

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-03-67-R77.5
Date: 29 November 2017
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Carmel Agius, President
Registrar: Mr. John Hocking
Order of: 29 November 2017

IN THE CASE AGAINST

**PETAR JOJIĆ
AND
VJERICA RADETA**

PUBLIC

**ORDER OF TRANSFER TO THE INTERNATIONAL
RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS**

Office of the Prosecutor:
Mr Serge Brammertz, Prosecutor

Amicus Curiae Prosecutor:
Ms Diana Ellis, QC

I, CARMEL AGIUS, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“President” and “Tribunal” respectively);

NOTING the confidential and *ex parte* “Decision Issuing Order in Lieu of Indictment” issued by a trial chamber on 30 October 2012 (“Order in Lieu of Indictment”) charging, *inter alia*, Petar Jojić and Vjerica Radeta with contempt of the Tribunal for having threatened, intimidated, offered bribes to or otherwise interfered with witnesses in the case of *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67 (“Case against Jojić and Radeta” and “Šešelj trial”, respectively);¹

NOTING the confidential and *ex parte* “Order Reassigning a Case to a Trial Chamber” issued by then-President Theodor Meron on 7 April 2015, assigning the Case against Jojić and Radeta to Trial Chamber I of the Tribunal (“Trial Chamber”);²

RECALLING the warrants of arrest and orders for surrender in relation to Petar Jojić and Vjerica Radeta, addressed to the Republic of Serbia (“Serbia”) on 19 January 2015; the international warrants of arrest and orders for surrender in relation to Petar Jojić and Vjerica Radeta, issued on 5 October 2016; and the Red Notices in relation to Petar Jojić and Vjerica Radeta, distributed by Interpol on 16 March 2016;³

NOTING that, in violation of its obligations under Article 29 of the Statute of the Tribunal, Serbia failed to cooperate with the Tribunal to arrest and surrender the accused Petar Jojić and Vjerica Radeta;⁴

NOTING that, at the request of the Trial Chamber, in my capacity as President, I officially reported this lack of cooperation to the United Nations Security Council on several occasions;⁵

¹ See Further Decision on Order in Lieu of Indictment, 5 December 2014 (confidential and *ex parte*), Annex B; Order Lifting Confidentiality of Order in Lieu of Indictment and Arrest Warrants, 1 December 2015, Annex A (public redacted).

² Order Reassigning a Case to a Trial Chamber, p. 2. The case against Jovo Ostojić was also assigned to the Trial Chamber. After having received the official death certificate of Jovo Ostojić, the Trial Chamber terminated all proceedings with respect to him. See Revised Order in Lieu of Indictment, 17 August 2017, pp. 1-2.

³ Order in Relation to Interpol Red Notice, 14 February 2017; Order Lifting Confidentiality of International Arrest Warrants, 29 November 2016; International Arrest Warrant and Order for Surrender [re. Petar Jojić], 5 October 2016 (confidential and *ex parte*); International Arrest Warrant and Order for Surrender [re. Vjerica Radeta], 5 October 2016 (confidential and *ex parte*); Order Lifting Confidentiality of Order in Lieu of Indictment and Arrest Warrants, 1 December 2015, Annexes C and D (public redacted); Warrant of Arrest and Order for Surrender of Petar Jojić, 19 January 2015 (confidential and *ex parte*); warrant of Arrest and Order for Surrender of Vjerica Radeta, 19 January 2015 (confidential and *ex parte*).

⁴ Decision Advising the Tribunal’s President of the Republic of Serbia’s Continued Failure to Cooperate with the Tribunal, 14 September 2016, p. 2; Decision Advising the Tribunal’s President of the Republic of Serbia’s Failure to Cooperate with the Tribunal, 25 August 2015, p. 2.

⁵ Letter to the President of the Security Council, 1 March 2017; Address to the Security Council on 8 December 2016; Remarks to the Informal Working Group on International Tribunals, 7 December 2016; Tribunal’s Completion Strategy

NOTING further the “Revised Order in Lieu of an Indictment” rendered by the Trial Chamber on 17 August 2017, in which the Trial Chamber terminated proceedings against a co-accused and issued a revised order in lieu of indictment in the Case against Jojić and Radeta;⁶

NOTING the “Decision Returning Case to President” rendered by the Trial Chamber on 2 November 2017 (“Trial Chamber Decision”), whereby the Trial Chamber: (i) held, *inter alia*, that, since the Tribunal’s judicial activities will cease on 30 November 2017, there is now insufficient time to hear the present case;⁷ and (ii) decided, *proprio motu*, to return the Case against Jojić and Radeta to myself as the President and urged me to refer the case to the President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);⁸

RECALLING that the United Nations Security Council, in Resolution 1966 (2010), reaffirmed, *inter alia*, “the necessity that all persons indicted by the [Tribunal] are brought to justice” and consequently acted under Chapter VII of the Charter of the United Nations to decide to establish the Mechanism and to adopt the Statute of the Mechanism and the Transitional Arrangements (“Transitional Arrangements”) set out in annexes to the resolution;⁹

RECALLING that pursuant to Article 1(4) of the Statute of the Mechanism, the Mechanism has the power to prosecute any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Tribunal or the Mechanism, and to hold such person in contempt;

RECALLING that pursuant to Article 4(1) of the Transitional Arrangements, the Tribunal has the competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed prior to 1 July 2013, and the Mechanism has the competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed on or after 1 July 2013;¹⁰

RECALLING that Article 1(4) of the Transitional Arrangements, concerning trial proceedings, provides, in part, that if a fugitive indicted by the Tribunal is arrested on or after the commencement date of the respective branch of the Mechanism, the Mechanism shall have competence over such person in accordance with Article 1 of its Statute;

Reports issued on 17 November 2016, S/2016/976, paras 4, 18; Presentation of the Tribunal’s annual report before the United Nations General Assembly, 9 November 2016; Address to the United Nations Security Council, 8 June 2016; Tribunal’s Completion Strategy Reports issued on 17 May 2016, S/2016/454, para. 22.

⁶ Revised Order in Lieu of Indictment, 17 August 2017.

⁷ Trial Chamber Decision, paras 9-10.

⁸ Trial Chamber Decision, paras 10, 13.

⁹ United Nations Security Council Resolution 1966 (2010), p. 1, p. 2.

¹⁰ Article 4(1) of the Transitional Arrangements; United Nations Security Council Resolution 1966 (2010), p. 2.

CONSIDERING that, while the Tribunal has had the primary jurisdiction to adjudicate the Case against Jojić and Radeta, in light of the imminent closure of the Tribunal and the conclusion of the Judges' mandates, as well as Serbia's persistent non-cooperation, it is no longer possible for the Tribunal to adjudicate the Case against Jojić and Radeta;

CONSIDERING that the Trial Chamber held that: (i) terminating the Case against Jojić and Radeta would be contrary to the purpose of the Tribunal's existence, *i.e.* combating impunity;¹¹ and (ii) while it had assumed jurisdiction on the basis of Article 4(1) of the Transitional Arrangements, "the Chamber allows for reasonable alternative interpretations on the question of jurisdiction in this case", referring in particular to Article 1(4) of the Transitional Arrangements;¹²

CONSIDERING that the Case against Jojić and Radeta arose in connection with the *Šešelj* trial before the Tribunal, and that the Mechanism has assumed jurisdiction over the appeals proceedings in that case;

CONSIDERING that the Transitional Arrangements should be interpreted in good faith, in accordance with the ordinary meaning of terms, in their context, and in light of their object and purpose;¹³

CONSIDERING that the Transitional Arrangements cannot be interpreted without taking into account the object and purpose of the Tribunal and the Mechanism and their respective Statutes;

CONSIDERING that the Transitional Arrangements have the purpose of regulating the transition from the Tribunal to the Mechanism and, in my view, should be interpreted to avoid any gaps in jurisdiction;

CONSIDERING the importance of safeguarding the integrity of proceedings conducted before the Tribunal and, consequently, the importance of prosecuting and bringing to justice those who are alleged to have knowingly and wilfully interfered with the administration of justice for serious violations of international humanitarian law;

¹¹ Trial Chamber Decision, para. 10.

¹² Trial Chamber Decision, para. 11.

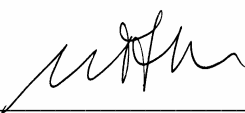
¹³ See Article 31(1) of the Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, p. 331. See also *Prosecutor v. Slobodan Milošević*, Case No. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 16; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR.73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One Formal Statement, 18 September 2000, para. 22; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 98; *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-37-A, Decision on the Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing and Indictment Against Théoneste Bagosora and 28 Others, 8 June 1998, para. 28; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 282..

CONSIDERING that it is in the interests of justice to transfer the Case against Jojić and Radeta to the Mechanism;

CONSIDERING, however, that it is ultimately for the Mechanism to decide whether it has jurisdiction over the Case against Jojić and Radeta;

HEREBY ORDER that the Case against Jojić and Radeta, as well as all judicial records in the custody of the Tribunal concerning this case, be transferred to the Mechanism.

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



Judge Carmel Agius
President

Dated this twenty-ninth day of November 2017,
At The Hague,
The Netherlands.

[Seal of the Tribunal]