



ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE INTERNATIONAL COURTS AND TRIBUNALS

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Resolution for General Assembly: 7 December 2019

ADC-ICT RESOLUTION ON CONVICTED PERSONS BEFORE ICTY & ICTR IN PENDING PROCEDURES BEFORE THE RESIDUAL MECHANISM

WHEREAS, the Association of Defence Counsel Practising Before the ICT (“ADC-ICT”) on 18 December 2012 was provisionally recognized by the Residual Mechanism for International Criminal Tribunals (“IRMCT”) Registry as the association of defence counsel representing defence counsel practicing before the IRMCT; and

WHEREAS the ADC-ICT has been acting in that capacity since that time by fulfilling all requests, duties and obligations associated with that function before the IRMCT; and

CONSIDERING, Article 26 of the IRMCT Statute, Rules 149-151 of the Rules of Procedure and Evidence and 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,¹ a State or a Convicted Person may seek early release, commutation of sentence or pardon; and

EMPHASISING, the established jurisprudence of the IRMCT, the ADC-ICT notes that a convicted person **having served two-thirds of his or her sentence** shall be 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;² and

EMPHASISING, that the relevant Practice Direction states: “Having regard to the criteria specified in Rule 151 of the Rules of Procedure and Evidence, the interests of

¹ MICT/3/Rev.2 (20 February 2019).

² *Prosecution v. Berislav Pušić*, Case No. MICT-17-112-ES.1, Public Redacted Version of the 20 April 2018

Decision of the President on the Early Release of Berislav Pušić, 24 April 2018, para. 35;

Prosecutor v. Radivoje Miletić, Case No. MICT-15-85-ES.5, Public Redacted Version of the 26 July 2017

Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017, para. 21;

Prosecutor v. Ljubiša Beara, Case No. MICT-15-85-ES.3, Public Redacted Version of the 7 February 2017

Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, para. 25;

Prosecutor v. Sreten Lukić, Case No. MICT-14-67-ES.4, Public Redacted version of Decision of the President on the Early Release of Sreten Lukic, para. 17;

Prosecutor v. Mladen Naletilić, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012
Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, para. 20;

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, paras. 21, 35.

justice, the general principles of law and any other information that he or she considers relevant, and after taking into account the views of any Judges of the sentencing Chamber who are Judges of the Mechanism or, if none of the Judges who imposed the sentence are Judges of the Mechanism, at least two other Judges, the President shall determine whether pardon, commutation of sentence, or early release is to be granted. **The decision of the President shall be rendered at least 7 days prior to the date of eligibility, where possible**³; and

CONSIDERING, based on information available, the ADC-ICT has knowledge or information that in multiple instances⁴ persons convicted before the ICTY & ICTR have already filed or can reasonably be expected to file timely submissions under the aforementioned Article, Rules of Procedure and Evidence, and Practice Direction based upon the two-thirds time served threshold; and

WHEREAS, the ADC-ICT has information and knowledge from its members that in most such instances which are known, these submissions have gone without a Decision of the President, for many months and even in excess of one year after the filing and after the eligibility threshold; and

CONVINCED, that the significant time-period elapsed is contrary to the clear language of the Practice Direction which stipulates that such Decision should be made “at least 7 days prior to the date of eligibility”. There has been no issuance of any amendments to these prevailing rules to permit deviation;⁵

RECALLING, that under the IRMCT Statute Article 19, “all persons shall be equal before the Mechanism”;

NOTING that under the IRMCT Statute Article 26, decisions shall be based on “the interests of justice and the general principles of law”;

CONSIDERING, that the extreme delay, uncertainty and extended periods of detention beyond the two-thirds threshold without a Decision creates inequality among persons who were released in completed proceedings and those awaiting release in ongoing proceedings, thereby frustrating and affecting the work of ADC-ICT members acting diligently to represent their clients.

HAVING, discussed, considered and debated, on 7 December 2019, the General Assembly of the ADC-ICT,

HEREBY, requests the President of the Mechanism to:

Apply the established jurisprudence of the *ad hoc* tribunals and the Mechanism as to early release therefore treating all convicted persons with uniformity in this respect;

³ MICT/3/Rev.2 (20 February 2019), para. 10.

⁴ Upon available information, there are at least nine pending motions for early release.

⁵ Certain motions are pending more than one year.

Expedite all pending and future submissions on early release, commutation of sentence and pardon and render decisions in a timely manner and in accordance with the Statute, the Rules of Procedure and Evidence and the Practice Direction;

Respect internationally recognized standards regarding the rights of the accused at all stages of proceedings and apply and interpret the law in a consistent and transparent manner.