

DER BOTSCHAFTER
DER BUNDESREPUBLIK DEUTSCHLAND
DE AMBASSADEUR
VAN DE BONDSREPUBLIEK DUITSLAND

Den Haag, den 28.07.2014

Gz. 502.40 E Dordevic

To the Registrar
of the Mechanism for International Criminal Tribunals
Mr. John Hocking
Churchillplein 1

2517 JW Den Haag

Dear Mr Hocking,

I have the honour to confirm receipt of your Note of 11 June 2014 proposing on behalf of the Mechanism for International Criminal Tribunals the conclusion of an Agreement between the Mechanism for International Criminal Tribunals and the Government of the Federal Republic of Germany concerning the conditions under which Mr. Đorđević's prison sentence shall be enforced.

Your Note reads as follows:

"Excellency,

On behalf of the Mechanism for International Criminal Tribunals ("Mechanism"), I have the honour to refer to your Embassy's note verbale, dated 13 December 2013 and my letter in response, dated 2 January 2014, in which I expressed my gratitude on behalf of the Mechanism for the willingness of the Government of the Federal Republic of Germany ("Germany") to enforce Mr. Đorđević's prison sentence, as imposed by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia ("Tribunal") in its Judgement of 27 January 2014 ("Judgement").

Accordingly, I have the honour to propose that an agreement between the Government of Germany and the Mechanism be concluded concerning the conditions under which Mr. Đorđević's prison sentence shall be enforced ("Agreement"), to read as follows:

1. Đorđević's prison sentence

The Appeals Chamber of the Tribunal sentenced Mr. Đorđević to 18 years' imprisonment. Subject to the conditions of the Judgement and this Agreement, Mr. Đorđević's prison sentence shall be enforced in Germany.

2. Enforcement

1. In enforcing Mr. Đorđević's sentence as pronounced by the Appeals Chamber of the Tribunal, the competent national authorities of Germany shall be bound by the duration of the sentence.
2. The conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the Mechanism, as provided for in Sections 5 to 7 and paragraphs 2 and 3 of Section 8 below.
3. The provisions of the German law regarding early release are not applicable. The President of the Mechanism has the sole authority to decide on the early release of Mr. Đorđević.
4. If circumstances arise in which Mr. Đorđević would be eligible for early release under German law, Germany shall notify the Registrar of the Mechanism accordingly. If the President of the Mechanism, in consultation with the Judges of the sentencing Chamber who are Judges of the Mechanism, does consider that the application for early release is appropriate, the Registrar shall immediately notify the competent national authorities.
5. The conditions of imprisonment shall be in accordance with relevant human rights standards, which Germany is obliged under international law to respect.

3. Transfer of Mr. Đorđević

The Registrar shall make appropriate arrangements for the transfer of Mr. Đorđević from the United Nations Detention Unit to the competent authorities of Germany. Prior to the transfer, Mr. Đorđević will be informed by the Registrar of the content of this Agreement.

4. Non-bis-in-idem

Mr. Đorđević shall not be tried before a court in Germany for acts constituting serious violations of international humanitarian law under the Statute of the Tribunal for which he has already been tried by the Tribunal.

5. Visits

1. The competent authorities of Germany shall allow visits to Mr. Đorđević by representative of the Mechanism, in accordance with Article 25 of the Statute of the Mechanism. The competent authorities shall allow visits at any time and on a periodic basis, the frequency of visits to be decided

by the Mechanism. Confidential reports on the conditions of detention and the treatment of Mr. Đorđević, based on the findings of the visits, will be prepared as appropriate.

2. The competent authorities of Germany acknowledge the right of the International Committee of the Red Cross ("ICRC") to inspect the conditions of detention and treatment of the prisoner at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. The ICRC will submit a confidential report based on the findings of these inspections to Germany and to the President of the Mechanism.

3. The competent authorities of Germany and the President of the Mechanism shall consult each other on the findings of the reports referred to in paragraphs 1 and 2. The President of the Mechanism may thereafter request Germany to report to him or her any changes in the conditions of detention of Mr. Đorđević suggested in the reports.

6. Information

1. Germany shall immediately notify the Registrar:

- a) two months prior to the completion of the sentence;
- b) if Mr. Đorđević has escaped from custody before the sentence has been completed;
- c) if Mr. Đorđević has deceased.

2. Notwithstanding the previous paragraph, the Registrar and the competent authorities of Germany shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

7. Pardon and commutation of sentence

1. If, pursuant to the applicable law of Germany, Mr. Đorđević is eligible for pardon or commutation of the sentence, Germany shall notify the Registrar accordingly.

2. The President of the Mechanism shall determine, in consultation with the Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform Germany of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, Germany shall act accordingly.

8. Termination of enforcement

1. The enforcement of the sentence shall cease:

- a) when the sentence has been completed;
- b) upon the demise of Mr. Đorđević;
- c) upon the early release of Mr. Đorđević;
- d) upon the pardon of Mr. Đorđević;
- e) following a decision of the Mechanism as referred to in paragraph 2 below.

2. The Mechanism may at any time decide to request the termination of the enforcement in Germany and transfer Mr. Đorđević to another State or to the United Nations Detention Unit.

3. The competent authorities of Germany shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

9. Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, Germany shall promptly consult the Registrar. If required, the Registrar shall make appropriate arrangements for the transfer of Mr. Đorđević as soon as possible. The competent authorities of Germany shall allow for at least thirty days following the notification to the Registrar before taking other measures on the matter.

10. Costs

The Mechanism shall bear the expenses related to the transfer of Mr. Đorđević to and from Germany, unless the parties agree otherwise. Germany shall pay all other expenses incurred by the enforcement of the sentence.

11. Languages

This Agreement shall be concluded in the German and English languages, both texts being equally authentic.

I would be grateful if you could confirm that the above is also the understanding of the Government of Germany.

In such event, this letter and Your Excellency's letter in reply expressing your Government's agreement shall constitute an agreement between Germany and the Mechanism, which shall enter into force on the date of your letter in reply.

Please accept, Excellency, the assurances of my highest consideration.

John Hocking

Assistant Secretary-General

Registrar"

I have the honour to inform you that my Government agrees to the proposals contained in your Note. Your Note and this Note in reply thereto shall thus constitute an Agreement between the Mechanism for International Criminal Tribunals and the Government of the Federal Republic of Germany, which shall enter into force on the date of this Note.

Please accept, Mr Hocking, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "F.J.K." followed by a stylized surname.

Franz Josef Kremp