

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-17-111-R90

Date: 16 April 2021

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun

Registrar: Mr. Abubacarr Tambaou

Decision of: 16 April 2021

IN THE CASE AGAINST

**PETAR JOJIĆ
VJERICA RADETA**

PUBLIC

**DECISION ON FAILURE OF THE REPUBLIC OF SERBIA
TO EXECUTE ARREST WARRANTS**

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 the international warrants of arrest and orders for surrender directed to all United Nations Member States (“UN Member States”) issued on 5 October 2016, ordering that the authorities of UN Member States transfer the Accused to the ICTY upon their arrest;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, in his Order of 12 June 2018, a Single Judge of the Mechanism referred the case against the Accused to the authorities of the Republic of Serbia (“Serbia”) for trial, revoked the

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*), pp. 3-8. *See 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*); *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 (“Indictment”).

³ *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, International Arrest Warrant and Order for Surrender [regarding Petar Jojić], 5 October 2016 (confidentiality lifted on 29 November 2016); *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, International Arrest Warrant and Order for Surrender [regarding Vjerica Radeta], 5 October 2016 (confidentiality lifted on 29 November 2016) (collectively, “ICTY International Arrest Warrants”). *See also Prosecutor v. Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Warrant of Arrest and Order for Surrender of Petar Jojić, 19 January 2015 (confidentiality lifted on 1 December 2015); *Prosecutor v. Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Warrant of Arrest and Order for Surrender of Vjerica Radeta, 19 January 2015 (confidentiality lifted on 1 December 2015).

⁴ Decision on Jurisdiction, 18 January 2018, p. 2. *See also 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; *Prosecutor v. Petar Jojić and Vjerica Radeta*, Case Nos. MICT-17-111-R90 & IT-03-67-R77.5, Certificate, 4 December 2017 (public with confidential and *ex parte* annex).

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

ICTY International Arrest Warrants and issued international arrest warrants directing the authorities of UN Member States 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 (“Appeals Chamber”) found that the *Amicus Curiae* Prosecutor had not raised before the Single Judge the issue of “the unwillingness of witnesses to testify if this 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;⁷

RECALLING the Decision of 13 May 2019 in which, having considered that each of the counts contained in the Indictment critically relies for support on the evidence of the witnesses who have declared their unwillingness to cooperate with the authorities of Serbia due to serious concerns regarding their safety and security as well as that of their relatives, I found that the conditions for referral of this case to Serbia were not met, revoked the Referral Order and the International Arrest Warrants of 12 June 2018, issued new international arrest warrants directing the authorities of UN Member States to act promptly with all due diligence to secure the arrest, detention, and transfer of the Accused to the custody of the Mechanism, and requested Serbia to transfer the Accused to the seat of the Mechanism in The Hague without delay;⁸

NOTING that, on 24 February 2020, the Appeals Chamber affirmed the Decision of 13 May 2019;⁹

RECALLING that, on 22 July 2020, I requested Serbia to report on action it has taken to execute the arrest warrants against the Accused and related transfer orders and, if applicable, state the reasons for its inability to execute the warrants and orders, within thirty days of the issuance of the Order;¹⁰

NOTING that, on 13 August 2020, Serbia responded that: (i) it had been unable to arrest and transfer the Accused because, *inter alia*, (a) at the time of the alleged offence Serbia’s obligation of cooperation applied to serious violations of international humanitarian law that were explicitly set

⁶ Order Referring a Case to the Republic of Serbia, 12 June 2018 (confidential; public redacted version filed on the same date) (“Referral Order”), p. 5. *See also* Referral Order, Annexes A and B (confidential) (“International Arrest Warrants of 12 June 2018”).

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

⁸ Decision Re-Examining the Referral of a Case to the Republic of Serbia, 13 May 2019 (public with confidential and public redacted annexes) (“Decision of 13 May 2019”), pp. 5, 6, Annexes A and B.

⁹ *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90-AR14.1, Decision on Republic of Serbia’s Appeal Against the Decision Re-Examining the Referral of a Case, 24 February 2020 (“Decision of 24 February 2020”), paras. 11-19. *See also In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90-AR14.1, Appeal of the Republic of Serbia against the Decision of the Single Judge of 13 May 2019, 8 July 2019 (confidential) (original filed in BCS on 10 June 2019).

¹⁰ Order for Submissions, 22 July 2020 (“Order of 22 July 2020”), p. 3.

out in the Statute of the ICTY, but not to the crime of contempt, and (b) the High Court of Belgrade decided that the requirements for arrest and surrender of the Accused were not fulfilled and this decision remains in effect;¹¹ and (ii) the mandates of the Accused as deputies of the National Assembly of Serbia have ceased as of 3 August 2020 and the authorities of Serbia are “fully prepared” to accept the responsibility of trying this case;¹²

BEING SEISED OF a confidential submission filed by the *Amicus Curiae* Prosecutor on 7 September 2020, requesting, *inter alia*, that I: (i) certify that Serbia continues to refuse to cooperate with the Mechanism, pursuant to its obligations under Article 28 of the Statute, and that no new or acceptable justification has been advanced by Serbia for its failure to execute the arrest warrants and related transfer orders; and (ii) notify the President of the Mechanism (“President”) of Serbia’s ongoing non-cooperation in order to report the matter to the United Nations Security Council;¹³

RECALLING the Decision of 8 December 2020 in which, having considered, *inter alia*, that, despite the fact that the Accused no longer hold positions as deputies of the National Assembly of Serbia, the witnesses, whose evidence is essential for the viability of the case, remain unwilling to testify should the case be referred to Serbia, I again requested Serbia to execute the arrest warrants and related transfer orders against the Accused in order to enable their transfer to the seat of the Mechanism in The Hague without further delay and remained seized of the matter with a view to ascertaining compliance with the Decision within 90 days of its issuance;¹⁴

NOTING that, on 5 March 2021, Serbia submitted, *inter alia*, that: (i) its obligation to cooperate with the Mechanism for the arrest and transfer of accused is limited to those charged with serious violations of international humanitarian law, as the crime of contempt is not foreseen in the Statute of the ICTY or the law on cooperation of Serbia with the ICTY; (ii) the High Court of Belgrade decided that the requirements for arrest and surrender of the Accused were not fulfilled and this decision remains in effect; and (iii) that it is willing to conduct the proceedings to determine the responsibility of the Accused;¹⁵

¹¹ Letter from the Ministry of Justice of the Republic of Serbia, 13 August 2020 (confidential) (“Serbia’s Submission of 13 August 2020”), RP. 647, 646. *See also* Letter from the Ministry of Justice of the Republic of Serbia, 22 September 2020 (confidential), RP. 699-697.

¹² Serbia’s Submission of 13 August 2020, RP. 646, 645.

¹³ Response of *Amicus Curiae* Prosecutor to the Update from the Republic of Serbia & Request to Notify the President of the Mechanism of Serbia’s Ongoing Non-Cooperation, 7 September 2020 (confidential with confidential Annex A; public redacted version filed on 8 September 2020), paras. 9-13 (“Request Regarding Serbia’s Failure to Cooperate”).

¹⁴ Decision Concerning the Referral of a Case to the Republic of Serbia, 8 December 2020, pp. 3-5. *See also* Registrar’s Submission in Compliance with the Order of 14 September 2020, 13 October 2020 (public with confidential and *ex parte* annex), Annex, RP. 707, 706; Response of the *Amicus Curiae* Prosecutor to the Order for Submissions Regarding the Report of the Witness Support and Protection Unit, 21 October 2020 (confidential and *ex parte*), paras. 32-41.

¹⁵ Letter from the Ministry of Justice of the Republic of Serbia, 5 March 2021 (confidential), RP. 761-755.

RECALLING that Article 28 of the Statute expressly requires States to cooperate with the Mechanism and to comply, without undue delay, with any request for assistance or order issued by the Mechanism for the arrest or the detention of persons and the surrender or the transfer of accused to the Mechanism, including in relation to cases of contempt;¹⁶

EMPHASIZING that the obligations laid down in Article 28 of the Statute prevail over any domestic legal impediment;¹⁷

NOTING, however, that, in its most recent submissions, Serbia reiterates its position that domestic legal impediments preclude the requested arrest and transfer of the Accused to the Mechanism and that, in such circumstances, Serbia is fully prepared to conduct the proceedings against the Accused to determine their responsibility;¹⁸

CONSIDERING that previous decisions of the ICTY and the Mechanism in this case have already considered and rejected Serbia's reliance on purported domestic legal impediments for failing to execute the arrest warrants against the Accused;¹⁹

CONSIDERING that Serbia's stated willingness to conduct the proceedings is not a relevant consideration in determining whether Serbia has failed to comply with the judicial orders of the Mechanism requesting it to arrest and transfer the Accused to the Mechanism;²⁰

RECALLING that, pursuant to Rule 8(A) of the Rules, where a Single Judge finds that a State has failed to comply with an obligation under Article 28 of the Statute, he or she may request the

¹⁶ See Articles 1(4)(a), 28(1), (2)(d)(e) of the Statute; Order of 22 July 2020, p. 2, nn. 10, 11; *In the Case Against Petar Jojić et al.*, Case No. IT-03-67-R77.5, Decision in Relation to the Cooperation of the Government of the Republic of Serbia with the Tribunal, 2 August 2016 ("Decision of 2 August 2016"), paras. 5-8. See also Rule 77 (A) of the ICTY Rules of Procedure and Evidence; Rule 90 (A) of the Rules of Procedure and Evidence of the Mechanism ("Rules"). In this regard, I note that Article 4(1) of the law on cooperation between Serbia and the ICTY explicitly foresees that: "Any request for cooperation or enforcement of a decision of the International Criminal Tribunal shall be granted if it is based on the provisions of the Statute and of the Rules of Procedure and Evidence of the International Criminal Tribunal" (emphasis added). See also United Nations Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, paras. 1, 4, Annex 1, Preamble, Article 1 of the Statute, confirming that the Mechanism continues the material, territorial, temporal and personal jurisdiction of the ICTY.

¹⁷ See Rule 60 of the Rules. See also Decision of 2 August 2016, para. 8.

¹⁸ See *supra* nn. 11, 12, 15.

¹⁹ See, e.g., Decision of 8 December 2020, pp. 4, 5; Decision of 2 August 2016, paras. 8, 9. See also Order of 22 July 2020; *In the Case Against Petar Jojić et al.*, Case No. IT-03-67-R77.5, Order for Monthly Reporting on Execution of Arrest Warrants, 13 January 2016). I note that other attempts made by Serbia to justify its non-cooperation in this case have also been rejected. See *In the Case Against Petar Jojić et al.*, Case No. IT-03-67-R77.5, Decision Advising the President of the Tribunal of the Republic of Serbia's Failure to Cooperate with the Tribunal, 25 August 2015 (confidential and *ex parte*).

²⁰ In this regard, I note that the referral of the case to Serbia was revoked because the witnesses' unwillingness to testify in Serbia would significantly undermine the prosecution's ability to present its case. See Decision of 13 May 2019, pp. 5, 6; Decision of 8 December 2020, pp. 4, 5. See also Decision of 24 February 2020, paras. 9-18.

President to report the matter to the Security Council, and that the President shall notify the Security Council thereof;²¹

CONSIDERING that referral of a State to the Security Council for non-compliance with Article 28 of the Statute is a remedy of last resort;²²

CONSIDERING, however, that the Mechanism has requested Serbia to execute the arrest warrants against the Accused in its judicial decisions dated 13 May 2019 and 8 December 2020;²³

CONSIDERING FURTHER that more than a year has passed since the Decision of 24 February 2020, which confirmed with finality Serbia's obligation to arrest and transfer the Accused to the Mechanism;

OBSERVING that it is undisputed that the Accused are in Serbia and that Serbia has not complied with the repeated requests of the Mechanism to execute the arrest warrants against the Accused and transfer them to the seat of the Mechanism in The Hague;

FINDING, therefore, that Serbia has failed to comply with its obligations under Article 28 of the Statute and that, in the present circumstances, it is appropriate to request the President to report the matter to the Security Council;

FOR THE FOREGOING REASONS,

PURSUANT TO Article 28 of the Statute and Rule 8(A) of the Rules,

GRANT the Request Regarding Serbia's Failure to Cooperate; and

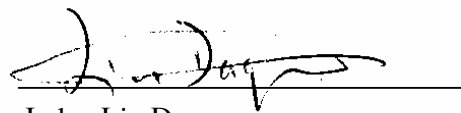
REQUEST the President to notify the Security Council of Serbia's failure to comply with its obligations under Article 28 of the Statute to arrest the Accused and transfer them to the Mechanism.

²¹ See also Rule 2(C) of the Rules.

²² *The Prosecutor v. Augustin Ndirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion Asking the Trial Chamber to Request the President to Report the Matter of the Republic of Togo's Refusal to Cooperate to the Security Council, 14 September 2011, para. 17; *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision

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

Done this 16th day of April 2021,
At The Hague,
The Netherlands



Judge Liu Daqun
Single Judge

[Seal of the Mechanism]

on Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council, 19 October 2009, para. 18.

²³ Decision of 8 December 2020, p. 5; Decision of 13 May 2019, p. 6. *See also* Decision of 24 February 2020, para. 19.



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