

INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

Case No: MICT-17-112-ES.5.

Date: 25 November 2020

PRESIDENT OF THE MECHANISM

In the Case of

THE PROSECUTOR

v.

MILIVOJ PETKOVIĆ

PUBLIC

MILIVOJ PETKOVIĆ'S APPLICATION FOR EARLY RELEASE

The Office of the Prosecutor

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MILIVOJ PETKOVIĆ'S APPLICATION FOR EARLY RELEASE

I. BACKGROUND

1. The Indictment in the *Prosecutor v. Prlić et al.* case was confirmed in March 2004.
2. On 5 April 2004 Milivoj Petković voluntarily surrendered to the ICTY and was immediately brought to the UNDU in The Hague, where his initial appearance took place on 6 April 2004.
3. On 29 March 2013 the Trial Chamber pronounced the judgement in the *Prosecutor v. Prlić et al.* case and sentenced Petković to 20 years of imprisonment.¹ Following the appeals, on 29 November 2017 the Appeals Chamber reaffirmed the sentence imposed by the Trial Chamber.²
4. Mr. Petković remained imprisoned at the UNDU in The Hague (Netherlands) until 22 September 2020, when he was transferred to Belgium, where he currently serves the remainder of his sentence.
5. Milivoj Petković, through his counsel, respectfully submits this Application for early release pursuant to Articles 25(2) and 26 of the MICT Statute, Rules 150 and 151 of the Rules of Procedure and Evidence (“the Rules”) of the International Residual Mechanism for Criminal Tribunals (“Mechanism” or “MICT”) and relevant paragraphs of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism (“Practice direction”).

¹ The *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Judgement of the Trial Chamber, 29 March 2013.

² The *Prosecutor v. Prlić et al.*, Case No. IT-04-74-A, Judgement of the Appeals Chamber, 29 November 2017.

6. This Application is respectfully made for Mr. Petković to be granted early release after serving two-thirds of his sentence and the grounds are set out below.

II. APPLICABLE LAW

7. Paragraph 26 of the Statute empowers the MICT President to decide on the petitions of convicted persons for early release on the basis of the interests of justice and the general principles of law.
8. Rule 150 the Rules provides that the President shall, *“/.../ upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges”*.
9. Rule 151 of the Rules sets out general standards for granting early release stating 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 Prosecutor”*.
10. Paragraph 5 of the Practice direction provides that a convicted person *“may apply directly to the President for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible”*.
11. Paragraph 8 of the Practice direction states that *“/.../ a convicted person serving a sentence under the supervision of the Mechanism will generally be eligible to be considered for early release only upon having served two-thirds of his or her sentence as imposed by the ICTR, the ICTY, or the Mechanism”*.

12. Paragraph 10 of the Practice direction indicates that the President may direct the Registry to obtain information which he considers may be relevant to the determination of early release application “*././ such as: (a) Any reports and observations from the appropriate authorities in the enforcement State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned; (b) Any psychiatric or psychological evaluations prepared on the mental condition of the convicted person, including in relation to any risks posed by release, as well as any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes; (c) Any medical reports on the physical condition of the convicted person, including whether the convicted person is capable of serving his or her sentence in the enforcement State; (d) Information on where the convicted person intends to live if released early; (e) A detailed report from the Office of the Prosecutor on any co-operation of the convicted person with the Prosecution of the ICTR, the ICTY, or the Mechanism and the significance thereof, as well as any other comments or information that the Prosecution considers of relevance for the determination of the Application; and (f) Any other information that the President considers relevant*”.
13. Paragraph 19 of the Practice direction provides that “*In accordance with Article 26 of the Statute, the President shall determine on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other relevant information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules, whether pardon, commutation of sentence, or early release is to be granted*”.
14. Finally, paragraph 20 of the Practice direction states that “*early release may be granted subject to conditions*”.

15. Detailed explication of the applicable law by the current MICT President is contained in his recent decisions on early release petitions.³

III. ARGUMENT

16. It is established MICT jurisprudence that a convicted person having served two-thirds of his or her sentence shall be eligible to be considered for early release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.

17. Based on information received from UNDU, it is estimated that Mr. Petković will become eligible to be considered for early release on 12 February 2021, when he will have served two-thirds of his sentence (excluding any time spent on conditional provisional release).

Circumstances of Petković case

18. Milivoj Petković does not deny nor in any way diminish the gravity of the crimes for which he has been convicted. The gravity of those crimes is reflected in the sentence imposed.

19. During the proceedings (trial, as well as appellate) Mr. Petković did not deny that numerous serious crimes against members of the ABiH and Muslim civilians have been committed during the HVO – ABH conflict. In the course of trial and during his testimony before the Trial Chamber he showed respect and compassion for all victims of the BH conflict and, in particular, his remorse for the sufferings of the Muslim population caused by the HVO actions.

20. In his personal address to the Trial Chamber On 2 March 2011 he publicly stated:

³ See *Decision on Laurent Semanza's Application for early Release*, of 17 September 2020, paras 20 – 24 and 46-48. See also, *Decision on the Application of Radoslav Brđanin for early Release*, of 28 February 2020, paras 24-27 and 47-51.

I take this opportunity to apologise to all the victims of actions and omissions committed by any members of the HVO, and I apologise in particular to Muslims, to those Bosniaks with whom I started defending Bosnia and Herzegovina in 1992. I am sorry that the unity of the peoples did not last throughout the war, for four years. And that for almost 12 months we were enemies in Bosnia and Herzegovina.⁴

21. Likewise, in his public statement before the Appeals Chamber on 28 March 2017 he said:

My Defence, Your Honours, has shown that in 1993, I thought that it's better to negotiate for two years than to wage war for one day. I think that still today. I think all other people think the same. To see the misfortune that a single shell can inflict upon people is enough to see that war is not the means to resolve problems. However, sooner or later all conflicts end at the negotiating table. It is unfortunate that that is preceded by misfortune and tragedy. I would like to say that I sincerely regret each victim of war in Bosnia and Herzegovina. I am particularly sad about the civilian victims of war, and I hope that nothing like that would ever happen again in that area.⁵

22. At the specific request of Mr. Petković, it is hereby submitted that Mr. Petković accepted the final judgement in his case. He accepts his personal responsibility for the crimes he was convicted for and the sentence imposed. He expresses his sincere remorse for his acts or omissions which led or contributed to the commission of crimes and his deep condolences to the victims of Muslim/Bosniak ethnicity and their relatives. He will bear this personal burden for the rest of his life. He can only hope that he will have an opportunity to personally contribute to the peace and reconciliation among nations in the former Yugoslavia in general and BH in particular.

⁴ T (Trial): 52975. The *Prosecutor v. Prlić at al.*, Case No. IT-04-74-T, 2 March 2011.

⁵ T (Appeal): 863. The *Prosecutor v. Prlić at al.*, Case No. IT-04-74-A, 28 March 2017.

23. Milivoj Petković is not a nationalist or chauvinist. He testified before the Trial Chamber about his family upbringing and professional background. There is no evidence that Petković ever harbored any sort of ethnic or religious enmity towards Muslims, or any other ethnic or religious group in the former Yugoslavia. Petković did not make any public statement calling for ethnic or religious hate against BH Muslims or any other national or religious group. On the contrary, in his rare public utterances, he called for peace and negotiations, rather than conflict. As an example of this, in an interview given to the Bosnian Serb TV at the Sarajevo airport on 16 May 1993⁶, Mr. Petković stated:

Well, I think that it is time to stop the war in these areas. It is better to spend a year or two politically negotiating than to wage a war for five months, or even for one day.

When asked if the day of peace agreement is near Petković said:

Listen, I would like it to be as soon as possible. You see what is happening in all this: the suffering, the destruction and the burning, people leaving certain territories. Therefore, every day of war brings with it more victims, more destruction, and more people get hurt, and what is a country without people. And there is enough room here in Bosnia for even a larger number of people to live in than have lived here thus far.

And further on in relation to Mostar:

Mostar belongs to the people of Mostar. I think that that is the most sensible definition and that this is the one we should stick with. If we stick to this then there will be no conflict. But they accuse us of wanting to take Mostar for ourselves, you see. But how could we take it exclusively for ourselves when they are here as well, you can't just take it for yourself. If I share something with you, then I cannot take it for myself. Which means that I am actually sharing it with someone.

⁶ T: 50865. *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, 11 March 2010.

24. As said above, Mr. Petković accepted his sentence and behaved accordingly while serving it (in the Netherlands and Belgium). He has been an exemplary detainee/prisoner, never causing any problem to the prison authorities. He had no difficulty in his relations with the inmates/prisoners of various ethnic or religious backgrounds with whom he served his detention or sentence. All reports from prison authorities will confirm this.
25. During trial Mr. Petković has been granted provisional release (for a shorter or longer periods) on numerous occasions. No difficulties arose during Mr. Petković's previous periods of provisional release. There was no report or suggestion of breach or abuse by Mr. Petković of the terms of his provisional release(s). There has never been any harm or threat to Mr. Petković, his family or any other person or any danger to public order in Croatia or in BH in connection with his previous provisional release.
26. In his relations to the Tribunal, Mr. Petković has always shown great respect towards the court and cooperated with its organs. He previously testified in two ICTY proceedings, on both occasions as a witness for the respective Trial Chamber. As soon as he became aware of the ICTY Indictment against him he notified Croatian authorities of his intention to place himself at the disposal of the ICTY in the shortest time possible. He voluntarily surrendered to the Tribunal on 5 April 2004, five days after receiving the Indictment.
27. Petković's conduct during the trial has been impeccable. He attended all court hearings (save during a short period when he was provisionally released to Croatia for a major surgery). He never ceased to attend the court hearings even for a day for any reason. He has always been respectful to the Trial Chamber, witnesses, co-accused and the Prosecution during the proceedings.
28. During his testimony before the Trial Chamber he showed respect for all victims of the BH conflict and, in particular, his remorse for the sufferings of the Muslim population caused by the HVO actions.
29. Mr. Petković has never been politically engaged nor held any political function. He was professional soldier all his professional life. He was born in

Croatia and prior to the outbreak of war on the territory of former Yugoslavia he had no connection whatsoever with the BH.

30. Prior to the ICTY Indictment (2004) Mr. Petković was never suspected, investigated or charged under any national jurisdiction for the commission of any crime. He had no criminal record.
31. The ICTY Prosecutor never requested an interview with or any assistance from Milivoj Petković, neither prior the Indictment in this case, nor afterwards.
32. Milivoj Petković is now 71 years old. His state of health is seriously affected by the major surgery he underwent in February 2009 and requires regular medical control.
33. Current global Covid-19 pandemic made and still makes practically impossible any physical contact of Mr. Petković with his wife and other members of his family (his two daughters and three grandchildren). Prior to Covid-19 crisis his wife and his daughters regularly visited Mr. Petković at the UNDU (The Hague) on a monthly basis. Since the epidemic began (March 2020) his wife and daughters could not visit him, due to various traveling/prison restrictions imposed by national/prison authorities and due to serious health risks involved for Mr. Petković and his wife considering their age and state of health. It is still unpredictable how long will this unprecedented situation last and, consequentially, how long Mr. Petković and his family members will be unable to establish physical contacts. It is, therefore, respectfully submitted that this specific factor/circumstance (in addition to all above stated) is relevant and should be duly considered in determining this Application for early release.⁷
34. Mr. Petković spent considerable periods on provisional release pending and during trial (altogether more than 3,5 years). The Trial and the Appeals Chamber did not accept to deduct these periods of provisional release for the

⁷ Right to family life is recognized by various international human rights instruments (see, for example, Article 23 of the ICCPR and Article 8 of the ECHR).

purpose of reduction of sentence. However, it should be respectfully noted in this connection that all periods of provisional release granted to Mr. Petković have been granted under relatively stringent conditions. In a certain number of cases he had been granted provisional release under the most stringent conditions of home confinement, akin to house arrest.⁸ His personal freedom (freedom of movement, right to social contacts, freedom of expression, various aspects of the right to privacy etc.) has been substantially limited during those periods he spent on provisional release. Respectfully, this factor deserves to be considered as relevant, at least to some extent, in the specific context of this Application for early release.

35. If granted early release Mr. Petković will not have any difficulty in reintegrating into the Croatian society. There is not the slightest risk of his reoffending. Petković does not represent any danger or threat to any person or to public order or safety. There is no indication to the contrary.

36. If the MICT President grants him early release Mr. Petković intends to live in Split (Republic of Croatia) where he lived prior to the ICTY Indictment and where his wife and his daughters and their families still reside. He will spend his time with his immediate family and his three grandchildren. Mr. Petković and his wife are both retired and their personal pensions will be sufficient for their needs.

IV. RELIEF SOUGHT

37. For all above stated reasons Milivoj Petković respectfully requests the President to grant his Application for early release after serving two-thirds of

⁸ Petković spent 106 days of provisional release under the strict conditions of home confinement. See: *Decision on Urgent Motion for Provisional Release of the Accused Milivoj Petković to Undergo Major Surgery in Croatia*, 29/01/2009, *Decision on the Accused Petković's Motion for Provisional Release*, 17/06/2009, *Decision on Motion for Provisional Release of the Accused Petković*, 09/12/2009, *Decision on motion for Provisional Release of the Accused Petković*, 12/07/2010, *Decision on Motion for Provisional Release Filed by the Accused Petković*, 09/12/2010, *Decision on Milivoj Petković's Motion for Provisional Release*, 24/06/2011. In all, Petković spent 1377 days (i.e. more than 3,5 years) on provisional release pending and during trial under various strict conditions imposed (including 106 days of home confinement).

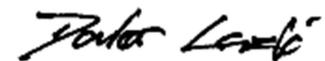
the sentence, subject to conditions he may find appropriate in the circumstances.

Word count: 2998

Respectfully submitted,



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