



Mechanism for International Criminal Tribunals

Case No. MICT-14-68-ES

Date: 6 June 2014

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 6 June 2014

PROSECUTOR

v.

DARIO KORDIĆ

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF THE 21 MAY 2014
DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF DARIO KORDIĆ**

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow

Counsel for Mr. Dario Kordić:

Mr. Stephen M. Sayers
Mr. Rajko Čogurić

The Republic of Austria

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of the Austrian Federal Ministry of Justice’s notification of the eligibility for early release of Mr. Dario Kordić (“Kordić”), dated 29 January 2014, conveyed to me by the Registry of the Mechanism (“Registry”) on 11 February 2014.¹ I consider the Notification 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 2 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”).²

I. BACKGROUND

2. Kordić surrendered voluntarily to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 6 October 1997.³ At his initial appearance on 8 October 1997 before a chamber of the ICTY, Kordić entered a plea of not guilty.⁴

3. On 26 February 2001, Trial Chamber III of the ICTY (“Trial Chamber”) convicted Kordić pursuant to Article 7(1) of the Statute of the ICTY of: (i) persecutions, murder, other inhumane acts, and imprisonment as crimes against humanity; (ii) unlawful attacks on civilians and civilian objects, wanton destruction, plunder of public or private property, and destruction or wilful damage to institutions dedicated to religion or education as violations of the laws or customs of war; and (iii) wilful killing, inhumane treatment, and unlawful confinement of civilians as grave breaches of the Geneva Conventions.⁵ The Trial Chamber sentenced Kordić to a single sentence of 25 years of imprisonment.⁶ On 27 December 2004, the Appeals Chamber of the ICTY, while reversing the Trial Judgement on a number of specific events, affirmed Kordić’s 25 year sentence.⁷ Kordić was

¹ Internal Memorandum from Mr. Gus de Witt, Chief, Office of the Registrar *ad interim*, to Judge Theodor Meron, President, dated 11 February 2014, transmitting a Note Verbale from the Embassy of the Republic of Austria to the Netherlands, dated 29 January 2014 (“Notification”). The Notification contains an Annex with information relevant to the early release of Kordić, including: (i) a letter of the Federal Ministry of Justice, dated 3 January 2014, regarding the Austrian law applicable to early release; (ii) a recommendation by the Graz-Karlau Prison Warden that Kordić be released, dated 2 December 2013; (iii) enforcement information, dated 7 January 2014; (iv) prison term information; (v) a statement by Kordić regarding his early release, dated 23 August 2013; (vi) an order and sentence to enforce administrative penalties, dated 28 January 2009; (vii) an order and sentence to enforce administrative penalties, dated 5 June 2008; and (viii) an order and sentence to enforce administrative penalties, dated 26 April 2007. All references herein are to the English translation pagination of the Annex, unless otherwise indicated.

² MICT/3, 5 July 2012.

³ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“Trial Judgement”), para. 2, Annex IV, para. 3.

⁴ Trial Judgement, paras. 2, 4, 5(e), 6(a)-(e), Disposition, Annex IV, para. 3. *See also* Trial Judgement, Annex V.

⁵ Trial Judgement, paras. 829, 834, pp. 307-310.

⁶ Trial Judgement, para. 854, p. 311.

⁷ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 1067, pp. 295-299.

transferred to the Republic of Austria ("Austria") to serve the remainder of his sentence on 8 June 2006.⁸

4. On 4 February 2010, the Registry informed the President of the ICTY of a notification received from the Embassy of Austria stating that Kordić became eligible for conditional release under Austrian law as of 6 April 2010, after having served one-half of his prison sentence.⁹ On 13 May 2010, the President of the ICTY, taking into account the treatment of similarly-situated prisoners who have been considered eligible for early release, concluded that the amount of time that Kordić had served for his crimes did not militate in favour of his early release and denied early release.¹⁰

II. NOTICE OF ELIGIBILITY

5. By Note Verbale dated 29 January 2014, the Federal Ministry of Justice, Austria, informed the Registry that Kordić will be eligible for early release in accordance with the provisions of Austrian national laws, in view of the fact that he will have served two-thirds of his sentence as of 6 June 2014.¹¹

6. On 11 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 5 March 2014 ("Prosecution Memorandum"), regarding the cooperation provided by Kordić to the Prosecution of the ICTY ("ICTY Prosecution").¹²

7. I was informed on 27 March 2014 that, following receipt of the Bosnian/Croatian/Serbian translations of the materials from Austria and the Prosecution, the collected information was forwarded to Kordić by the Registry on 13 March 2014 pursuant to paragraph 5 of the Practice Direction, and Kordić confirmed receipt of this information on 21 March 2014.¹³ On 21 March

⁸ See Press Release, Dario Kordic and Zoran Zigic Transferred to Austria to Serve their Prison Sentences, dated 9 June 2006, available at <http://www.icty.org/sid/8736>.

⁹ See *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-ES, Decision of President on Application for Pardon or Commutation of Sentence of Dario Kordić, 13 May 2010 ("Decision of 13 May 2010"), para. 2.

¹⁰ Decision of 13 May 2010, paras. 13, 23, 25.

¹¹ Notification, p. 1.

¹² Internal memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, to Judge Theodor Meron, President, dated 11 March 2014, transmitting Internal memorandum from Mr. Mathias Marcussen, Officer in Charge, OTP MICT, to Mr. Gus de Witt, Chief, Office of the Registrar *ad interim*, dated 5 March 2014.

¹³ Internal memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, to Judge Theodor Meron, President, dated 27 March 2014 ("Memorandum of 27 March 2014"), transmitting Letter from Mr. Stephen Sayers, Counsel for Mario Kordić, to Mr. Augustus De Witt, Officer in Charge, Office of the Registrar, dated 21 March 2014 ("Letter of 21 March 2014").

2014, Kordić submitted a response to the Registry’s communication dated 13 March 2014 (“Response”), pursuant to paragraph 6 of the Practice Direction.¹⁴

III. DISCUSSION

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

A. Applicable Law

9. 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 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 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.

11. 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

¹⁴ See Memorandum of 27 March 2014, transmitting Letter of 21 March 2014, containing a confidential “Petition by Dario Kordić for Early Release”, dated 21 March 2014, with confidential Exhibit 1. Counsel for Kordić has requested that the letter and documentation of 21 March 2014 be considered a written submission pursuant to paragraph 6 of the Practice Direction. See Memorandum of 27 March 2014, para. 4.

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.

12. Article 3(2) of the Agreement between the United Nations and the Federal Government of Austria on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 23 July 1999 (“Enforcement Agreement”), provides that the conditions of imprisonment shall be governed by the law of Austria, subject to the supervision of the ICTY (and now, the Mechanism).¹⁵ Article 8 of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides, *inter alia*, that, following notification of eligibility for early release under Austrian law, the President shall determine, in consultation with the Judges of the Mechanism, whether early release is appropriate, and the Registrar shall inform the Austrian authorities of the President’s determination accordingly.

B. Eligibility under Austrian Law

13. Under Section 46(1) of the Austrian Criminal Code in conjunction with Section 152(1) and (2) of the Penal Enforcement Act, a convicted person may be eligible for conditional release at the completion of one-half of the sentence.¹⁶ I note, however, that even if Kordić is eligible for early release under the domestic law of Austria, 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

14. The crimes for which Kordić has been convicted are of a very high gravity. In this regard, the Trial Chamber stated that,

[Kordić has] been convicted of numerous offences. However, all arise from the same common design which led to the persecution and “ethnic cleansing” of the Bosnian Muslims of the Lašva Valley and surroundings. This led to a sustained campaign involving a succession of attacks on villages and towns which were characterised by ruthlessness and savagery and in which no distinction was made as to the age of its victims: young and old were either murdered or expelled and their houses burned. The total number of dead may never be known, but it runs into hundreds, with thousands expelled. Offences of this level of barbarity could not be more

¹⁵ 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”.

¹⁶ See Notification, p. 1, Annex, pp. 1, 4, 9, 11.

grave and those who participate in them must expect sentences of commensurate severity to mark the outrage of the international community.¹⁷

15. In assessing the gravity of Kordić's conduct in the commission of these crimes, the Trial Chamber further noted that he was a regional political leader whose "role in these offences was an important one", and that he "played his part as surely as the men who fired the guns".¹⁸

16. In these circumstances, I am of the view that the high gravity of Kordić's offences weighs against his early release.

D. Eligibility and Treatment of Similarly-Situated Prisoners

17. In this respect, I recall that persons sentenced by the ICTY, like Kordić, are "similarly-situated" to all other prisoners under the Mechanism's supervision and thus, are to be considered eligible for early release upon two-thirds of their sentences, irrespective of the tribunal that convicted them.¹⁹ 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.²⁰ However, 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.²¹

¹⁷ Trial Judgement, para. 852.

¹⁸ Trial Judgement, para. 853.

¹⁹ See *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"), para. 16. 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.

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

²¹ See *Sagahutu* Decision, paras. 16, 23; *Bisengimana* Decision, paras. 21, 35. I note, for clarification purposes, that the two-thirds threshold does not prohibit enforcement States from notifying the Mechanism whenever convicted persons become eligible for pardon, commutation of sentence, or early release under national law, even before the completion of two-thirds of their sentence. See generally Practice Direction, para. 2. Paragraph 3 of the Practice Direction also allows a convicted person to directly petition the President for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible, even before the completion of the two-thirds of his or her sentence. According to the Practice Direction, in such circumstances, the President will still consider a convicted person's application or eligibility for pardon, commutation of sentence, or early release. See Practice Direction, para. 3. However, it is only in exceptional circumstances, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, that early release prior to the serving of two-thirds of the sentence may be granted, provided that other factors also weigh in favour of early release. See, e.g., *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012 (public redacted version), paras. 15, 25-28, 30 (granting early release in a case involving exceptional cooperation with the ICTY Prosecution); *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009 (public redacted version), paras. 8, 13-15 (granting early release because of substantial cooperation with the ICTY Prosecution and because the convicted person had effectively completed two-thirds of his sentence once sentence remissions under national law were recognized).

18. According to the Notification, and based on my own calculation, Kordić will have served two-thirds of his sentence as of 6 June 2014.²²

E. Demonstration of Rehabilitation

19. The information supplied by the Graz-Karlau Prison Warden (“Prison Warden”) provides a positive account of Kordić’s time in detention. In particular, the Prison Warden recommends conditional release of Kordić on the grounds of his “very good behaviour in the prison”, “continued very good performance at work in the prison laundry”, the fact that “he completed two accompanied excursions with no problems in October 2013 and November 2013”, the fact that he has been held in “relaxed pre-release detention” since 6 June 2013, and generally his “stable personality and the favourable assessment of the risk of repeat offences”.²³

20. The Prison Warden further states that the prison’s psychiatrist also recommends early release, given that Kordić, “in addition to a very low probability of committing a repeat offence, does not exhibit any risk factors; [and] he has an existing social network”.²⁴ Kordić receives regular visits from his wife and children, and will be able to live with his family in Zagreb upon his release.²⁵ [REDACTED].²⁶

21. The Prison Warden notes that Kordić committed three violations of the prison regulations, termed as “administrative offences”, on 26 April 2007, 5 June 2008, and 28 January 2009.²⁷ These offences involved making prohibited contact from a mobile telephone confiscated from a prisoner sharing the same prison cell in 2007, possessing unauthorized items in the form of a mobile telephone, a SIM card, and a charger in 2008, and possessing an unauthorized item in the form of a mobile telephone and making prohibited contact with a person in 2009.²⁸ Kordić was fined for two of the three offences.²⁹

22. Kordić submits that he has demonstrated “excellent adjustment” and exhibited “exemplary conduct” while in detention at the United Nations Detention Unit in The Hague, and that he does not have a prior criminal record.³⁰ Kordić further states that he intends to support himself and his family by working as an editor in a publishing company.³¹ Kordić submits generally that his

²² Notification, p. 1. *See also* Decision of 13 May 2010, para. 14; Notification, Annex, pp. 1, 9, 11.

²³ Notification, Annex, pp. 4-6. *See also* Notification, Annex, pp. 1-2, 7, 11-12; Response, paras. 21-22, 28.

²⁴ Notification, Annex, p. 2. *See also* Notification, Annex, pp. 5-6.

²⁵ Notification, Annex, pp. 2, 5, 11, 13-14. *See also* Response, paras. 23, 25, Exhibit 1, paras. 6, 8.

²⁶ Notification, Annex, p. 2. *See also* Response, para. 27.

²⁷ Notification, Annex, pp. 2, 4-5, 13, 15-23.

²⁸ Notification, Annex, pp. 15-23.

²⁹ Notification, Annex, pp. 15-16, 18-19.

³⁰ Response, paras. 20, 24.

³¹ Notification, Annex, p. 14. *See also* Response, para. 25.

rehabilitation, “strong family attachments”, and chances of successful reintegration into society weigh in his favour for early release.³²

23. The Prison Warden’s description of Kordić’s good behaviour while detained at the Graz-Karlau Prison, the good rehabilitative prognosis by the Graz-Karlau Prison, as well as Kordić’s plans for employment if granted early release suggest that Kordić is capable of reintegrating into society if he is released. I note that the violations of prison regulations committed by Kordić during his period of imprisonment are classified as “administrative offences” and did not impact the Prison Warden’s assessment of Kordić’s good behaviour. Having carefully reviewed the information before me, I am of the opinion that Kordić has demonstrated signs of rehabilitation and, therefore, count this factor as weighing in favour of his early release.

F. Cooperation with the Prosecution

24. The Prosecution Memorandum states that Kordić did not cooperate with the ICTY Prosecution in the course of his trial or appeal, or at any point during the serving of his sentence.³³ The Prosecution does not indicate whether the ICTY Prosecution sought Kordić’s cooperation at any point during his trial or after he was convicted.

25. Kordić submits that the ICTY Prosecution has neither sought nor received any cooperation from him, and that this is a neutral factor for purposes of consideration of his early release.³⁴

26. 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.³⁵ I therefore consider that Kordić’s lack of cooperation with the ICTY Prosecution is a neutral factor in determining whether or not to grant him early release.

G. Conclusion

27. 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 Kordić early release, effective 6 June 2014. Although the crimes for which Kordić was convicted are very grave, Kordić’s completion of two-thirds of his sentence and his demonstrated continued signs of rehabilitation weigh in favour of his early release. I note that the remaining Judge of the sentencing Chamber who is also a Judge of the Mechanism agrees that Kordić should be granted early release.

³² Response, para. 31. *See also* Response, para. 30.

³³ Prosecution Memorandum, para 2.

³⁴ Response, paras. 32, 34. *See also* Response, para. 33.

³⁵ *Sagahutu* Decision, para. 22.

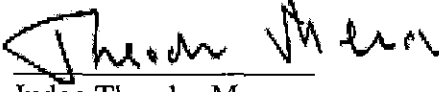
IV. DISPOSITION

28. 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** Kordić early release effective 6 June 2014.

29. The Registrar is hereby **DIRECTED** to inform the authorities of Austria 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 6th day of June 2014,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]