

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-15-85-ES.5

Date: 18 January 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 18 January 2024

PROSECUTOR

v.

RADIVOJE MILETIĆ

PUBLIC

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF RADIVOJE MILETIĆ**

Counsel for Mr. Radivoje Miletić:

Ms. Natacha Fauveau Ivanovic

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of Mr. Radivoje Miletić’s direct petition for early release filed on 30 January 2023 (“Miletić” and “Application”, respectively).¹

I. BACKGROUND

2. On 24 February 2005, Miletić surrendered and, on 28 February 2005, he was transferred to the International Criminal Tribunal for the former Yugoslavia (“ICTY”).² At his further initial appearance before the ICTY on 15 April 2005, Miletić pleaded not guilty to all charges against him.³ Following the transfer of his case to Trial Chamber II of the ICTY (“Trial Chamber”) and amendments to the indictment, Miletić entered new pleas of not guilty on 6 July 2006.⁴

3. On 10 June 2010, the Trial Chamber found Miletić guilty pursuant to Article 7(1) of the Statute of the ICTY of murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity.⁵ Miletić was sentenced to 19 years of imprisonment.⁶

4. On 30 January 2015, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) reversed, in part, Miletić’s convictions for persecution and inhumane acts (forcible transfer) as crimes against humanity;⁷ (ii) affirmed the remainder of his convictions for murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity;⁸ (iii) entered a conviction against Miletić pursuant to Article 7(1) of the Statute of the ICTY for murder as a violation of the laws or customs of war;⁹ and (iv) reduced Miletić’s sentence from 19 years to 18 years of imprisonment.¹⁰

5. On 4 April 2016, Miletić was transferred to the Republic of Finland (“Finland”) to serve the remainder of his sentence.¹¹

¹ Requête de Radivoje Miletić aux fins de libération anticipée, 30 January 2023. An English translation of the Application was filed on 14 February 2023. See Radivoje Miletić’s Request for Early Release, 14 February 2023. All references herein are to the English translation of the Application.

² *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted) (“Trial Judgement”), Annex 2, para. 6.

³ Trial Judgement, Annex 2, para. 6; *Prosecutor v. Radivoje Miletić*, Case No. IT-04-80-I, Transcript of 15 April 2005, pp. 59, 63-64.

⁴ Trial Judgement, Annex 2, paras. 2, 7.

⁵ Trial Judgement, para. 2108, p. 830.

⁶ Trial Judgement, p. 830.

⁷ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (“Appeal Judgement”), paras. 785, 2113, 2117.

⁸ Appeal Judgement, para. 2117.

⁹ Appeal Judgement, paras. 1717-1718, 2113, 2117.

¹⁰ Appeal Judgement, paras. 2113, 2117.

¹¹ Order Designating State in which Radivoje Miletić is to Serve his Sentence, 15 December 2015, pp. 1-2.

6. Miletić has previously applied for early release on four occasions. The first application, filed before he had reached the two-thirds eligibility threshold, was denied by the then-President, Judge Theodor Meron, on 26 July 2017.¹² On 23 October 2018, Judge Meron denied the second application, which was filed after Miletić reached the two-thirds threshold.¹³ Miletić's subsequent two applications were denied by the then-President, Judge Carmel Agius, on 5 May 2021 and 24 June 2022, due to significant factors strongly militating against Miletić's early release, including the high gravity of his crimes and his failure to demonstrate sufficient signs of rehabilitation.¹⁴

II. APPLICATION

7. On 30 January 2023, Miletić filed the Application, in which he submits that "all of the conditions for his early release were met as of 17 May 2018, the date on which he served two-thirds of his sentence, and that he has tangibly demonstrated his rehabilitation".¹⁵ He further indicates that, if his request for early release is granted, he would reside with his children in Belgrade, Republic of Serbia ("Serbia").¹⁶

8. On 9 March 2023, I requested the Registrar of the Mechanism ("Registrar") to, *inter alia*, obtain, as soon as possible, the information enumerated in paragraphs 10(a) through 10(c) and paragraph 10(e) of the Practice Direction,¹⁷ as well as any updated information concerning the victims of crimes for which Miletić was convicted, relevant victims' associations, and any media reports concerning him published in the region of the former Yugoslavia since the last update.¹⁸

9. On 24 March 2023, I received an unsolicited joint letter from two victims' associations, namely the Association of the Victims and Witnesses of Genocide and the Association of Mothers of the Srebrenica and Žepa Enclaves, informing me of their views on the Application.¹⁹ I decided to accept this letter in line with paragraph 14 of the Practice Direction.

¹² Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017, paras. 35-36.

¹³ Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (public redacted), paras. 46-47.

¹⁴ Decision on the Application for Early Release of Radivoje Miletić, 24 June 2022 ("Decision of 24 June 2022"), paras. 63-64; Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) ("Decision of 5 May 2021"), paras. 78-79.

¹⁵ Application, para. 47.

¹⁶ Application, para. 45.

¹⁷ 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").

¹⁸ Internal Memorandum from the President to the Registrar, 9 March 2023 (confidential) ("Memorandum of 9 March 2023"), paras. 3-6. *See also* Internal Memorandum from the President to the Registrar, 8 June 2023 (confidential), paras. 2-3.

¹⁹ Joint Letter from the Association of the Victims and Witnesses of Genocide and the Association of Mothers of the Srebrenica and Žepa Enclaves to the President, dated 24 March 2023 ("Victims' Associations' Letter"), pp. 1-2.

10. On 12 April 2023, the Registry of the Mechanism (“Registry”) conveyed to me a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), providing its comments and information concerning the Application.²⁰ According to the Prosecution, Miletić has not demonstrated that early release is warranted due to the high gravity of his crimes, insufficient evidence of his rehabilitation and lack of substantial cooperation with the Prosecution and, if early released, appropriate conditions in compliance with international best practices must be imposed.²¹

11. On 11 May 2023, I invited the authorities of Serbia to, *inter alia*, provide any views that they may wish to offer with regard to the Application, indicate their willingness to monitor the conditions imposed by the Mechanism in case of an early release, and provide guarantees to this effect.²² On 1 June 2023, a *note verbale* from the Embassy of Serbia to the Netherlands, dated 31 May 2023, conveying the requested information, was filed on the judicial record.²³

12. On 22 June 2023, the Registry provided me with: (i) an overview of media reports concerning Miletić that were published in the region of the former Yugoslavia since the last update in September 2019 and information about relevant victims’ associations; and (ii) a strictly confidential memorandum from the Witness Support and Protection Unit of the Mechanism (“WISP” and “WISP Memorandum”, respectively), conveying information since the last update provided in April 2020 in relation to witnesses who testified in the case involving Miletić, including 57 witnesses whom the Prosecution considered to be victims and vulnerable.²⁴

13. On 7 July 2023, I asked the Registry to invite victims’ associations that had not yet submitted views in relation to the Application to do so if they wished.²⁵ On 22 August 2023, the Registrar informed me that no further responses had been received.²⁶

²⁰ Internal Memorandum from the Registrar to the President, 12 April 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 April 2023 (confidential redacted) (“Prosecution Memorandum”). The Prosecution Memorandum includes a list of relevant media reports and victims’ associations. *See* Prosecution Memorandum, paras. 2, 19-22, Annexes A-B.

²¹ Prosecution Memorandum, paras. 2, 4-18, 23-25, 28.

²² Invitation to the Republic of Serbia Related to Radivoje Miletić’s Application for Early Release, 11 May 2023 (confidential and *ex parte*), p. 2.

²³ *Note verbale* from the Embassy of Serbia to the Mechanism, dated 31 May 2023, *conveying* a letter from the Minister of Justice of Serbia, dated 22 May 2023 (“Letter of Serbian Ministry of Justice”), 1 June 2023 (confidential and *ex parte*). On 17 July 2023, the Mechanism received the original of this letter. *See* Internal Memorandum from the Registrar to the President, 17 July 2023 (confidential).

²⁴ Internal Memorandum from the Registrar to the President, 22 June 2023 (strictly confidential), *transmitting* an Internal Memorandum from the Head of WISP to the Registrar, dated 21 June 2023 (strictly confidential).

²⁵ Internal Memorandum from the President to the Registrar, 7 July 2023 (confidential), paras. 2-4.

²⁶ Internal Memorandum from the Registrar to the President, 22 August 2023 (confidential), para. 3.

14. On 17 July 2023, the Registrar conveyed to me a letter from the Prison and Probation Service of Finland, dated 10 July 2023, conveying: (i) a statement on Miletić’s behaviour and the general conditions under which he is imprisoned (“Prison Report”); (ii) a statement on Miletić’s state of health (“Medical Report”); and (iii) an excerpt from the Finnish Criminal Code on conditional release (“Excerpt from Finnish Criminal Code”).²⁷

15. On 24 August 2023, I instructed the Registry to provide relevant materials received in relation to the Application to Miletić for his comments in accordance with paragraph 12 of the Practice Direction.²⁸ On 27 October 2023, the Registry informed my Office that Miletić had not submitted any comments.²⁹

16. With regard to the Application, I have consulted with Judge Carmel Agius and Judge William H. Sekule in their capacity as Judges of the sentencing Chamber at trial and on appeal, respectively,³⁰ in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 16 of the Practice Direction.

III. APPLICABLE LAW

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

18. 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.

19. 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

²⁷ Internal Memorandum from the Registrar to the President, 17 July 2023 (confidential), conveying a letter from the Prison and Probation Service of Finland, dated 10 July 2023 (“Letter from Finnish Prison and Probation Service”).

²⁸ Internal Memorandum from the President to the Registrar, dated 24 August 2023 (confidential), paras. 2-3. This material was subsequently sent to Miletić on 10 October 2023. *See* Email communication from the Office of the Registrar to the Office of the President, dated 10 October 2023.

²⁹ Email communication from the Office of the Registrar to the Office of the President, dated 27 October 2023.

³⁰ *See* Trial Judgement; Appeal Judgement.

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.

20. 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.

21. 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.

22. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers may be 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 be given 14 days to examine the information received by the Registrar, following which he or she may provide any written submissions in response.

23. 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.

24. The enforcement agreement between the United Nations and Finland,³¹ which applies *mutatis mutandis* to the Mechanism,³² provides in Article 3(4) that the President shall determine whether early release is appropriate, and if the President determines that it is not appropriate, Finland shall act accordingly.

³¹ Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of Finland on the Enforcement of Sentences of the International Tribunal, 7 May 1997.

³² See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

IV. ANALYSIS

A. Eligibility

1. Eligibility before the Mechanism

25. 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.³³ Further, serving two-thirds of a sentence has been described by the Mechanism’s jurisprudence as being “in essence, an admissibility threshold”.³⁴

26. Miletić had served two-thirds of his sentence by 17 May 2018,³⁵ and is therefore eligible to be considered for early release.

2. Eligibility under Finnish Law

27. Miletić is currently serving his sentence in Finland.³⁶ The Finnish authorities informed me that, pursuant to the Finnish Criminal Code, a person serving a fixed-term sentence of imprisonment is conditionally released once he or she has served two-thirds of the sentence, unless otherwise provided.³⁷ Miletić, having served two-thirds of his sentence as of May 2018, is therefore eligible under Finnish law to be conditionally released.

28. In any event, the authorities have previously informed the Mechanism that sentences imposed by the ICTY or the Mechanism are enforced in accordance with the Finnish Act on International Co-operation in the Enforcement of Certain Penal Sanctions (21/1987).³⁸ Pursuant to

³³ *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.

³⁴ *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 the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted) (“*Bisengimana* Decision”), para. 19.

³⁵ Decision of 24 June 2022, paras. 21, 34.

³⁶ See *supra*, para. 5.

³⁷ Excerpt from Finnish Criminal Code.

³⁸ See Decision of 24 June 2022, para. 22. See also Internal Memorandum from the then-Registrar to the then-President, 8 January 2020 (confidential) (“Memorandum of 8 January 2020”), *transmitting, inter alia*, Notification from the Central Administration Unit of the Finnish Criminal Sanctions Agency, dated 18 November 2019, p. 1.

section 14 of that Act, the provisions of the Criminal Code of Finland on conditional release shall not apply to persons convicted by the ICTY or the Mechanism who serve their sentence in Finland.³⁹ The Finnish authorities therefore accept that the decision on early release is to be made by the President of the Mechanism.⁴⁰

29. In this respect, I recall that under the Mechanism's legal framework, 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.⁴¹

B. General Standards for Granting

30. According to the Mechanism's jurisprudence, a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release.⁴² 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.⁴³

1. Gravity of Crimes

31. 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.⁴⁴

32. In relation to the gravity of crimes, past decisions have established that: (i) as a general rule, a sentence should be served in full 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

³⁹ See Decision of 24 June 2022, para. 22.

⁴⁰ See Decision of 24 June 2022, para. 22.

⁴¹ *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.

⁴² *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.

⁴³ *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.

⁴⁴ *Bralo* Decision of 28 December 2023, para. 34; *Krstić* Decision of 15 November 2022, para. 33.

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.⁴⁵

33. As set out above, Miletić was found guilty pursuant to Article 7(1) of the Statute of the ICTY of murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity, and of murder as a violation of the laws or customs of war.⁴⁶ The Trial Chamber established, and the Appeals Chamber affirmed, that Miletić participated in, and significantly contributed to, the joint criminal enterprise to forcibly remove the Bosnian Muslim civilians from the Srebrenica and Žepa enclaves, and that he shared the common criminal intent with the other members of this joint criminal enterprise.⁴⁷

34. In assessing the gravity of the crimes for the purpose of determining the sentences of the accused persons in the case involving Miletić, the Trial Chamber observed that “the calculated destruction of Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War” and that the extermination of the Bosnian Muslim males from Srebrenica, accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves, “all together encompass the gravest of crimes under international criminal law”.⁴⁸

35. The Trial Chamber further found that the crimes of genocide, extermination, murder, and persecution were executed with “systematic and cold brutality” and that the forcible transfer of the Bosnian Muslims from Potočari and Žepa was a massive operation, involving the removal of tens of thousands of people over a few days.⁴⁹ In this respect, it recalled in particular the “heart-wrenching evidence of the ‘screening’” in Potočari, where hundreds of husbands, fathers, sons, and brothers were separated from their families.⁵⁰ Moreover, the Trial Chamber held that the manifold persecutory acts that were committed with discriminatory intent were not random or isolated incidents, but rather crimes committed in a pattern on a large scale accompanied by brutality, which constitute factors that increase the gravity of the crimes.⁵¹

⁴⁵ *Bralo* Decision of 28 December 2023, para. 35; *Krstić* Decision of 15 November 2022, para. 34; *Miletić* Decision of 5 May 2021, para. 39.

⁴⁶ Appeal Judgement, paras. 1717-1718, 2113, 2117.

⁴⁷ Trial Judgement, para. 1718. *See* Appeal Judgement, para. 1719.

⁴⁸ Trial Judgement, para. 2148.

⁴⁹ Trial Judgement, para. 2149. *See also* Trial Judgement, para. 2150.

⁵⁰ Trial Judgement, para. 2149.

⁵¹ Trial Judgement, para. 2150.

36. The Trial Chamber also found that the gravity of the crimes was further demonstrated by their terrible impact on the victims and their relatives.⁵² For the thousands who lost their lives at the many execution sites, the consequences were absolute.⁵³ The few survivors of the executions, and the Bosnian Muslim women, children, and elderly people who were forcibly removed from Srebrenica, suffered not only their own physical and mental trauma as a result of the conditions of life in Potočari and their separation from their men, but also the sudden loss and disappearance of their male family members or the uncertainty about the fates of the men yet unaccounted for.⁵⁴ The Trial Chamber further emphasised that those who were forcibly removed from Srebrenica also experienced a sharp decline in their standard of life due to the loss of their homes and possessions as a result of the expulsions.⁵⁵ The Trial Chamber concluded that “[t]he sheer scale and cruelty of these crimes and the continuing impact they have had and still have on so many victims and their relatives is overwhelming”.⁵⁶

37. I recall in this regard that Miletić was not charged with the genocide perpetrated in Srebrenica in July 1995 or as a participant in the joint criminal enterprise to murder the able-bodied Bosnian Muslim men from Srebrenica.⁵⁷ Instead, he was held responsible for his “pivotal role” in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa.⁵⁸

38. Specifically in relation to the nature and extent of Miletić’s involvement, the Trial Chamber found that he held the position of Chief of the Administration for Operations and Training within the Main Staff of the Army of Republika Srpska (“VRS”) during the period relevant for the charges for which he was convicted and that, in June 1995, he was promoted to the rank of General.⁵⁹ The Trial Chamber also established that Miletić played a pivotal coordinating role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa and made continuous contributions at all stages from inception, through implementation, to fruition, with the specific intent to discriminate on political, racial or religious grounds.⁶⁰ In particular, the Trial Chamber found that Miletić drafted Directive 7, which tasked the VRS Drina Corps with an illegal plan for an attack on the civilian population involving the creation of “an unbearable situation of total insecurity with no hope of

⁵² Trial Judgement, para. 2151.

⁵³ Trial Judgement, para. 2151.

⁵⁴ Trial Judgement, para. 2151.

⁵⁵ Trial Judgement, para. 2151.

⁵⁶ Trial Judgement, para. 2152.

⁵⁷ Trial Judgement, paras. 4, 877, 1047, 1603.

⁵⁸ Trial Judgement, paras. 1716, 2195. *See also* Appeal Judgement, para. 743.

⁵⁹ Trial Judgement, para. 1622.

⁶⁰ Trial Judgement, paras. 1715-1716, 1726, 1729, 2195-2197. *See also* Trial Judgement, paras. 1622-1643; Appeal Judgement, paras. 743, 1460, 1474.

further survival or life for the inhabitants of Srebrenica and Žepa”.⁶¹ It also found that he “skilfully and efficiently used his unique position of knowledge” to enable the decisions taken to successfully implement the plan, resulting in the forced removal of thousands of Bosnian Muslims from the respective enclaves.⁶² Accordingly, Miletić had a significant impact on the functioning and operation of the VRS as a whole and he clearly occupied a central position of authority.⁶³ Moreover, as a result of his level of involvement, Miletić was in a position to foresee that this large-scale forced movement of the population would lead to “opportunistic” killings in Potočari, and he willingly took the risk that these killings would occur.⁶⁴

39. Among the aggravating circumstances, the Trial Chamber emphasised the fact that the victims of the crimes were particularly vulnerable and that Miletić’s participation in the commission of the crimes was prolonged and systematic.⁶⁵ Furthermore, the Trial Chamber considered that Miletić’s appeal to certain individuals not to provide the ICTY with information related to the events in Srebrenica aimed at obstructing justice and, more particularly, the work of the ICTY.⁶⁶ The mitigating factors considered by the Trial Chamber included Miletić’s voluntary surrender, apparent good character before the events covered by the indictment, as well as good behaviour during trial, at the detention unit, and while on provisional release.⁶⁷

40. Miletić submits that he “fully comprehends” the gravity of the crimes for which he was sentenced, as all crimes within the jurisdiction of the ICTY, the ICTR, and the Mechanism are of “very high gravity”.⁶⁸ He also repeats his previous submissions that, although the seriousness of the crimes must be taken into account, it must not be the sole reason for denying early release, because there is no international rule preventing early release from being granted to persons convicted of the gravest crimes, and the gravity was already assessed when the sentence was determined.⁶⁹

41. In this respect, I recall that while gravity is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is a factor of fundamental importance.⁷⁰ I also

⁶¹ Trial Judgement, paras. 762, 1716; Appeal Judgement, paras. 1495, 1498-1504. *See also* Trial Judgement, paras. 1644, 1649-1654; Appeal Judgement, paras. 1505-1511.

⁶² Trial Judgement, para. 1716. *See also* Trial Judgement, paras. 1717-1718, 2195; Appeal Judgement, paras. 1555, 1569.

⁶³ Trial Judgement, para. 2196; Appeal Judgement, paras. 1460, 1474, 2026.

⁶⁴ Trial Judgement, paras. 1726-1727; Appeal Judgement, paras. 1669, 1715-1719.

⁶⁵ Trial Judgement, paras. 2153, 2197; Appeal Judgement, paras. 2038, 2040.

⁶⁶ Trial Judgement, para. 2199; Appeal Judgement, para. 2047.

⁶⁷ *See* Trial Judgement, paras. 2155-2156, 2200-2202.

⁶⁸ Application, paras. 25, 32. *See also* Decision of 24 June 2022, para. 32; Radivoje Miletić’s Request for Early Release, 2 January 2022, Annex (“Miletić’s Letter”), p. 1. Miletić’s Letter was initially submitted as part of a confidential application. *See* Radivoje Miletić’s Request for Early Release, 12 March 2019 (confidential), Annex.

⁶⁹ Application, para. 31. *See also* Decision of 24 June 2022, para. 32.

⁷⁰ *Bralo* Decision of 28 December 2023, para. 35; *Krstić* Decision of 15 November 2022, para. 34; Decision of 5 May 2021, para. 39.

consider that Miletić's submission that the gravity of the crimes has already been assessed when determining the sentence is without merit, as the consideration of gravity for the purpose of determining the sentence is a separate exercise from its consideration for the purpose of deciding on early release.

42. In light of the above and as consistently held in the decisions on Miletić's previous applications for early release, there is no doubt as to the high gravity of his crimes. Accordingly, I am of the view that this factor weighs very strongly against Miletić's early release.

2. Treatment of Similarly-Situated Prisoners

43. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Miletić, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.⁷¹ As noted above, all convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.⁷² Having passed this two-thirds threshold on 17 May 2018,⁷³ Miletić is eligible to be considered for early release.

44. Miletić acknowledges that "[i]t is extremely difficult to compare the situation of convicted persons", but argues that such a comparison is essential in order to avoid arbitrary decisions.⁷⁴ To substantiate his argument, he refers to cases where early release was granted to persons convicted of extremely serious crimes, including genocide and crimes committed in Srebrenica, and to persons who received sentences similar to Miletić's.⁷⁵

45. Noting Miletić's arguments in this regard, I recall that each case presents unique circumstances that must be considered on their own merits by the President in determining whether early release is to be granted.⁷⁶ Therefore, once a person has been found to be eligible to be

⁷¹ *Bralo* Decision of 28 December 2023, para. 46; *Krstić* Decision of 15 November 2022, para. 42; *Bisengimana* Decision, paras. 16-17.

⁷² *See supra*, para. 25.

⁷³ *See supra*, para. 26.

⁷⁴ Application, para. 30. *See also* Application, para. 26.

⁷⁵ Application, paras. 27-29.

⁷⁶ *Krstić* Decision of 15 November 2022, para. 44; Decision of 24 June 2022, para. 35; Decision of 5 May 2021, para. 42.

considered for early release, any comparison to other cases in the context of an early release application is inconsequential to the President's decision.⁷⁷

3. Demonstration of Rehabilitation

46. 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.⁷⁸ The prisoner's demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.⁷⁹

47. Before turning to an individualised assessment of Miletić's demonstration of rehabilitation, I note that the Mechanism's jurisprudence expands upon certain elements pertaining to whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules, and I find it appropriate to set this out here.⁸⁰

48. 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.⁸¹ 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.⁸² This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.⁸³

⁷⁷ *Krstić* Decision of 15 November 2022, para. 44; Decision of 24 June 2022, para. 35; *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) ("*Kunarac* Decision of 31 December 2020"), para. 40.

⁷⁸ *See supra*, para. 18.

⁷⁹ *See supra*, paras. 18, 20.

⁸⁰ *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.

⁸¹ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

⁸² *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.

⁸³ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

49. 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.⁸⁴ 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 through the same lens as one would the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.⁸⁵

50. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.⁸⁶ In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁸⁷

51. 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.⁸⁸

52. Turning to the extent to which Miletić has demonstrated rehabilitation, I note that the most probative materials before me are the Application, which also refers to Miletić's Letter submitted before my predecessor, and the Prison Report.

(a) Behaviour in Prison

53. Miletić submits that the Finnish authorities have consistently attested to his rehabilitation and impeccable conduct.⁸⁹

54. The Prison Report that was received for the purpose of the present Application indicates that Miletić's behaviour has been "impeccable".⁹⁰ It states that he "has respected other prisoners, the prison staff, and the prison rules", has participated in different activities in and outside the prison, and has received family visits without immediate supervision. The Prison Report also notes that Miletić "never needed to be rebuked for anything as he has followed the rules and instructions

⁸⁴ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 39.

⁸⁵ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 38.

⁸⁶ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49.

⁸⁷ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49; Decision of 24 June 2022, para. 37; *Bralo* Decision of 31 December 2019, para. 38.

⁸⁸ *Bralo* Decision of 28 December 2023, para. 53; *Krstić* Decision of 15 November 2022, para. 50; *Kunarac* Decision of 31 December 2020, para. 44.

⁸⁹ Application, paras. 37-40. *See also* Application, para. 46.

⁹⁰ Prison Report, p. 1.

given to him” and has conducted himself “in an exemplary manner” during all his visits outside the prison.⁹¹

55. I acknowledge that, based on the reported information, Miletić’s behaviour in prison has been commendable. This merits positive weight in my consideration of his rehabilitation. 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.⁹² It is therefore necessary to consider other elements, as set out below.

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

56. The Mechanism’s jurisprudence 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;⁹³ 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 actually played, can suggest insufficient critical reflection upon his or her crimes.⁹⁴

57. Miletić contends that he has expressed his “profound regret and sincere compassion for the victims and their families” and has acknowledged his role “in the events described in the Judgement” and the fact that he has made mistakes.⁹⁵

58. In Miletić’s Letter, which is addressed to my predecessor, and on which Miletić relies in his Application, he asserts that he “cannot find the words to express [his] regret” and that although he “can see all of the mistakes [he has] made”, he “also know[s] that [he] did not have much choice”.⁹⁶ Miletić also conveys his belief “that every officer bears part of the responsibility for what took place during the war on the territory of the Republic of Bosnia and Herzegovina” and attributes the suffering of the victims to “the war”.⁹⁷

⁹¹ Prison Report, p. 1.

⁹² See *supra*, para. 50.

⁹³ *Krstić* Decision of 15 November 2022, para. 56; *Prosecutor v. Nebojša Pavković*, Case No. MICT-14-67-ES.2, Decision on the Application for Early Release of Nebojša Pavković, 18 May 2022 (“*Pavković* Decision”), para. 57; *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) (“*Đorđević* Decision”), para. 70.

⁹⁴ *Krstić* Decision of 15 November 2022, para. 56; *Pavković* Decision, para. 57; *Đorđević* Decision, para. 70.

⁹⁵ Application, paras. 33-34. See also Miletić’s Letter, p. 1; Application, para. 32.

⁹⁶ Miletić’s Letter, p. 1.

⁹⁷ Miletić’s Letter, p. 1.

59. In my opinion, while Miletić does express regret and compassion for the victims and their families, these expressions are generic and vague, with no reference to his own actions and how they contributed to the specific crimes for which he was convicted, or how his conduct impacted the victims of his crimes. In fact, he explicitly distances himself from the consequences of his conduct by attributing the suffering caused to the “war” rather than his own personal actions. Miletić also expresses the view that he did not have a choice regarding the actions in which he engaged during the conflict, despite the fact that he was a high-level VRS official, whose role in the implementation of the plan of the joint criminal enterprise was found to be “pivotal” and whose contributions to it were “continuous”.⁹⁸

60. In this regard, I observe that my predecessor, Judge Agius, when considering earlier applications for early release submitted by Miletić, similarly found it concerning that Miletić “could not unequivocally admit his personal responsibility for the concrete crimes committed against concrete victims”.⁹⁹ Despite these concerns having been brought to his attention and having the opportunity to address them, Miletić has elected to rely on his previous letter, and to not provide any additional submissions that would indicate his reflection on these concerns and a change of his state of mind since the Decision of 24 June 2022.¹⁰⁰

61. In light of this, I have doubts that Miletić has exhibited signs of critical reflection upon his crimes or of genuine regret and that he has truly accepted his own responsibility for the crimes for which he was convicted.

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

62. Miletić states that, if released early, he will live in Belgrade, Serbia with his children, while the crimes for which he was convicted were committed in another State.¹⁰¹ He indicates that he has lost several close family members since his incarceration.¹⁰² However, he has a very close relationship with his children and would like to be reunited, as soon as possible, with them and his grandchildren, some of whom were born while he was in detention.¹⁰³ I take note of the fact that Miletić has kept regular contact with his family while incarcerated, including through in-person visits.¹⁰⁴ While Miletić has not provided any information as to how he plans to sustain himself in

⁹⁸ See *supra*, para. 38.

⁹⁹ Decision of 5 May 2021, para. 55. See also Decision of 24 June 2022, para. 46.

¹⁰⁰ See Decision of 24 June 2022, para. 46.

¹⁰¹ Application, para. 45.

¹⁰² Application, para. 38.

¹⁰³ Application, para. 38.

¹⁰⁴ Prison Report, p. 1.

Belgrade, I consider that these close family ties would be supportive of any effort to reintegrate into society, should he be released early.

63. I also note Serbia's support of the Application, its views that there would be no hindrance to Miletić staying in Belgrade, and its assurances that, in case of early release, the authorities would be ready to monitor the fulfilment of the conditions imposed and to issue "binding and unequivocal guarantees in the shortest possible time".¹⁰⁵ Further, Miletić's submits that he is prepared to respect any conditions and explicitly commits that he will not be involved in politics.¹⁰⁶

64. Regarding Miletić's mental state, I note, that the Prison and Probation Service of Finland has indicated that it is not able to provide information about any psychiatric or psychological evaluations prepared on Miletić's mental condition which would address the risks posed by his potential release, as well as any remarks Miletić may have made regarding the crimes for which he was convicted and the victims of these crimes.¹⁰⁷ Miletić does not make any submissions on the issue of his mental health either. I observe, however, that information provided in relation to a previous early release application indicated that Miletić's psychological status was stable, although he exhibited mild signs of melancholy and anxiety when discussing certain topics¹⁰⁸ and that, based on his behaviour while incarcerated, Miletić was expected to adapt to the changed societal circumstances of his own home country.¹⁰⁹

65. Although Miletić's close family ties, his willingness to abide by any conditions, and his commitment to not engage in politics do not in and of themselves demonstrate rehabilitation, I consider that they merit positive weight in my consideration of his rehabilitation.

(d) Overall Assessment

66. Miletić has shown commendable behaviour in prison and any attempt he may make to reintegrate into society would be supported by the close ties he has maintained with his family. I am not convinced, however, that he has exhibited signs of critical reflection or of genuine regret about his role in the crimes for which he was convicted, or that he has accepted his own responsibility. Consequently, on the basis of the information presented to me, I cannot conclude that Miletić has

¹⁰⁵ Letter of Serbian Ministry of Justice, pp. 1-2.

¹⁰⁶ Application, para. 44.

¹⁰⁷ Letter from Finnish Prison and Probation Service, p. 1.

¹⁰⁸ Memorandum of 8 January 2020, *conveying, inter alia, note verbale* from the Embassy of Finland to the Mechanism, dated 2 January 2020.

¹⁰⁹ Memorandum of 8 January 2020, *conveying, inter alia, note verbale* from the Embassy of Finland to the Mechanism, dated 2 January 2020.

demonstrated that he has been sufficiently rehabilitated so as to merit early release as a responsible exercise of my discretion.

67. I am mindful that in a few months, in May 2024, Miletić will have served his whole sentence. However, the proximity to the completion of a convicted person's full sentence is not a basis that would weigh in favour of his or her early release. Rehabilitation is a lengthy process that requires sustained efforts.¹¹⁰ I encourage Miletić to use the time until the completion of his sentence, as well as the time following his release, to continue reflecting on his own responsibility and its impact on the victims of the crimes for which he was convicted.

4. Substantial Cooperation with the Prosecutor

68. The Prosecution confirmed that Miletić did not cooperate with it or with the ICTY Prosecution at any point.¹¹¹ On this issue, Miletić submits that his choice not to cooperate during his trial is a fundamental right and that, after his final conviction, he was never contacted by the ICTY or Mechanism Prosecution.¹¹² It is clear that Miletić did not cooperate with the Prosecution and, accordingly, this merits no weight in my consideration of the Application.

C. Other Considerations

1. Comments and Information Provided by the Prosecution

69. In determining an application for early release, past decisions have established that the President shall: (i) use his or her discretion in receiving and considering general comments and information from the Prosecution with regard to early release applications;¹¹³ and (ii) in doing so, 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.¹¹⁴

70. The Prosecution asserts that Miletić has not demonstrated that his early release is warranted due to the high gravity of his crimes,¹¹⁵ insufficient evidence of rehabilitation,¹¹⁶ and lack of

¹¹⁰ *Bralo* Decision of 28 December 2023, para. 77.

¹¹¹ Prosecution Memorandum, para. 18.

¹¹² Application, paras. 35-36.

¹¹³ *Bralo* Decision of 28 December 2023, para. 82; *Krstić* Decision of 15 November 2022, para. 72; *Bralo* Decision of 31 December 2019, para. 69.

¹¹⁴ *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.

¹¹⁵ Prosecution Memorandum, paras. 2, 4-11, 28.

¹¹⁶ Prosecution Memorandum, paras. 2, 12-17, 28.

substantial cooperation with the Prosecution.¹¹⁷ In the event that I would nevertheless grant the Application, the Prosecution requests that appropriate conditions be imposed upon Miletić's release.¹¹⁸

71. In particular, the Prosecution submits that the high gravity of Miletić's crimes weighs heavily against his early release and that in light of this, he should not be granted early release unless there is persuasive evidence of rehabilitation or substantial cooperation with the Prosecution, which there is not.¹¹⁹ In this respect, the Prosecution argues that Miletić does not demonstrate sufficient progress towards rehabilitation since the Decision of 24 June 2022, as his generic claims do not acknowledge his role or the crimes for which he was convicted and his good behaviour in detention is insufficient for that purpose.¹²⁰ The Prosecution also submits that any evidence Miletić offers for his rehabilitation should be considered together with views from victims and communities affected by his crimes and that a wider consultation with victims' associations will allow me to better assess any demonstrated progress by Miletić towards rehabilitation.¹²¹ The Prosecution further argues that consideration must also be given to the possible impact of Miletić's early release on victims and witnesses and, more broadly, on the community into which he will be released, including in view of the climate of revisionism, genocide denial and glorification of convicted war criminals in Serbia where he intends to reside.¹²²

72. I have remained mindful of this information in considering the Application.

2. Views of Serbia

73. Serbia submits that Miletić has served two-thirds of his sentence and expresses concerns about his health and advanced age.¹²³ Further, Serbia recalls that Miletić surrendered voluntarily.¹²⁴ I have also taken note of the fact that Serbia fully supports the Application and guarantees that should Miletić be released early, the Serbian authorities would be ready to monitor the fulfilment of any conditions imposed by the Mechanism.¹²⁵

¹¹⁷ Prosecution Memorandum, paras. 2, 18, 28.

¹¹⁸ Prosecution Memorandum, paras. 2, 23-28.

¹¹⁹ Prosecution Memorandum, paras. 4, 11.

¹²⁰ Prosecution Memorandum, paras. 12, 15-17.

¹²¹ Prosecution Memorandum, paras. 2, 19-20, 28. *See also* Prosecution Memorandum, Annex A.

¹²² Prosecution Memorandum, paras. 21-22. *See also* Prosecution Memorandum, Annex B.

¹²³ Letter of Serbian Ministry of Justice, p. 2.

¹²⁴ Letter of Serbian Ministry of Justice, p. 2.

¹²⁵ Letter of Serbian Ministry of Justice, pp. 1-2.

3. Impact on Witnesses and Victims

74. WISP submits that the early release of a convicted person may impact victims and witnesses in different ways.¹²⁶ 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-traumatise them.¹²⁷ 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.¹²⁸

75. WISP conveyed information concerning a number of witnesses, including those who were identified as victim witnesses or insider/sensitive witnesses. The information provided relates to the places of residence of these witnesses and victims, as well as any psychological trauma and health issues they may suffer from, or whether they have previously reported security concerns. Based on the available information, the vast majority of the witnesses do not live in Serbia.

76. I also note that WISP expressed its concern about the geopolitical situation in Srebrenica, Žepa, and the Republika Srpska in general.¹²⁹ According to WISP, witnesses, especially those of ethnic minority groups or those seen as collaborators or traitors, continue to have a feeling of insecurity, and some of their security concerns are allegedly due to the actions of local law enforcement or other officials.¹³⁰

77. Further, in the Victims' Associations' Letter, the Association of the Victims and Witnesses of Genocide and the Association of Mothers of the Srebrenica and Žepa Enclaves express the view that Miletić has not performed a single act that would warrant his early release.¹³¹ They perceive Miletić's submissions in his Application as defying and insulting for the victims, and submit that he has not shown sincere remorse or any interest in their suffering and has not done anything to relieve their situation.¹³²

78. I have given due regard to this information in considering the present Application.

¹²⁶ WISP Memorandum, para. 7.

¹²⁷ WISP Memorandum, para. 7.

¹²⁸ WISP Memorandum, para. 7.

¹²⁹ WISP Memorandum, para. [22].

¹³⁰ WISP Memorandum, para. [22].

¹³¹ Victims' Associations' Letter, p. 2.

¹³² Victims' Associations' Letter, pp. 1-2.

4. Health of the Convicted Person

79. Previous decisions have taken into account the state of the convicted person's health in the context of an early release application.¹³³ 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.¹³⁴

80. Miletić submits that he is presently 75 years old and has diabetes, and previously suffered from leukaemia, and underwent eye and hip operations.¹³⁵ He asserts that keeping in prison an elderly person who suffers from serious illnesses may constitute degrading and inhuman treatment.¹³⁶

81. The Medical Report I received from the Finnish authorities indicates that Miletić “can continue serving the prison sentence in Finland as far as his state of health is concerned”.¹³⁷ The Finnish Health Care Services for Prisoners have also informed me that Miletić has some chronic diseases, but “they are under control and his ability to function matches his age”.¹³⁸

82. In light of the information before me about Miletić's health, I find no indication that his continued imprisonment is inappropriate, and consider that he has not demonstrated that there are compelling humanitarian grounds which would warrant his early release.

5. Consultation

83. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism.¹³⁹ Judge Agius agrees that while Miletić is eligible to be considered for early release, he has not demonstrated serious progress towards rehabilitation, there are significant factors militating against his early release, and there is no humanitarian reason which would negate such a conclusion. Judge Sekule is similarly of the firm opinion that the Application should be denied, in view of the high gravity of Miletić's crimes, the lack of sufficient signs of rehabilitation, and the absence of compelling humanitarian grounds that would otherwise warrant his early release.

¹³³ *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 2013 (public redacted) (“Reasons for *Simatović* Decision”), para. 37; *Krstić* Decision of 15 November 2022, para. 87; *Bisengimana* Decision, para. 32.

¹³⁴ 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.

¹³⁵ Application, paras. 13, 42.

¹³⁶ Application, para. 43.

¹³⁷ Medical Report, p. 1.

84. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Application.

V. CONCLUSION

85. Although Miletić is eligible to be considered for early release, I am of the view that the Application should be denied. Significant factors continue to strongly militate against his early release, including the high gravity of his crimes, and his failure to demonstrate sufficient signs of rehabilitation. Further, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment. I am cognizant of the fact that Miletić is expected to have served his full sentence in May of this year. However, it is still incumbent upon him to fulfil the conditions for granting early release. The proximity to the date when Miletić will have fully served his 18-year sentence is not a consideration that would weigh in favour of granting him early release.

VI. DISPOSITION

86. 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.

87. The Registrar is **DIRECTED** to provide the authorities of Finland and Serbia, as well as the Prosecution, with a copy of this decision as soon as practicable.

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

Done this 18th day of January 2024,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]

¹³⁸ Medical Report, p. 1.

¹³⁹ See *supra*, para. 16.



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