

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-17-111-R90

Date: 8 December 2020

Original: English

---

**BEFORE A SINGLE JUDGE**

**Before: Judge Liu Daqun**

**Registrar: Mr. Abubacarr Tambaou**

**Decision of: 8 December 2020**

**IN THE CASE AGAINST**

**PETAR JOJIĆ  
VJERICA RADETA**

***PUBLIC***

---

**DECISION CONCERNING THE REFERRAL  
OF A CASE TO THE REPUBLIC OF SERBIA**

---

***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;<sup>1</sup>

**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;<sup>2</sup>

**NOTING** that, on 29 November 2017, the ICTY President ordered that the case against the Accused be transferred to the Mechanism in light of the imminent closure of the ICTY;<sup>3</sup>

**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”);<sup>4</sup>

**NOTING** that, on 5 February 2018, the Registrar appointed an *Amicus Curiae* Prosecutor in the case against the Accused;<sup>5</sup>

**NOTING** that, on 12 June 2018, a Single Judge of the Mechanism ordered the case against the Accused to be referred to the authorities of the Republic of Serbia (“Serbia”) for trial and issued warrants of arrest directing the authorities and officers and agents of all Member States of the United Nations (“UN Member States”) to secure the arrest, detention, and transfer of the Accused to Serbia;<sup>6</sup>

**NOTING** that, on 12 December 2018, the Appeals Chamber of the Mechanism found that the *Amicus Curiae* Prosecutor had not raised before the Single Judge the issue of “the unwillingness of

<sup>1</sup> Order Replacing a Single Judge, 17 December 2018.

<sup>2</sup> *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*), Annex, pp. 3, 7, 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.

<sup>3</sup> *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. *See also Prosecutor v. Petar Jojić and Vjerica Radeta*, Case Nos. MICT-17-111-R90 & IT-03-67-R77.5, Certificate, 4 December 2017, Annex (confidential and *ex parte*).

<sup>4</sup> Decision on Jurisdiction, 18 January 2018, p. 2.

<sup>5</sup> Decision, 5 February 2018 (confidential), Registry Pagination (“RP.”) 29.

the witnesses to testify if the 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 (“WISP”);<sup>7</sup>

**RECALLING** that, on 13 May 2019, after receiving submissions from the *Amicus Curiae* Prosecutor, Serbia, and the WISP, and having considered that the witnesses’ unwillingness to testify in Serbia would significantly undermine the prosecution’s ability to present its case and would frustrate the proceedings, I found that, pursuant to Article 6(6) of the Statute, the conditions for referral of this case to Serbia are not met and I consequently revoked the Referral Order and the Arrest Warrants issued on 12 June 2018 and issued new international arrest warrants directing the authorities of all UN Member States to act promptly with all due diligence to secure the arrest, detention, and transfer of the Accused to the seat of the Mechanism in The Hague without delay;<sup>8</sup>

**NOTING** that, on 24 February 2020, the Appeals Chamber affirmed the Decision of 13 May 2019;<sup>9</sup>

**RECALLING** that, on 22 July 2020, I ordered the authorities of Serbia to report on action they have taken to execute the arrest warrants against the Accused and related transfer orders and, if applicable, to state the reasons for their inability to do so;<sup>10</sup>

**NOTING** that, on 13 August 2020, Serbia submitted that: (i) it had been unable to arrest and transfer the Accused despite the Decision of 24 February 2020 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 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;<sup>11</sup> 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;<sup>12</sup>

---

<sup>6</sup> Public Redacted Version of the 12 June 2018 Order Referring a Case to the Republic of Serbia, 12 June 2018 (with public redacted versions of confidential Annexes A and B) (“Referral Order”), p. 5, Annexes A and B.

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

<sup>8</sup> 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.

<sup>9</sup> *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. 18, 19.

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

<sup>11</sup> 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.

<sup>12</sup> Serbia’s Submission of 13 August 2020, RP. 646, 645.

**NOTING** the *Amicus Curiae* Prosecutor’s submission filed on 7 September 2020 requesting 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 non-cooperation; and (ii) notify, pursuant to Rule 61 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), or alternatively Rule 8 of the Rules, the President of the Mechanism (“President”) of Serbia’s ongoing refusal to cooperate with the Mechanism and give effect to the arrest warrants against the Accused and related transfer orders, despite being given ample opportunity to do so;<sup>13</sup>

**NOTING** that, in reply, Serbia submits that it has regularly reported to the United Nations Security Council about this case and, therefore, the *Amicus Curiae* Prosecutor’s request to notify it of Serbia’s non-cooperation through the President is inappropriate;<sup>14</sup>

**RECALLING** the Order for Submissions filed on 14 September 2020 ordering: (i) the WISP to file submissions regarding the witnesses’ willingness to participate in proceedings in Serbia, in light of the fact that the Accused no longer hold positions as deputies in the National Assembly of Serbia; and (ii) the *Amicus Curiae* Prosecutor to file a response, if any, to the submission from the WISP within 14 days of the date of its filing;<sup>15</sup>

**NOTING** that, on 13 October 2020, the Registrar submitted that: (i) despite the fact that the Accused no longer hold positions as deputies in the National Assembly of Serbia, the witnesses remain unwilling to testify should the case be referred to Serbia; and (ii) the information received from the witnesses causes serious concern as to the possible impact a trial in Serbia might have on the safety, privacy, and wellbeing of the witnesses and their families;<sup>16</sup>

**NOTING** that, on 21 October 2020, the *Amicus Curiae* Prosecutor responded that Serbia must execute the arrest warrants and related transfer orders against the Accused, since, while the witnesses, whose evidence is essential for the viability of the case, are adamant that they will not

---

<sup>13</sup> 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”, 8 September 2020 (confidential version with confidential annex A filed on 7 September 2020), paras. 5-13.

<sup>14</sup> Letter from the Ministry of Justice of the Republic of Serbia, 22 September 2020 (confidential), RP. 699-697.

<sup>15</sup> Order for Submissions, 14 September 2020, p. 3.

<sup>16</sup> Registrar’s Submission in Compliance with the Order of 14 September 2020, 13 October 2020 (public with confidential and *ex parte* annex) (“Registrar’s Submission of 13 October 2020”), Annex, RP. 707, 706. The Registrar also informed me of the decease of one of the witnesses. *See* Registrar’s Submission of 13 October 2020, Annex, RP. 708, 704, 703.

participate in proceedings against the Accused by the Serbian authorities, they have a genuine and long-standing wish to cooperate with the *Amicus Curiae* Prosecutor;<sup>17</sup>

**CONSIDERING** that, despite the fact that the Accused no longer hold positions in the National Assembly of Serbia, the witnesses maintain their unequivocal unwillingness to testify should the case be referred to Serbia which renders the conduct of the proceedings in Serbia impossible;<sup>18</sup>

**CONSIDERING** that, since the issuance of the Decision of 24 February 2020, in which the Appeals Chamber affirmed the Decision of 13 May 2019 revoking the referral of the case against the Accused to Serbia, approximately nine months have passed and that Serbia maintains its position that it is unable to transfer the Accused to the Mechanism;<sup>19</sup>

**CONSIDERING** 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 in relation to cases of contempt, including for the arrest or the detention of persons and the surrender or the transfer of accused to the Mechanism;<sup>20</sup>

**CONSIDERING** that the obligations laid down in Article 28 of the Statute prevail over any domestic legal impediment;<sup>21</sup>

**FINDING** that, in these circumstances, it is appropriate to reiterate the request to Serbia to transfer the Accused to the seat of the Mechanism in The Hague without delay, as set out in the Decision of 13 May 2019;

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Articles 1(4), 6(6), and 28 of the Statute and Rules 14(D), 55, 57, 58, 59, 60, and 90 of the Rules,

---

<sup>17</sup> 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*) (“*Amicus Curiae* Prosecutor’s Submission of 21 October 2020”), paras. 34-41. I note that the *Amicus Curiae* Prosecutor also submits that she has independently confirmed the witnesses’ views. *See Amicus Curiae* Prosecutor’s Submission of 21 October 2020, paras. 32, 33.

<sup>18</sup> *See* Registrar’s Submission of 13 October 2020, Annex, RP. 708-706; *Amicus Curiae* Prosecutor’s Submission of 21 October 2020, paras. 32, 33, 38, 41. *See also* Decision of 13 May 2019, p. 5.

<sup>19</sup> *See supra* n. 11.

<sup>20</sup> Order of 22 July 2020, p. 2, nn. 10, 11. It is well established that the power of the Mechanism and of the ICTY over contempt of court is inherent. *See 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. 6, 7. *See also* Rule 77 (A) of the ICTY Rules of Procedure and Evidence; Rule 90 (A) of the Rules.

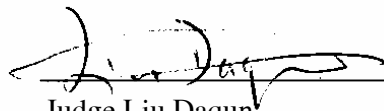
<sup>21</sup> *See* Rule 60 of the Rules. *See also* Decision of 2 August 2016, paras. 5-9.

**REQUEST** 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

**REMAIN** seized of the matter with a view to ascertaining compliance with this Decision within 90 days of its issuance.

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

Done this 8<sup>th</sup> day of December 2020,  
At The Hague,  
The Netherlands



---

Judge Liu Daqun  
Single Judge

**[Seal of the Mechanism]**



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS

**I - FILING INFORMATION / INFORMATIONS GÉNÉRALES**

<b>To/ À :</b>	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
<b>From/ De :</b>	<input type="checkbox"/> President / <i>Président</i>	<input checked="" type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>	<input type="checkbox"/> Defence / <i>Défense</i>
<b>Case Name/ Affaire :</b>	<b>IN THE CASE AGAINST PETAR JOJIĆ &amp; VJERICA RADETA</b>	<b>Case Number/ Affaire n° :</b>	<b>MICT-17-111-R90</b>
<b>Date Created/ Daté du :</b>	<b>8 December 2020</b>	<b>Date transmitted/ Transmis le :</b>	<b>8 December 2020</b>
		<b>No. of Pages/ Nombre de pages :</b>	<b>6</b>
<b>Original Language / Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S
<b>Title of Document/ Titre du document :</b>	<b>DECISION CONCERNING THE REFERRAL OF A CASE TO THE REPUBLIC OF SERBIA</b>		
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
<b>Document type/ Type de document :</b>			
<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

**II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT**

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i> )
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input checked="" type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
<b>Original/ Original en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
<b>Translation/ Traduction en</b> <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*

[JudicialFilingsArusha@un.org](mailto:JudicialFilingsArusha@un.org) OR/ *OU* [JudicialFilingsHague@un.org](mailto:JudicialFilingsHague@un.org)

Rev: August 2019/ *Rév. : Août 2019*