

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-85-ES.2

Date: 30 January 2023

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 30 January 2023

PROSECUTOR

v.

VUJADIN POPOVIĆ

PUBLIC

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF VUJADIN POPOVIĆ**

Counsel for Mr. Vujadin Popović:

Mr. Zoran Živanović

Federal Republic of Germany

I, GRACIELA GATTI SANTANA, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a notification from the Federal Republic of Germany (“Germany”) regarding the eligibility of Mr. Vujadin Popović (“Popović”) under German law to suspend the enforcement of the remainder of his life sentence on probation, which was transmitted to me on 15 November 2022 (“Application”);¹

NOTING that, following his surrender, on 14 April 2005 Popović was transferred to the United Nations Detention Unit of the International Criminal Tribunal for the former Yugoslavia (“ICTY”);²

NOTING that on 10 June 2010, Trial Chamber II of the ICTY (“Trial Chamber”) found Popović guilty of genocide, conspiracy to commit genocide, murder as a violation of the laws and customs of war, as well as persecution, extermination, and murder as crimes against humanity, and sentenced Popović to life imprisonment;³

NOTING that on 30 January 2015, the Appeals Chamber of the ICTY granted Popović’s appeal in part, reversing his convictions in relation to one incident, granted the ICTY Prosecution’s appeal in part, entering a conviction for conspiracy to commit genocide, and affirmed Popović’s sentence of life imprisonment;⁴

¹ See Internal Memorandum from the Registrar to the President, dated 15 November 2022 (confidential), *transmitting a note verbale* from the Embassy of Germany to the Kingdom of the Netherlands (“German Embassy” and “Netherlands”, respectively), dated 26 October 2022, *conveying*: (i) a report from the prison where Popović is serving his sentence, dated 5 September 2022 (“Prison Report”); (ii) a declaration by Popović consenting to the suspension of enforcement pursuant to German law, dated 31 August 2022; (iii) an excerpt from an expert opinion on Popović, dated 5 July 2021; (iv) a report from the Senior Public Prosecutor in the Ministry of Justice of Lower Saxony, dated 9 September 2022 (“Public Prosecutor Report”); and (v) a personal data sheet concerning Popović, dated 31 August 2022. All references herein are to the English translation of these documents provided by the German authorities as part of the Application or otherwise translated by the Registry of the Mechanism. I use the term “Application” to refer to the notification from Germany, consistent with paragraph 2 of the 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”). Further, I note that the Application was filed confidentially on 9 January 2023. See Registrar’s Submission of a Note Verbale Received from the Embassy of the Federal Republic of Germany in The Hague, 9 January 2023 (confidential), Annex. See also *Note verbale* from the Mechanism to the German Embassy, dated 6 December 2022, p. 1.

² See *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted) (“Trial Judgement”), para. 2160, Annex 2, para. 6.

³ Trial Judgement, para. 2104, p. 826. The Trial Chamber did not enter a conviction, on the basis of the principles relating to cumulative convictions, for conspiracy to commit genocide and murder as a crime against humanity. Trial Judgement, p. 826.

⁴ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015, para. 2117.

NOTING that on 24 August 2015, Popović was transferred to Germany to serve the remainder of his sentence;⁵

NOTING that the Application indicates that, under German law, Popović became eligible for consideration to have the remainder of his sentence suspended on 13 April 2020,⁶ that the Mechanism denied early release to Popović on 30 December 2020,⁷ and that the relevant Enforcement Agreement provides for a further review to be conducted every two years;⁸

NOTING further that the Application contains an unfavourable assessment regarding Popović's early release, in view of the severity of the crimes for which he was convicted and sentenced;⁹

RECALLING that according to Article 25(2) of the Statute of the Mechanism ("Statute"), the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda ("ICTR"), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

RECALLING that pursuant to Article 26 of the Statute: (i) if a convicted person becomes eligible for pardon or commutation of sentence under the law of the enforcement State, that State shall notify the Mechanism accordingly; and (ii) there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law;¹⁰

RECALLING that pursuant to Rule 150 of the Rules, upon a State notification or a direct petition, the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with: (i) any Judges of the sentencing Chamber who are Judges of the Mechanism; or (ii) at least two other Judges, if none of the Judges who imposed the sentence are Judges of the Mechanism;

RECALLING that paragraph 2(4) of the Enforcement Agreement provides, *inter alia*, that if a review of eligibility for the suspension of enforcement of the remainder of Popović's sentence pursuant to applicable German law does not lead to his release, there shall be further reviews at the

⁵ Decision on the Early Release of Vujadin Popović, 30 December 2020 (public redacted) ("Decision of 30 December 2020"), p. 2. *See also* Order Designating State in which Vujadin Popović is to Serve his Sentence, 28 May 2015.

⁶ Public Prosecutor Report, p. 3 *referring to* German Criminal Code, Sec. 57a.

⁷ Public Prosecutor Report, p. 3 *referring to* Decision of 30 December 2020.

⁸ *See* Public Prosecutor Report, pp. 2-3 *referring to* Agreement between the Mechanism and Germany concerning the conditions under which Popović's prison sentence shall be enforced, 26 June 2015 ("Enforcement Agreement").

⁹ *See* Public Prosecutor Report, p. 3. *See also* Prison Report, p. 5.

¹⁰ While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Mechanism's Rules of Procedure and

latest every two years *ex officio*, or upon an application by Popović, who has the right to submit such an application;

RECALLING that paragraph 7(2) of the Enforcement Agreement states that where the President determines that a pardon or commutation of sentence is not appropriate, the Registrar shall immediately notify the German authorities who, upon the request of the Mechanism, shall provide for the immediate transfer of Popović to the Mechanism or, if Germany expressly consents thereto, shall continue the enforcement in Germany;

RECALLING 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 sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State;¹¹

RECALLING further that serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”,¹² and that if a convicted person applies for early release or commutation of sentence before having served two-thirds of his or her sentence, the application may be considered without necessarily triggering the multi-step and resource-intensive process of requesting, receiving, translating, sharing, and considering additional information before determining whether the application should be denied as premature;¹³

Evidence (“Rules”) reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

¹¹ *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (public redacted) (“*Krstić* Decision of 15 November 2022”), para. 28; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application for Early Release of Radoslav Brđanin, 3 September 2022, p. 3; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

¹² *Krstić* Decision of 15 November 2022, para. 28; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Application for Early Release of Radivoje Miletić, 24 June 2022, para. 21; *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), para. 19.

¹³ *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Decision on the Application for Early Release of Milan Lukić, 24 June 2022 (public redacted) (“*Lukić* Decision”), p. 3; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 17 June 2022 (“*Galić* Decision of 17 June 2022”), p. 3; *Prosecutor v. Jadranko Prlić*, Case No. MICT-17-112-ES.2, Decision on the Early Release of Jadranko Prlić, 23 March 2021, p. 4.

RECALLING that compelling or exceptional circumstances could arise in specific instances prior to the two-thirds threshold having been reached, which, in the exercise of my discretion as President, may overcome any eligibility concerns;¹⁴

CONSIDERING that the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President’s discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;¹⁵

CONSIDERING that a person sentenced to life imprisonment by the ICTR, the ICTY, or the Mechanism may be considered eligible for early release;¹⁶

CONSIDERING that, when applying the two-thirds threshold requirement to another convicted person who had also been sentenced to life imprisonment, the then-President, Judge Theodor Meron, determined that the threshold in that case should be “equivalent to more than a sentence of 45 years”, based in part on the fact that at the time, the highest fixed-term sentence imposed by the ICTR, the ICTY, or the Mechanism was imprisonment for 45 years;¹⁷

CONSIDERING that since then, a higher fixed-term sentence of 47 years has been imposed by the ICTR¹⁸ and that the impact, if any, of this sentencing decision upon future applications for the early release of persons serving a sentence of life imprisonment will be addressed if and when required;¹⁹

CONSIDERING that, regardless of whether the two-thirds threshold is calculated on the basis of a fixed-term sentence of 45 years or 47 years, having served approximately 18 years of his sentence Popović has not yet reached that threshold and is therefore not eligible to be considered for early release by the Mechanism at this stage;

¹⁴ *Lukić* Decision, p. 4; *Galić* Decision of 17 June 2022, p. 4; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016 (public redacted), para. 18.

¹⁵ *Krstić* Decision of 15 November 2022, para. 31; *Lukić* Decision, p. 3; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Application for Early Release, 17 September 2020 (public redacted), para. 29.

¹⁶ *Lukić* Decision, pp. 3-4; *Galić* Decision of 17 June 2022, p. 4. See *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President’s Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted) (“*Galić* Reasons of 23 June 2015”), para. 24.

¹⁷ *Galić* Reasons of 23 June 2015, para. 35. See Decision of 30 December 2020, p. 4; *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. 4.

¹⁸ See *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015, para. 3539 (reducing the sentences of Ms. Pauline Nyiramasuhuko, Mr. Arsène Shalom Ntahobali, and Mr. Élie Ndayambaje from life imprisonment to 47 years’ imprisonment).

¹⁹ *Galić* Decision of 17 June 2022, fn. 19; Decision of 30 December 2020, p. 4; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 33.

CONSIDERING further that neither Popović nor Germany raise or demonstrate any compelling or exceptional circumstance that might warrant granting early release before having reached the two-thirds eligibility threshold;

CONSIDERING that I have consulted with Judge William H. Sekule and Judge Carmel Agius, Judges of the sentencing Chamber in Popović's case;²⁰

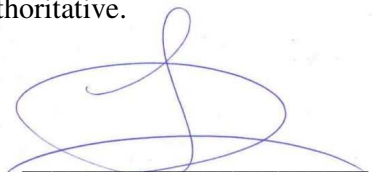
CONSIDERING further that Judge Sekule and Judge Agius share my position that Popović is not eligible to be considered for early release at this stage, and that no compelling or exceptional circumstances have been demonstrated which would justify granting him early release prior to reaching his two-thirds eligibility threshold;

FOR THE FOREGOING REASONS,

HEREBY DENY the Application.

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

Done this 30th day of January 2023,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]

²⁰ See Rule 150 of the Rules; Practice Direction, para. 16.



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