C.

²¹ I note that whether the witnesses' fears are well-founded is not a relevant consideration when assessing the likelihood that they will appear for trial. See *Uwinkindi* Decision of 16 December 2011, para. 61; *Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on Referral, 9 October 2008, paras. 37, 42.

PURSUANT TO Articles 1(4), 6(6), and 28 of the Statute and Rules 14(D), 55, 57, 58, 59, 60, 61, and 90 of the Rules,

REVOKE the Referral Order and Arrest Warrants issued on 12 June 2018;

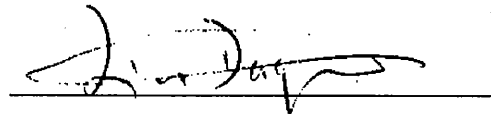
ISSUE new international arrest warrants, set out in Annexes A and B of the present Decision;

REQUEST Serbia to transfer the Accused to the seat of the Mechanism in The Hague without delay; and

REMAIN seized of the case.

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

Done this 13th day of May 2019,
At The Hague,
The Netherlands



Judge Liu Daqun
Single Judge

[Seal of the Mechanism]