

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-23-129-I

Date: 29 February 2024

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Liu Daqun
Registrar: Mr. Abubacarr M. Tambadou
Decision of: 29 February 2024

PROSECUTOR

v.

**VOJISLAV ŠEŠELJ
MILJAN DAMJANOVIĆ
MIROLJUB IGNJATOVIĆ
LJILJANA MIHAJLOVIĆ
OGNJEN MIHAJLOVIĆ**

PUBLIC

**DECISION ON REFERRAL OF
THE CASE TO THE REPUBLIC OF SERBIA**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen

The Accused:

Mr. Vojislav Šešelj
Mr. Miljan Damjanović
Mr. Miroljub Ignjatović
Ms. Ljiljana Mihajlović
Mr. Ognjen Mihajlović

Government of the Republic of Serbia

1. I, LIU DAQUN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case, have been assigned to determine whether the present case should be referred to the authorities of a State, in accordance with Article 6 of the Statute of the Mechanism (“Statute”).¹

I. BACKGROUND

2. On 11 August 2023, I issued a decision confirming an indictment against Vojislav Šešelj (“Šešelj”), Miljan Damjanović (“Damjanović”), Miroљjub Ignjatović (“Ignjatović”), Ljiljana Mihajlović, and Ognjen Mihajlović (collectively, “Accused”) for contempt of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the Mechanism, pursuant to Article 1(4)(a) of the Statute and Rule 90 of the Rules of Procedure and Evidence of the Mechanism (“Rules”).² In the Indictment, the Office of the Prosecutor of the Mechanism (“Prosecution”) alleges that, pursuant to Rule 90(A) of the Rules, the Accused knowingly and wilfully interfered with the administration of justice; disclosed information in violation of court orders, including orders for the protection of witnesses; and failed to comply, without just excuse, with court orders to cease and desist from the publication of confidential information.³

3. In the Confirmation Decision, I requested the authorities of the Republic of Serbia (“Serbia”) to serve the Indictment on the Accused within 21 days of its receipt, and to submit proof of service to the Registry of the Mechanism (“Registry”) no later than 40 days from receipt of the Indictment.⁴ Should service not be fully executed by the authorities of Serbia within the set deadline, I instructed the Registry to complete service of the Indictment and to inform me accordingly.⁵

4. On 5 October 2023, I issued a decision, instructing the Registry to lift the seal on the public redacted version of the Indictment, and noting that, pursuant to Article 6(2) of the Statute, following the confirmation of an indictment a determination should be made whether the case should be

¹ Order Assigning a Single Judge to Consider a Matter, 9 October 2023, p. 1. *See* Article 1(4) of the Statute.

² Decision on Confirmation of Indictment, 11 August 2023 (confidential and *ex parte*) (“Confirmation Decision”), pp. 1, 2. The Indictment and the public redacted version thereof were filed on 15 August 2023 and were both placed under seal pursuant to an instruction contained in the Confirmation Decision. *See* Notice of Filing of Indictment, 15 August 2023 (confidential and *ex parte*), Appendix (“Indictment”); Notice of Filing of Public Redacted Version of Indictment, 15 August 2023 (confidential and *ex parte*), Appendix; Confirmation Decision, p. 2. The Confirmation Decision and the public redacted version of the Indictment were subsequently made public pursuant to a decision issued on 5 October 2023. *See* Decision on Prosecution Request to Unseal Public Redacted Version of Indictment and Other Matters, 5 October 2023 (“Decision of 5 October 2023”), p. 2.

³ Indictment, para. 6. *See* Indictment, paras. 7-11.

⁴ Confirmation Decision, p. 2.

⁵ Confirmation Decision, p. 2

referred to a national jurisdiction for trial.⁶ Accordingly, I referred the matter to the President of the Mechanism (“President”) to consider appointing a Single Judge to determine whether the case against the Accused should be referred to the authorities of a State.⁷ Following my assignment by the President to assess the referral of this case,⁸ on 12 October 2023, I issued an order inviting Serbia to provide a detailed written submission on its jurisdiction, willingness, and preparedness to accept this case for trial; ordering the Prosecution to file a detailed written submission on the suitability of referring the case to Serbia; and deciding on a briefing schedule for responses and replies, if any, from Serbia and the Prosecution.⁹ Both Serbia and the Prosecution filed their respective submissions on 10 November 2023.¹⁰ The Prosecution filed a response to Serbia’s submission on 28 November 2023.¹¹ Serbia filed neither a response to the Prosecution Submission nor a reply to the Prosecution Response.

5. On 18 December 2023, the Registry notified me that it had not received proof of service of the Indictment from Serbia and had therefore completed service of the Indictment on the Accused in accordance with the Confirmation Decision.¹² Following the service of the Indictment on the Accused by the Registry, on 22 December 2023, I invited the Accused to file submissions on the suitability of referring the case to Serbia.¹³ Submissions by Damjanović, Ignjatović, Ljiljana

⁶ Decision of 5 October 2023, p. 2.

⁷ Decision of 5 October 2023, p. 2.

⁸ *See supra* n. 1.

⁹ Order for Submissions, 12 October 2023 (“Order of 12 October 2023”), p. 2. *See also* Article 6(4) of the Statute.

¹⁰ Submission by the Minister of Justice of the Republic of Serbia, 10 November 2023 (confidential and *ex parte*) (“Submission of Serbia”); Prosecution Submission on Suitability of Referral to Serbia, 10 November 2023 (public with public Annex A and confidential and *ex parte* Annex B) (“Prosecution Submission”). I note that the Submission of Serbia has been filed confidentially and *ex parte* the Accused. Notwithstanding, noting that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential, and considering that the seal on the public redacted version of the Indictment has been lifted, I find that it is in the interests of justice and transparency to issue this Decision publicly. *See* Decision of 5 October 2023, pp. 1, 2 and references cited therein.

¹¹ Prosecution Response to Serbia’s Submission Regarding Referral to Serbia, 28 November 2023 (confidential and *ex parte* with confidential and *ex parte* Annex) (“Prosecution Response”). *See also supra* n. 10.

¹² Registrar’s Notice of Compliance with the Decision on Confirmation of Indictment, 18 December 2023 (confidential) (“Registrar’s Notice of Compliance”), paras. 5, 6.

¹³ Order for Submissions, 22 December 2023, p. 2. *See also* Registrar’s Notice of Compliance, para. 3.

Mihajlović, and Ognjen Mihajlović were filed on 30 January 2024,¹⁴ and a submission by Šešelj was filed on 5 February 2024.¹⁵

II. SUBMISSIONS

6. Serbia submits that all legal requirements for the referral of the case are met.¹⁶ Specifically, Serbia refers to its legal obligation to cooperate with the Mechanism,¹⁷ notes that the Accused reside in its territory,¹⁸ and submits that the alleged criminal conduct corresponds to a number of offences under Serbia’s domestic legislation, including the conduct of hiding or aiding the perpetrator after the commission of the offence, criminalized under Article 333 of the Serbian Criminal Code, and the offence of obstructing or tampering with evidence under Article 336 of the Serbian Criminal Code.¹⁹ Serbia “believe[s] that, for example, by disclosing data about witnesses who have been or were to be examined in the judicial proceedings before the Mechanism, [the offender] aids the perpetrator of the criminal offense”, which could amount to “an act of perpetration” under Article 333 of the Serbian Criminal Code.²⁰ According to Serbia, should the case be referred, the Public Prosecutor’s Office for War Crimes would prosecute the case before the Belgrade High Court in the first instance, and the Belgrade Appellate Court in the second instance.²¹ Serbia further submits that its “excellent legal regulations and quality practices” provide for the safety of witnesses and their families and property.²²

¹⁴ See [Miljan Damjanović] Submission in Response to the Order of 22 December 2023 on Referral of the Case to the Republic of Serbia, 30 January 2024 (original Serbian version submitted on 22 January 2024) (“Submission of Damjanović”); [Miroљub Ignjatović] Submission in Response to the Order of 22 December 2023 on Referral of the Case to the Republic of Serbia, 30 January 2024 (original Serbian version submitted on 22 January 2024) (“Submission of Ignjatović”); [Ljiljana Mihajlović] Submission in Response to the Order of 22 December 2023 on Referral of the Case to the Republic of Serbia, 30 January 2024 (original Serbian version submitted on 22 January 2024) (“Submission of Ljiljana Mihajlović”); [Ognjen Mihajlović] Submission in Response to the Order of 22 December 2023 on Referral of the Case to the Republic of Serbia, 30 January 2024 (original Serbian version submitted on 22 January 2024) (“Submission of Ognjen Mihajlović”).

¹⁵ [Vojislav Šešelj] Submission in Response to the Order of 22 December 2023 on Referral of the Case to the Republic of Serbia (“Submission of Šešelj”).

¹⁶ Submission of Serbia, Registry Pagination (“RP.”) 182-180.

¹⁷ Submission of Serbia, RP. 182, 180, *referring to* Article 4(1) of the Law on Cooperation of Serbia and Montenegro with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed on the Territory of the Former Yugoslavia since 1991, Official Gazette of Serbia and Montenegro, No. 16/2003 (“Law on Cooperation with the ICTY”), Article 7 on the Law on International Legal Assistance in Criminal Matters, Official Gazette of the Republic of Serbia, No. 20/2009 (“Law on International Legal Assistance”).

¹⁸ Submission of Serbia, RP. 181, 180.

¹⁹ Submission of Serbia, RP. 181, 180. See also Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, with the latest amendment on 21 May 2019 (Official Gazette of the Republic of Serbia, No. 35/2019) (“Serbian Criminal Code”).

²⁰ Submission of Serbia, RP. 181, 180.

²¹ Submission of Serbia, RP. 181.

²² Submission of Serbia, RP. 180.

7. The Prosecution submits that Serbia meets the initial criteria for referral under Article 6(2)(i) of the Statute, since the alleged crimes were committed in its territory.²³ However, the Prosecution argues that Serbia has not sufficiently demonstrated that it has an adequate legal framework, namely through Articles 333 and 336 of the Serbian Criminal Code, that criminalizes the conduct alleged in the Indictment.²⁴ In particular, the Prosecution expresses doubt as to whether Šešelj could be tried as an accessory to his own crimes pursuant to Article 333 of the Serbian Criminal Code, and contends that, even if his co-Accused could be tried pursuant to the same provision for aiding and abetting – the crimes against humanity of which Šešelj was convicted by the Mechanism – this would encompass only a small fraction of the conduct charged in the Indictment.²⁵ According to the Prosecution, prior to referring the case, I should seek assurances that Serbian courts will be able to adjudicate a contempt case involving allegations of breaches of orders issued by the ICTY and the Mechanism, including taking into account any applicable statutory limitations, and that Serbia will comply with any future order for revocation of the referral of the case.²⁶ The Prosecution notes that, for the most part, it had been able to obtain Serbia’s cooperation during the investigation, “albeit with considerable delays”.²⁷ However, given Serbia’s lack of compliance with prior orders issued by the Mechanism, the Prosecution argues that, for the case to be referred, Serbia should demonstrate that it can bring this case to trial and complete it in a timely manner.²⁸

8. The Accused submit that the case should be referred to Serbia, that they will appear before the relevant domestic authorities when summoned, and that conducting the proceedings in Serbia is in the interests of expediency, fairness, and efficiency.²⁹

III. DISCUSSION

9. Pursuant to Article 1(4)(a) of the Statute, the Mechanism has the power to prosecute persons who have knowingly and wilfully interfered with the administration of justice of the Mechanism and the ICTY, and to hold such persons in contempt. Before proceeding to try such persons,

²³ Prosecution Submission, para. 3.

²⁴ Prosecution Response, paras. 1, 4. *See also* Prosecution Submission, para. 7.

²⁵ Prosecution Response, n. 10 (also submitting that the criminal offences would not include the failure to comply with cease and desist orders).

²⁶ Prosecution Submission, paras. 4, 6, Annex A. *See* Prosecution Response, paras. 2-4, n. 12.

²⁷ Prosecution Submission, para. 5.

²⁸ Prosecution Submission, para. 5. *See also* Prosecution Response, paras. 2, 3.

²⁹ *See* Submission of Šešelj, paras. 3, 5-11; Submission of Damjanović, paras. 1-3, 6, 7; Submission of Ignjatović, paras. 2, 3, 5, 6; Submission of Ljiljana Mihajlović, paras. 2-4; Submission of Ognjen Mihajlović, para. 2. The Accused have further made submissions that proceedings in Serbia would be more favourable to their personal and family situations. *See* Submission of Šešelj, para. 4; Submission of Damjanović, paras. 4, 5; Submission of Ignjatović, para. 4; Submission of Ljiljana Mihajlović, para. 3(c); Submission of Ognjen Mihajlović, paras. 2-4.

however, the Mechanism is required to consider referring the case to the authorities of a competent national jurisdiction, taking into account the interests of justice and expediency.³⁰ This requirement is mandatory, and the inclusion of this provision in the Statute indicates a strong preference for referral if all relevant conditions are met.³¹ Accordingly, the Mechanism may only exercise jurisdiction after it has considered whether the case can be transferred to a national jurisdiction for trial.³²

10. Pursuant to Article 6(2) of the Statute, a Single Judge shall determine whether the case should be referred to the authorities of a State: (i) in whose territory the crime was committed; or (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case.³³ In addition, to refer a case to the authorities of a State, a Single Judge shall be satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.³⁴ The decision on whether or not to refer the case to the authorities of a State is within the discretion of the Single Judge.³⁵

11. At the outset, I note Serbia's submission that the Accused reside in its territory³⁶ as well as the Prosecution's submission that the crimes alleged in the Indictment were committed in the territory of Serbia.³⁷ As to whether the Accused will receive a fair trial if the case were to be referred to Serbia, I note that the Accused have not raised any concerns in this regard and that the information before me does not suggest otherwise. I further note that the prohibition of the death

³⁰ See Articles 1(4) and 6(1) of the Statute; *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Decision on *Amicus Curiae's* Appeal Against the Order Referring a Case to the Republic of Serbia, 12 December 2018 ("*Jojić and Radeta* Appeal Decision of 12 December 2018"), para. 11.

³¹ *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 11.

³² *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 11.

³³ See also Article 12(1) of the Statute. See *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 12, 14 (wherein the Appeals Chamber rejected the argument that the Single Judge in that case failed to give sufficient weight to the fact that, while crimes were committed in Serbia, their impact was on trial proceedings in The Hague. In doing so, the Appeals Chamber recalled that "the Statute explicitly contemplates referral to a State 'in whose territory the crime was committed', without requiring that all the alleged acts, omissions, or effects thereof be committed or sustained in the territory of that State").

³⁴ See Article 6(4) of the Statute.

³⁵ See *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 13. See also *Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012 ("*Munyarugarama* Appeal Decision of 5 October 2012"), para. 19; *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-AR11bis, Decision on Rule 11bis Appeal, 30 August 2006 ("*Bagaragaza* Appeal Decision of 30 August 2006"), para. 9. See also *mutatis mutandis* Rule 11bis(A) of the Rules of Procedure and Evidence of the ICTY ("ICTY Rules") and Rule 11bis(A) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda ("ICTR" and "ICTR Rules"). I note that the language adopted in Article 6(2) of the Statute is similar to the language in Rule 11bis(A) of the ICTY Rules and the ICTR Rules. See also *Munyarugarama* Appeal Decision of 5 October 2012, para. 6 (wherein the Appeals Chamber of the Mechanism stated that it is bound to interpret the Statute and the Rules in a manner consistent with the jurisprudence of the ICTR and the ICTY).

³⁶ Submission of Serbia, RP. 181, 180.

³⁷ Prosecution Submission, para. 3.

penalty is guaranteed by the Constitution of Serbia.³⁸ These are factors that weigh in favour of referring the case to Serbia.

12. I further note Serbia's position that it has jurisdiction and is willing and prepared to accept the case against the Accused.³⁹ Additionally, the authorities of Serbia need not necessarily proceed under their laws against each act or crime mentioned in the Indictment in the same manner that the Prosecution would before the Mechanism.⁴⁰ Nevertheless, I should be satisfied that, if the case were to be referred to Serbia, an adequate legal framework exists criminalizing most, if not all, of the Accused's conduct alleged in the Indictment and providing for an adequate penalty structure.⁴¹

13. To demonstrate that it has jurisdiction to adjudicate allegations of contempt of the ICTY and the Mechanism, Serbia relies on Article 4(1) of the Law on Cooperation with the ICTY and Article 7 of the Law on International Legal Assistance.⁴² In relation to the specific conduct alleged in the Indictment, I note Serbia's submission that such conduct "can correspond to a number" of offences, including offences prescribed under Articles 333 and 336 of the Serbian Criminal Code.⁴³ Article 333(1) of the Serbian Criminal Code stipulates that:

Whoever hides an offender or by concealing the means of commission of the offence, or traces or otherwise aids the offender in order not to be detected, or who harbours a convicted person or undertakes other acts directed at preventing enforcement of penalty, security measure or rehabilitation measure of remand to a rehabilitation or correctional facility, shall be punished by fine or imprisonment up to three years.⁴⁴

14. In its submission, Serbia also refers to the potential applicability of Article 336 of the Serbian Criminal Code, which criminalizes acts of interference with witnesses or tampering with evidence.⁴⁵ Article 336(1) of the Serbian Criminal Code stipulates that:

³⁸ See Article 24 of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006, as amended on 16 February 2022 (Official Gazette of the Republic of Serbia, No. 16/2022) ("Constitution of Serbia").

³⁹ See *supra* para. 6, referring to Submission of Serbia, RP. 182-180. While Serbia does not use the specific language of Article 6(2)(iii) of the Statute, I am satisfied that, when read as a whole, Serbia's submission indicates willingness to accept the case. Cf. *Jojić and Radeta* Appeal Decision of 12 December 2018, para. 15.

⁴⁰ See *Bagaragaza* Appeal Decision of 30 August 2006, para. 17.

⁴¹ See *Munyarugarama* Appeal Decision of 5 October 2012, para. 18; *Prosecutor v. Mitar Rašević and Savo Todović*, Case Nos. IT-97-25/1-AR11bis.1 & IT-97-25/1-AR11bis.2, Decision on Savo Todović's Appeals Against Decisions on Referral Under Rule 11bis, 4 September 2006, paras. 89, 91; *Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-AR11bis.1, Decision on Joint Defence Appeal Against Decision on Referral Under Rule 11bis, 7 April 2006 ("*Mejačić et al.* Appeal Decision of 7 April 2006"), paras. 45, 48.

⁴² Submission of Serbia, RP. 182, 180. See also *supra* para. 6, n. 17.

⁴³ Submission of Serbia, RP. 181, 180. See also *supra* para. 6, n. 19.

⁴⁴ See Submission of Serbia, RP. 181, 180. See Article 333(2) of the Serbian Criminal Code ("Whoever aids a perpetrator of a criminal offence punishable under law by imprisonment of more than five years, shall be punished by imprisonment of six months to five years") and Article 333(3) of the Serbian Criminal Code ("Whoever aids a perpetrator of a criminal offence punishable under law by life sentence, shall be punished by imprisonment of one to eight years").

⁴⁵ See Submission of Serbia, RP. 180. See also *supra* para. 6, n. 19.

Whoever gives or promises a gift or other benefit to a witness or an expert witness or another party to the proceedings before a court or other government authority, or by force or threat of force ([deleted]) against such person with intent to induce such person to give false testimony and thereby affect the outcome of the proceedings, shall be punished by imprisonment of six months to five years and by fine.⁴⁶

15. Turning to the Accused's conduct, as alleged in the Indictment,⁴⁷ I note that the acts include knowingly and wilfully interfering with the administration of justice and disclosing confidential information to the public in violation of court orders, including orders for the protection of witnesses: (i) through publishing, advertising, selling, and otherwise distributing books containing such confidential information;⁴⁸ and (ii) making available to the public books, filings, and videos and transcripts of hearings containing confidential information on websites.⁴⁹ The Indictment further alleges that the Accused interfered with the administration of justice by failing to comply with orders of the Mechanism to cease and desist from the publication of confidential information.⁵⁰

16. Having thoroughly considered Serbia's submissions, I have reservations whether Serbia has sufficiently demonstrated that it has an adequate legal framework, criminalizing most, if not all, of the Accused's conduct as alleged in the Indictment. Notably, none of the criminal law provisions relied on by Serbia in its submission appear to criminalize the disclosure, in violation of ICTY court orders, of confidential information from judicial proceedings and the non-compliance with the Mechanism's judicial orders to cease and desist from the publication of such information, which are among the key elements of the allegations against the Accused contained in the Indictment.⁵¹ On the contrary, domestic provisions cited by Serbia on aiding a perpetrator after the commission of a criminal offence⁵² and on interference with witnesses,⁵³ on their face, appear to criminalize conduct that is, in all essential elements, distinguishable from the type of conduct alleged in the Indictment. However, I am cognizant that, in assessing the capacity of Serbia to accept the case, I do not have the authority to decide which law is to be applied if the case were to be referred, since such determination falls within the competence of the relevant domestic court.⁵⁴ I also note the

⁴⁶ See also Article 336(2)-(4) of the Serbian Criminal Code.

⁴⁷ See Indictment, paras. 6-11, p. 4; Rule 90(A) of the Rules.

⁴⁸ Indictment, paras. 6, 7.

⁴⁹ Indictment, paras. 6, 8-10.

⁵⁰ Indictment, paras. 6, 11.

⁵¹ See Rules 90(A)(ii) and 90(A)(iii) of the Rules.

⁵² See *supra* paras. 6, 13.

⁵³ See *supra* paras. 6, 14.

⁵⁴ *Mejakić et al.* Appeal Decision of 7 April 2006, paras. 45, 48, 59.

Prosecution's submission that statutory limitations may impede Serbia's ability to try the Accused for conduct charged in the Indictment.⁵⁵

17. I turn next to consider whether, in view of the above observations, referring the case to Serbia is in the interests of justice and expediency, as required by Article 1(4) of the Statute. I note Serbia's position that it is prepared to conduct criminal proceedings against the Accused, including by ensuring the safety of witnesses in this case, and its belief that it will be able to prosecute under its domestic legislation the Accused's alleged conduct related to the disclosure of protected information of witnesses before the ICTY and the Mechanism.⁵⁶ In relation to the latter, I recall my reservations whether Serbia has sufficiently demonstrated in its submission that it has an adequate legal framework, criminalizing most, if not all, of the Accused's conduct as alleged in the Indictment.⁵⁷ I also note that, as pointed by the Prosecution, Serbia's cooperation in relation to this case has not been consistent.⁵⁸ The weight to be given to these considerations, however, should not be assessed in isolation, but in the context of the Mechanism's referral framework and the related guarantees provided in the Statute and the Rules.⁵⁹

18. I note that, pursuant to Article 6(5) of the Statute and Rule 14(A)(iv) of the Rules, once a case has been referred to the authorities of a State, the Mechanism shall take appropriate measures to monitor the referred case, including with the assistance of national and regional organisations and bodies. The Statute and the Rules further allow the Mechanism to make a formal request for deferral where it is clear that the conditions for the referral of the case are no longer met and it is in the interests of justice.⁶⁰ It follows from a previous ruling of the Appeals Chamber in another contempt case that, if the Accused are not brought to trial within a reasonable time or if a competent Serbian court determines that it does not have jurisdiction to prosecute the Accused for contempt of the ICTY and the Mechanism as alleged in the Indictment, a deferral may be sought in the interests of justice.⁶¹ Accordingly, taking into account the availability of a revocation procedure under the Statute and the Rules, the deficiencies identified in Serbia's submission do not necessarily preclude the referral of the case to Serbia at this stage.

⁵⁵ See Prosecution Submission, para. 4, n. 7, Annex A; Prosecution Response, n. 12. I note that Article 103 of the Serbian Criminal Code stipulates that criminal prosecution may not be instituted after a lapse of certain number of years following the commission of an offence.

⁵⁶ See Submission of Serbia, RP. 180-182. See *supra* para. 6, 12-14.

⁵⁷ See *supra* para. 16.

⁵⁸ See Prosecution Submission, para. 5.

⁵⁹ See *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 20, 21.

⁶⁰ See Article 6(6) of the Statute; Rule 14(C) of the Rules. See also Rule 14(D) of the Rules; *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 20, 21.

⁶¹ See *Jojić and Radeta* Appeal Decision of 12 December 2018, paras. 20, 21.

19. Regarding the Prosecution's request to seek assurances that Serbian courts will be able to adjudicate the case and that Serbia will comply with any future order for revocation of the referral,⁶² I do not find it necessary, at this stage, to seek such guarantees. As noted above, if a competent court of Serbia determines that ultimately it does not have jurisdiction to prosecute the Accused for the conduct alleged in the Indictment, a deferral may be sought.⁶³ The Statute and the Rules unequivocally provide that, where an order for referral of a case is revoked and the State is requested to transfer the accused to the seat of the Mechanism, the State shall accede to such request without delay, in keeping with its obligation to cooperate with the Mechanism under Article 28 of the Statute. This obligation prevails over any domestic legal impediment, and a State's failure to comply with its obligation under Article 28 of the Statute may result in the referral of that State to the United Nations Security Council.⁶⁴

20. Finally, in assessing whether referring the case to Serbia is in the interest of expediency, I recall that the crimes alleged in the Indictment were committed in the territory of Serbia⁶⁵ and note that the Accused, who reside in Serbia, are willing to be tried there and have confirmed that they will appear when summoned by the Serbian authorities.⁶⁶ On balance, these factors support the conclusion that referring the case to Serbia is in the interests of expediency.

21. In view of the above considerations, I find that, when all relevant factors are weighed together, it is in the interests of justice and expediency to refer the case to Serbia. Given the strong preference in the Statute for referral, should all relevant conditions be met, I further find it appropriate to exercise my discretion and refer the case to Serbia.

IV. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT to Articles 1(4), 6(2), and 6(4) of the Statute, and Rule 14 of the Rules;

ORDER the case against the Accused (Case No. MICT-23-129-I) to be referred to the authorities of Serbia for trial;

⁶² Prosecution Submission, paras. 4-6. *See also supra* para. 7.

⁶³ I note that the Appeals Chamber has held that, regardless of a previous failure of a State to cooperate, the availability of the revocation procedure under Rule 14 of the Rules is a valid consideration for the purposes of determining whether to refer a case. *See Jojić and Radeta* Appeal Decision of 12 December 2018, para. 20.

⁶⁴ *See In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Decision on Failure of the Republic of Serbia to Execute Arrest Warrants, 16 April 2021, pp. 4, 5.

⁶⁵ *See supra* para. 11.

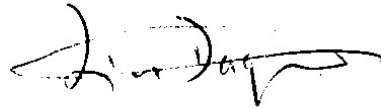
ORDER the Prosecution to transfer to the Prosecutor's Office of Serbia, as soon as possible, all information relating to this case that it considers appropriate including, in particular, the Indictment and the material supporting the Indictment;

INVITE the Prosecutor's Office of Serbia to seek by application filed before the President, pursuant to Rule 86 of the Rules, any variation of protective measures as may be necessary; and

ORDER the Registry to take appropriate measures, as soon as practicable, for an effective monitoring mechanism to be implemented in accordance with Article 6(5) of the Statute and Rule 14(A)(iv) of the Rules and to report to the President.

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

Done this 29th day of February 2024,
At The Hague,
The Netherlands



Judge Liu Daqun
Single Judge

[Seal of the Mechanism]

⁶⁶ See Submission of Šešelj, paras. 3, 6, 8; Submission of Damjanović, paras. 1, 3; Submission of Ignjatović, paras. 2, 3; Submission of Ljiljana Mihajlović, para. 3(b); Submission of Ognjen Mihajlović, para. 3. See *supra* para. 8.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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Case Name/ Affaire :	PROSECUTOR V. VOJISLAV ŠEŠELJ ET AL	Case Number/ Affaire n° :	MICT-23-129-I
Date Created/ Daté du :	29 February 2024	Date transmitted/ Transmis le :	29 February 2024
			No. of Pages/ Nombre de pages : 11
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) :
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Title of Document/ Titre du document :	DECISION ON REFERRAL OF THE CASE TO THE REPUBLIC OF SERBIA		
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Rev: August 2019/ Rév. : Août 2019