

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-17-112-ES.3

Date: 17 January 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 17 January 2024

PROSECUTOR

v.

BRUNO STOJIĆ

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF BRUNO STOJIĆ**

Counsel for Mr. Bruno Stojić:

Ms. Senka Nožica

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for early release filed by Mr. Bruno Stojić on 7 December 2022 (“Stojić” and “Application”, respectively).¹

I. BACKGROUND

2. On 5 April 2004, Stojić voluntarily surrendered to the International Criminal Tribunal for the former Yugoslavia (“ICTY”).² At his initial appearance on 6 April 2004, Stojić pleaded not guilty to all charges contained in the initial indictment.³

3. On 29 May 2013, Trial Chamber III of the ICTY (“Trial Chamber”) convicted Stojić, pursuant to Article 7(1) of the Statute of the ICTY, of numerous counts of grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, and crimes against humanity,⁴ and sentenced him to 20 years of imprisonment.⁵

4. On 29 November 2017, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) granted one sub-ground of Stojić’s appeal; (ii) reversed a number of his convictions pursuant to Article 7(1) of the Statute of the ICTY; (iii) dismissed Stojić’s appeal in all other respects; (iv) affirmed the remainder of Stojić’s convictions; (v) allowed certain grounds of appeal of the Office of the Prosecutor of the ICTY (“ICTY Prosecution”), but declined to quash Stojić’s acquittals in this regard, to order a retrial or a remittance, or to enter new convictions; (vi) dismissed the appeal of the ICTY Prosecution in all other respects; and (vii) affirmed the sentence of 20 years of imprisonment.⁶

5. On 4 June 2018, Stojić was transferred to the Republic of Austria (“Austria”) to serve the remainder of his sentence.⁷

6. On 25 August 2020, Stojić filed a direct petition for early release.⁸ This direct petition was denied by my predecessor on 11 April 2022, on the basis that, although Stojić was eligible to be

¹ Bruno Stojić’s Second Application for Early Release, 7 December 2022 (public with public Annex A and confidential Annex B). I note that Annex A to the Application contains an undated letter of remorse from Stojić (“Letter of Remorse”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 29 May 2013 (originally filed in French; English translation filed on 6 June 2014) (“Trial Judgement”), vol. 5, para. 33.

³ Trial Judgement, vol. 5, para. 33. See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Transcript of 6 April 2004, T. 46.

⁴ Trial Judgement, vol. 4, paras. 431, 450, p. 430.

⁵ Trial Judgement, vol. 4, p. 430.

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017 (“Appeal Judgement”), vol. 3, pp. 1401-1403.

considered for early release, the high gravity of his crimes and his insufficient demonstration of rehabilitation militated against his early release at that stage.⁹

II. APPLICATION

7. On 7 December 2022, Stojić filed the Application, in which he requests that he be granted conditional early release and indicates that, if released early, he would reside in [REDACTED], Republic of Croatia (“Croatia”).¹⁰

8. On 20 December 2022, following my preliminary review of the Application, I, *inter alia*, asked the Registry of the Mechanism (“Registry”) to take the steps foreseen in paragraphs 9(b) and 9(c) of the applicable Practice Direction.¹¹ I also requested the Registry to obtain, as soon as practicable, the information enumerated in paragraphs 10(a) through 10(c), and 10(e) of the Practice Direction.¹² I further requested, in line with paragraph 10(f) of the Practice Direction: (i) information from the Witness Support and Protection Unit of the Mechanism (“WISP”) on the victims of the crimes for which Stojić was convicted and who testified in his case, and whether any of them reside in the vicinity of [REDACTED], Croatia, given Stojić’s indication that he would reside there if released early;¹³ (ii) any media reports concerning Stojić published in Croatia in the past two years;¹⁴ and (iii) information regarding the existence of any relevant victims’ associations or other groups in relation to the crimes for which Stojić was convicted.¹⁵

9. On the same day, I invited the authorities of Croatia to, *inter alia*: (i) provide any views that they may wish to offer with regard to the public parts of the Application and Stojić’s indication that, if released early, he would reside in [REDACTED], Croatia; and (ii) indicate if they would be

⁷ See Order Designating State in which Bruno Stojić is to Serve his Sentence, 26 January 2018, p. 1. See also Decision on the Application for Early Release of Bruno Stojić, 11 April 2022 (public redacted) (“Decision of 11 April 2022”), para. 5 and reference cited therein.

⁸ Bruno Stojić’s Application for Early Release, 25 August 2020 (“Previous Application”). See Bruno Stojić’s Submissions Pursuant to Paragraph 13 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence or Early Release, 16 June 2021 (“Previous Submission”). I note that Annex A to the Previous Submission contains a letter of remorse from Stojić dated 15 June 2021 (“Previous Letter of Remorse”).

⁹ Decision of 11 April 2022, paras. 87-88.

¹⁰ Application, paras. 7, 31, 34.

¹¹ Internal Memorandum from the President to the Registrar, dated 20 December 2022 (confidential) (“Memorandum of 20 December 2022”), para. 3. See also Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”).

¹² Memorandum of 20 December 2022, para. 3.

¹³ Memorandum of 20 December 2022, para. 4.

¹⁴ Memorandum of 20 December 2022, para. 5.

¹⁵ Memorandum of 20 December 2022, para. 5.

willing to monitor any conditions imposed by the Mechanism in case of an early release and to provide guarantees to this effect.¹⁶

10. On 11 January 2023, I received a *note verbale* from the Embassy of Croatia to the Kingdom of the Netherlands (“Netherlands”), dated 10 January 2023, conveying a letter addressed to me from the Minister of Justice and Public Administration of Croatia, also dated 10 January 2023.¹⁷

11. On 10 February 2023, the Registrar of the Mechanism (“Registrar”) transmitted to me a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 6 February 2023, providing its comments and information in relation to the Application.¹⁸

12. On 3 March 2023, the Registrar transmitted to me a *note verbale* from the Embassy of Austria to the Netherlands, dated 1 February 2023, containing information provided by the Austrian Federal Ministry of Justice in relation to the Application.¹⁹

13. On the same day, the Registrar also transmitted to me a memorandum from WISP, dated 3 March 2023, conveying strictly confidential information related to the witnesses who provided evidence against Stojić or testified in his case.²⁰

¹⁶ Invitation to the Republic of Croatia Related to the Application for Early Release of Bruno Stojić, 20 December 2022 (confidential and *ex parte*), p. 2.

¹⁷ *Note verbale* from the Embassy of Croatia to the Netherlands, dated 10 January 2023, conveying a Letter from the Minister of Justice and Public Administration of Croatia, dated 10 January 2023. The *note verbale* and the letter were filed on the record in this case on 23 January 2023. See Registrar’s Submission of a Note Verbale Received from the Embassy of the Republic of Croatia to the Netherlands, 23 January 2023 (confidential), Annex (“Croatia’s Response”), Registry Pagination (“RP”) 128.

¹⁸ Internal Memorandum from the Registrar to the President, dated 10 February 2023 (confidential), transmitting an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Officer-in-Charge, Registry, Hague branch, dated 6 February 2023 (public redacted) (“Prosecution Memorandum”). I note that Annex A to the Prosecution Memorandum contains a list of victims’ associations.

¹⁹ Internal Memorandum from the Registrar to the President, dated 3 March 2023 (confidential), transmitting a *note verbale* from the Embassy of Austria to the Netherlands addressed to the Registrar, dated 1 February 2023, conveying: (i) a report from the Austrian prison where Stojić is serving his sentence, dated 26 January 2023 (“Prison Report”); (ii) a statement from a warden of the prison regarding possible conditional release, dated 8 October 2020 (“Warden Statement”); (iii) an opinion from the legal office of the prison regarding pardon, sentence mitigation or early discharge, dated 20 January 2023 (“Legal Office Opinion”); (iv) a medical report from the medical unit of the prison, dated 20 January 2023 (“Medical Report”); (v) a psychological report from the psychological service of the prison, dated 22 November 2022 (“Psychological Report”); (vi) a psychiatric report from the psychiatric service of the prison, dated 24 January 2023 (“Psychiatric Report”); and (vii) the results of various medical analyses and examinations from 2021 and 2022 (“Results of Medical Analyses and Examinations”). Throughout this decision, all references to documentation are to the English versions thereof.

²⁰ Internal Memorandum from the Registrar to the President, dated 3 March 2023 (strictly confidential) (“Registrar Memorandum of 3 March 2023”), transmitting an Internal Memorandum from the Head of WISP to the Registrar, dated 3 March 2023 (strictly confidential) (“WISP Memorandum”), paras. 3-5. The Registrar noted that this strictly confidential information should not be made available to Stojić or the Prosecution. See Registrar Memorandum of 3 March 2023, para. 2.

14. On 16 March 2023, the Registrar provided me with a compilation of media reports concerning Stojić that had been published in Croatia in the past two years and a table of victims' associations.²¹

15. On 27 March 2023, I requested the Registry to contact the victims' associations listed in Annex A to the Prosecution Memorandum and in the External Relations Office Memorandum, and to invite them to provide any views that they may wish to offer with regard to the public parts of the Application and Stojić's indication that, if released early, he would reside in [REDACTED], Croatia.²²

16. On 21 June 2023, the Registrar transmitted to me the responses received from four of the victims' associations that had been contacted ("Victims' Associations").²³

17. On 26 June 2023, I requested the Registrar to provide all relevant materials received in relation to the Application, with the exception of Annex A to the Prosecution Memorandum and the WISP Memorandum, to Stojić for his comments in accordance with paragraph 12 of the Practice Direction.²⁴ Stojić filed his comments on 13 September 2023.²⁵

18. With regard to the Application, I have consulted with Judge Jean-Claude Antonetti, Judge Carmel Agius, and Judge Liu Daqun in their capacity as Judges of the sentencing Chambers,²⁶ in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules").

III. APPLICABLE LAW

19. According to Article 25(2) of the Statute of the Mechanism ("Statute"), the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for

²¹ Internal Memorandum from the Registrar to the President, dated 16 March 2023 (strictly confidential), *transmitting* an Internal Memorandum from the External Relations Officer, Hague branch, to the Registrar, dated 15 March 2023 ("External Relations Office Memorandum").

²² Internal Memorandum from the President to the Registrar, dated 27 March 2023 (confidential), paras. 1-2. *See* Internal Memorandum from the Registrar to the President, dated 18 April 2023 (confidential), paras. 2-3. *See also* Internal Memorandum from the President to the Registrar, dated 20 April 2023 (confidential), para. 2.

²³ Internal Memorandum from the Registrar to the President, dated 21 June 2023 (confidential), para. 3, *transmitting*: (i) a letter from the Association of the Victims and Witnesses of Genocide, dated 22 May 2023 ("Letter of 22 May 2023"); (ii) a letter from the Mostar Association of Prison Camp Inmates, dated 24 May 2023 ("Letter of 24 May 2023"); (iii) a letter from the Association of Citizens Civilian Victims of War Mostar, dated 27 May 2023 ("Letter of 27 May 2023"); and (iv) a letter from the Association of Camp Inmates of Bosnia and Herzegovina, dated 29 May 2023 ("Letter of 29 May 2023").

²⁴ Internal Memorandum from the President to the Registrar, dated 26 June 2023 (confidential), para. 2.

²⁵ Bruno Stojić's Submission in Accord with Paragraph 13 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release, 13 September 2023 (confidential) ("Final Submission").

²⁶ *See generally* Trial Judgement; Appeal Judgement.

Rwanda (“ICTR”), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States.

20. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

21. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, 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. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

22. The general standards for granting early release are set out in Rule 151 of the Rules, which provides that in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.

23. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible.

24. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 12 of the Practice Direction provides that, once all information requested has been received, the President shall instruct the Registry to communicate relevant information to the convicted person in a language that he or she understands. Paragraph 13 of the Practice Direction states that the convicted person shall then be given 14 days to examine the information, following which he or she may provide any written submissions in response.

25. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well

as the views of the Judges consulted in accordance with Rule 150 of the Rules. Paragraph 20 of the Practice Direction states that if early release is granted, it may be subject to conditions.

26. The enforcement agreement between the United Nations and Austria,²⁷ which applies *mutatis mutandis* to the Mechanism,²⁸ provides in Article 8(3) that the President shall determine whether early release, pardon, or commutation of sentence is appropriate and, if the President determines that this is not appropriate, Austria shall act accordingly.

IV. ANALYSIS

A. Eligibility

1. Eligibility before the Mechanism

27. Previous decisions have determined that all convicted persons serving a sentence under the Mechanism's supervision are eligible to be considered for early release upon having served two-thirds of their sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.²⁹ Further, serving two-thirds of a sentence has been described by the Mechanism's jurisprudence as being "in essence, an admissibility threshold".³⁰

28. Stojić served two-thirds of his sentence on 4 January 2021,³¹ and is therefore eligible to be considered for early release.

2. Eligibility under Austrian Law

29. Stojić is currently serving his sentence in Austria.³² The Austrian authorities have informed the Mechanism that Stojić met the requirements for conditional release under Austrian law on 11 January 2021.³³

²⁷ Agreement between the United Nations and the Federal Government of Austria on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, 23 July 1999.

²⁸ See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

²⁹ *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Application for Early Release of Miroslav Bralo, 28 December 2023 (public redacted) ("*Bralo* Decision of 28 December 2023"), para. 29; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 6 November 2023 ("*Galić* Decision of 6 November 2023"), p. 3; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

³⁰ *Bralo* Decision of 28 December 2023, para. 29; *Galić* Decision of 6 November 2023, p. 3; *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 (public redacted) ("*Bisengimana* Decision"), para. 19.

³¹ See Decision of 11 April 2022, paras. 28, 40. See also Internal Memorandum from the Registrar to the President, dated 13 December 2023 (confidential), Annex, p. 1.

30. In this respect, even if Stojić is eligible for conditional release under Austrian law, I recall that the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President's discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.³⁴

B. General Standards for Granting

31. According to the Mechanism's jurisprudence, a convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered for early release and not entitled to such release.³⁵ Against this backdrop, it is therefore necessary for me, in determining whether early release is appropriate, to analyse and consider the convicted person's current situation, taking into account the non-exhaustive list of factors set out in Rule 151 of the Rules.³⁶

1. Gravity of Crimes

32. In my opinion, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism for genocide, crimes against humanity, or war crimes should be exceptional.³⁷

33. In relation to the gravity of crimes, past decisions have established that: (i) as a general rule, a sentence should be served in full given the gravity of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, unless it can be demonstrated that a convicted person should be granted early release; (ii) while the gravity of the crimes is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental importance; (iii) the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be; and (iv) while the gravity of the crimes cannot be seen as depriving a convicted person of an opportunity to argue his or her case, it may be said to determine the threshold that the arguments in favour of early release must reach.³⁸

³² See *supra*, para. 5.

³³ See Prison Report, pp. 1-2; Legal Office Opinion, p. 2. See also Warden Statement, p. 2.

³⁴ *Bralo* Decision of 28 December 2023, para. 32; *Galić* Decision of 6 November 2023, p. 4; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza's Application for Early Release, 17 September 2020 (public redacted), para. 29.

³⁵ *Bralo* Decision of 28 December 2023, para. 33; *Galić* Decision of 6 November 2023, p. 3; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 24.

³⁶ *Bralo* Decision of 28 December 2023, para. 33; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (public redacted) ("*Krstić* Decision of 15 November 2022"), para. 32.

³⁷ *Bralo* Decision of 28 December 2023, para. 34; *Krstić* Decision of 15 November 2022, para. 33.

³⁸ *Bralo* Decision of 28 December 2023, para. 35; *Krstić* Decision of 15 November 2022, para. 34; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) ("*Miletić* Decision of 5 May 2021"), para. 39.

34. In his submissions, Stojić acknowledges the gravity of his crimes.³⁹ In this regard, I note that the Trial Chamber determined that all the crimes for which it convicted Stojić and his co-accused constituted a large-scale attack committed on the territory of eight municipalities in the Republic of Bosnia and Herzegovina (“BiH”) during a period of approximately one-and-a-half years, between the autumn of 1992 and early 1994, resulting in “thousands of victims”.⁴⁰ It found that the “scale and brutality of the crimes” and the “inherent nature of the offences” demonstrated that the crimes Stojić and others had committed were “extremely serious”.⁴¹ It further pointed out that a considerable number of the victims were particularly vulnerable, subjected to physical and mental suffering, with many of them losing their lives, family members, and property.⁴² Similarly, in confirming Stojić’s sentence despite a number of reversals, the Appeals Chamber emphasised that he remained convicted of “very serious crimes”.⁴³

35. As established by the Trial Chamber and affirmed on appeal, as early as mid-January 1993, a joint criminal enterprise (“JCE”) came into existence that was aimed at creating a Croatian entity in BiH that would reconstitute earlier borders and facilitate the reunification of the Croatian people.⁴⁴ This JCE had as its common criminal purpose (“CCP”) the “domination by [the Croatian Republic of Herceg-Bosna (“HR H-B”)] through ethnic cleansing of the Muslim population”.⁴⁵ The members of this JCE, including Stojić,⁴⁶ were found to have implemented “an entire system for deporting the Muslim population of the HR H-B consisting of the removal and placement in detention of civilians, of murders and the destruction of property during attacks, of mistreatment and devastation caused during eviction operations, of mistreatment and poor conditions of confinement as well as the widespread, nearly systematic use of detainees on the front lines for labour or even to serve as human shields, as well as murders and mistreatment related to this labour and these shields, and, lastly, the removal of detainees and their families outside of the territory of the [HR H-B] once they were released”.⁴⁷

36. As the Head of the Department of Defence and a member of the Croatian Defence Council (“HVO”),⁴⁸ Stojić was one of the “most important members” of the JCE.⁴⁹ He made a “significant”

³⁹ Final Submission, para. 16; Application, paras. 15, 22, 26; Letter of Remorse, RP 104.

⁴⁰ Trial Judgement, vol. 4, para. 1297.

⁴¹ Trial Judgement, vol. 4, para. 1302. *See* Trial Judgement, vol. 4, para. 1306.

⁴² Trial Judgement, vol. 4, paras. 1304-1305. *See* Trial Judgement, vol. 4, para. 1303.

⁴³ Appeal Judgement, vol. 3, para. 3361.

⁴⁴ Appeal Judgement, vol. 2, para. 782; Trial Judgement, vol. 4, paras. 24, 41, 43-44.

⁴⁵ Appeal Judgement, vol. 2, para. 791; Trial Judgement, vol. 4, para. 41, vol. 5, p. 6. *See* Trial Judgement, vol. 4, paras. 65-66.

⁴⁶ Appeal Judgement, vol. 2, paras. 1521-1523, 1755-1756; Trial Judgement, vol. 4, paras. 66-67, 1231-1232.

⁴⁷ Appeal Judgement, vol. 1, paras. 391-392; Trial Judgement, vol. 4, para. 66.

⁴⁸ Appeal Judgement, vol. 2, paras. 1457, 1479, 1516; Trial Judgement, vol. 4, paras. 293, 312, 320, 325, 425, 429, 1227, vol. 5, p. 4. *See* Trial Judgement, vol. 1, paras. 9, 555-556.

contribution to the JCE,⁵⁰ by controlling the HVO armed forces and the Military Police, and serving as the link between them and the civilian Government of the HR H-B.⁵¹ His contribution included the use of the HVO armed forces and the Military Police to commit crimes that formed part of the CCP.⁵² It was also established that he intended to expel the Muslim population from the territory of Herceg-Bosna,⁵³ to carry out the crimes forming part of the CCP,⁵⁴ and to discriminate against Muslims in order to facilitate their eviction from the territory of Herceg-Bosna.⁵⁵ Further, by virtue of his knowledge of the facts and his involvement in achieving the CCP, Stojić could reasonably have anticipated the sexual abuse during the eviction operations in West Mostar⁵⁶ and the thefts during the military operations in Gornji Vakuf in January 1993 and in the municipality of Mostar from May 1993 onwards.⁵⁷ Nevertheless, he accepted that these crimes might be committed and willingly took that risk.⁵⁸

37. Stojić was convicted for committing, pursuant to the first form of JCE liability, grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, and crimes against humanity, including murder, forcible transfer, deportation, imprisonment, persecutions, inhumane acts, unlawful confinement of civilians, unlawful labour, inhuman treatment, extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, destruction or wilful damage done to institutions dedicated to religion or education, unlawful attack on civilians, and unlawful infliction of terror on civilians.⁵⁹ In addition, Stojić was found responsible, pursuant to the third form of JCE liability, for rape as a crime against humanity, sexual assault and extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions of 1949, and plunder of public or private property as a violation of the laws or customs of war.⁶⁰

38. There is no doubt as to the high gravity of Stojić's crimes and I am of the view that this factor strongly weighs against his early release.

⁴⁹ Trial Judgement, vol. 4, para. 429.

⁵⁰ Appeal Judgement, vol. 2, paras. 1800, 1806; Trial Judgement, vol. 4, para. 429.

⁵¹ Appeal Judgement, vol. 2, paras. 1541-1542, 1806; Trial Judgement, vol. 4, paras. 425, 429, 1227.

⁵² Appeal Judgement, vol. 2, paras. 1545-1550, 1806; Trial Judgement, vol. 4, paras. 429, 1232.

⁵³ Appeal Judgement, vol. 2, paras. 1756, 1759-1760, 1800, 1806; Trial Judgement, vol. 4, para. 428.

⁵⁴ Appeal Judgement, vol. 2, paras. 1770-1789, 1806; Trial Judgement, vol. 4, para. 426.

⁵⁵ Appeal Judgement, vol. 2, paras. 1793, 1797, 1806; Trial Judgement, vol. 4, para. 429.

⁵⁶ Appeal Judgement, vol. 3, paras. 2856-2861, 2871-2873, 2880; Trial Judgement, vol. 4, paras. 72, 429, 433-434, 437.

⁵⁷ Appeal Judgement, vol. 3, paras. 2865-2870, 2880; Trial Judgement, vol. 4, paras. 72, 438-448.

⁵⁸ Appeal Judgement, vol. 3, paras. 2853, 2858, 2871, 2878-2879; Trial Judgement, vol. 4, paras. 433, 437, 439, 445-448.

⁵⁹ Appeal Judgement, vol. 3, pp. 1401-1403; Trial Judgement, vol. 4, paras. 431-432, p. 430.

⁶⁰ Appeal Judgement, vol. 3, pp. 1401-1403; Trial Judgement, vol. 4, para. 450, p. 430.

2. Treatment of Similarly-Situated Prisoners

39. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Stojić, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision.⁶¹ As noted above, the eligibility threshold of having served two-thirds of the sentence applies to all convicted persons serving a sentence under the Mechanism’s supervision.⁶² Having passed this two-thirds threshold in January 2021,⁶³ Stojić is eligible to be considered for early release.

40. Stojić argues that both Messrs. Milivoj Petković and Valentin Ćorić were convicted under the same indictment as him and for many of the same crimes, but that “the high gravity of those crimes was not a reason to deny them release upon otherwise meeting the criteria for early release, including rehabilitation”.⁶⁴

41. While noting Stojić’s arguments in this regard, I am of the view that each case and each convicted person presents unique circumstances that must be considered on their own merits by the President in determining whether early release is to be granted.⁶⁵ Therefore, any comparison to other cases or other convicted persons in the context of an early release application is inconsequential to the President’s decision.⁶⁶

3. Demonstration of Rehabilitation

42. A decision on whether to grant an early release application is taken by the President on the basis of the interests of justice and the general principles of law, having regard, *inter alia*, to the criteria specified in Rule 151 of the Rules.⁶⁷ The prisoner’s demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.⁶⁸

43. Before turning to an individualised assessment of Stojić’s demonstration of rehabilitation, I note that the Mechanism’s jurisprudence expands upon certain elements pertaining to whether a

⁶¹ *Bralo* Decision of 28 December 2023, para. 46; *Krstić* Decision of 15 November 2022, para. 42; *Bisengimana* Decision, paras. 16-17.

⁶² *See supra*, para. 27.

⁶³ *See supra*, para. 28.

⁶⁴ Final Submission, para. 16.

⁶⁵ *Krstić* Decision of 15 November 2022, para. 44; *Prosecutor v. Radivoje Miletić*, Decision on the Application for Early Release of Radivoje Miletić, 24 June 2022 (“*Miletić* Decision of 24 June 2022”), para. 35; *Miletić* Decision of 5 May 2021, para. 42.

⁶⁶ *Krstić* Decision of 15 November 2022, para. 44; *Miletić* Decision of 24 June 2022, para. 35; *Miletić* Decision of 5 May 2021, para. 42.

⁶⁷ *See supra*, paras. 20, 25.

⁶⁸ *See supra*, paras. 22, 25.

convicted person has demonstrated rehabilitation under Rule 151 of the Rules, and I find it appropriate to set this out here.⁶⁹

44. A number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism have been recognised as such in the past or may be of persuasive relevance.⁷⁰ Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; (ii) signs of critical reflection of the convicted person upon his or her crimes; (iii) public or private expressions of genuine remorse or regret; (iv) actions taken to foster reconciliation or seek forgiveness; (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes; (vi) participation in rehabilitation programmes in prison; (vii) a convicted person's mental health status; and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.⁷¹ This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.⁷²

45. It falls upon the convicted person to demonstrate that sufficient progress has been made in his or her rehabilitation, and that granting release before the full sentence is served would be a responsible exercise of the President's discretion.⁷³ Given that genocide, crimes against humanity, and war crimes are among the gravest crimes known to humankind, it is not appropriate to view the rehabilitation of perpetrators of such crimes as one would view the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.⁷⁴

46. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.⁷⁵ In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁷⁶

⁶⁹ *Bralo* Decision of 28 December 2023, paras. 49-53; *Krstić* Decision of 15 November 2022, paras. 46-50; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted) ("*Bralo* Decision of 31 December 2019"), paras. 37-41.

⁷⁰ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

⁷¹ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39 and references cited therein.

⁷² *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

⁷³ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 39.

⁷⁴ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 38.

⁷⁵ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49.

⁷⁶ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49; *Bralo* Decision of 31 December 2019, para. 38.

47. Further, a convicted person who intends to return to the region where his or her crimes were committed before serving his or her full sentence will ordinarily have to demonstrate a greater degree of rehabilitation.⁷⁷

48. Stojić generally submits that his attitude and circumstances have changed significantly since he submitted the Previous Application, particularly in relation to his rehabilitation, and that this justifies granting him conditional early release.⁷⁸

49. Turning to the extent to which Stojić has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the Application, including the Letter of Remorse; (ii) certain information provided by the Austrian authorities, in particular the Prison Report, the Warden Statement, the Psychological Report, and the Psychiatric Report; and (iii) the Final Submission.

(a) Behaviour in Prison

50. Stojić submits that his behaviour during his time in the United Nations Detention Unit and while serving his sentence in Austria demonstrates that his attitude towards persons of other backgrounds is the same as his attitude towards persons of his own background.⁷⁹

51. The Prison Report describes Stojić as “adjusted, quiet and courteous”⁸⁰ and draws attention to a number of positive circumstances, such as Stojić’s “still unobtrusive behaviour in prison, his stable personality and the good criminal prognosis”.⁸¹ It also points out that Stojić has “work[ed] on the prison farm since 2018, where he shows very good work performance”.⁸²

52. The Warden Statement confirms that “[s]ince his arrival at our facility [Stojić] has been working on the prison farm, where he has demonstrated a very good work ethic and leadership”.⁸³ It adds that “[Stojić’s] prison behaviour can also be described as very good. No disciplinary measures have been imposed on him as of today”.⁸⁴

53. The Psychological Report indicates that “[n]o clear national pride of [Stojić] is evident any more during the conversations” and that he “seems open and appreciative of the other cultures and

⁷⁷ *Bralo* Decision of 28 December 2023, para. 53; *Krstić* Decision of 15 November 2022, para. 50; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on Dragoljub Kunarac’s Application for Early Release, 31 December 2020 (public redacted), para. 44.

⁷⁸ Application, paras. 5, 7-8, 20. *See also* Previous Application.

⁷⁹ Letter of Remorse, RP 103.

⁸⁰ Prison Report, p. 2.

⁸¹ Prison Report, p. 3.

⁸² Prison Report, p. 2.

⁸³ Warden Statement, p. 2.

⁸⁴ Warden Statement, p. 2.

nations”.⁸⁵ It also states that overall Stojić has “an adjusted prison behaviour”.⁸⁶ However, it emphasises that, “[d]uring the guard-escorted outings that took place so far, [...] [he] experienced increased stress”, even if “[n]o detention privilege incidents were reported”.⁸⁷

54. In response, Stojić argues that the Austrian authorities support the Application and his conditional early release.⁸⁸

55. I acknowledge that the Austrian authorities have assessed Stojić’s behaviour in prison positively. However, as set out above, good behaviour in prison cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁸⁹ It is therefore necessary to consider other elements, to which I now turn.

(b) Acceptance of Responsibility, Signs of Critical Reflection, and Expressions of Genuine Remorse or Regret

56. The jurisprudence of the Mechanism has recognised that: (i) an important factor in assessing a convicted person’s progress towards rehabilitation is the acceptance of responsibility for his or her crimes, even if this does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release; and (ii) a convicted person’s partial acceptance of responsibility for his or her crimes will merit positive weight, however, any notable difference between the role a convicted person ascribes to himself or herself, and the role he or she was found to have actually played in the crimes, can suggest a lack of sufficient critical reflection upon his or her crimes.⁹⁰

57. Stojić submits that he “is a much-changed man from the person” that was the subject of the Decision of 11 April 2022.⁹¹ He argues that he “has availed himself [...] [of] all opportunities available at the host prison to better himself and attain rehabilitation”.⁹² In this respect, he explains that he “voluntarily approached and of his own accord sought not only counseling by a mental-health professional (Psychologist) but also spiritual/religious advisors, which were”, according to him, “the fullest extent of the rehabilitative programs and services offered by the host prison”.⁹³

⁸⁵ Psychological Report, p. 3.

⁸⁶ Psychological Report, p. 3.

⁸⁷ Psychological Report, p. 3.

⁸⁸ Final Submission, paras. 8, 12.

⁸⁹ See *supra*, para. 46.

⁹⁰ *Bralo* Decision of 28 December 2023, para. 59; *Krstić* Decision of 15 November 2022, para. 56; *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on the Applications for Early Release of Vlastimir Đorđević, 30 November 2021 (public redacted), para. 70.

⁹¹ Application, para. 32.

⁹² Application, para. 11. See also Application, para. 17.

⁹³ Application, para. 17.

58. Stojić relies on the Letter of Remorse to demonstrate that he accepts in full his responsibility for his crimes, expresses sincere remorse or regret, and is able to openly confess.⁹⁴ In the Letter of Remorse, he admits to the “killings of civilians and members of [the Armed Forces of the Republic of Bosnia and Herzegovina], rapes, detention and systematic, forceful expulsion of Bosniaks/Muslims”, the “siege of Mostar and all the sufferings the siege brought to Bosniak/Muslim population, including shelling, sniping, food and water shortages, as well as obstruction of the delivery of humanitarian aid”, and the “crimes committed in detention camps and prisons in Ljubuški, Heliodrom, Dretelj and Gabela”.⁹⁵ He concedes that these crimes were “grave ones” and that they “cannot be justified or rationalized in any manner whatsoever”.⁹⁶

59. The Prison Report and the Psychological Report indicate that Stojić now “clearly shows empathy for the victims and credible regret” in his statements regarding the war, which he expresses “authentically and honestly”, and that he is aware of “the full extent of the consequences of his actions and decisions made at that time”, which he evaluates as “devastating and deeply wrong”.⁹⁷ In addition, the Psychiatric Report observes that Stojić “had been very moved” by the conversations with the psychological service of the prison about the processing of his crimes, “which deepened his insight and elicited remorse in him”.⁹⁸ It also stresses that Stojić “thinks a lot about his guilt and punishment, and how something like that could have happened”.⁹⁹ It concludes that, while general justifications, such as “that’s what happens in war”, have not totally disappeared, they are less frequent in his discourse.¹⁰⁰

60. In response, Stojić submits that the statements of the Austrian authorities corroborate key aspects of the Letter of Remorse.¹⁰¹

61. In my opinion, a letter sent to the President in support of an early release application, such as the Letter of Remorse, should not be considered in isolation from its greater context.¹⁰² The content of any such letter should be corroborated by positive actions taken by the convicted person, which indicate that he or she has critically reflected upon his or her crimes and is genuinely remorseful.¹⁰³ Evidencing the rehabilitation process is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse and regret from more opportunistic ones.

⁹⁴ Final Submission, para. 16; Application, paras. 15, 19, 22; Letter of Remorse, RP 104-101.

⁹⁵ Letter of Remorse, RP 104.

⁹⁶ Letter of Remorse, RP 104.

⁹⁷ Psychological Report, p. 2. *See also* Prison Report, p. 2.

⁹⁸ Psychiatric Report, p. 2.

⁹⁹ Psychiatric Report, p. 2.

¹⁰⁰ Psychiatric Report, p. 2.

¹⁰¹ Final Submission, paras. 10, 13.

¹⁰² *Bralo* Decision of 28 December 2023, para. 62; *Krstić* Decision of 15 November 2022, para. 61.

62. I recognise that the Letter of Remorse shows that Stojić has embarked on a process of reflection and acceptance, as evidenced by his acknowledgement of responsibility and his apologies to the victims of his crimes. This sharply contrasts with the Previous Application and the Previous Letter of Remorse, in which Stojić relied on the statements he had made before the Trial Chamber and the Appeals Chamber that my predecessor found to be general in nature, and which included his own denial of personal involvement in the crimes in his submissions.¹⁰⁴ In addition, the Austrian authorities have confirmed that Stojić has taken positive steps towards rehabilitation since the Previous Application and the Previous Letter of Remorse. In the present context, I am therefore of the view that the Letter of Remorse constitutes evidence of progress and a step in the right direction.

63. I am, however, concerned about the notable difference between the passive role that Stojić ascribes to himself and the more active role he was found to have actually played in the crimes. In my view, this suggests an insufficient critical reflection upon his crimes.

64. For example, Stojić refers to “a grave mistake [he] made by blindly following” the policy of the JCE.¹⁰⁵ On the contrary, the Trial Chamber found that, as the Head of the Department of Defence and a member of the HVO, Stojić had been one of the “most important members” of the JCE, who controlled the HVO armed forces and the Military Police, and served as the link between the HVO and the HR H-B Government.¹⁰⁶ Stojić’s central role in the implementation of the JCE is insufficiently captured by describing his actions as “blindly following” such a policy.

65. In the same vein, Stojić writes that he “deeply regret[s] that [he has] not invested more serious effort in stopping the crimes committed” by the HVO armed forces and the Military Police and “lacked the courage to admit that they were being committed”.¹⁰⁷ These statements similarly portray Stojić as a passive observer, who did not stop the crimes because he lacked the courage to admit reality, rather than reflecting that he was one of the key protagonists in the events that took place. This description of his role again stands at odds with the findings of the Trial Chamber and Appeals Chamber,¹⁰⁸ and leaves me with the impression that Stojić still – whether consciously or unconsciously – deflects responsibility for his own actions and inactions.

¹⁰³ *Bralo* Decision of 28 December 2023, para. 62; *Krstić* Decision of 15 November 2022, para. 61.

¹⁰⁴ Decision of 11 April 2022, paras. 60-63, 69.

¹⁰⁵ Letter of Remorse, RP 103.

¹⁰⁶ *See supra*, para. 36.

¹⁰⁷ Letter of Remorse, RP 104-103.

¹⁰⁸ Appeal Judgement, vol. 2, paras. 1792-1793; Trial Judgement, vol. 4, paras. 415, 423.

66. Further, I remain mindful that rehabilitation is a process, rather than a definite result, and that this process takes time. In the Decision of 11 April 2022, issued a mere 21 months ago, my predecessor expressed doubts as to Stojić's acceptance of responsibility, critical reflection, and expression of remorse.¹⁰⁹ I share some of these doubts. In this respect, I note that Stojić himself acknowledges that "it has taken time for him to accept in full his responsibility for his crimes and overcome the coping mechanisms of denial".¹¹⁰ He also explains that he has taken the Decision of 11 April 2022 "to heart"¹¹¹ and "only now has found the ability to openly confess".¹¹² This seems a rather rapid turnaround since the Previous Application and the Previous Letter of Remorse. In order for me to be fully persuaded by Stojić's statements, I would urge him to continue his rehabilitation efforts going forward.

67. It is apparent that Stojić has taken positive steps towards his rehabilitation while in prison in Austria, particularly since the Previous Application and the Previous Letter of Remorse. I consider that his willingness to engage with the services offered at the prison and his Letter of Remorse are evidence of progress and go in the right direction. Stojić's efforts in this regard must be welcomed and encouraged. However, his failure to fully accept the role he was found to have actually played in the crimes suggests a lack of sufficient critical reflection upon his crimes. In addition, due to what appears to be a rapid turnaround in his approach, I still have lingering doubts as to Stojić's acceptance of responsibility and the genuine character of his expressions of remorse and regret.

(c) Mental State and Prospects of Successful Reintegration into Society

68. With regard to his prospects of reintegration into society, Stojić submits that he has the support of his family and wishes to spend the rest of his life with them in [REDACTED], Croatia.¹¹³ Furthermore, he has no desire to participate in future political or public engagements¹¹⁴ and commits to abide by any conditions imposed on him, if conditionally released.¹¹⁵

69. In relation to his mental health, the Psychological Report states that Stojić "has no risk factors that would indicate a risk of reoffending in [a] forensic sense – because of this, no forensic

¹⁰⁹ Decision of 11 April 2022, para. 69.

¹¹⁰ Application, para. 16.

¹¹¹ Application, para. 20.

¹¹² Application, para. 15.

¹¹³ Application, paras. 28-29, 31; Letter of Remorse, RP 102.

¹¹⁴ Application, paras. 27, 29; Letter of Remorse, RP 101.

¹¹⁵ Final Submission, para. 31; Application, paras. 12, 27, 31.

psychotherapy was indicated in prison”.¹¹⁶ It concludes that Stojić “has normal psychopathological personality for his age”.¹¹⁷

70. I take note that Stojić has retained ties with his family, has committed to keep a low profile in Croatia if released, and has a normal psychopathological personality and no risk factors. Although these elements do not in and of themselves demonstrate rehabilitation, I consider that they merit positive weight in my consideration of his rehabilitation.

(d) Overall Assessment

71. Stojić has shown good behaviour in prison, has taken positive steps while in prison in Austria, particularly since the Previous Application and the Previous Letter of Remorse, and has a normal psychopathological personality and no risk factors. His recent progress towards rehabilitation is welcomed and encouraged. At the same time, I recall that the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.¹¹⁸ For the reasons set out above, I still have lingering doubts as to the sincerity of Stojić’s acceptance of responsibility, critical reflection, and expression of remorse. After considering the totality of the information before me, I am of the view that Stojić is not yet sufficiently rehabilitated to merit early release.

4. Substantial Cooperation with the Prosecutor

72. The Prosecution submits that Stojić has not cooperated with it at any point.¹¹⁹ Stojić recalls that he voluntarily surrendered¹²⁰ and that he “is under no obligation to plead guilty or cooperate with the prosecution”.¹²¹

73. It is clear that Stojić did not cooperate with the Prosecution or the ICTY Prosecution. Accordingly, this merits no weight in my consideration of the Application.

C. Other Considerations

1. Comments and Information Provided by the Prosecution

74. Decisions on early release have established that the President may receive and consider general comments and information from the Prosecution with regard to early release applications.¹²²

¹¹⁶ Psychological Report, p. 3.

¹¹⁷ Psychological Report, p. 3.

¹¹⁸ *See supra*, para. 33.

¹¹⁹ Prosecution Memorandum, para. 14.

¹²⁰ Application, para. 25.

In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.¹²³

75. In the present case, the Prosecution asserts that, although it should be recognised that Stojić has made important progress towards rehabilitation, he has not demonstrated that early release is warranted in his case due to the high gravity of his crimes,¹²⁴ insufficient evidence of rehabilitation,¹²⁵ and lack of substantial cooperation with the Prosecution.¹²⁶ According to the Prosecution, the evidence that Stojić offers for his rehabilitation should be considered together with views of victims and communities affected by his crimes.¹²⁷ Should I nevertheless determine that Stojić merits early release, the Prosecution requests that I impose appropriate conditions on his release and measures to ensure compliance with all ordered conditions.¹²⁸

76. In particular, the Prosecution argues that the Letter of Remorse “should be recognised as a significant personal statement and evidence that Stojić has taken important steps towards rehabilitation since his previous request for early release as well as the letter he filed thereafter, as demonstrated by his acknowledgement of responsibility and his apology to victims”.¹²⁹ However, the Prosecution notes that “there remains a notable difference between the role he ascribes himself and the role he was found to have played, suggesting an ‘insufficient critical reflection’ upon his crimes”.¹³⁰ The Prosecution therefore concludes that “doubts remain as to Stojić’s acceptance of responsibility, critical reflection and remorse”.¹³¹

77. Further, the Prosecution submits that the evidence that Stojić offers for his rehabilitation should be considered together with the views of victims and communities affected by his crimes.¹³² According to the Prosecution, the possible impact of Stojić’s release on the victims and communities affected by his crimes must be taken into account and assessed in light of the Croatian President’s “public declarations of support for former HVO members convicted by the ICTY” and

¹²¹ Final Submission, para. 15.

¹²² *Bralo* Decision of 28 December 2023, para. 82; *Krstić* Decision of 15 November 2022, para. 72; *Bralo* Decision of 31 December 2019, para. 69.

¹²³ *Bralo* Decision of 28 December 2023, para. 82; *Krstić* Decision of 15 November 2022, para. 72; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted), para. 83.

¹²⁴ Prosecution Memorandum, paras. 2, 4-7, 24.

¹²⁵ Prosecution Memorandum, paras. 2, 8-13, 24.

¹²⁶ Prosecution Memorandum, paras. 2, 14, 24.

¹²⁷ Prosecution Memorandum, paras. 2, 15-18, 24.

¹²⁸ Prosecution Memorandum, paras. 2, 19-24.

¹²⁹ Prosecution Memorandum, para. 8.

¹³⁰ Prosecution Memorandum, para. 10. *See also* Prosecution Memorandum, para. 24.

¹³¹ Prosecution Memorandum, para. 10.

¹³² Prosecution Memorandum, paras. 2, 16, 24.

the media atmosphere in Croatia, which “continues to downplay the actions of those who were convicted by the [ICTY]”.¹³³

78. In response, Stojić submits that “a comprehensive and objective review of the [Letter of Remorse] does not support the Prosecution assertions”, given that, in the Letter of Remorse, he accepts full responsibility for all the crimes for which he was convicted.¹³⁴

79. I have given due regard to the Prosecution’s comments and information in relation to the Application, as well as to Stojić’s response thereto.

2. Views of Croatia

80. Croatia indicates that [REDACTED].¹³⁵ Croatia also [REDACTED].¹³⁶

81. In response, Stojić emphasises that Croatia [REDACTED].¹³⁷

82. I have taken note of Croatia’s [REDACTED].

3. Impact on Witnesses and Victims

83. WISP conveyed information concerning witnesses who testified in Stojić’s case.¹³⁸ The information provided relates to the location of these witnesses, as well as any physical or psycho-social issues, previously expressed security and protection concerns, and reported incidents.¹³⁹ Based on the available information, very few of these witnesses reside in the vicinity of [REDACTED] or in Croatia more generally.¹⁴⁰

84. According to WISP, “[t]he early release of a convicted person may impact victims and witnesses in different ways. Learning of a convicted person’s release through the media, other channels, or through an unexpected encounter in public could increase the perception of risk by victims and witnesses, affect their psycho-social wellbeing, or re-traumatize them. Other victims and/or witnesses may potentially come under threat of being physically harmed or intimidated by the convicted person or his supporters, as retribution for their involvement in the proceedings and for contributing to the conviction by the [ICTY]”.¹⁴¹

¹³³ Prosecution Memorandum, para. 18, Annex B.

¹³⁴ Final Submission, para. 17.

¹³⁵ Croatia’s Response, RP 128.

¹³⁶ Croatia’s Response, RP 128.

¹³⁷ Final Submission, para. 6.

¹³⁸ WISP Memorandum, paras. 3-4.

¹³⁹ WISP Memorandum, paras. 5, 9-15.

¹⁴⁰ WISP Memorandum, para. 6.

¹⁴¹ WISP Memorandum, para. 7.

85. WISP submits that “Stojić’s release will probably receive local media coverage and may thus impact witnesses located in Bosnia and Herzegovina”.¹⁴² WISP also observes that it “is not in a position to assess whether Mr. Stojić would be capable of or intends to harm any witnesses”.¹⁴³ Even with this caveat, however, WISP considers that certain witnesses are not only likely to experience a heightened perception of risk as a result of Stojić’s release, but that his release may also increase their level of actual risk.¹⁴⁴

86. WISP adds that it cannot determine the extent of risk to the witnesses solely by referring to its records and that a fuller assessment would require a range of additional information, involving contact with each witness.¹⁴⁵ In this regard, and in light of the particular circumstances of this case, I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit further information from them with respect to the Application.

87. The Victims’ Associations oppose Stojić’s early release.¹⁴⁶ They express the view that, as a matter of principle, no person convicted by the ICTY or the Mechanism, like Stojić, shall be released before having served their sentence in full¹⁴⁷ and that revisionism, crime denial, and attempts to rehabilitate convicted persons on the part of State and political structures in the region do not weigh in favour of applications for early release.¹⁴⁸ Moreover, they doubt Stojić’s acceptance of responsibility and the genuineness of his expressions of remorse and regret.¹⁴⁹

88. In particular, the Association of Camp Inmates of Bosnia and Herzegovina is “sceptical and doubtful as to the sincerity of [Stojić’s] acknowledgement, acceptance of responsibility and remorse, and his understanding and compassion for the victims”.¹⁵⁰

89. The Association of Citizens Civilian Victims of War Mostar states that “[s]incere remorse and acknowledgment of the crimes and the public acknowledgement of their commission do not have the power to bring back the innocent slain civilians to their families” and that “[t]he counselling and rehabilitation programmes available in prison can further assist Stojić in accepting and dealing with his responsibility for the commission of crimes”.¹⁵¹

¹⁴² WISP Memorandum, para. 7.

¹⁴³ WISP Memorandum, para. 16.

¹⁴⁴ WISP Memorandum, para. 15.

¹⁴⁵ WISP Memorandum, para. 16.

¹⁴⁶ Letter of 29 May 2023, pp. 1-2; Letter of 27 May 2023, p. 1; Letter of 24 May 2023, p. 3; Letter of 22 May 2023, p. 4.

¹⁴⁷ Letter of 27 May 2023, p. 1; Letter of 24 May 2023, pp. 1-3.

¹⁴⁸ Letter of 24 May 2023, p. 2; Letter of 22 May 2023, pp. 1-5.

¹⁴⁹ Letter of 29 May 2023, p. 1; Letter of 24 May 2023, p. 1; Letter of 22 May 2023, p. 4.

¹⁵⁰ Letter of 29 May 2023, p. 1.

¹⁵¹ Letter of 27 May 2023, p. 1 (emphasis omitted).

90. The Mostar Association of Prison Camp Inmates stresses that Stojić’s release would “cause outrage among the victims” and “definitely undermine confidence in justice, because his victims have not received any justice or empathy from him”.¹⁵² It also gives a few examples of “false remorse”, where convicted persons who had expressed remorse before the ICTY prior to being released early, later denied the crimes committed.¹⁵³ It warns against such examples, which constitute “a mockery of justice, a brutal slap in the face of all the murdered, tortured, expelled and displaced victims of the criminals who thought it more important to implement their criminal policies than to show the bare minimum empathy for the suffering of their victims”.¹⁵⁴

91. Finally, the Association of the Victims and Witnesses of Genocide considers that the fact that Stojić only expressed remorse and admitted to his crimes on this occasion is part of an attempt to be released at all costs, given that he first pleaded not guilty and used all legal remedies available throughout the proceedings before the ICTY to challenge the charges against him and secure an acquittal.¹⁵⁵ It also points out that persons convicted by the ICTY or the Mechanism, “who showed remorse and faced up to their crimes so late in the day,” like Stojić, “should make a specific contribution to justice”.¹⁵⁶ For instance, such persons could give information about those killed and missing, testify in cases before national courts, establish the truth about the crimes committed, cooperate with the victims of the affected communities, educate the young, or dedicate themselves to the mission of peace.¹⁵⁷

92. In response, Stojić states that the Mostar Association of Prison Camp Inmates “generally opposes any release of anyone, and is at odds with the Rules and prior practice of the [Mechanism]”.¹⁵⁸ He also contends that the position of the Association of the Victims and Witnesses of Genocide is “based entirely on their belief that Croatia lacks the ability to give credible guarantees to implement conditional early release”.¹⁵⁹ In this respect, he expresses the view that none of the Victims’ Associations are located in Croatia, and therefore that they have no bearing on his proposed release.¹⁶⁰ Stojić further considers that the fact that six victims’ associations did not respond and thus did not take steps to oppose his conditional early release

¹⁵² Letter of 24 May 2023, p. 2.

¹⁵³ Letter of 24 May 2023, p. 2.

¹⁵⁴ Letter of 24 May 2023, pp. 2-3.

¹⁵⁵ Letter of 22 May 2023, p. 4.

¹⁵⁶ Letter of 22 May 2023, p. 4.

¹⁵⁷ Letter of 22 May 2023, p. 4.

¹⁵⁸ Final Submission, para. 25 (emphasis omitted).

¹⁵⁹ Final Submission, para. 23.

¹⁶⁰ Final Submission, para. 28.

should be considered in his favour.¹⁶¹ Finally, he concludes that the submissions of the Austrian authorities and his own submissions “should be the primary basis for any decision”.¹⁶²

93. I have carefully considered all of this information.

4. Health of the Convicted Person

94. Previous decisions have taken into account the state of the convicted person’s health in the context of an early release application.¹⁶³ In particular, I observe that a convicted person’s health must be considered when the seriousness of his or her condition makes it inappropriate for the convicted person to remain in prison any longer.¹⁶⁴

95. Stojić makes no submissions concerning his physical health, although he submits that [REDACTED].¹⁶⁵ Separately, while also not related to his own health, Stojić requests that [REDACTED].¹⁶⁶

96. With regard to his physical health, the Medical Report and the Prison Report indicate that Stojić’s [REDACTED].¹⁶⁷ The Psychiatric Report notes that Stojić [REDACTED].¹⁶⁸ It adds that he [REDACTED].¹⁶⁹ [REDACTED].¹⁷⁰

97. With regard to his mental health, the Prison Report and the Psychiatric Report state [REDACTED].¹⁷¹ The Psychiatric Report concludes that [REDACTED].¹⁷² The Warden Statement observes that Stojić’s “psychopathological findings are normal” and that “[t]here are no addictions in his medical history”.¹⁷³ It specifies that [REDACTED].¹⁷⁴

98. In light of the information before me regarding Stojić’s health, I find no indication that Stojić’s continued imprisonment is inappropriate, and consider that he has not demonstrated any

¹⁶¹ Final Submission, para. 29.

¹⁶² Final Submission, para. 30.

¹⁶³ *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Reasons for the 29 August 2023 Decision on the Application for Early Release of Franko Simatović, 11 September 2023 (public redacted) (“Reasons for *Simatović* Decision”), para. 37; *Krstić* Decision of 15 November 2022, para. 87; *Bisengimana* Decision, para. 32.

¹⁶⁴ Reasons for *Simatović* Decision, para. 37; *Krstić* Decision of 15 November 2022, para. 87; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, paras. 47-49.

¹⁶⁵ Application, para. 30. *See also* Decision of 11 April 2022, para. 84.

¹⁶⁶ Application, para. 29, Annex B.

¹⁶⁷ Medical Report, p. 1; Prison Report, p. 3.

¹⁶⁸ Psychiatric Report, p. 2.

¹⁶⁹ Psychiatric Report, p. 2.

¹⁷⁰ Results of Medical Analyses and Examinations, pp. 4-6, 8, 10-12.

¹⁷¹ Prison Report, p. 3; Psychiatric Report, p. 2.

¹⁷² Psychiatric Report, p. 2.

¹⁷³ Warden Statement, p. 2.

¹⁷⁴ Warden Statement, p. 2.

compelling humanitarian grounds that would warrant his early release. I have nevertheless taken the information on Stojić's health into account in reaching my decision on the Application, as part of my overall assessment of the various factors. Turning to Stojić's remaining submission, I do not consider that [REDACTED] provides a sufficient basis for Stojić's early release on humanitarian grounds, regardless of the sad nature of the situation.

5. Consultation

99. In coming to my decision on whether to grant the Application, I have consulted with three other Judges of the Mechanism.¹⁷⁵ Judge Antonetti concluded that he would be in favour of granting early release to Stojić, given the time he has already served in prison. He further suggested that the Application should be granted because Stojić's involvement in the crimes was secondary. Judge Agius was of the view that Stojić is on the right path in his process of rehabilitation but due to the gravity of his crimes and his insufficient critical reflection thereon should not be released early. Judge Liu underlined that early release should be an exception, rather than a routine matter, and, having weighed the gravity of the crimes and the submitted indicators of rehabilitation, stated that Stojić should not be granted early release.

100. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Application. I have particularly considered Judge Antonetti's reasoning, given his position that he would be in favour of granting the Application. However, I am of the strong view that the mere passage of time cannot constitute sufficient grounds for early release. Such an approach would substitute the consideration of various factors with an automatic process based purely on the number of years served, give insufficient weight to the judicially determined sentence of the convicted person, undermine the exceptionality of being released early, and constrain the discretionary decision-making authority of the President in this respect. In fact, except for the eligibility threshold, which ensures the consistent treatment of similarly-situated prisoners, the number of years served is generally not a factor in deciding whether to grant early release. Furthermore, I do not consider it appropriate to engage in a discussion of the merits of the Appeal Judgement in the context of an early release application.

V. CONCLUSION

101. I am of the opinion that the Application should be denied. While Stojić is eligible to be considered for early release and has demonstrated recent progress towards rehabilitation, there are

¹⁷⁵ See *supra*, para. 18.

significant factors militating against his early release at this stage. The high gravity of his crimes is one of them. In addition, I still have lingering doubts as to the sincerity of Stojić's acceptance of responsibility, critical reflection, and expression of remorse. Further, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

VI. DISPOSITION

102. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **DENY** the Application.

103. The Registrar is **DIRECTED** to provide the authorities of Austria and Croatia, as well as the Prosecutor of the Mechanism, with the public redacted version of this decision as soon as practicable.

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

Done this 17th day of January 2024,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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