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Mechanism for  
International  
Criminal Tribunals

Mécanisme pour les  
Tribunaux Pénaux  
Internationaux

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Mechanism for International Criminal Tribunals

Case No. MICT-15-85-ES.1

Date: 10 April 2015

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Theodor Meron, President  
**Registrar:** Mr. John Hocking  
**Decision of:** 10 April 2015

**PROSECUTOR**

v.

**VINKO PANDUREVIĆ**

***PUBLIC***

**PUBLIC REDACTED VERSION OF THE  
9 APRIL 2015 DECISION OF THE PRESIDENT ON THE  
EARLY RELEASE OF VINKO PANDUREVIĆ**

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow

**Counsel for Mr. Vinko Pandurević:**

Mr. Peter Haynes  
Mr. Simon Davis

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seized of Mr. Vinko Pandurević’s Request for Early Release, dated 3 February 2015 (“Application”). I consider the Application pursuant to Article 26 of the Statute of the Mechanism (“Statute”), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), and paragraph 3 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”).<sup>1</sup>

## I. BACKGROUND

2. Pandurević surrendered voluntarily to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 23 March 2005.<sup>2</sup> At his initial appearance on 3 May 2005 before a chamber of the ICTY, Pandurević entered a plea of not guilty.<sup>3</sup>

3. On 10 June 2010 Trial Chamber II of the ICTY (“Trial Chamber”) convicted Pandurević pursuant to Article 7(1) of the Statute of the ICTY (“ICTY Statute”) of: (i) aiding and abetting murder as a crime against humanity and as a violation of the laws or customs of war; (ii) aiding and abetting persecution as a crime against humanity through aiding and abetting forcible transfer; and (iii) aiding and abetting inhumane acts (forcible transfer) as a crime against humanity.<sup>4</sup> Pandurević was also convicted pursuant to Article 7(3) of the ICTY Statute of murder as a crime against humanity and as a violation of the laws or customs of war.<sup>5</sup> The Trial Chamber sentenced Pandurević to a term of 13 years of imprisonment.<sup>6</sup>

4. On 30 January 2015 the Appeals Chamber of the ICTY (“Appeals Chamber”) dismissed Pandurević’s appeal in its entirety, granted the ICTY Prosecution’s appeal in part, and entered new convictions against Pandurević for aiding and abetting: (i) extermination as a crime against humanity; (ii) murder as a violation of the laws or customs of war; and (iii) persecution through murder as a crime against humanity.<sup>7</sup> The Appeals Chamber also entered convictions against Pandurević pursuant to Article 7(3) of the ICTY Statute for: (iv) persecution through cruel and inhumane treatment as a crime against humanity; (v) extermination as a crime against humanity; (vi) murder as a violation of the laws or customs of war; and (vii) persecution through murder as

<sup>1</sup> MICT/3, 5 July 2012.

<sup>2</sup> *Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86-PT, Decision on Vinko Pandurević’s Application for Provisional Release, 18 July 2005, para. 17.

<sup>3</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted version) (“Trial Judgement”), Annex 2, para. 6.

<sup>4</sup> Trial Judgement, para. 2110, p. 837.

<sup>5</sup> Trial Judgement, para. 2110, p. 837.

<sup>6</sup> Trial Judgement, p. 838.

well as through cruel and inhumane treatment as a crime against humanity.<sup>8</sup> The Appeals Chamber set aside Pandurević's convictions for murder as a crime against humanity and murder as a violation of the laws or customs of war under Article 7(3) of the ICTY Statute.<sup>9</sup> It affirmed his 13-year sentence.<sup>10</sup>

5. As of the date of this decision, Pandurević remains in custody at the United Nations Detention Unit ("UNDU") in The Hague pending designation of an enforcement State.

## II. APPLICATION

6. Pandurević filed the Application on 3 February 2015. On 16 February 2015 the Registrar of the Mechanism ("Registrar"), in accordance with paragraphs 3, 4, and 5 of the Practice Direction, provided me with: (i) a report from the Commanding Officer of the UNDU, dated 6 February 2015 ("UNDU Report on Conduct"), containing observations as to Pandurević's behaviour during detention; and (ii) a report from the Medical Officer of the UNDU, dated 13 February 2015 ("UNDU Medical Report"), regarding Pandurević's mental health.<sup>11</sup>

7. On 24 February 2015 the Registry of the Mechanism ("Registry"), in accordance with paragraphs 4 and 5 of the Practice Direction, forwarded a memorandum from the Office of the Prosecutor ("Prosecution"), dated 19 February 2015 ("Prosecution Memorandum"), regarding the cooperation provided by Pandurević to the ICTY Prosecution ("ICTY Prosecution").<sup>12</sup> On 25 February 2015, the Registry forwarded the documentation related to the Application to Pandurević pursuant to paragraph 5 of the Practice Direction.<sup>13</sup> On 5 March 2015 Pandurević made submissions pursuant to paragraph 6 of the Practice Direction.<sup>14</sup>

## III. DISCUSSION

8. In coming to my decision on whether it is appropriate to grant early release for Pandurević, I have consulted the Judges of the sentencing Chamber who are Judges of the Mechanism, pursuant to Rule 150 of the Rules.

<sup>7</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (public redacted version) ("Appeal Judgement"), paras. 1804, 1817, p. 715.

<sup>8</sup> Appeal Judgement, paras. 1916, 1947, p. 715.

<sup>9</sup> Appeal Judgement, para. 1806, p. 715.

<sup>10</sup> Appeal Judgement, p. 716.

<sup>11</sup> Internal Memorandum from Mr. John Hocking, Registrar, to Judge Theodor Meron, President, dated 16 February 2015, transmitting UNDU Report on Conduct and UNDU Medical Report. The UNDU Medical Report is accompanied by a consent release signed by Pandurević, dated 13 February 2015.

<sup>12</sup> Internal Memorandum from Ms. Tatjana Dawson, Deputy Chief, Immediate Office of the Registrar - ICTY, to Judge Theodor Meron, President, dated 24 February 2015, transmitting Prosecution Memorandum.

### A. Applicable Law

9. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Article 26 of the Statute further provides that there shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.

10. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President of the Mechanism shall, upon such notice, 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. Pursuant to Rule 151 of the Rules, in making a determination on ~~pardon, commutation of sentence, or early release, the President of the Mechanism 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, and any substantial cooperation of the prisoner with the Prosecution.

11. The jurisprudence of the Mechanism recognizes that, in the situation where there is no appeal pending and a convicted person is still detained at either the United Nations Detention Facility ("UNDF") in Arusha or at the UNDU in The Hague, a request for early release may be entertained by the President of the Mechanism.<sup>15</sup> Following the approach taken by the International Criminal Tribunal for Rwanda ("ICTR") and the ICTY, the President of the Mechanism may consider such requests given that "the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced" by the ICTR, the ICTY, or the Mechanism and that the eligibility of individuals serving their sentences at the UNDF or the UNDU "must be determined by reference to the equivalent conditions for eligibility established by the enforcement states".<sup>16</sup>

<sup>13</sup> Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar – Hague Branch, to Judge Theodor Meron, President, dated 6 March 2015, *transmitting* Pandurević's submissions of 5 March 2015 ("Reply").

<sup>14</sup> See generally Reply.

<sup>15</sup> See *The Prosecutor v. Innocent Sagahutu*, Case No. MICT-13-43-ES, Public Redacted Version of the 9 May 2014 Decision of the President on the Early Release of Innocent Sagahutu, 13 May 2014 ("*Sagahutu Decision*"), paras. 11-12. See also *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A, Decision on Tharcisse Muvunyi's Application for Early Release, 6 March 2012, para. 10; *Prosecutor v. Shefqet Kabashi*, Case No. IT-04-84-R77.1-ES, Decision of President on Early Release of Shefqet Kabashi, 28 September 2011 ("*Kabashi Decision*"), para. 11.

<sup>16</sup> *Sagahutu Decision*, para. 11, *referring to Kabashi Decision*, para. 11.

## B. Gravity of Crimes

12. The Trial Chamber convicted Pandurević pursuant to Article 7(1) of the ICTY Statute of: (i) aiding and abetting murder as a crime against humanity and as a violation of the laws or customs of war because of his failure to discharge his legal duty to protect ten wounded prisoners from Milići Hospital; (ii) aiding and abetting persecution as a crime against humanity through aiding and abetting the forcible transfer of the Bosnian Muslim population from Srebrenica through his participation in the *Krivaja-95* operation; and (iii) aiding and abetting inhumane acts (forcible transfer) as a crime against humanity by participating in the attack on Srebrenica pursuant to the *Krivaja-95* operation and knowing that his participation assisted in the commission of the forcible transfer of the Bosnian Muslim population of the Srebrenica enclave.<sup>17</sup>

13. In the context of sentencing, the Trial Chamber “emphasize[d] the serious and grave nature of the crimes for which Pandurević has been found responsible”, but it also underscored that his case “presents an uncommon and extraordinary set of facts and circumstances” warranting careful consideration<sup>18</sup> and noted the “limited extent of his involvement in the crimes”.<sup>19</sup>

14. In particular, with respect to Pandurević’s responsibility for the crime of forcible transfer, the Trial Chamber observed that although Pandurević “participated in the *Krivaja-95* Operation with the knowledge of the criminal plan to forcibly remove the Bosnian Muslim populations of the enclaves and with the knowledge that his acts provided practical assistance to the commission of forcible transfer of the Bosnian Muslim population of the Srebrenica enclave”, he “participated in the military operation also with the knowledge that it had legitimate military objectives”.<sup>20</sup> Taking into account “the dual purpose of the *Krivaja-95* Operation and Pandurević’s role as a military commander, acting at a tactical level carrying out arguably justifiable military objectives”, the Trial Chamber found that “the limited nature of Pandurević’s involvement in the forcible transfer diminishes the gravity of his criminal conduct”.<sup>21</sup>

15. With respect to Pandurević’s responsibility for the crime of murder, the Trial Chamber found that while Pandurević’s “failure to discharge his legal duty to protect the wounded prisoners from Milići Hospital [...] cannot be trivialized” as it contributed to their murder, “the circumstances

<sup>17</sup> Trial Judgement, paras. 1988-1991, 2010-2012, 2098-2100, 2110, 2212, 2214, p. 837. The Trial Chamber entered additional convictions that were set aside on appeal. See Trial Judgement, paras. 2110, 2215, p. 837. See also Appeal Judgement, para. 1806, p. 715.

<sup>18</sup> Trial Judgement, para. 2210.

<sup>19</sup> Trial Judgement, para. 2219.

<sup>20</sup> Trial Judgement, para. 2212.

<sup>21</sup> Trial Judgement, para. 2212.

which Pandurević faced—including the high level authorities behind the murder operation—and the nature of his omission [...] diminish the gravity of his omission to some limited extent”.<sup>22</sup>

16. On appeal, the Appeals Chamber entered a number of new convictions against Pandurević.<sup>23</sup> In particular, the Appeals Chamber convicted Pandurević pursuant to Article 7(1) of the ICTY Statute for aiding and abetting extermination and persecution through murder as crimes against humanity and murder as a violation of the laws or customs of war.<sup>24</sup> These crimes concern the killing of more than 1,000 Bosnian Muslim prisoners at Kozluk on 15 July 1995 and the killing of between 1,000 and 2,000 persons at the Branjevo Military Farm and Pilica Cultural Centre on 16 July 1995.<sup>25</sup> The Appeals Chamber also entered a conviction against Pandurević for the crime of aiding and abetting persecution through murder as a crime against humanity with regard to the ten prisoners at Milići Hospital.<sup>26</sup>

17. In addition, the Appeals Chamber entered a new conviction for persecution through cruel and inhumane treatment pursuant to Article 7(3) of the ICTY Statute for Pandurević’s failure to take reasonable and necessary measures to prevent his subordinates from participating in this crime committed against 1,500 to 2,500 Bosnian Muslim prisoners at the Ročević and Kula Schools from noon on 15 July to 16 July 1995.<sup>27</sup> The Appeals Chamber also entered new convictions pursuant to Article 7(3) of the ICTY Statute for extermination and persecution through murder as crimes against humanity, and murder as a violation of the laws or customs of war for Pandurević’s failure to punish his subordinates who, from 13 July to noon on 15 July 1995, aided and abetted these crimes against Bosnian Muslim prisoners detained at the Grbavci, Ročević, and Kula Schools, and committed or aided and abetted these crimes at Orahovac on 14 July 1995.<sup>28</sup> Finally, the Appeals Chamber entered a new conviction for persecution through cruel and inhumane treatment as a crime against humanity for his failure to punish his subordinates who from 13 July to 16 July 1995 aided and abetted this crime against the Bosnian Muslim prisoners who were detained at the Grbavci, Kula, and Ročević Schools, and transported to Orahovac and Kozluk.<sup>29</sup>

18. In considering the impact of the Appeals Chamber’s findings on Pandurević’s sentence, the Appeals Chamber recalled the nature of these crimes, including the number of victims, as well as the emphasis placed by the Trial Chamber on Pandurević’s actions that saved the lives of thousands

<sup>22</sup> Trial Judgement, para. 2214.

<sup>23</sup> Appeal Judgement, paras. 2114-2115, p. 715.

<sup>24</sup> Appeal Judgement, paras. 1804, 2114, p. 715.

<sup>25</sup> Appeal Judgement, para. 1804.

<sup>26</sup> Appeal Judgement, paras. 1816-1817, p. 715.

<sup>27</sup> Appeal Judgement, paras. 1916, 2115, p. 715.

<sup>28</sup> Appeal Judgement, paras. 1947, 2115, p. 715.

<sup>29</sup> Appeal Judgement, paras. 1947, 2115, p. 715.



of Bosnian Muslims.<sup>30</sup> The Appeals Chamber proceeded to conclude that “Pandurević’s criminal responsibility as recalled above does not call for a revision of his sentence.”<sup>31</sup>

19. In these circumstances, I am of the view that the gravity of Pandurević’s offences weighs against his early release.

### C. Eligibility and Treatment of Similarly-Situated Prisoners

20. In this respect, I recall that persons sentenced by the ICTY, like Pandurević, are “similarly-situated” to all other prisoners under the Mechanism’s supervision and thus, are to be considered eligible for early release upon serving two-thirds of their sentences, irrespective of the tribunal that convicted them.<sup>32</sup> Although the two-thirds practice originates from the ICTY, it applies to all prisoners within the jurisdiction of the Mechanism, given the requirement for equal treatment of all convicted persons supervised by the Mechanism and the need for a uniform eligibility threshold applicable to both of the Mechanism’s branches.<sup>33</sup>

21. However, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President of the Mechanism as a matter of discretion, after considering the totality of the circumstances in each case.<sup>34</sup>

22. Based on my own calculation, and as of the date of this decision, Pandurević has served more than nine years and eight months—and, therefore, substantially more than two-thirds—of his 13-year sentence.<sup>35</sup>

### D. Demonstration of Rehabilitation

23. The information supplied by the UNDU Commanding and Medical Officers provides a positive account of Pandurević’s time in detention. The Commanding Officer states that Pandurević “continues to show respect towards the staff of the Detention Unit, adhering to orders and instructions.”<sup>36</sup> The Commanding Officer observes that Pandurević “integrates well with the Unit’s

<sup>30</sup> Appeal Judgement, paras. 2114-2116.

<sup>31</sup> Appeal Judgement, para. 2116.

<sup>32</sup> See *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014 (“*Ntakirutimana* Decision”), para. 14. See also *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 version) (“*Bisengimana* Decision”), paras. 17, 20.

<sup>33</sup> See *Ntakirutimana* Decision, para. 14; *Bisengimana* Decision, para. 20.

<sup>34</sup> See *Ntakirutimana* Decision, para. 14; *Bisengimana* Decision, para. 21.

<sup>35</sup> See Trial Judgement, p. 838.

<sup>36</sup> UNDU Report on Conduct.

detained population but is also content in his own company”, and “does not pose a threat to himself or other detainees.”<sup>37</sup> [REDACTED]<sup>38</sup> [REDACTED]<sup>39</sup>

24. Pandurević submits that he has “demonstrated exemplary behaviour as a detainee”, “has always complied with the rules of detention and instructions of guards, has shown respect for the UNDU management and staff and has at all times maintained good relations with his other detainees.”<sup>40</sup> He also underscores that, notwithstanding certain enumerated difficulties and the usual adjustments resulting from incarceration, he has “accepted [his] situation in the knowledge and expectation that one day [he] would have to recommence [his] life beyond detention” and has, moreover, “had the opportunity fully to reflect upon [his] responsibility for the events which were the subject of [his] indictment as reflected by [his] various convictions and make appropriate resolutions as to [his] future behaviour.”<sup>41</sup> According to Pandurević, he “pose[s] no danger to anybody, [he is] psychologically well adjusted, and [his] release would provoke no breach of the peace or controversy. [He] remain[s] deeply ashamed of the horrors that were visited upon the Muslim population of Bosnia and Herzegovina during the period covered by the indictment”.<sup>42</sup> He further states:

It is my deep regret that I could not have done more to have prevented these events [from] taking place, but I accept that my failure to do so was a culpable omission. I wish to express again my profound apology to the victims and their families for these horrific events. I believe victims should always be central to the aims of justice, an objective which the ICTY as an institution has effected.<sup>43</sup>

25. The Commanding Officer’s description of Pandurević’s good behaviour while detained at the UNDU, the Medical Officer’s opinion [REDACTED], and Pandurević’s own statements suggest that Pandurević is capable of reintegrating into society if he is released. Having carefully reviewed the information before me, I am of the opinion that Pandurević has demonstrated signs of rehabilitation, and I am therefore inclined to count this factor as weighing in favour of his early release.

#### **E. Cooperation with the Prosecution**

26. The Prosecution Memorandum states that Pandurević “did not cooperate with the ICTY Office of the Prosecutor [...] either before or after being convicted and sentenced.”<sup>44</sup> The

<sup>37</sup> UNDU Report on Conduct.

<sup>38</sup> UNDU Medical Report.

<sup>39</sup> UNDU Medical Report.

<sup>40</sup> Application, para. 13.

<sup>41</sup> Reply, p. 1.

<sup>42</sup> Reply, pp. 1-2.

<sup>43</sup> Reply, p. 2. *See also* Application, para. 12.

<sup>44</sup> Prosecution Memorandum, para. 3.

Prosecution Memorandum describes a 2001 encounter between Pandurević and an ICTY Prosecution team, when Pandurević appeared at the interview of General Milenko Živanović to convey his “explanation” of his actions in 1995 and was told to contact the relevant ICTY Prosecution team dealing with the Srebrenica events.<sup>45</sup> When Pandurević subsequently contacted the leader of the relevant ICTY Prosecution team to arrange for a meeting, he was informed of the indictment against him and “[r]ather than surrender and cooperate, [...] Pandurević refused to face the charges against him and evaded justice for almost three and a half years.”<sup>46</sup> The Prosecution Memorandum further states that Pandurević did not testify truthfully at trial “on essential points regarding his role in and knowledge of the extermination campaign”, which, according to the Prosecution, “reflects his lack of remorse and any genuine willingness to assist the Prosecution in its investigation of those events.”<sup>47</sup>

27. Pandurević submits in reply that:

[I]t cannot be said that I did not cooperate at all with the Prosecution. Obviously I did not plead guilty and give evidence in subsequent trials. However, I did give evidence in a multi-handed case and thereby provided the Prosecution with the means through cross-examination to obtain incriminating evidence against my co-accused. Moreover, I did make myself available for interview by an investigative team. It can hardly be held against me that they were apparently not briefed sufficiently well to know who I was.<sup>48</sup>

28. I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.<sup>49</sup> I therefore consider that Pandurević’s lack of cooperation with the ICTY Prosecution is a neutral factor in determining whether or not to grant him early release.

#### F. Conclusion

29. In light of the above, and having considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, I hereby grant Pandurević early release, effective upon issuance of my decision. Although the crimes of which Pandurević was convicted are grave, his completion of more than two-thirds of his sentence and his demonstrated signs of rehabilitation counsel in favour of his early release. I note that two of the remaining three Judges of the sentencing Chamber who are also Judges of the Mechanism agree that Pandurević should be granted early release. However, the third Judge of the sentencing Chamber who is also a Judge of the Mechanism is not in favour of granting early release in light of the gravity of the crimes for

<sup>45</sup> Prosecution Memorandum, para. 4.

<sup>46</sup> Prosecution Memorandum, para. 5.

<sup>47</sup> Prosecution Memorandum, para. 6.

<sup>48</sup> Reply, p. 1.

<sup>49</sup> See *Sagahutu Decision*, para. 22; see also *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version), para. 21.

which Pandurević has been convicted as well as his convictions on appeal. I respect my colleague's concerns, but I believe that in context, the particular factors and circumstances of Pandurević's case are sufficient to justify his early release.

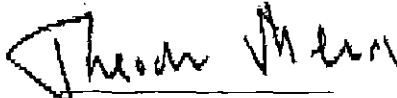
#### IV. DISPOSITION

30. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, and paragraph 9 of the Practice Direction, I hereby **GRANT** Pandurević early release effective immediately and to be implemented as soon as practicable.

31. The Registrar is hereby **DIRECTED** to inform the UNDU authorities of this decision as soon as practicable.

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

Done this 10th day of April 2015,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

[Seal of the Mechanism]