



UNITED NATIONS
International Residual Mechanism for
Criminal Tribunals

Case No.: MICT-17-111-R90
Date: 8 September 2020
Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun
Registrar: Mr Abubacarr Tambadou

IN THE CASE AGAINST

PETAR JOJIĆ
VJERICA RADETA

PUBLIC

PUBLIC REDACTED VERSION OF
“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”

Amicus Curiae Prosecutor (“ACP”)

Ms. Diana Ellis QC
Mr. Sam Blom-Cooper

Government of the Republic of Serbia

I. INTRODUCTION

1. On 22 July 2020, the Single Judge requested¹, pursuant to Article 1(4) of the Statute and Rules 55 and 61 of the Rules of Procedure and Evidence (“the Rules”)², the Republic of Serbia (“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...”³
2. Such an order should not have been necessary given that there remains an extant order⁴ in force directing Serbia to provide monthly updates on its efforts to arrest and transfer the Accused. Since May 2016, Serbia has repeatedly failed to comply with this legal obligation.
3. On 13 August 2020, Serbia filed its Response⁵ confirming the ACP’s understanding that [REDACTED].
4. The ACP herein responds to Serbia’s filing to correct matters asserted by Serbia that are both legally and factually wrong, and to invite the Single Judge to alert the President of the Mechanism so that the President may notify the United Nations Security Council of Serbia’s on-going non-compliance with its obligations under Article 28 of the Statute of the Mechanism.

II. SPECIFIC RESPONSE TO SERBIA’S REPORT OF 13 AUGUST 2020

5. First, Serbia yet again asserts that [REDACTED]. This is unquestionably incorrect.⁶ The Single Judge and Appeals Chamber could not have been clearer in rejecting Serbia’s

¹ *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Order for Submissions, 22 July 2020 (“Order”)

² Rules of Procedure and Evidence, 18 December 2019, MICT/1/Rev.6

³ Order, p.3

⁴ *In the Case Against Petar Jojić, Jovo Ostojic, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order for Monthly Reporting on Execution of Arrest Warrants, 13 January 2016 (“Monthly Reporting Order”), p. 1

⁵ Response of the Republic of Serbia to the Order for submissions – 13 August 2020, p.1 (“Response”)

⁶ See *In the Proceedings against [redacted]*, Case No. MICT-17-109-R108.1, Seising the Mechanism President on the Matter of the Republic of Burundi’s Failure to Comply with its Obligation to Cooperate with the Mechanism, 15 May 2020 (public redacted), p. 2 (original and public redacted versions in French filed on 11 May 2020; confidential version in English filed on 13 May 2020). See also Order of 13 January 2016, p. 1.

arguments to this effect.⁷ Rule 60 is unambiguous in confirming that Serbia may not rely on its own national law to disobey a lawful order of the Mechanism.

6. It was more than five years ago that the Trial Chamber gave Serbia a final deadline of 31 July 2015 by which to execute the arrest warrants,⁸ this it blatantly ignored. The legal position was clearly set out by the President of the ICTY when he expressed his concerns regarding Serbia's non-compliance with its obligations in a letter of 2 March 2017 to the United Nations Security Council. In it he noted that the Trial Chamber had affirmed on 2 August 2016 that Article 29 of the Statute of the Tribunal created an obligation to cooperate with the Tribunal in contempt matters and that the jurisprudence established this. Further, that the crime of contempt had been explicitly included in the Mechanism's jurisdiction demonstrating an intention to ensure the obligation of States extends to contempt matters. The President stated that Serbia couldn't point to national law to justify non-compliance with international obligations. In December 2016, a number of member states had called for strengthening of cooperation, noting that this was required in order for the Tribunal to carry out its mandate. The President noted that if cases were not heard it was a stain on the legacy of the Tribunal and a blow to international justice.⁹
7. Second, despite claiming that [REDACTED] [Serbia] has previously effected transfers, as the President reminded the Security Council in his letter.¹⁰ Indeed, the very same judge whose decision is relied upon [REDACTED] to refuse transfer, has found it lawful to transfer other cases of contempt.¹¹
8. Third, in terms of Serbia's obstructivism in respect of the present case, there is now also concern about Serbia's good faith. Serbia had previously denied outright the legal

⁷ Decision on Jurisdiction, 18 January 2018, p.2; 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; *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")

⁸ Status Hearing, IT-03-67-R77.5, 30 June 2015 T.31 - 32, 36, 42

⁹ Letter from the President of the ICTY regarding the non-compliance of Serbia with its obligations under the Statute of the Tribunal; U.N.S.C. S/2017/180, 2 March 2017

¹⁰*Supra*

¹¹ Judge Dilparić confirmed jurisdiction for Serbia to arrest and transfer the accused following issuance of the Order in lieu of Indictment for contempt against Ljubiša Petković, *Prosecutor v Ljubiša Petković*, IT-03-67-R77.1, 13 May 2008

possibility that referral of the case to Serbia would result in impunity for the Accused whom, the ACP was concerned, could invoke the immunity available to them as members of the National Assembly.¹² In its latest filing, [REDACTED].

III. REQUEST TO REPORT SERBIA'S ONGOING NON-COOPERATION TO THE PRESIDENT OF THE MECHANISM IN ORDER TO NOTIFY THE UNITED NATIONS SECURITY COUNCIL

9. The *status quo ante* endures. [REDACTED] referral of the case to Serbia has been conclusively determined in favour of the Mechanism retaining jurisdiction over the case. [REDACTED].
10. It is beyond dispute that a reasonable time has passed since the transmission of the Warrants and Transfers Orders to Serbia.¹³ In the light of Serbia's [REDACTED] refusal to cooperate with the Mechanism in accordance with Article 28 of the Statute and take action to execute the Warrants of Arrest and Transfer Orders the Single Judge is invited, pursuant to Rule 61(B) of the Rules ("Failure to Execute a Warrant of Arrest or Transfer Order"), to once again inform the President of the Mechanism of Serbia's ongoing failure to execute the Arrest Warrants and Transfer Orders so that the President may notify the United Nations Security Council accordingly.
11. If the Single Judge is of the view, contrary to the contention of the ACP, that, by virtue of the latest solitary report, Rule 61(B) is inapplicable, then the provisions of Rule 8 of the Rules are still engaged and the Single Judge is invited to request that the President of the Mechanism report the matter to the Security Council and notify the Security Council of Serbia's failure to comply with its obligations under Article 28 of the Statute.
12. Rule 63 of the Rules, sets out a procedure to deal with a failure to execute a warrant of arrest issued by the Mechanism within a reasonable time and where, consequently,

¹² *In the Case Against Petar Jojić & Vjerica Radeta*, MICT-17-111-R90, Appeal Brief: Against the Order Referring a Case to the Republic of Serbia, 11 July 2018 (public), paras. 106-114; Addendum to Response of the *Amicus Curiae* Prosecutor to the Letter of the Republic of Serbia Re: Referral of the Case, 12 April 2018, p.185; Order Referring a Case to the Republic of Serbia, confidential, 12 June 2016, p.185; Letter from the Minister of Justice of the Republic of Serbia, 8 May 2018, (public, made confidential 9 May 2018) ("Third Submission of Serbia"), RP. 145

¹³ Warrants of Arrest and Orders for Transfer issued on 19 January 2015

personal service of the indictment has not been effected.¹⁴ The ACP has considered whether this Rule provides a further means by which the matter can be reported to the President. She takes the view that Rule 63(E) is not applicable. The Rule states where there has been a failure to effect personal service of the indictment “due in whole or in part to a failure or refusal of a State to cooperate with the Mechanism...” the Single Judge shall so certify and the President shall inform the Security Council. The ACP is of the view the Rule is not engaged [REDACTED].

V. RELIEF SOUGHT

13. The ACP respectfully requests that the Single Judge:
- a. **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;
 - b. **NOTIFY** the President of the Mechanism of Serbia’s ongoing refusal to cooperate with the Mechanism and give effect to the Orders for Arrest and Transfer of the Accused, despite being given ample opportunity to give effect to the said Orders;

Word Count: 1,460

Respectfully submitted,

Dated this day the 8th September 2020

At London, UK


Diana Ellis QC
Sam Blom-Cooper

¹⁴ See Rule 63(A) of the Rules of Procedure and Evidence



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