

UNITED NATIONS

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**Mechanism for International Criminal Tribunals**

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**THE PRESIDENT OF THE MECHANISM**

Before: Judge Theodor Meron, President

Registrar: Mr John Hocking

Date Filed: 3 February 2015

THE PROSECUTOR  
-V-  
VINKO PANDUREVIĆ

*PUBLIC*

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**REQUEST FOR EARLY RELEASE**

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**The Office of the Prosecutor**

Mr. Hasan Babacar Jallow

**Counsel for the Accused**

Peter Haynes QC and Simon Davis for Vinko Pandurević

1. Pursuant to Article 26 of the Statute of the Mechanism for International Criminal Tribunals ("the Statute" and "the Mechanism"), Rules 149-151 of the Rules of Procedure and Evidence ("the Rules") of the Mechanism, 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 ICTY, ICTR or the Mechanism ("Practice Direction"), Vinko Pandurević respectfully requests an order from the President of the Mechanism for his early release.

## **I. Background**

2. On 23 March 2005, Vinko Pandurević surrendered to the custody of the Tribunal and was transferred to The Hague. At his initial appearance before the Tribunal on 3 May 2005 he pleaded not guilty. The trial phase of *Popović et al.* ended in September 2009 and judgment was delivered on 10 June 2010. Pandurević was sentenced to 13 years' imprisonment for aiding and abetting by omission murder (as a crime against humanity and as a war crime), for aiding and abetting persecution and inhumane acts (forcible transfer) and for failure to prevent, as a superior, murder (as a crime against humanity and as a war crime).<sup>1</sup> Both the Defence and the Prosecution filed Notices of Appeal against Conviction and Sentence on 8 September 2010. On 30 January 2015, the Appeals Chamber entered new convictions against Pandurević for aiding and abetting extermination as a crime against humanity, murder as a violation of the laws or customs, of war, persecution through murder as a crime against humanity, aiding and abetting persecution through murder as a crime against humanity under Article 7(1) as well as new convictions under Article 7(3) of the Statute for persecution through cruel and inhumane treatment as a crime against humanity, extermination as a crime against humanity, murder as a violation of the laws or customs of war, persecution through murder as well as through cruel and inhumane treatment as a crime against humanity under Article 7(3). The Appeals Chamber set aside, in part, Pandurević's conviction under Article 7(3) for murder as a crime against humanity, and murder as a violation of the laws or customs of war. The Chamber affirmed Pandurević's sentence of 13 years' imprisonment, subject to credit being given for the period he has already spent in detention.

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<sup>1</sup> Prosecutor v. Popović et al., Case No.IT-05-88-T, Judgment of the Trial Chamber (hereafter, "Trial Chamber Judgment"), 10 June 2010, para. 2110.

## II. Applicable Law

3. Article 26 of the Statute provides that if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the 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. 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.
4. 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 the President shall take into account, *inter alia*, the following factors when making a determination on pardon or commutation of a sentence: (i) the gravity of the crimes for which the prisoner was convicted, (ii) the treatment of similarly-situated prisoners, (iii) the prisoner's demonstration of rehabilitation, and (iv) any substantial cooperation of the prisoner with the Prosecution.
5. In the situation where a convicted person is still detained at the ICTY UNDU, a request for release may be entertained by the President of the Mechanism.<sup>2</sup> In such circumstances, although the Statute, Rules, and Practice Direction do not address the situation where a convicted person is detained at the UNDU, rather than in one of the enforcement states, “the conditions for eligibility regarding pardon or commutation of sentence should be applied equally to all individuals convicted and sentenced by the Tribunal” and “the eligibility of individuals serving their sentence at the UNDU must be determined by reference to the equivalent conditions for eligibility established by the enforcement states”.<sup>3</sup>

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<sup>2</sup> 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; Prosecutor v. Popović et al., Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 7, citing at fn. 17: Prosecutor v. Enver Hadiihasanovic and Amir Kubura, Case No. IT-01-47-A, Decision of the President on Enver Hadtihasanovic's Request for Early Release, 12 April 2007; Prosecutor v. Enver Hadiihasanovic and Amir Kubura, Case No. IT-01-47-T, Decision of the President on Amir Kubura's Request for Early Release, 11 April 2006; Prosecutor v. Veselin Slijvančanin, Case No. IT-95-13/1-T, confidential and ex parte Decision on Request for Early Release or, Alternatively, Motion for Provisional Release, 9 November 2007.

<sup>3</sup> Prosecutor v. Milan Gvero, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 7; Prosecutor v. Miroslav Kvočka, Case No. IT-98-30/1-A, Decision on Application for Pardon or Commutation of Sentence, 30 March 2005, para. 4; Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-ES,

6. 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.

### **III. Submissions**

7. Vinko Pandurević is currently incarcerated at the United Nations Detention Unit in The Hague. The Appeals Chamber affirmed Pandurević's sentence of 13 years' imprisonment, with credit for the time served in custody, including the days when he was granted custodial release. As at 30 January 2015, Pandurević has served over 75% of his sentence on appeal.

#### **1. Gravity of the Crimes**

8. Although there is no doubt that the crimes of which Pandurević has been convicted are grave, the Appeals Chamber reaffirmed the Trial Chamber's finding that "in more than one respect, Pandurević's case presents an uncommon and extraordinary set of facts and circumstances".<sup>4</sup> In particular, the Appeals Chamber emphasised his actions in saving thousands of lives.<sup>5</sup>
9. Given these findings as regards the circumstances in which Pandurević committed the above-mentioned crimes, their gravity should not weigh against the present application for early release.

#### **2. The Treatment of Similarly-Situated Prisoners**

10. It is the practice of the ICTY to consider convicted persons to be eligible for early release when they have served at least two-thirds of their sentences.<sup>6</sup> As said above, when

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confidential Decision of the President on the Application for Pardon or Commutation of Sentence of Milorad Krnojelac, 21 June 2005, para. 5.

<sup>4</sup> Trial Chamber Judgment, para. 2210; Prosecutor v. Popovic et al., Case No. IT-05-88-A, Appeals Chamber Judgment, 30 January 2015, para. 1993.

<sup>5</sup> Appeals Chamber Judgment, para. 2116.

<sup>6</sup> Prosecutor v. Ivica Rajić, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 22 August 2011, para. 12; Prosecutor v. Milomir Stakić, Case No. IT-97-24-ES, Decision of President on Early

individuals are detained at the UN Detention Centre in The Hague, their eligibility for early release must be determined by reference to equivalent conditions for eligibility established by the enforcement states. Most enforcement states consider convicted persons eligible for early release after they served two-thirds of their sentence. In particular, Article 15.2 of the Dutch Penal Code, provides that those sentenced to a prison term of more than two years become eligible for early release when they have served two-thirds of their sentence.<sup>7</sup>

11. As at 30 January 2015, Vinko Pandurević served over 75% of his sentence. Of course, a convicted person who has served two-thirds of his sentence is eligible for rather than entitled to early release. Nonetheless, taking into account the treatment of similarly-situated prisoners, the amount of time that Vinko Pandurević has served for his crimes weighs in favour of his early release.<sup>8</sup>

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Release of Milomir Stakić, 15 July 2011, para. 22; Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011, para. 21; Prosecutor v. Veselin Šljivančanin, Case No. IT-95-13/1-ES.1, Decision of President on Early Release of Veselin Šljivančanin, 5 July 2011, para. 20; Prosecutor v. Johan Tarčulovski, Case No. IT-04-82-ES, Decision of President on Early Release of Johan Tarčulovski, 23 June 2011, para. 13; Prosecutor v. Blagoje Simić, Case No. IT-95-9-ES, Decision of President on Early Release of Blagoje Simić, 15 February 2011, para. 20; Prosecutor v. Darko Mrňa, Case No. IT-02-59-ES, Decision of President on Early Release of Darko Mrňa, 1 February 2011, para. 15; Prosecutor v. Ivica Rajić, Case No. IT-95-12-ES, Decision of President on Early Release of Ivica Rajić, 31 January 2011, para. 14; Prosecutor v. Zoran Žigić, Case No. IT-98-30/1-ES, Decision of President on Early Release of Zoran Žigić, 8 November 2010, para. 12; Prosecutor v. Haradin Bala, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010, para. 14; Prosecutor v. Momcilo Krajisnik, Case No. IT-00-39-ES, Decision of President on Early Release of Momcilo Krajisnik, 26 July 2010, para. 14; Prosecutor v. Milan Gvero, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 8; Prosecutor v. Duško Sikirica, Case No. IT-95-8-ES, Decision of President on Early Release of Duško Sikirica, 21 June 2010, para. 13; Prosecutor v. Dragan Zelenović, Case No. IT-96-23/2-ES, Decision of the President on Application for Pardon or Commutation of Sentence of Dragan Zelenović, 10 June 2010, para. 13; 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, para. 13; Prosecutor v. Mlaño Radić, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlaño Radić, 23 April 2010, paras 12-13; Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Mitar Vasiljević, 12 March 2010, para. 14; Prosecutor v. Dragan Jokić, Case No. IT-02-60-ES & IT-05-88-R.77.1-ES, Public Redacted Version of Decision of President on Application for Pardon or Commutation of Sentence of Dragan Jokić of 8 December 2009, 13 January 2010, para. 14; Prosecutor v. Biljana Plavšić, Case No. IT-00-39 & 40/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, 14 September 2009, para. 10.

<sup>7</sup> “De veroordeelde tot tijdelijke gevangenisstraf van meer dan twee jaren wordt voorwaardelijk in vrijheid gesteld wanneer hij tweederde gedeelte daarvan heeft ondergaan.”(Artikel 15.2, Wetboek van Strafrecht)

<sup>8</sup> The Tribunal has granted early release upon serving two-thirds of a sentence to several individuals, including: Ivica Rajić (convicted to 12 years); Momčilo Krajišnik (convicted to 20 years); Veselin Šljivančanin (convicted to 10 years); Johan Tarčulovski (convicted to 12 years); Blagoje Simić (convicted to 15 years); Darko Mrňa (convicted to 17 years); Zoran Žigić (convicted to 25 years); Haradin Bala (convicted to 13 years); Duško Sikirica (convicted to 15 years); Dario Kordić (convicted to 25 years); Mlaño Radić (convicted to 20 years); Dragoljub Ojdanić (convicted to 15 years); Radomir Kovač (convicted to 20 years); Mladen Nalelitić (convicted to 20 years); Vidoje Blagojević (convicted to 18 years); Vinko Martinović (convicted to 18 years); Anto Furundžija (convicted to 10 years); Simo Darić (convicted to 6 years); Milan Simić (convicted to 5 years);

### 3. The Prisoner's Demonstration of Rehabilitation

12. Pandurević is aware of the gravity of his crimes and, as he stated on the occasion of the December 2013 appeal hearing, “I condemn the fact that these crimes happened and I apologise on my behalf and on behalf of the Zvornik Brigade to all the victims and their families.”<sup>9</sup>
13. Pandurević surrendered to the custody of the Tribunal on 23 March 2005 and has since remained in its custody. His act of surrender signifies a decision to submit to criminal justice and follow the path of judicial truth-finding. He has accepted the conditions of his detention without complaint, as he has the decisions of the Trial Chamber and Appeals Chamber relating to his custodial release hitherto. Furthermore, Pandurević has demonstrated exemplary behaviour as a detainee. He 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. Pandurević is confident that should the Registry demand a report from the Commanding Officer of the UNDU, such an assessment would favour early release.

### 4. Cooperation with the Prosecution

14. The Prosecution has claimed in the past that Pandurević never cooperated with its office, on the basis that he never gave a formal interview.<sup>10</sup> Neither the Rules nor the Statute oblige an accused or convicted person to cooperate with the Prosecution during the course.<sup>11</sup> Moreover, the Prosecution's contentions in this regard are only partially accurate. In October 2001, Pandurević made himself available for interview by OTP investigators.<sup>12</sup>

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Zdravko Mucić (convicted to 9 years); Damir Došen (convicted to 5 years); Ranko Češić (convicted to 18 years).

<sup>9</sup> Prosecutor v. Popović et al., Case No IT-05-88-A, Appeal Hearing, 6 December 2013, p. 597 lines 13-16.

<sup>10</sup> Prosecutor v. Popović et al., Case No IT-05-88-A, Prosecution Response to Pandurević's Motion for Provisional Release, 13 December 2013, para.8.

<sup>11</sup> Prosecutor v. Dragoljub Ojdanić, Case No. T-05-87-ES.1, Public Redacted Version of the 10 July 2013 Decision of the President on the Early Release of Dragoljub Ojdanić, 29 August 2013, para. 21.

<sup>12</sup> Prosecutor v. Popović et al., Pandurević Final Trial Brief, 30 July 2009, paras.22-25; Exh. P2408.

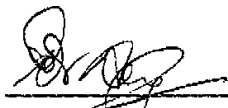
15. Furthermore, he chose to testify in his own defence and open himself to extensive cross-examination by the Prosecution on events both relevant to the Indictment and well beyond it.<sup>13</sup> Accordingly, this factor should either weigh in favour of early release or should be deemed a neutral factor in granting the present application.

#### **IV. Relief Sought**

16. For all these reasons, Vinko Pandurević respectfully requests the President of the Mechanism to grant him early release.

Respectfully submitted on this 3<sup>rd</sup> of February 2015,

Lead Counsel for Vinko Pandurević



Peter Haynes

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<sup>13</sup> The Prosecution's cross-examination of Vinko Pandurevic started on 23 February 2009 (T.32005) and finished on 2 March 2009 (T.32338). On 25 February 2009 (T.32039-T.32111), Pandurevic was extensively cross-examined on events not related to the indictment against him.