



Mechanism for International Criminal Tribunals

Case No. MICT-14-66-ES

Date: 28 May 2014

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**Decision of:** 28 May 2014

**PROSECUTOR**

**v.**

**RANKO ČEŠIĆ**

***PUBLIC REDACTED***

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**PUBLIC REDACTED VERSION OF THE 30 APRIL 2014  
DECISION OF THE PRESIDENT ON THE  
EARLY RELEASE OF RANKO ČEŠIĆ**

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**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow

**Counsel for Mr. Ranko Češić**

Mr. Mihajlo Bakrač

**The Kingdom of Denmark**

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seised of: (i) the Danish Ministry of Justice’s notification of the eligibility for early release of Mr. Ranko Češić (“Češić”), dated 20 February 2014, conveyed to me by the Registry of the Mechanism (“Registry”) on 4 March 2014;<sup>1</sup> and (ii) a confidential request for early release filed by Češić on 7 March 2014.<sup>2</sup> I consider the Notification and the Request 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 paragraphs 2 and 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>3</sup>

## I. BACKGROUND

2. Češić was arrested in Belgrade by the authorities of the Federal Republic of Yugoslavia on 25 May 2002 and was transferred to the United Nations Detention Unit at The Hague on 17 June 2002.<sup>4</sup> At a hearing on 8 October 2003 before Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively), Češić pleaded guilty to the 12 counts of the indictment with which he was charged, including charges of murder and rape as crimes against humanity, and murder and humiliating and degrading treatment as violations of the laws and customs of war.<sup>5</sup>

3. On 11 March 2004, the Trial Chamber sentenced Češić to a single sentence of 18 years of imprisonment.<sup>6</sup> Češić was transferred to the Kingdom of Denmark (“Denmark”) to serve the remainder of his sentence on 11 April 2005.<sup>7</sup>

<sup>1</sup> Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, to Judge Theodor Meron, President, dated 4 March 2014 (“Memorandum”), transmitting a letter from the Department of Prisons and Probation, Ministry of Justice, Denmark, to the Registrar of the Mechanism (“Registrar”), dated 20 February 2014 (“Notification”).

<sup>2</sup> *Prosecutor v. Ranko Češić*, Case No. MICT-14-66-ES, Defence Request Seeking Ranko Češić’s Early Release with Confidential Annex, 7 March 2014 (confidential) (“Request”).

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

<sup>4</sup> *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1-S, Sentencing Judgement, 11 March 2004 (“Sentencing Judgement”), para. 2.

<sup>5</sup> Sentencing Judgement, paras. 3-4.

<sup>6</sup> Sentencing Judgement, para. 111.

<sup>7</sup> See Press Release, Ranko Cestic Transferred to Denmark to Serve his Prison Sentence, dated 12 April 2005, available at <http://www.icty.org/sid/8607>.

## II. NOTICE OF ELIGIBILITY AND REQUEST

4. By letter dated 20 February 2014, the Danish Ministry of Justice informed the Registry that Češić will be eligible for early release under its national laws, in view of the fact that he will have served two-thirds of his sentence as of 25 May 2014.<sup>8</sup> The Notification also includes information regarding the Danish law applicable to early release, and a recommendation by the Danish Prison and Probation Service that Češić be released, dated 19 December 2013 (“Prison Recommendation”). On 7 March 2014, Češić filed his Request.

5. On 17 March 2014, the Registry, in accordance with paragraphs 4 and 5 of the Practice Direction, provided me with a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 14 March 2014 (“Prosecution Memorandum”), regarding the cooperation provided by Češić to the Prosecution of the ICTY (“ICTY Prosecution”).<sup>9</sup>

6. I was informed on 8 April 2014 that, following receipt of the Bosnian/Croatian/Serbian translations of the materials from Denmark and the Prosecution, the collected information was forwarded to Češić by the Registry on 18 March 2014 pursuant to paragraph 5 of the Practice Direction, and Češić confirmed receipt of this information on 28 March 2014.<sup>10</sup>

## III. DISCUSSION

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

### A. Applicable Law

8. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the International Criminal Tribunal for Rwanda (“ICTR”), or the Mechanism 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 of the Mechanism (“President”) so decides on the basis of the interests of justice and the general principles of law.

<sup>8</sup> Notification, p. 1.

<sup>9</sup> Internal memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, to Judge Theodor Meron, President, dated 17 March 2014, transmitting Internal memorandum from Mr. Matthias Marcussen, Officer in Charge, OTP MICT, to Mr. Gus de Witt, Officer in Charge, Office of the Registrar, dated 14 March 2014.

<sup>10</sup> Internal memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, to Judge Theodor Meron, President, dated 8 April 2014, transmitting Letter from Mr. Ranko Češić to the Registrar, dated 28 March 2014.

9. 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.

10. Paragraph 2 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least forty-five days prior to the date of eligibility, notify the Mechanism accordingly. Paragraph 3 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible therefore.

11. Article 3(2) of the Agreement between the United Nations and the Kingdom of Denmark on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 4 June 2002 ("Enforcement Agreement") provides that the conditions of imprisonment shall be governed by the law of Denmark, subject to the supervision of the ICTY (and now, the Mechanism).<sup>11</sup> Article 8 of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides, *inter alia*, that, following notification of eligibility for early release under Danish law, the Mechanism shall give its views whether early release is appropriate, and Denmark shall take these views into consideration and respond to the Mechanism prior to taking any decision in the matter.

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<sup>11</sup> Security Council Resolution 1966 (2010) provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 ("[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]"). According to Article 25(2) of the Statute, "[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States".

**B. Eligibility under Danish Law**

12. Under section 38(1) of the Danish criminal code, a convicted person may be released on parole at the completion of two-thirds of the sentence. I note, however, that even if Češić is eligible for early release under the domestic law of Denmark, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

**C. Gravity of Crimes**

13. The crimes for which Češić has been convicted are of very high gravity. In this regard, the Trial Chamber stated that “these crimes are particularly serious in terms of the protected interests violated: the life as well as the physical and moral integrity of the victims”.<sup>12</sup> The Trial Chamber expressed that “most murders to which Ranko Češić pleaded guilty were carried out in cold-blood”,<sup>13</sup> and that Češić furthered showed his depravity by initiating a sexual assault between two brothers, which lasted for a period of about 45 minutes.<sup>14</sup> The Trial Chamber found that the “humiliation suffered by the victims was exacerbated both because they were brothers and because guards were present, watching and laughing”.<sup>15</sup> Further, the Trial Chamber took into account the fact that the victims, as detainees, were particularly vulnerable, and “Češić’s depravity and cruelty” in this context.<sup>16</sup>

14. In assessing the gravity of Češić’s conduct in the commission of these crimes, the Trial Chamber noted that he personally participated in all the crimes.<sup>17</sup> Specifically, Češić committed, himself, and with others, the murders referred to in the indictment, and, with regard to the sexual assault, he actively participated in the violence inflicted on the victims before the assault, and initiated the assault by ordering it.<sup>18</sup>

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

**D. Eligibility and Treatment of Similarly-Situated Prisoners**

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

<sup>12</sup> Sentencing Judgement, para. 107.

<sup>13</sup> Sentencing Judgement, para. 51.

<sup>14</sup> Sentencing Judgement, paras. 13-14, 52.

<sup>15</sup> Sentencing Judgement, para. 54.

<sup>16</sup> Sentencing Judgement, para. 108.

<sup>17</sup> Sentencing Judgement, para. 36.

<sup>18</sup> Sentencing Judgement, para. 36.

eligible for early release upon two-thirds of their sentences, irrespective of the tribunal that convicted them.<sup>19</sup> 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.<sup>20</sup>

17. 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.<sup>21</sup>

18. According to the Notification, and based on my own calculation, Češić will have served two-thirds of his sentence as of 25 May 2014.<sup>22</sup>

#### **E. Demonstration of Rehabilitation**

19. The information supplied by the Danish Prison and Probation Service provides a positive account of Češić's time in detention. In particular, according to the Prison Recommendation, Češić is well liked by the staff, always approaches them in a "polite and friendly manner", and is generally described as "quiet and calm".<sup>23</sup> The Prison Recommendation does reflect that Češić offended the disciplinary rules on two occasions, however they were both considered "trivial", and dealt with by issuing a "caution".<sup>24</sup> The first offence involved a failure on Češić's part to report his cell ready for inspection, and the second was a failure on his part to turn down the heat when the window was open.<sup>25</sup> [REDACTED].<sup>26</sup>

20. The Prison Recommendation further states that Češić considers that a word such as repentance "is inadequate to explain how a person like [himself] feels. Imprisonment is not the only punishment for [him] – it is even worse to live with [his] guilt".<sup>27</sup> According to the Prison Recommendation, Češić feels "bad" about the crimes of which he was convicted, regrets the actions he took, and wishes that he had acted differently.<sup>28</sup> The Prison Recommendation reflects that Češić

<sup>19</sup> See *Prosecutor v. Omar Serushago*, Case No. MICT-12-28, Public Redacted Version of Decision of the President on the Early Release of Omar Serushago, 13 December 2012 ("Serushago Decision"), paras. 16-17; *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>20</sup> See *Serushago Decision*, para. 17; *Bisengimana Decision*, para. 20.

<sup>21</sup> See *Serushago Decision*, paras. 18, 34; *Bisengimana Decision*, paras. 21, 35.

<sup>22</sup> Notification, p. 1. See also Sentencing Judgement, paras. 2, 111.

<sup>23</sup> Prison Recommendation, p. 3. See also Prison Recommendation, p. 2; Request, paras. 14-15.

<sup>24</sup> Prison Recommendation, p. 3. See also Request, para. 18.

<sup>25</sup> Prison Recommendation, p. 3.

<sup>26</sup> Prison Recommendation, p. 3. See also Request, para. 16.

<sup>27</sup> Prison Recommendation, p. 4.

<sup>28</sup> Prison Recommendation, p. 4.

would like to “help prevent young persons from ending up in a similar situation”.<sup>29</sup> As reported in the Prison Recommendation, Češić states that he “likes” the change that his country has undergone and looks forward to living in a democratic society.<sup>30</sup> Lastly, the Prison Recommendation reflects that Češić plans to resume living with his spouse upon his release and will support himself through the income generated from the couple’s restaurants.<sup>31</sup>

21. Češić’s claims and the description of his behaviour while detained at the East Jutland State Prison in Denmark suggest that Češić is capable of reintegrating into society if he is released. Having carefully reviewed the information before me, I am of the opinion that Češić has demonstrated signs of rehabilitation, and I am therefore inclined to count this factor as weighing in favour of his early release.

#### F. Substantial Cooperation with the Prosecution

22. The Prosecution Memorandum states that Češić has cooperated with the ICTY Prosecution “only as required pursuant to his guilty plea”.<sup>32</sup> The Prosecution Memorandum reflects that Češić’s cooperation with the ICTY Prosecution was judged to be substantial by the Trial Chamber, as he provided a full and complete interview on criminal events in Brčko during the war and was committed to testify if called upon by the ICTY Prosecution.<sup>33</sup> After the Sentencing Judgement, the ICTY Prosecution has neither sought nor received any cooperation from Češić and he has not provided any cooperation beyond that required to fulfil his obligations under the plea agreement.<sup>34</sup> The Prosecution Memorandum also states that Češić’s admission of guilt and his cooperation with the ICTY Prosecution were, *inter alia*, taken into consideration in the mitigation of his sentence, and that he has already been given credit for the cooperation in sentencing.<sup>35</sup>

23. Češić submits that he was convicted by the ICTY on the basis of the honest and voluntary confession for his acts, and that he has demonstrated his sincere repentance for the acts he has committed and expressed remorse.<sup>36</sup> According to Češić, through his confession and repentance, he has provided his contribution to the establishment of the truth as well as to the reconciliation process.<sup>37</sup>

<sup>29</sup> Prison Recommendation, p. 4.

<sup>30</sup> Prison Recommendation, p. 4.

<sup>31</sup> Prison Recommendation, p. 3. *See also* Request, para. 17.

<sup>32</sup> Prosecution Memorandum, para 2.

<sup>33</sup> Prosecution Memorandum, para. 3, *referring to* Sentencing Judgement, paras. 61-62.

<sup>34</sup> Prosecution Memorandum, para 2.

<sup>35</sup> Prosecution Memorandum, para. 3.

<sup>36</sup> Request, paras. 8-9.

<sup>37</sup> Request, para. 10.

24. While accepting that admission of guilt was a factor taken into account by the Trial Chamber, I place some weight upon it in favour of Češić's release, due to the impact of such a plea on the efficient administration of justice.<sup>38</sup>

**G. Conclusion**

25. 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 Češić early release, effective 25 May 2014, or as soon as practicable thereafter. Although the crimes for which Češić was convicted are very grave, Češić's completion of more than two-thirds of his sentence, his demonstrated signs of rehabilitation, and his cooperation with the ICTY Prosecution counsel in favour of his early release. I note that the remaining Judges of the sentencing Chamber who are also Judges of the Mechanism agree that Češić should be granted early release.


**IV. DISPOSITION**

26. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby **GRANT** the Request effective 25 May 2014, or as soon as practicable thereafter.

27. The Registrar is hereby **DIRECTED** to inform the authorities of Denmark of this decision as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

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

Done this 28th day of May 2014,  
At The Hague,  
The Netherlands.

  
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Judge Theodor Meron  
President

**[Seal of the Mechanism]**

<sup>38</sup> See *Bisengimana* Decision, para. 30. The entry of a guilty plea may be taken into account in favour of an early release application, even if it was also taken into account at the sentencing stage. See *Bisengimana* Decision, para. 30.