

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-13-46-ES.1

Date: 24 January 2024

Original: English

BEFORE THE PRESIDENT

Before: Judge Graciela Gatti Santana

Registrar: Mr. Abubacarr Tambadou

THE PROSECUTOR

v.

RADISLAV KRSTIĆ

PUBLIC

**PROSECUTION'S RESPONSE TO RADISLAV KRSTIĆ'S
APPLICATION FOR EARLY RELEASE**

The Office of the Prosecutor:

Mr. Mathias Marcussen

Counsel for Mr. Radislav Krstić:

Mr. Tomislav Višnjić

Mr. Vladimir Petrović

1. Radislav Krstić’s latest application for early release¹ should be dismissed. Following the President’s denial of early release a little over a year ago,² Krstić is again applying for early release, but without further substantiation.

2. While early release applications may be submitted at any time,³ they must contain arguments substantiating the application⁴ and not be a repetition of a previous request.⁵ Krstić’s Application is a reiteration of his previous application,⁶ and of the President’s 15 November 2022 Decision, which Krstić refers to throughout,⁷ but is devoid of arguments and is filed without any evidentiary support.

3. Krstić offers as support a future “comprehensive statement of acceptance of responsibility and remorse”,⁸ and various medical issues.⁹ Krstić intends to base his “comprehensive statement” on information from other sources as per the Practice Direction, to address “all relevant issues in a non-generic way”.¹⁰ However, Krstić has already received, and commented on, information from those sources received during consideration of his 2022 Application,¹¹ on which he has now had “more than a year to engage in [] critical reflection”.¹²

¹ *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1 (“*Krstić*”), Application for Early Release, 19 January 2024 (“Application”).

² *Krstić*, Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (public redacted version) (“15 November 2022 Decision”).

³ 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”), para.7.

⁴ *See Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant’s Brief, 17 August 2006 (filed on 8 September 2006), para.19 (wherein the Appeals Chamber found to be frivolous a motion “devoid of any arguments” in relation to the rule in question).

⁵ *See Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on a Motion to Reconsider the “Decision on Motions for Hospitalization”, 28 August 2020, p.3 (wherein the Appeals Chamber recalled that filing repetitive requests “does not serve the interests of justice, wastes valuable judicial resources, and may amount to an abuse of process”).

⁶ *Krstić*, Petition for Early Release, 21 April 2022 (public with confidential annex B) (“2022 Application”).

⁷ *See* Application, paras.25-26, 28-29, 31, 35, 37.

⁸ Application, para.30.

⁹ Application, para.40.

¹⁰ Application, para.30. *See* Practice Direction, paras.10, 12-13.

¹¹ 15 November 2022 Decision, para.17.

¹² Application, para.36.

4. Similarly, Krstić enumerates medical issues then seeks additional medical examination seemingly with a view to potentially supporting his request for early release,¹³ which further shows the lack of substantiation.¹⁴

5. Even if the Application were to be construed as a request for reconsideration of the 15 November 2022 Decision, it should be dismissed, as Krstić fails to show any clear error of reasoning or exceptional circumstances that would warrant a review.¹⁵

6. In conclusion, while convicted persons have the right to request early release, they cannot merely repeat earlier applications and refer to possible future arguments and evidence. Accepting otherwise will drain the Mechanism's limited resources.

7. For the foregoing reasons, Krstić's Application for early release should be dismissed without prejudice.

Word Count: 626



Mathias Marcussen
Senior Legal Officer, Officer in Charge

Dated this 24th day of January 2024
At The Hague, The Netherlands

¹³ See Application, paras.40-41.

¹⁴ The Prosecution notes that there is a Medical Officer at the UN Detention Unit where Krstić is detained "responsible for managing the care of the physical and mental health of Detainees". Rule 46, para.1, of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018.

¹⁵ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Public Redacted Version of the "Decision on Valentin Ćorić's Request for Provisional Release" Issued on 15 August 2016, 1 December 2016, pp.2-3.



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