

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

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

Date: 30 December 2020

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Abubacarr Tambadou

**Decision of:** 30 December 2020

**PROSECUTOR**

v.

**VUJADIN POPOVIĆ**

***PUBLIC REDACTED***

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

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Mr. Vujadin Popović:**

Mr. Zoran Živanović

**Federal Republic of Germany**

**I, CARMEL AGIUS**, 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 7 February 2020;<sup>1</sup>

**NOTING** that [REDACTED];<sup>2</sup>

**NOTING** that, following Popović’s surrender, on 14 April 2005 he was transferred to the United Nations Detention Unit in The Hague, the Netherlands;<sup>3</sup>

**NOTING** that, on 10 June 2010, Trial Chamber II of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), *inter alia*: (i) convicted Popović of genocide, extermination and persecution as crimes against humanity, and murder as a violation of the laws or customs of war; (ii) 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; (iii) acquitted Popović of inhumane acts (forcible transfer), and deportation as crimes against humanity; and (iv) sentenced him to life imprisonment;<sup>4</sup>

**NOTING** that, on 30 January 2015, the Appeals Chamber of the ICTY, *inter alia*: (i) reversed, in part, Popović’s convictions for genocide, extermination and persecution as crimes against humanity, and murder as a violation of the laws or customs of war; (ii) affirmed the remainder of

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<sup>1</sup> Internal Memorandum from the Registrar to the President, dated 7 February 2020 (confidential), *transmitting a note verbale* from the Embassy of Germany to the Netherlands, dated 31 January 2020 and received on 4 February 2020 (confidential) (“Application”), *conveying*: (i) Letter from the Ministry of Justice, dated 23 December 2019 (“Letter from the Ministry of Justice”); (ii) Report from the Office of the Public Prosecutor General, dated 16 December 2019 (“Public Prosecutor Report”), including a prison report, dated 8 October 2019 (“Prison Report”); and (iii) Letter from Counsel for Vujadin Popović to the Office of the Public Prosecutor, dated 9 December 2019 (“Letter from Counsel”). 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”). I note however that this matter first arose while a previous version of the Practice Direction was in force. *See* 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. Unless otherwise indicated, references will be made to the current Practice Direction. Further, I note that the *note verbale* was filed confidentially on 17 December 2020, while the attachments conveyed with the *note verbale* were not filed. *See* Registrar’s Submission of a Note Verbale Received from the Embassy of the Federal Republic of Germany in The Hague, 17 December 2020 (confidential with confidential annex).

<sup>2</sup> [REDACTED].

<sup>3</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted) (“Trial Judgement”), para. 2160, Annex II, para. 6. *See Prosecutor v. Vujadin Popović*, Case No. IT-02-57-I, Order for Detention on Remand, 15 April 2005, p. 2; *Prosecutor v. Vujadin Popović*, Case No. IT-02-57-I, Scheduling Order for Initial Appearance, 15 April 2005, p. 2.

Popović’s convictions; (iii) granted, in part, one of the Office of the Prosecutor’s grounds of appeal and entered a conviction against Popović for conspiracy to commit genocide; and (iv) affirmed Popović’s sentence of life imprisonment;<sup>5</sup>

**NOTING** that, on 24 August 2015, Popović was transferred to Germany to serve the remainder of his sentence;<sup>6</sup>

**NOTING** that in the Application, it is indicated that: (i) the German Criminal Code permits a court to suspend the enforcement of the remainder of a sentence of imprisonment for life on probation after 15 years of the sentence have been served;<sup>7</sup> (ii) the German Code of Criminal Procedure states that in preparation for such a decision, a German Criminal Chamber responsible for the execution of sentences will decide whether an expert’s opinion on the convicted person is necessary;<sup>8</sup> and (iii) Popović has provided the requisite consent to early release on probation;<sup>9</sup>

**RECALLING** that, pursuant to Article 25(1) of the Statute of the Mechanism (“Statute”), imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose, and such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism;

**RECALLING** that, pursuant to Article 25(2) of the Statute, the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the International Criminal Tribunal for Rwanda (“ICTR”), or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

**RECALLING FURTHER** 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

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<sup>4</sup> Trial Judgement, para. 2104, p. 826.

<sup>5</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (“Appeal Judgement”), p. 713.

<sup>6</sup> ICTY Press Briefing, dated 23 September 2015, <https://www.icty.org/en/press/icty-press-briefing-23-september-2015>. See Order Designating State in which Vujadin Popović is to Serve his Sentence, 28 May 2015.

<sup>7</sup> Letter from the Ministry of Justice, p. 1; Public Prosecutor Report, pp. 2-4.

<sup>8</sup> Letter from the Ministry of Justice, p. 1; Public Prosecutor Report, p. 4.

<sup>9</sup> Letter from the Ministry of Justice, p. 2; Public Prosecutor Report, p. 4; Letter from Counsel, p. 3.

commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law;<sup>10</sup>

**RECALLING** that, pursuant to Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), 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(2) of the relevant enforcement agreement between the Mechanism and the Government of Germany<sup>11</sup> states that the conditions of imprisonment shall be governed by the laws of Germany, subject to the supervision of the Mechanism;

**RECALLING FURTHER** that paragraph 2(3) of the Enforcement Agreement states that the Mechanism shall be notified if Popović becomes eligible to have the remainder of his sentence suspended under German law, and that if the President does not consider that suspending the enforcement of the remainder of the sentence and/or early release is appropriate, the competent national authorities, upon the request of the Mechanism, shall provide for Popović’s immediate transfer to the Mechanism, or if Germany expressly consents thereto, shall continue the enforcement of Popović’s sentence 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 sentences, 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 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;<sup>12</sup>

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<sup>10</sup> 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. *See* Rules 149-151 of the Rules. *See also* *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) (“*Semanza* Decision”), para. 20; *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) (“*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) (“*Bralo* Decision”), paras. 17-18.

<sup>11</sup> Agreement between the Mechanism and Germany concerning the conditions under which Popović’s prison sentence shall be enforced, 26 June 2015 (“*Enforcement Agreement*”).

<sup>12</sup> *Semanza* Decision, paras. 26, 41; *Prosecutor v. Milan Martić*, Case No. MICT-14-82-ES, Decision on the Early Release of Milan Martić, 7 August 2020 (“*Martić* Decision”), p. 3; *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Early Release of Dragomir Milošević, 29 July 2020 (“*Milošević* Decision”), p. 3; *Brđanin* Decision, para. 29; *Bralo* Decision, para. 22; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on

**RECALLING** that serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”;<sup>13</sup>

**RECALLING FURTHER** that a person sentenced to life imprisonment by the ICTR, the ICTY, or the Mechanism may be considered eligible for early release;<sup>14</sup>

**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;<sup>15</sup>

**CONSIDERING** that since then, a higher fixed-term sentence of 47 years has been imposed by the ICTR<sup>16</sup> 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;<sup>17</sup>

**CONSIDERING** that, even if a German court decides that suspending Popović’s sentence on probation is justified, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;<sup>18</sup>

**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 15 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;

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the Early Release of Radislav Krstić, 10 September 2019 (public redacted version) (“*Krstić Decision*”), paras. 16, 18. See Practice Direction, para. 8.

<sup>13</sup> *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.

<sup>14</sup> *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 (“*Musema Decision*”) 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) (“*Galić 2019 Decision*”), para. 16. 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 2015 Decision*”), paras. 23-24.

<sup>15</sup> *Galić 2015 Decision*, para. 35. See *Musema Decision*, p. 4.

<sup>16</sup> *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).

<sup>17</sup> *Musema Decision*, p. 4; *Galić 2019 Decision*, para. 33.

<sup>18</sup> See e.g. *Semanza Decision*, para. 29; *Martić Decision*, p. 4; *Milošević Decision*, p. 4; *Brđanin Decision*, para. 33; *Bralo Decision*, para. 26; *Krstić Decision*, para. 24.

**RECALLING** that in compelling or exceptional circumstances, early release may be granted prior to the serving of two-thirds of the sentence;<sup>19</sup>

**CONSIDERING** that nothing in the Application demonstrates compelling or exceptional circumstances that would warrant granting Popović early release;

**CONSIDERING** that, as Popović 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 seek additional information before reaching a conclusion on the Application;<sup>20</sup>

**NOTING** that, as mentioned above, [REDACTED];<sup>21</sup>

**ACKNOWLEDGING** [REDACTED];

**NOTING** in this context [REDACTED];<sup>22</sup>

**NOTING** that [REDACTED],<sup>23</sup> [REDACTED];

**CONSIDERING** however that, [REDACTED];

**CONSIDERING** that, [REDACTED];

**CONSIDERING** that I have consulted with Judge William H. Sekule, who is a Judge of the Mechanism and was a Judge of the sentencing chamber in Popović's case, and, as no other Judge who imposed Popović's sentence is a Judge of the Mechanism, I have also consulted Judge Graciela Susana Gatti Santana;<sup>24</sup>

**CONSIDERING FURTHER** that Judge Sekule and Judge Gatti unanimously share my position that early release at this stage is inappropriate, and that [REDACTED];

**FOR THE FOREGOING REASONS,**

**HEREBY DENY** the Application;

[REDACTED]; and

<sup>19</sup> See e.g. *Martić* Decision, p. 4; *Milošević* Decision, p. 4; *Krstić* Decision, para. 17; *Musema* Decision, p. 3, fn. 17.

<sup>20</sup> See e.g. Practice Direction, para. 10. See also Practice Direction (MICT/3/Rev.2), para. 4.

<sup>21</sup> See *supra* p. 1.

<sup>22</sup> [REDACTED].

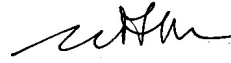
<sup>23</sup> [REDACTED].

<sup>24</sup> See Rule 150 of the Rules; Practice Direction, para. 16.

[REDACTED].

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

Done this 30th day of December 2020,  
At The Hague,  
The Netherlands.



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Judge Carmel Agius  
President

**[Seal of the Mechanism]**



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