

INTERNATIONAL RESIDUAL MECHANISM
FOR CRIMINAL TRIBUNALS

Case no.: MICT-13-48-ER
Date: 05 February 2021

BEFORE THE PRESIDENT

Before: The Honorable Judge Carmel Agius

Registrar: Mr. Abubacarr M. Tambaou

Date Filed: 05 February 2021

THE PROSECUTOR

VS.

RADOSLAV BRDJANIN

Public

RADOSLAV BRDJANIN'S APPLICATION FOR EARLY RELEASE

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for the Defense:

Mr. Novak Lukić

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I. INTRODUCTION

Based on Articles 5 and 6 of the Practice Direction on the Procedure for Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism¹ ("Practice Direction"), and further, in accordance with Article 26 of the Statute and Rules 150 and 151 of the MICT Rules of Procedure and Evidence ("Rules"), Mr. Radoslav Brdjanin ("Petitioner"), through his defense counsel, files this Motion for Early Release.

II. BACKGROUND

1. On 03 April 2007 the Appeals Chamber of the ICTY convicted the Petitioner to 30 years of imprisonment, subject to credit being given in accordance with the Rule 101 (C) of the Rules for the period the Petitioner already spent in detention as of 06 July 1999.

¹ MICT/3/Rev.1

2. Petitioner is serving his sentence in the Kingdom of Denmark (“Enforcing State”) from the day of his transfer on 04 March 2008.
3. On 14 January 2019, the Petitioner filed his Submission in accordance with Article 6 of the Practice Direction on the Procedure for Determination of Applications for Pardon, Commutation of Sentence and Early Release to the President of MICT (“First Application”). On 28 February 2020, the President of MICT denied the application for early release.

III. ARGUMENTS

4. The first prerequisite for consideration of an application for early release – as provided for by the Statute – is that the person is eligible for pardon, commutation of sentence or early release pursuant to the applicable law of the State in which the person convicted by the ICTY is imprisoned².
5. The Rules state that in determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor³.
6. Article 8 of the Practice Direction precisely states that a convicted person serving a sentence supervised by the Mechanism will generally be eligible to be considered for early release upon having served two-thirds of his or her sentence imposed by *inter alia*, the ICTY. Article 10 of Practice Direction provides for the general scope of information to be collected by the Registrar, as may be of assistance to the President, for purposes of determination of an application for early release.⁴

² Statute of the MICT, Article 26

³ MICT Rules of Procedure and Evidence, Article 151

⁴ Practice Direction *inter alia* lists reports and observations as to the behavior of convicted person during his period of incarceration, psychiatric and psychological assessments, medical reports, information on where the convicted

IV. FULFILLMENT OF CONDITIONS PURSUANT TO APPLICABLE LAWS OF KINGDOM OF DENMARK

7. A letter from the Danish authorities was received by the President of the MICT while considering the Petitioner's previous Submission for early release, where it was stated that the Petitioner was, in accordance with Danish laws, eligible for early release as of 06 July 2019 provided that he did not commit a criminal offence for five years after his release and that the Petitioner "leaves Denmark at the time of release"⁵.

V. GRAVITY OF CRIMES

8. The crimes the Petitioner was convicted of are of high gravity. This was already considered by the President of MICT when deciding on the First Application, and was, indeed, one of the arguments for denial of that application.⁶ The Petitioner is fully aware of the gravity of crimes, and accepts such position of the President. Moreover, the Petitioner stated in the First Application, as well as in his handwritten comments and statement of 23 December 2019 during the first proceedings, that he is mindful of the high gravity of crimes he was convicted of. Back then, in addition to recognizing this fact, the Petitioner personally wrote:

.....The most dangerous theory, so to say, justifying crimes is when someone says, "Look at what they did to us." I cannot and will not accept this philosophy, because crimes cannot and must not be justified by other crimes...⁷

person intends to live if released early, report from the Prosecution on any co-operation of the convicted person, as well as any other comments or information that the Prosecution considers of relevance

⁵ MICT 13-48-ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para. 31- 32

⁶ Ibid, para 36-44

⁷ Petitioner's handwritten comments in support of his first Application of 23 December 2019

9. In the above acknowledged thoughts, the Petitioner clearly stated that crimes he was convicted of must not be relativized. The Petitioner has fully maintained that position to this day.

VI. TREATMENT OF SIMILARLY – SITUATED PRISONERS

10. The jurisprudence of ICTY, ICTR and MICT has also crystalized the meaning of treatment of similarly situated prisoners to include determination of whether those prisoners have reached their two-thirds threshold. This criteria is now stated in Article 8 of Practice Direction.
11. When deciding on the First Application, the President of MICT established that the Petitioner reached his two thirds threshold on 06 July 2019.⁸ The Petitioner was detained on 06 July 1999 and from that day forward, he was permanently in detention or imprisoned. From the first day of his detention, the Petitioner did not spend a single hour on provisional release.

VII. DEMONSTRATION OF REHABILITATION

12. When deciding on previously filed applications for provisional release, the President of MICT transparently stated his position on various factors for determination of level of rehabilitation in order to grant one's application for provisional release.⁹
13. Owing to the previous Decision of the President of MICT, the Petitioner is acquainted in detail with these criteria and is aware that in the present proceedings he must convince the President of MICT that he can indeed be considered rehabilitated in order to be released before serving his full sentence.

⁸ MICT 13-48-ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para.45

⁹ MICT-14-78-ES, Decision on the early release of Miroslav Bralo, 31 December 2019, para.39

14. More than two years have passed from the day of filing of the Petitioner's first application for early release. Also, more than a year has passed since the Petitioner submitted his handwritten comments and statement, which were by the President as an indicator of his rehabilitation.¹⁰
15. In his previous Decision, the President of MICT quoted part of that statement as a positive indicator of the Petitioner's critical reflection and remorse.¹¹

In that statement, the Petitioner said:

"I have sincerely shown regret and empathy for all the victims and their suffering and I will keep doing so in the future. [...] I accept my responsibility and do not deny it, and I definitely do not justify a single one of the crimes. My attitude towards crimes committed by my people against other peoples has always been one of humility, with a large dose of shame and sincere regret."

The Petitioner uses this opportunity to observe that in the original BCS version of the statement he said "by my people to members of other peoples", which was subsequently omitted in the translation.

16. Further on, the Petitioner stated that the true forgiveness and reconciliation may happen:

*"...only if we admit our own crimes, pay tribute to the victims notwithstanding their nation or religion and ask for forgiveness. The war is the greatest tragedy for any people and therefore, anyone who still rattles the weapons must renounce politics"*¹²

17. In this Application, the Petitioner fully stands by these words and wishes these words to serve as the basis and starting point for the analysis and decision to be made by the relevant participants in these proceedings. In the past period, the Petitioner has not done anything to cast doubt on the sincerity of his statement. He has never commented on any part of the previous Decision denying his early release. The Petitioner believes that in the

¹⁰ On 23 December 2019 the Petitioner submitted his handwritten comments in support of his First Application, which were weighed in the proceedings on his first application for early release

¹¹ MICT 13-48-ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para.62

¹² Petitioner's handwritten comments in support of his first Application of 23 December 2019

present proceedings, on this application for early release, he will fully convince the President of MICT of earnestness of his declarations of remorse.

18. The Petitioner is aware of the President's position that each case is specific and that comparisons to other cases are "distinctly unhelpful"¹³. However, the Petitioner bears in mind that in the decision on his previous application, as well as in decisions on applications of other convicted persons, the presidents relied upon jurisprudence when indicating criteria and facts applicable to rehabilitation. In that sense, the Petitioner uses this opportunity to point out some conclusions from earlier decisions with respect to factors of rehabilitation.

19. In the Decision on Early Release of Aloys Simba, the President, when analyzing remorse as a factor of rehabilitation, invokes the jurisprudence and finds:

.....Indeed numerous requests for earlier release have been granted where there was no clear indication of remorse and in some instances where the convicted person expressly denied the crimes for which they were convicted. I do not consider that remorse should be treated as a determining factor in this case or in determining early release applications more generally. Rule 151 of the Rules provides that I must take into account "a prisoner's demonstration of rehabilitation" in determining whether early release is appropriate, but the applicable legal framework of the Mechanism (following that of its predecessor institutions, the ICTY and the ICTR) does not stipulate that remorse must be present"¹⁴

20. In the Decision in Ntawukulilyayo case, although the Application was denied as premature given that the convicted person still hadn't reach the 2/3 threshold, and despite the fact that Ntawukulilyayo denied his responsibility for crimes, maintaining that "he has nothing on his conscience", the President, nevertheless, concluded that Ntawukulilyayo has demonstrated some signs of rehabilitation ("expressed profound regret")¹⁵, and counted that factor as weighing in favor of his early release.¹⁶

¹³ MICT 13-48-ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para. 46

¹⁴ MICT-14-62-ES, Decision on Early Release of Aloys Simba, 07 January 2019, para. 44

¹⁵ MICT-13-34-ES, Decision of the President on Early Release of Dominique Ntawukulilyayo, 08 July 2016, para.24

¹⁶ MICT-13-34-ES Decision of the President on Early Release of Dominique Ntawukulilyayo, 08 July 2016, para.23, 27

21. Similar denial of responsibility for genocide was also weighed in Nahimana case¹⁷, but the petitioner, however, expressed his profound regret for the crimes committed and asserted his wish to work for peace and reconciliation in Rwanda. The President found that he had demonstrated some signs of rehabilitation and granted the application for early release.
22. The Petitioner, Mr. Brdjanin, reiterates his hope that if granted early release, he would return to Bosnia and Herzegovina, to reside in the area where he spent his entire life prior to his arrest almost 22 years ago – in Banja Luka. This hope is motivated primarily by his intention to live with his family in the surroundings where he was born and where his roots lie. He sincerely hopes and does not expect that anyone would feel uneasy or pressured upon his return. This belief of the Petitioner is supported by the fact that members of his closest family have continued to live in that community, maintaining social contacts and friendly relationships with members of all nations inhabiting the area.
23. In the Decision on application for early release of Radislav Krstic, the President stated:

*In my view, rehabilitation entails that a convicted person can be trusted to successfully and peacefully reintegrate into a given society.*¹⁸

24. The Petitioner is aware of the position of the President of MICT that he generally does not consider it appropriate to allow convicted persons to return to the affected regions before serving their full sentence without them having demonstrated a certain degree of rehabilitation.¹⁹ However, the Petitioner holds that the fact that neither local nor state authorities of BiH ever opposed his return to the area is a significant indicator that his return to the community would not be a source of discomfort to anyone. The Petitioner strongly believes that he can significantly contribute to reconciliation and peaceful cohabitation of all residents in the community.

¹⁷ MICT-13-37-ES, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana, 05 December 2016, para. 25, 26

¹⁸ MICT-13-46-ES, Decision of 10. September 2019, para. 30, MICT-13-48- ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para.30

¹⁹ MICT-13-48-ES, Decision on the Application of Radoslav Brdjanin for Early Release, 28 February 2020, para. 50

25. Upon return to BiH, the Petitioner would live on his pension and financial support from his family with whom he will be residing in the same household.

VIII. OTHER CONSIDERATIONS

a) Contacts with the family

26. Jurisprudence of the ICTY, ICTR and MICT considers strong relations with the family as one of significant factors in deciding on applications for early release. Throughout the period of his imprisonment, the Petitioner maintained regular and close contact with his family, who paid visits to him as much as the finances allowed, and through regular phone contacts.

27. Unfortunately, due to the current situation with Covid 19 pandemic, and in accordance with strict regulations of the Kingdom of Denmark banning entry of non-EU citizens, not a single member of the Petitioner's family was able to visit him in a long time. The last visit from his daughter and granddaughter was in April 2019.

28. In the period since 6 July 1999, seven members of the Petitioner's close family had passed away. He did not attend a single funeral nor did he ever visit the graves of his parents, brother and sister.

b) Medical condition

29. In his first application and during the entire proceedings the Petitioner never mentioned his medical condition. He spent the last 21 years and 6 months in detention and in prison. Through this entire period, he has suffered from chronic diseases, which were treated by Dutch and Danish prison medical services. The Petitioner's medical condition, further aggravated by his age and the long period spent in incarceration, is fully documented in his medical files. Should the President find it helpful to review the medical documentation

in order to determine whether the Petitioner's state of health is a factor of significance in granting the early release, the medical files may be requested via the kind of assistance of the Registrar.

RELIEF REQUESTED

On the basis of the above, the Petitioner, Radoslav Brdjanin respectfully requests the President of MICT to consider this application, determine that all conditions for early release are fulfilled and grant his provisional release.



Respectfully submitted,

Novak Lukic, Defense Counsel
for Mr. Radoslav Brdjanin

Word count: 2580



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