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Mechanism for International Criminal Tribunals

Case No. MICT-14-67-ES.3

Date: 3 December 2015

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 3 December 2015

PROSECUTOR

v.

VLADIMIR LAZAREVIĆ

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF THE 7 SEPTEMBER 2015
DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF VLADIMIR LAZAREVIĆ**

The Office of the Prosecutor:

Mr. Hassan B. Jallow

Counsel for Mr. Vladimir Lazarević:

Mr. Mihajlo Bakrač
Mr. Đuro Čepić

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of an application for early release from Vladimir Lazarević (“Lazarević”), dated 28 November 2014 (“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”).¹

I. BACKGROUND

2. Lazarević surrendered voluntarily to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 3 February 2005.² He was transferred to the United Nations Detention Unit (“UNDU”) in The Hague on that day.³ Trial Chamber III of the ICTY (“Trial Chamber”) found that Lazarević aided and abetted deportation and other inhumane acts (forcible transfer) as crimes against humanity on the basis of his actions in nine different locations.⁴ The Appeals Chamber reversed some of these convictions, but maintained others.⁵

3. On 26 February 2009, the Trial Chamber sentenced Lazarević to a single term of 15 years of imprisonment,⁶ which was subsequently reduced on appeal to 14 years.⁷ As of the date of this decision, Lazarević remains in custody at the UNDU pending designation of an enforcement State.

II. THE APPLICATION

4. On 22 December 2014, the Registry of the Mechanism (“Registry”), in accordance with paragraphs 3, 4, and 5 of the Practice Direction, provided me with: (i) a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”) dated 19 December 2014 (“Prosecution Memorandum”), detailing the extent, if any, of Lazarević’s cooperation; (ii) a report from the Commanding Officer of the UNDU, dated 8 December 2014 (“UNDU Report on Conduct”), containing observations as to Lazarević’s behaviour during detention; and (iii) a report from the

¹ MICT/3, 5 July 2012.

² *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”), Vol. I, para. 2.

³ Trial Judgement, Vol. I, para. 2.

⁴ Trial Judgement, Vol. III, para. 930.

⁵ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Appeal Judgement, 23 January 2014 (“Appeal Judgement”), para. 1847.

⁶ Trial Judgement, Vol. III, para. 1211.

⁷ Appeal Judgement, para. 1847.

Medical Officer of the UNDU, dated 5 December 2014 (“UNDU Medical Report”), regarding Lazarević’s health.⁸

5. On 23 December 2014, the Registry forwarded the documentation related to the Application to Lazarević pursuant to paragraph 5 of the Practice Direction.⁹ On 8 January 2015, the Registry conveyed to me Lazarević’s reply.¹⁰

III. DISCUSSION

6. In coming to my decision on whether it is appropriate to grant early release for Lazarević, I have consulted the Judge of the sentencing Chamber who is a Judge of the Mechanism, pursuant to paragraph 7 of the Practice Direction and Rule 150 of the Rules.

A. Applicable Law

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

8. 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 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. Rule 151 of the Rules provides that, in making a determination on pardon, commutation of sentence, or early release, 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, and any substantial cooperation of the prisoner with the Prosecution.

9. 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

⁸ Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, to Judge Theodor Meron, President, dated 22 December 2014, *transmitting, inter alia*, Prosecution Memorandum, UNDU Report on Conduct, and UNDU Medical Report.

⁹ See Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, to Judge Theodor Meron, President, dated 8 January 2015, *transmitting* Lazarević’s submissions of 26 December 2014 (“Reply”).

¹⁰ See generally Reply.

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.¹¹ 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”.¹²

B. Gravity of Crimes

10. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

11. The Trial Chamber convicted Lazarević of: (i) aiding and abetting deportation as a crime against humanity; and (ii) aiding and abetting forcible transfer as “other inhumane acts” as a crime against humanity.¹³ The Trial Chamber found, *inter alia*, that Lazarević was aware of a number of specific criminal acts by his subordinates in the Army of Yugoslavia, as well as serious violent acts committed against Kosovo Albanians, that he was aware of the widespread forcible displacement of Kosovo Albanians, and that this was at least in part due to the actions of the Army of Yugoslavia.¹⁴

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

C. Eligibility and Treatment of Similarly-Situated Prisoners

13. Rule 151 of the Rules requires the President to consider, as a separate factor, the need for equal treatment for similarly-situated prisoners when deciding early release applications.

14. In this respect, I recall that persons sentenced by the ICTY, like Lazarević, are “similarly-situated” to all other prisoners under the Mechanism’s supervision and thus, are to be considered

¹¹ See *Prosecutor v. Vinko Pandurević*, Case No. MICT-15-85-ES.1, Public Redacted Version of the 9 April 2015 Decision of the President on the Early Release of Vinko Pandurević, 10 April 2015 (“*Pandurević Decision*”), para. 11. See also *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; *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55-A-T, 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, para. 11.

¹² *Pandurević Decision*, para. 11, citing *Sagahutu Decision*, para. 11.

¹³ Trial Judgement, Vol. III, paras. 1, 922, 927, 930, 935. See also Appeal Judgement, para. 10.

¹⁴ Trial Judgement, Vol. III, para. 860.

eligible for early release upon serving two-thirds of their sentences, irrespective of the tribunal that convicted them.¹⁵ Although the two-thirds practice originates from the ICTY, it applies to all prisoners within the jurisdiction of the Mechanism, given the need 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.¹⁶

15. 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 as a matter of discretion, after considering the totality of the circumstances in each case.¹⁷

16. Lazarević contends that all of the time he spent on provisional release should be included as part of his sentence served.¹⁸ Alternatively, Lazarević submits that the 94 days he spent in the hospital under police surveillance should be credited towards his sentence served.¹⁹

17. The Trial Judgement and the Appeal Judgement do not address the manner in which Lazarević's time spent on provisional release should be calculated. I have previously held that in such circumstances, time spent on provisional release is not counted as time in detention for purposes of sentence calculation.²⁰ Accordingly, as of the date of this decision, Lazarević will have served two-thirds of his sentence as of 3 December 2015.²¹

D. Demonstration of Rehabilitation

18. The information supplied by the UNDU Commanding and Medical Officers provides a positive account of Lazarević's time in detention. The UNDU Report on Conduct states that while in custody Lazarević "has shown respect for the management and staff of the Unit" and "complied well with both the Rules of Detention and the instructions of the guards."²² The UNDU Report on

¹⁵ See *Prosecutor v. Youssouf Mnyakazi*, Case No. MICT-12-18-ES.1, Public Redacted Version of the 22 July 2015 Decision of the President on the Early Release of Youssouf Mnyakazi, 22 July 2015 ("*Mnyakazi 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.

¹⁶ See *Pandurević Decision*, para. 20; *Bisengimana Decision*, para. 20.

¹⁷ See *Mnyakazi Decision*, para. 14; *Bisengimana Decision*, paras. 21, 35.

¹⁸ Application, para. 17.

¹⁹ Application, para. 22.

²⁰ *Prosecutor v. Nikola Šainović*, Case No. MICT-14-67-ES.1, Decision on Defence Request Regarding Service of Sentence, 28 March 2014 (confidential), p. 2. See also *Prosecutor v. Miroslav Tadić*, Case No. IT-95-9, Decision of the President on the Application for Pardon or Commutation of Sentence of Miroslav Tadić, 24 June 2004, fn. 8.

²¹ The Prosecution responded to Lazarević's Application arguing that none of Lazarević's time spent on provisional release should be counted towards his time served. See *Prosecutor v. Vladimir Lazarević*, Case No. MICT-14-67-ES.3, Prosecution's Response to Vladimir Lazarević's Supplement or Amendment to His Early Release Request, 19 June 2015 (confidential), para. 5.

²² UNDU Report on Conduct, p. 1.

Conduct further states that Lazarević “maintains cordial relations with his fellow detainees and has integrated well” while “participating fully in the regime.”²³

19. Lazarević submits that while in custody he has demonstrated a high degree of rehabilitation, which the UNDU officials would corroborate based on his “impeccable” behaviour towards other convicted and accused persons, “regardless of their nationality.”²⁴ However, it should be noted that the UNDU Report on Conduct is quite brief and contains no mention of Lazarević’s degree of rehabilitation or ability to reintegrate into society if he is released.²⁵

20. The Commanding Officer’s description of Lazarević’s good behaviour while detained at the UNDU suggests that Lazarević is capable of reintegrating into society if he is released. Having carefully reviewed the information before me, I am of the opinion that Lazarević 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

21. Rule 151 of the Rules states that the President shall take into account any “substantial cooperation” of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar of the Mechanism (“Registrar”) shall request the Prosecution “to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof”.

22. According to the Prosecution, Lazarević “cooperated with the [ICTY Prosecution] and has been given credit in mitigation of his sentence for this factor.”²⁶ The Prosecution refers specifically to the Trial Chamber’s acknowledgement of Lazarević’s participation in “an extensive interview over the course of several days and providing new documents.”²⁷ According to the Prosecution, “no additional cooperation has been given”.²⁸ I am satisfied that when an accused person participates in interviews with and provides documents to the Prosecution, this constitutes cooperation.

23. While accepting that Lazarević’s participation in interviews and his provision of documents was a factor taken into account by the Trial Chamber in relation to sentencing, I place some weight upon it favour of Lazarević’s early release, due to the impact such cooperation has on the efficient administration of justice.

²³ UNDU Report on Conduct, p. 1.

²⁴ Application, para. 41.

²⁵ *See generally* UNDU Report on Conduct.

²⁶ Prosecution Memorandum, para. 2, *citing* Trial Judgement, Vol. III, para. 1198 and Appeal Judgement, paras. 1819-1821.

²⁷ Trial Judgement, Vol. III, para. 1198.

²⁸ Prosecution Memorandum, para. 2.

F. Other Factors: Humanitarian Grounds

24. Paragraph 9 of the Practice Direction provides that the President may consider “any other information” that the President believes to be “relevant” to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the condition of a convicted person’s health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the person to remain in prison any longer.²⁹

25. [REDACTED].³⁰ [REDACTED].³¹ [REDACTED].³² [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵

26. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹

27. The record before me suggests that Lazarević suffers from health issues. However, I am not convinced that his health issues is so serious as to be a factor supporting early release. Accordingly, I consider these to be neutral factors in determining whether or not to grant Lazarević early release.

G. Conclusion

28. 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 Lazarević early release, effective 3 December 2015. Although the crimes for which Lazarević was convicted are grave, Lazarević’s demonstrated signs of rehabilitation and his cooperation with the Prosecution, counsel in favour of his early release upon completion of two-thirds of his sentence. The view that Lazarević should be granted early release is shared by the Judge of the sentencing Chamber who is a Judge of the Mechanism.

²⁹ See, e.g., *Munyakazi* Decision, para. 22; *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, para. 21; *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. 22. See also *Bisengimana* Decision, para. 32.

³⁰ UNDU Medical Report, p. 1.

³¹ UNDU Medical Report, p. 1.

³² UNDU Medical Report, p. 1.

³³ UNDU Medical Report, p. 1.

³⁴ UNDU Medical Report, p. 1.

³⁵ UNDU Medical Report, p. 1.

³⁶ Reply, p. 15.

³⁷ Reply, p. 2.

³⁸ Reply, p. 16.

³⁹ Reply, pp. 15-16.

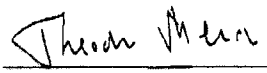
IV. DISPOSITION

29. 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** the Application effective 3 December 2015, or as soon as practicable thereafter.

30. 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 3rd day of December 2015,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]



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