

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-17-112-ES.5

Date: 16 December 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambaou

Decision of: 16 December 2021

PROSECUTOR

v.

MILIVOJ PETKOVIĆ

***CONFIDENTIAL REDACTED VERSION
WITH CONFIDENTIAL ANNEX***

**DECISION ON THE EARLY RELEASE OF
MILIVOJ PETKOVIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Milivoj Petković:

Ms. Vesna Alaburić

Mr. Davor Lazić

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of a direct petition for early release filed by Mr. Milivoj Petković on 25 November 2020 (“Petković” and “Application”, respectively).¹

I. BACKGROUND

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

3. On 29 May 2013, Trial Chamber III of the ICTY found Petković guilty pursuant to Article 7(1) of the Statute of the ICTY of numerous counts of grave breaches of the Geneva Conventions,⁴ violations of the laws or customs of war,⁵ and crimes against humanity⁶ and sentenced him to 20 years of imprisonment.⁷

4. On 29 November 2017, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) granted, in part, one sub-ground of Petković’s appeal and one ground of the Prosecution’s appeal; (ii) reversed a number of his convictions as a participant in a joint criminal enterprise; (iii) dismissed his appeal in all other respects; (iv) affirmed the remainder of his convictions; and (v) affirmed the sentence of 20 years of imprisonment.⁸

5. On 22 September 2020, Petković was transferred to the Kingdom of Belgium (“Belgium”) to serve the remainder of his sentence.⁹

II. APPLICATION

6. On 25 November 2020, Petković filed the Application, indicating that if released early he would reside in [REDACTED], Republic of Croatia (“Croatia”).¹⁰

¹ Milivoj Petković’s Application for Early Release, 25 November 2020.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 29 May 2013 (English translation) (“Trial Judgement”), vol. 5, para. 33.

³ Trial Judgement, vol. 5, para. 33.

⁴ Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁵ Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁶ Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁷ Trial Judgement, vol. 4, p. 431.

⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017 (“Appeal Judgement”), pp. 1404-1406.

⁹ See e.g. Order Designating the State in which Milivoj Petković is to Serve his Sentence, 14 July 2020. See also Application, para. 4.

¹⁰ Application, paras. 6, 36-37.

7. On 20 January 2021, I requested the Registry of the Mechanism (“Registry”) to undertake the steps prescribed in paragraphs 9 and 10 of the relevant practice direction.¹¹
8. On 26 February 2021, the Registrar provided me with: (i) a report concerning Petković’s detention in the United Nations Detention Unit (“UNDU”); and (ii) a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 25 February 2021, setting forth its views on the Application.¹² The Registry also conveyed to me several documents provided by Belgium on Petković’s detention at Leuze-en-Hainaut Prison.¹³ In these documents the Belgian authorities indicated that conducting a psycho-social assessment of Petković would be extremely difficult in light of the language barrier and the COVID-19 pandemic.¹⁴
9. On 12 March 2021, the Registrar provided me with the list of the most relevant victims’ associations that have been concerned with the crimes for which Petković was convicted.¹⁵
10. On 30 March 2021, the Registrar provided me with: (i) a strictly confidential memorandum from the Witness Support and Protection Unit of the Mechanism (“WISP”) containing information related to the witnesses who testified in the case involving Petković; and (ii) an overview of media reports concerning Petković that were published in Croatia in the past two years.¹⁶
11. On 7 April 2021, the Registrar transmitted to me additional documents provided by Belgium, including a medical report.¹⁷
12. On 8 April 2021, in light of the concerns raised by the Belgian authorities regarding the feasibility of conducting a psycho-social assessment, I requested the Registry to take steps to

¹¹ Internal Memorandum from the President of the Mechanism to the Registrar of the Mechanism (“Registrar”), dated 20 January 2021 (confidential) (“Memorandum of 20 January 2021”), paras. 2-6; 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”), paras. 9-10.

¹² Internal Memorandum from the Registrar to the President, dated 26 February 2021 (confidential) (“Memorandum of 26 February 2021”), *transmitting, inter alia*: (i) the UNDU custody report (“UNDU Custody Report”); and (ii) an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch to the Officer-in-Charge, Registry, Hague branch, dated 25 February 2021 (public redacted) (“Prosecution Submissions”).

¹³ Memorandum of 26 February 2021, *transmitting, inter alia*: (i) the letter from the Belgian Task Force for International Criminal Justice, dated 7 February 2021 (“Letter of 7 February 2021”); and (ii) the psycho-social report, dated 28 January 2021 (“Psycho-social Report”).

¹⁴ Letter of 7 February 2021, p. 2.

¹⁵ Internal Memorandum from the Registrar to the President, dated 12 March 2021 (confidential) (“Memorandum of 12 March 2021”).

¹⁶ Internal Memorandum from the Registrar to the President, dated 30 March 2021 (confidential), *transmitting*: (i) Internal Memorandum from the Head of WISP to the Registrar, dated 30 March 2021 (strictly confidential) (“WISP Memorandum”); and (ii) Internal Memorandum from the Officer-in-Charge, External Relations, Hague branch to the Registrar, dated 30 March 2021.

¹⁷ Internal Memorandum from the Registrar to the President, dated 7 April 2021 (confidential), *transmitting, inter alia*, a medical report, dated 12 March 2021 (“Medical Report”).

identify a Bosnian/Croatian/Serbian-speaking psychiatrist or psychologist who could travel to Leuze-en-Hainaut Prison to conduct an evaluation of Petković, with his consent.¹⁸

13. On 10 June 2021, I invited Croatia to, *inter alia*: (i) provide any views that they may wish to offer with regard to the Application; and (ii) indicate if the Croatian authorities would be willing to monitor any conditions imposed by the Mechanism in case of an early release and to provide guarantees to this effect.¹⁹ On 29 June 2021, Croatia responded that [REDACTED].²⁰

14. On 29 July 2021, the Registrar provided me with a psychological assessment of Petković, prepared by an independent expert assigned pursuant to my request of 8 April 2021.²¹

15. On 30 July 2021, I instructed the Registrar to provide all materials received in relation to the Application to Petković, in a language that he understands, for his comments in accordance with paragraph 12 of the Practice Direction.²² Petković's counsel and Petković received, on 23 and 26 August 2021, respectively, the materials transmitted by the Registry.²³ On 6 September 2021, Petković submitted his comments and a letter addressed to me.²⁴

16. On 5 November 2021, I further invited Croatia to provide: (i) a timeline detailing how soon Petković's final conviction by the ICTY would be registered in his criminal record in Croatia and when any licenses for firearms or other weapons that Petković may possess would be revoked, if Petković is granted early release; (ii) confirmation that Croatia is both willing and able to monitor any conditions imposed by the Mechanism, and to designate a Monitoring Authority that would act in line with the necessary requirements, if Petković is granted early release; (iii) Croatia's undertakings both to report to the Mechanism within 24 hours any failure by Petković to comply with the conditions of his early release and, in line with the necessary requirements, to arrest

¹⁸ Internal Memorandum from the President to the Registrar, dated 8 April 2021 (confidential), paras. 3-4.

¹⁹ Invitation to the Republic of Croatia Related to the Application for Early Release of Milivoj Petković, 10 June 2021 (confidential and *ex parte*), p. 2.

²⁰ *Note verbale* from the Embassy of Croatia to the Registrar, dated 25 June 2021 (confidential), transmitting Letter from the Croatian Ministry of Justice and Administration to the President, dated 24 June 2021 (confidential), filed 29 June 2021 ("Croatia's Response").

²¹ Internal Memorandum from the Registrar to the President, dated 29 July 2021 (confidential), transmitting a psychological report, dated 28 July 2021 ("Psychological Report"). See also Internal Memorandum from the Registrar to the President, dated 21 July 2021 (confidential).

²² Internal Memorandum from the President to the Registrar, dated 30 July 2021 (confidential), para. 2.

²³ Milivoj Petković's Submission Pursuant to Paragraph 13 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence or Early Release, 6 September 2021 ("Petković's Submissions"), paras. 2-3.

²⁴ Petković's Submissions and Annex containing a letter from Petković to the President, dated 30 August 2021 ("Petković's Letter").

Petković and transfer him immediately to the custody of the Mechanism; and (iv) binding and unequivocal guarantees to this effect.²⁵

17. On 2 December 2021, in response to the Further Invitation, I received a letter from the Croatian Ministry of Justice containing Croatia's guarantees and confirming that: [REDACTED]²⁶

18. On 8 December 2021, further to the Mechanism's request,²⁷ Croatia confirmed that [REDACTED].²⁸

19. With regard to the Application, I have consulted with Judge Theodor Meron, Judge Jean-Claude Antonetti, and Judge Liu Daqun in their capacity as Judges of the respective sentencing Chambers,²⁹ as foreseen under Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules").

III. APPLICABLE LAW

20. Pursuant to Article 26 of the Statute of the Mechanism ("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 International Criminal Tribunal for Rwanda ("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

²⁵ Further Invitation to the Republic of Croatia Related to the Application for Early Release of Milivoj Petković, 5 November 2021 (confidential and *ex parte*) ("Further Invitation"), p. 3.

²⁶ *Note verbale* from the Embassy of Croatia to the Registrar, dated 25 November 2021 (confidential and *ex parte*), transmitting Letter from the Croatian Ministry of Justice and Administration to the President, dated 22 November 2021 (confidential and *ex parte*), filed 2 December 2021 ("Croatia's Guarantees"), p. 1.

²⁷ *Note verbale* from the President to the Embassy of Croatia, dated 3 December 2021 (confidential), p. 1.

²⁸ *Note verbale* from the Embassy of Croatia to the Registrar, dated 6 December 2021 (confidential and *ex parte*), transmitting Letter from the Croatian Ministry of Justice and Administration to the President, dated 6 December 2021 (confidential and *ex parte*), filed 8 December 2021 ("Croatia's Further Guarantees"), p. 1.

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 Prosecutor.

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. 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 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.

24. 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 relevant information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. If early release is granted, it may be subject to conditions.³⁰

25. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the ICTY or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. The enforcement agreement between the United Nations and the Government of Belgium,³¹ which applies *mutatis mutandis* to the Mechanism,³² provides in Article 3(5) that upon being informed of the convicted person becoming eligible for early release, the President shall evaluate, in consultation with the judges of the Mechanism, whether there is reason to grant early release.

²⁹ See generally Trial Judgement; Appeal Judgement.

³⁰ Practice Direction, para. 20; *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"), para. 27; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Motions Related to Valentin Ćorić's Request for Variation of Early Release Conditions, 21 February 2020, para. 39; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019, paras. 74, 76, 78; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019, paras. 81-82, Annex A.

³¹ Agreement Between the United Nations and the Government of the Kingdom of Belgium on Enforcement of Sentences Handed Down by the International Criminal Tribunal for the Former Yugoslavia, 2 May 2007.

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

IV. ANALYSIS

A. Eligibility

1. Eligibility before the Mechanism

26. 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 Serving two-thirds of a sentence has been described as being "in essence, an admissibility threshold".³⁴ As Petković passed this two-thirds threshold on 10 February 2021,³⁵ he is eligible to be considered for early release.

2. Eligibility under Belgian Law

27. As set out above, Petković is currently serving his sentence in Belgium.³⁶ The Belgian authorities have informed the Mechanism that Petković is eligible for provisional release pursuant to domestic legal provisions.³⁷

28. In this respect, I recall that under the Mechanism's framework, the early release of persons convicted by the ICTR, the ICTY or the Mechanism falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.³⁸

B. General Standards for Granting

29. 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, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case,

³³ See e.g. *Miletić* Decision, para. 29; *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Decision on the Early Release of Théoneste Bagosora, 1 April 2021 (public redacted) ("*Bagosora* Decision"), para. 26; *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"), para. 31.

³⁴ See e.g. *Miletić* Decision, para. 29; *Prosecutor v. Jadranko Prlić*, Case No. MICT-17-112-ES.2, Decision on the Early Release of Jadranko Prlić, 23 March 2021 ("*Prlić* Decision"), p. 4; *Kunarac* Decision, para. 31.

³⁵ Memorandum of 26 February 2021, para. 5; Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

³⁶ See *supra*, para. 5.

³⁷ Letter of 7 February 2021, p. 1.

³⁸ *Miletić* Decision, para. 31; *Bagosora* Decision, para. 29; *Prlić* Decision, p. 4.

as required by Rule 151 of the Rules.³⁹ I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

30. While I note that 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.⁴⁰ It is precisely the gravity of the crimes, understood as an overall assessment of the severity of a convicted person's criminal conduct which is the primary consideration in determining the length of a sentence imposed by the sentencing Chamber.⁴¹ I emphasise in this respect that, 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.⁴² Moreover, the graver the criminal conduct in question, the more compelling such a demonstration should be.⁴³ In other words, while the gravity of the crimes by itself cannot be seen as depriving a convicted person of an opportunity to argue his or her case for early release, it may be said to determine the threshold that the arguments in favour of early release must reach.⁴⁴

31. Petković submits that he does not deny nor in any way diminish the gravity of the crimes for which he was convicted.⁴⁵

32. The Trial Chamber found that as early as January 1993, a Joint Criminal Enterprise ("JCE") existed with a single common criminal purpose: the domination by the Croats of the Croatian Republic of Herceg-Bosna ("HR H-B") through ethnic cleansing of the Muslim population.⁴⁶

33. The Trial Chamber considered Petković to be one of the key members of the JCE.⁴⁷ From 14 April 1992 to 26 April 1994, as the Chief of the Main Staff and subsequently the deputy commander, and ultimately the deputy Chief of the Croatian Defence Council ("HVO") Main Staff,

³⁹ *Miletić* Decision, para. 32; *Bagosora* Decision, para. 30; *Kunarac* Decision, para. 33.

⁴⁰ *See Miletić* Decision, para. 39.

⁴¹ *Miletić* Decision, para. 39.

⁴² *Miletić* Decision, para. 39.

⁴³ *Miletić* Decision, para. 39.

⁴⁴ *Miletić* Decision, para. 39.

⁴⁵ Application, para. 18; Petković's Submissions, para. 8. *See* Psychological Report, p. 6.

⁴⁶ Trial Judgement, vol. 4, paras. 41, 65-66. *See* Appeal Judgement, para. 3. Specifically, the Trial Judgement found that the members of the JCE "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 HZ(R) H-B once they were released". Trial Judgement, Vol. 4, para. 66. *See also* Trial Judgement, vol. 4, paras. 44-65, 67-73. In the course of consultation, Judge Antonetti asked me to emphasise that he dissented from this finding. *See* Trial Judgement, vol. 4, para. 4.

he ordered, planned, facilitated, encouraged, and concealed the crimes committed by members of the HZ(R) H-B⁴⁸ armed forces over which he had effective control.⁴⁹ These crimes included (i) grave breaches of the Geneva Conventions, such as: wilful killing; inhuman treatment (sexual assault); unlawful deportation of a civilian; unlawful transfer of a civilian; unlawful confinement of a civilian; inhuman treatment (conditions of confinement); extensive destruction of property not justified by military necessity; and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;⁵⁰ (ii) violations of the laws or customs of war, such as: unlawful labour; destruction or wilful damage to institutions dedicated to religion or education; plunder of public or private property; unlawful attack on civilians; and unlawful infliction of terror on civilians;⁵¹ and (iii) crimes against humanity, such as: persecutions on political, racial, and religious grounds; murder; rape; inhumane acts (forcible transfer; conditions of confinement); imprisonment; and deportation.⁵²

34. Petković, *inter alia*: (i) took part in planning the military operations in the Municipality of Gornji Vakuf in January 1993, in the Municipality of Jablanica in April 1993, in the Municipality of Prozor in July and August 1993 and in the Municipality of Vareš in October 1993; (ii) planned the arrest of men who did not belong to any armed force in the municipalities of Mostar, Stolac, and Čapljina; (iii) participated in the crimes committed during the siege of East Mostar; and (iv) ordered and authorised the forced labour of detainees from the Heliodrom and the Vitina-Otok Camp.⁵³ The Trial Chamber concluded that Petković had the intent to evict the Muslim population from the HZ(R) H-B and did not make serious efforts to end the commission of crimes even though he continued to exercise control over the HVO armed forces until April 1994.⁵⁴

35. The Trial Chamber further found that Petković played a key role in the commission of crimes by virtue of his functions and powers as the Chief, subsequently the deputy commander, and ultimately the deputy Chief of the HVO Main Staff.⁵⁵ As such, he abused his authority in order to facilitate the crimes by using the resources at his disposal for the implementation of all the crimes.⁵⁶ The Trial Chamber, however, also identified several mitigating circumstances, including Petković's

⁴⁷ Trial Judgement, vol. 4, para. 1353.

⁴⁸ HZ(R) H-B stands for the Croatian Community and Republic of Herceg-Bosna, referred to jointly. *See* Appeal Judgement, Annex B, p. 35.

⁴⁹ Trial Judgement, vol. 4, para. 1353.

⁵⁰ Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁵¹ Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁵² Trial Judgement, vol. 4, paras. 820, 853, p. 431.

⁵³ Trial Judgement, vol. 4, para. 1353.

⁵⁴ Trial Judgement, vol. 4, para. 1353.

⁵⁵ Trial Judgement, vol. 4, para. 1355.

⁵⁶ Trial Judgement, vol. 4, para. 1355.

voluntary surrender as well as his good behaviour while in detention pending and during his trial and during his provisional releases.⁵⁷

36. The Appeals Chamber reversed several of Petković's convictions in relation to some of the crime sites.⁵⁸ At the same time, it classified these reversals as being of a "limited nature" and found that "Petković remains convicted of very serious crimes".⁵⁹ As a consequence, the Appeals Chamber concluded that no reduction of sentence was warranted, and confirmed his 20-year sentence.⁶⁰

37. The high gravity of Petković's crimes is not in doubt. In these circumstances, this factor weighs against his early release.

2. Treatment of Similarly-Situated Prisoners

38. Persons sentenced by the ICTY, like Petković, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.⁶¹ 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.⁶² Having passed this two-thirds threshold in February 2021, Petković is eligible to be considered for early release.⁶³

3. Demonstration of Rehabilitation

39. Before turning to an individualised assessment of Petković's demonstration of rehabilitation, I recall that I have set forth some of the considerations that will guide my assessment of whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules.⁶⁴

40. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as rehabilitation of perpetrators of ordinary domestic crimes.⁶⁵ For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not

⁵⁷ Trial Judgement, vol. 4, paras. 1356-1357.

⁵⁸ Appeal Judgement, para. 3363, pp. 1404-1406.

⁵⁹ Appeal Judgement, para. 3363.

⁶⁰ See Appeal Judgement, para. 3363.

⁶¹ *Miletić* Decision, para. 41; *Bagosora* Decision, para. 39; *Kunarac* Decision, para. 39.

⁶² See *supra*, para. 26.

⁶³ See *supra*, para. 26.

⁶⁴ *Miletić* Decision, paras. 43-47; *Bagosora* Decision, paras. 41-45; *Kunarac* Decision, paras. 41-45.

⁶⁵ *Miletić* Decision, para. 44; *Bagosora* Decision, para. 42; *Kunarac* Decision, para. 42.

consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁶⁶

41. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past or may be of persuasive relevance.⁶⁷ 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.⁶⁸ This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in order to demonstrate rehabilitation.⁶⁹ It falls, however, upon the convicted person to convince me 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 my discretion.⁷⁰

42. Rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.⁷¹ Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.⁷² I will, therefore, generally consider the convicted person's post-release plans, including the envisaged place of residence.⁷³ If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.⁷⁴ Bearing this in mind, as a general matter I do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a greater degree of rehabilitation.⁷⁵

⁶⁶ *Miletić* Decision, para. 44; *Bagosora* Decision, para. 42; *Kunarac* Decision, para. 42.

⁶⁷ *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.

⁶⁸ *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.

⁶⁹ *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.

⁷⁰ *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.

⁷¹ *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

⁷² *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

⁷³ *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

⁷⁴ *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

⁷⁵ *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

43. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on early release of a convicted person who is eligible to be considered for such relief.⁷⁶ Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.⁷⁷

44. Turning to the extent to which Petković has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the UNDU Custody Report; (ii) the Psycho-social Report; (iii) the Psychological Report; as well as (iv) Petković's submissions in the Application and Petković's Letter.

(a) Behaviour in Prison

45. The UNDU Custody Report is very positive with regard to Petković's behaviour while he was at the UNDU.⁷⁸ In particular, it is stated that he always fully complied with the detention regime and was respectful to management and staff, never breached discipline, or was subject to any warnings or disciplinary procedures.⁷⁹ Moreover, Petković was the most active detainee on the wing, acting as a wing cleaner, participating in education, personal sport, and other activities including painting.⁸⁰ He also "always enjoyed cordial relations with all other detainees regardless of their background" and never presented a risk to other detainees or to himself.⁸¹

46. The Psycho-social Report, prepared by the Belgian authorities four months after Petković's arrival, is not overly extensive. At the same time nothing in it suggests that Petković's behaviour in Leuze-en-Hainaut prison has been problematic.⁸² The report states that as Petković does not speak French, he is often left on his own or with another inmate with whom he is able to communicate on a basic level.⁸³ Petković "has not made any requests other than to be able to work, not for financial reasons but so that he can have an occupation that would give structure to his detention".⁸⁴ It is reported that his days lack substance, as they consist of reading, walking in the enclosure of his

⁷⁶ *Miletić* Decision, para. 47; *Bagosora* Decision, para. 45; *Kunarac* Decision, para. 45.

⁷⁷ *Miletić* Decision, para. 47; *Bagosora* Decision, para. 45; *Kunarac* Decision, para. 45.

⁷⁸ See UNDU Custody Report, p. 1.

⁷⁹ UNDU Custody Report, p. 1.

⁸⁰ See UNDU Custody Report, p. 1.

⁸¹ UNDU Custody Report, p. 1.

⁸² Psycho-social Report, p. 1.

⁸³ Psycho-social Report, p. 1.

⁸⁴ Psycho-social Report, p. 1.

wing, and watching television.⁸⁵ The authorities point out that “[i]n his previous prison, it seems that he was never without something to do”.⁸⁶

47. While recognising the limitations that a convicted person’s behaviour in prison may have in demonstrating rehabilitation,⁸⁷ I nevertheless find that Petković’s conduct in detention is a factor that militates in his favour.

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

48. In his submissions Petković appears to accept his personal responsibility for the crimes he committed and for which he was convicted by the ICTY. Petković also expresses remorse for his crimes and his condolences to their victims.⁸⁸

49. In particular, in a public letter addressed to me, Petković states:

[A]most thirty years have passed since the war events in Croatia and [Bosnia and Herzegovina] I had participated in. Not a single day has passed since then without images of war horrors returning to my memory. I know that it will be so to the end of my life. I live with it and I deal with it as best I can.

War is human tragedy. Evil. In war even good people may, with their deeds or omissions, commit crimes, or contribute to commission of crimes.

Today, eight years since the first-instance judgement and four years since the final judgement, I have a need to say to you, Mr. President, and to all others, that I accept my judgement and personal responsibility for my acts or omissions which led to the commission of crimes I was convicted for. I also accepted the punishment which I serve. There is no justification, nor excuse, for the crimes committed. Because of that I feel sincere remorse and express my deep condolences to all victims of Bosniaks [*sic*] ethnicity, and to their relatives and friends. I feel a human need to say this, although I am aware that my regret and expression of condolences offer weak consolation to those who have lost their love ones.

Admitting the crimes committed, sincere remorse and expression of condolences to the families of victims is the only way to reconciliation, preserving peace and coexistence among the peoples of Bosnia and Herzegovina and ex-Yugoslavia. I hope this statement of mine will contribute to that goal at least a little bit. It is the most I can do in the circumstances.⁸⁹

50. The Psychological Report sheds further light on the process of Petković’s reflection on his crimes observing that:

⁸⁵ Psycho-social Report, p. 1.

⁸⁶ Psycho-social Report, p. 1.

⁸⁷ *See supra*, para. 40.

⁸⁸ *See Application*, para. 22 stating: “[...] it is hereby submitted that Mr. Petković accepted the final judgement in his case. He accepts his personal responsibility for the crimes he was convicted for and the sentence imposed. He expresses his sincere remorse for his acts or omissions which led or contributed to the commission of crimes and his deep condolences to the victims of Muslim/Bosniak [*sic*] ethnicity and their relatives. He will bear this personal burden for the rest of his life. He can only hope that he will have an opportunity to personally contribute to the peace and reconciliation among nations in the former Yugoslavia in general and BH in particular.”

⁸⁹ Petković’s Letter, p. 1.

[Petković] has an idea about his guilt for the crime he committed, but not in the form of intense feelings of guilt. Sometimes he thinks about that. "It is appalling what happened and what he and his staff did during the war," said Mr. Petkovi[ć]. He is a rational person with little contact with his own emotions. His coping style is "great" – don't whine, head up, keep going. Such a coping style is often seen in Balkan men and especially military.⁹⁰

51. However, the Psychological Report also appears to corroborate Petković's submissions in stating that:

Petković accepted the final judgment in his case. He accepts his personal responsibility for the crimes he was convicted for, and the sentence imposed. He expresses his sincere remorse for his actions or omissions which led or contributed to the commission of crimes and his deep condolences to the victims of Muslim/Bosnian ethnicity and their relatives.⁹¹

52. Having carefully reflected on the statements of Petković presented above, and their reinforcement by the Psychological Report, I consider them to be genuine. I consider it particularly important that Petković has had the courage to publicly admit the crimes he committed and to accept the judgements of the ICTY convicting him for them. This approach is not only a very relevant indicator of rehabilitation, but can also directly contribute to easing tensions in the former Yugoslavia, countering the revisionism so often fuelled by politicians in the Western Balkans.

(c) Prospects of Successful Reintegration into Society

53. Petković states that if released early, he would reside in [REDACTED], Croatia, [REDACTED].⁹² He indicates that he will spend his time with his immediate family and his three grandchildren.⁹³ Petković submits that he and his wife are both retired and their personal pensions will be sufficient for their needs.⁹⁴

54. It is apparent that Petković has kept and cultivated his family connections.⁹⁵ Such close family ties may certainly facilitate his attempts to reintegrate into society should he be released early. I also note that Petković would be able to support himself financially.⁹⁶

55. I have also considered Petković's submission that he has never been politically engaged, or held any political function.⁹⁷ This statement is supported by his lack of contact with the press while in detention and further corroborated by the Psychological Report which emphasises that Petković "has reached an advanced age where he shows no interest in politics and instead, he especially

⁹⁰ Psychological Report, p. 5.

⁹¹ Psychological Report, pp. 5-6.

⁹² Application, para. 36. *See* Psychological Report, p. 4.

⁹³ Application, para. 36. *See* Psychological Report, pp. 4-5.

⁹⁴ Application, para. 36.

⁹⁵ UNDU Custody Report, p. 1; Letter of 7 February 2021, Annex, List of virtual visits. *See* Application, para. 33.

⁹⁶ *See* Psychological Report, p. 5.

⁹⁷ Application, para. 29; Petković's Submissions, para. 12.

longs for certain family activities and hobbies with which he can fill his days satisfactorily”.⁹⁸ Being mindful of disturbing instances of public glorifications of persons convicted by the ICTY and/or the Mechanism in the region of the former Yugoslavia, I accord a particular importance to this factor.

56. Finally, I note that on 24 June 2021, in a letter addressed to me, the Croatian Ministry of Justice and Administration stated that the Government of Croatia will undertake all necessary measures to ensure that Petković complies with any conditions of his early release that may be imposed.⁹⁹

57. Based on the foregoing, I consider that, if released early, Petković has a real prospect of successfully reintegrating into society. Moreover, I trust that he will not engage in politics and will not allow to use his person for the political goals of others. Should Petković be released early, I will closely monitor his adherence to any related conditions.

(d) Overall Assessment

58. I consider that there are a number of indicators demonstrating that Petković has reached a sufficient level of rehabilitation. In this regard I place particular emphasis on Petković’s acceptance of his personal responsibility for the crimes he was convicted for, his signs of critical reflection, and his expression of remorse, which I consider to be genuine. In addition, I give some weight to his good behaviour in prison. Finally, I believe that Petković would be able to successfully reintegrate into society if released early.

4. Substantial Cooperation with the Prosecutor

59. The Prosecutor of the Mechanism (“Prosecutor”) indicates that Petković has not cooperated with the Prosecution at any point.¹⁰⁰ Petković does not dispute this statement.¹⁰¹ Accordingly, I note that Petković did not cooperate with the Prosecution and, as such, this merits no weight in my consideration of the Application.

⁹⁸ Psychological Report, p. 7.

⁹⁹ Croatia’s Response, p. 1.

¹⁰⁰ Prosecution Submissions, para. 13.

¹⁰¹ See Petković’s Submissions.

C. Other Considerations

1. Views of the Prosecutor

60. I have previously explained that I will use my discretion to receive and consider general comments from the Prosecution with regard to early release applications.¹⁰² In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person and will 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.¹⁰³

61. The Prosecution submits that Petković has not demonstrated that early release is warranted in his case due to the high gravity of his crimes and insufficient evidence of rehabilitation.¹⁰⁴ It points out that Petković was convicted of grave and serious crimes as one of the most important members of the JCE who shared the intent to expel the Muslim population from the HZ(R) H-B.¹⁰⁵ Further, the Prosecution argues that Petković has not met his burden of demonstrating sufficient progress towards his rehabilitation, referring to, *inter alia*, his “lengthy excuses for his own conduct during the conflict” demonstrating “his continued lack of critical reflection upon his responsibility and the crimes for which has was convicted”.¹⁰⁶ Finally, the Prosecution submits that should his early release be granted, enforceable, appropriate conditions should be imposed for the remainder of Petković’s sentence.¹⁰⁷

62. Petković responds that he “did not and does not dispute, deny or in any way relativise the gravity of the crimes he has been convicted for”.¹⁰⁸ He submits that “every human being deserves a chance to be rehabilitated and upon showing sufficient signs of rehabilitation to be granted early release”.¹⁰⁹ Finally, Petković states that he will accept and respect any conditions attached to his early release that I may find appropriate and necessary.¹¹⁰

63. Throughout my consideration of this matter, I have given due regard to the views expressed by the Prosecutor. I have also taken note of the conditions he proposes and his comments on

¹⁰² *Miletić* Decision, para. 62; *Bagosora* Decision, para. 54; *Kunarac* Decision, para. 76.

¹⁰³ *Miletić* Decision, para. 62; *Bagosora* Decision, para. 54; *Kunarac* Decision, para. 76.

¹⁰⁴ Prosecution Submissions, paras. 2, 24.

¹⁰⁵ Prosecution Submissions, paras. 4-5. *See* Prosecution Submissions, paras. 6-7.

¹⁰⁶ Prosecution Submissions, paras. 8, 11. *See* Prosecution Submissions, paras. 9-10, 12.

¹⁰⁷ Prosecution Submissions, paras. 2, 19-24.

¹⁰⁸ Petković’s Submissions, para. 8.

¹⁰⁹ Petković’s Submissions, para. 10.

¹¹⁰ Petković’s Submissions, para. 11.

guarantees and orders relevant to Croatia,¹¹¹ and in this respect have also taken into account Petković's submissions on these proposals.¹¹²

2. Views of Croatia

64. Croatia submits that, should Petković be granted early release, it "will [REDACTED]"¹¹³ and "[REDACTED]."¹¹⁴

65. I appreciate Croatia's willingness and ability to monitor any conditions imposed by the Mechanism should early release be granted. I have relied on Croatia's guarantees in considering whether to grant the Application and the conditions to be imposed if I do so.

3. Impact on Witnesses and Victims

66. After analysing data concerning 224 witnesses who testified or provided evidence in the trial involving Petković, WISP submits that 38 of them should be considered vulnerable based on reported psycho-social issues prior to, during, or after testifying in the trial involving Petković or in other cases.¹¹⁵ Based on the available information, the vast majority of these vulnerable witnesses do not live in Croatia.¹¹⁶

67. WISP submits that the early release of a convicted person may impact victims and witnesses in different ways.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ WISP submits that Petković's release will probably receive significant local media coverage and may thus impact witnesses, most of whom are located in [REDACTED].¹²⁰

¹¹¹ Prosecution Submissions, paras. 19-23.

¹¹² Petković's Submissions, para. 11.

¹¹³ Croatia's Guarantees, p. 1. *See also* Croatia's Response, p. 1.

¹¹⁴ Croatia's Further Guarantees, p. 1. *See also* Croatia's Guarantees, p. 1; Croatia's Response, p. 1.

¹¹⁵ *See* WISP Memorandum, paras. 4, 11.

¹¹⁶ *See* WISP Memorandum, para. 6.

¹¹⁷ WISP Memorandum, para. 9.

¹¹⁸ WISP Memorandum, para. 9.

¹¹⁹ WISP Memorandum, para. 9.

¹²⁰ WISP Memorandum, paras. 6, 9.

68. WISP states that a more comprehensive assessment of the overall situation would require that each witness be contacted individually.¹²¹ In this regard, I remain cognisant that contacting witnesses too frequently could negatively impact them, particularly in terms of their need to move on with their lives, and especially if some years have passed since they have been contacted by the Mechanism or its predecessor tribunals.¹²² Having taken into account the material already provided by WISP, 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.

69. In considering the Application, I inquired with the Registry about the existence of any victims' associations or groups that exist in relation to the crimes for which Petković was convicted.¹²³ The Registry provided me with a chart detailing seven potential organisations.¹²⁴ Having considered these carefully, I am of the opinion that to the extent that these organisations may deal with some of crimes Petković was convicted of, seeking the views of any of these organisations would not alter my conclusions on the high gravity of Petković's crimes. Therefore, on this occasion, and in the interests of judicial economy, I have not sought the views of any victim's associations in considering the Application.

70. The safety and well-being of all the courageous people who have decided to testify and/or give evidence to the ICTR, the ICTY, and the Mechanism has been always one of the most, if not the most important factor in my considering whether to grant early release to any of the convicted persons. That is why, although WISP's report does not indicate any apparent threat to any of the witnesses, I will continue to monitor the situation extremely closely, and any attempt to interfere with any of the witnesses, by Petković or anyone associated with him, would immediately jeopardise his conditional early release.

4. Health of the Convicted Person

71. Previous decisions on early release have determined that other considerations, such as the state of the convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.¹²⁵

¹²¹ See WISP Memorandum, para. 18.

¹²² *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. 90.

¹²³ Memorandum of 20 January 2021, para. 7.

¹²⁴ Memorandum of 12 March 2021, pp. 1-4.

¹²⁵ *Miletić* Decision, para. 67; *Bagosora* Decision, para. 60; *Kunarac* Decision, para. 79.

72. Petković submits that [REDACTED].¹²⁶ [REDACTED].¹²⁷

73. The Medical Report prepared by the Belgian authorities states that Petković is [REDACTED].¹²⁸ The report mentions that [REDACTED].¹²⁹ It concludes that [REDACTED].¹³⁰

74. Therefore, in light of the information before me, I consider that there is no indication that Petković's health may be an impediment to his continued detention.

5. Consultation

75. In coming to my decision on whether to grant the Application I have consulted with three other Judges of the Mechanism.¹³¹ Judge Meron, Judge Antonetti, and Judge Liu all agree that the Application should be granted, with Judge Antonetti expressing his disagreement with: (i) some of the conditions under which Petković's early release is to be granted; and (ii) the finding that Petković did not cooperate with the Prosecutor.

76. 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

77. I consider that the Application should be granted subject to the conditions set out in the annexed Conditional Early Release Agreement ("Agreement"). The gravity of Petković's crimes is high and weighs against granting early release. Notwithstanding this consideration, there are a number of positive factors that, taken together, have convinced me that Petković has reached a sufficient level of rehabilitation and that he can be trusted to reintegrate successfully and peacefully into society.

78. Of particular note is that Petković publicly accepted his personal responsibility for the crimes he was convicted for, that he has shown clear signs of critical reflection, and that he expressed remorse which I consider to be genuine. In addition, I give some weight to his good behaviour in prison. Further, no witness-related concerns have been identified should Petković be released, and Croatia has indicated its willingness and ability to monitor any conditions imposed by the Mechanism.

¹²⁶ Application, para. 32.

¹²⁷ Psycho-social Report, p. 1.

¹²⁸ Medical Report, p. 2.

¹²⁹ Medical Report, p. 2.

¹³⁰ Medical Report, p. 2.

¹³¹ See *supra*, para. 19.

79. As a result, I consider it to be in the interests of justice and the general principles of law to grant Petković early release, subject to strict conditions set out in the annexed Agreement, and which will remain in force until the completion of his sentence on 9 October 2027.¹³² I emphasise that Petković's agreement with these conditions forms a prerequisite for his being released early, and that any failure by Petković to strictly adhere to these conditions would immediately jeopardise his conditional early release.

VI. DISPOSITION

80. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **GRANT** the Application, **SUBJECT TO** the conditions set forth in the Agreement.

81. The Registrar is hereby **DIRECTED** to provide the authorities of Belgium and Croatia with the confidential redacted version of this Decision as soon as practicable. In the event that Petković agrees with, signs, and submits to the Registry the original signed Agreement (both the authoritative English version and the official Bosnian/Croatian/Serbian translation), the Registrar is hereby **DIRECTED** to take all necessary measures to facilitate Petković's transfer as expeditiously as possible to Croatia. Should Petković be transferred to Croatia, and following receipt of information from the Croatian authorities that Petković has arrived at his place of residence in Croatia, the Registrar is further **DIRECTED** to recirculate as a public filing the confidential redacted version of this Decision and to file the signed Agreement as a public document.

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

Done this 16th day of December 2021,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]

¹³² UNDU Custody Report, p. 1.

ANNEX

CONDITIONAL EARLY RELEASE AGREEMENT

Name: _____

Date of Birth: _____

I, the undersigned, declare that:

1. I have received the authoritative English version of this document, as well as the official translation into Bosnian/Croatian/Serbian (“BCS”), and have been advised by my Counsel with regard to its contents, including the individual conditions set forth herein.
2. I have read, understand, and agree to comply fully with all conditions of my early release, as set forth below.
3. I agree to comply fully with all of the following conditions:
 - A. I shall remain under the supervision of a Monitoring Authority designated by the Republic of Croatia (“Monitoring Authority” and “Croatia”, respectively) during the remainder of my sentence until its completion on 9 October 2027;
 - B. I shall comply with any requirement made of me by the Monitoring Authority, including contacting an agent of the Monitoring Authority as requested;
 - C. If required by the Monitoring Authority or if so directed by the President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), I shall report in person to the Monitoring Authority, a local police station, or any other location designated by the Monitoring Authority or the President for this purpose;
 - D. I shall notify the Mechanism and the Monitoring Authority of my address of residence, as well as give 14 days’ notice of any proposed change of residence;
 - E. I shall have no contact whatsoever with, or directly or indirectly try to harm, intimidate, or otherwise interfere with, victims or witnesses who testified in my case or other cases before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) or the Mechanism, and/or members of their respective families, with the sole exception being contact with witnesses who testified in my own defence;
 - F. I shall not interfere in any way with the proceedings of the Mechanism or the administration of justice;
 - G. I shall not violate any orders issued by the ICTY or the Mechanism, and shall not otherwise reveal the identities of witnesses or potential witnesses in any way;
 - H. I shall not discuss my case, including any aspect of the events in the former Yugoslavia that were the subject of my case, with the media, through social media, or with anyone other than my legal counsel recognised by the Mechanism, if any, unless this has been specifically authorised in advance by the President;

- I. I shall not make any statement denying the crimes over which the ICTY had jurisdiction, and over which the Mechanism retains jurisdiction, that were committed during the conflict in the former Yugoslavia;
 - J. I shall under no circumstances directly or indirectly express publicly any agreement with, or otherwise contribute in any way to, the glorification of persons convicted by the ICTY or the Mechanism;
 - K. If I intend to travel outside Croatia, I will notify the Monitoring Authority beforehand so that it may seek a direction from the President, who will ultimately have the discretion to approve or not approve such travel;
 - L. I shall conduct myself honourably and peacefully in the community in which I will reside, and shall not engage in meetings or associations intended to plan civil unrest or actively engage in any political activities except for voting;
 - M. I shall deposit any firearms and other weapons requiring a licence with the Croatian authorities as designated by the Monitoring Authority, and shall not purchase, possess, use, or handle any firearms or other weapons requiring a license;
 - N. I shall not commit any offence that is punishable by any term of imprisonment, nor shall I publicly or privately incite or promote such an offence;
 - O. I shall notify the Monitoring Authority of any arrest, summons, or questioning by a law enforcement officer; and
 - P. I shall continue to make efforts to contribute to my rehabilitation and resocialisation.
4. I understand and agree that I shall be subject to the conditions stated herein, unless they are revoked or modified, until the completion of my sentence on 9 October 2027.
5. I understand and agree that any change in the foregoing conditions can only be authorised by the President.
6. I understand and agree that if I violate or otherwise fail to comply fully with any of the conditions set out in this agreement, then my early release may be revoked at the sole discretion of the President.
7. I understand and accept that as a condition of my early release, Croatia is obligated to: (a) register my final conviction by the ICTY in my criminal record in Croatia; (b) revoke any licenses for firearms or other weapons that I may possess and ensure that no new licenses are issued to me until the expiration of my sentence; and (c) transfer me immediately to the custody of the Mechanism following a request by the Mechanism to do so.
8. In addition, I understand and accept that as a condition of my early release, Croatia is obligated to designate as the Monitoring Authority an agent or entity to: (a) monitor and enforce the above-mentioned conditions; (b) report to the Mechanism, within 24 hours, any failure by me to comply with these conditions; (c) arrest me immediately upon request of the Mechanism; (d) arrest

me immediately if I pose a threat to victims or witnesses, commit any crime under Croatian law that is punishable by any term of imprisonment, or seek to leave the territory of Croatia without the necessary permission in accordance with these conditions, or if Croatia or the Monitoring Authority otherwise consider it necessary to ensure compliance with each of the conditions set out herein; and (e) submit quarterly reports to the Mechanism on the implementation of these conditions.

9. I understand and accept that all the obligations stated above will cease to be in effect at 23:59 on 9 October 2027, the date my sentence ends.

10. I understand that, once I have signed the authoritative English version of this document, as well as the official BCS translation, the original signed document (in both languages) is to be provided to the Registry of the Mechanism, which will subsequently file it publicly on the judicial record in *Prosecutor v. Milivoj Petković*, Case No. MICT-17-112-ES.5, and that until I have been transferred to my place of residence in Croatia, this matter must remain confidential for reasons of security.

Signature: _____

Name: _____

Date: _____

Witnessed by (for Milivoj Petković):

Signature: _____

Name: _____

Date: _____

Witnessed by (for the Mechanism):

Signature: _____

Name: _____

Date: _____

SPORAZUM O UVJETNOM PRIJEVREMENOM PUŠTANJU NA SLOBODU

Ime i prezime: _____

Datum rođenja: _____

Ja, dolje potpisani, izjavljujem sljedeće:

1. Primio sam mjerodavnu englesku verziju ovog dokumenta, kao i službeni prijevod na bosanski/hrvatski/srpski (dalje u tekstu: b/h/s), i objašnjenje svog pravnog zastupnika u vezi sa sadržajem tog dokumenta, uključujući sve uvjete koji su u njemu navedeni.
2. Pročitao sam, razumijem, i pristajem da u potpunosti ispunim sve uvjete prijevremenog puštanja na slobodu, navedene niže u tekstu.
3. Pristajem da u potpunosti ispunim sve niže navedene uvjete:
 - A. Ostat ću pod nadzorom Nadzorne vlasti koju odredi Republika Hrvatska (dalje u tekstu: Nadzorna vlast, odnosno Hrvatska) tokom preostalog dijela kazne sve do njezinog isteka 9. listopada 2027. godine;
 - B. Postupat ću u skladu sa svim uvjetima koje mi odredi Nadzorna vlast, uključujući i održavanje kontakta s predstavnikom Nadzorne vlasti na njihov zahtjev;
 - C. Ako to zatraži Nadzorna vlast ili naloži predsjednik Međunarodnog rezidualnog mehanizma za kaznene sudove (dalje u tekstu: predsjednik, odnosno Mehanizam), osobno ću se javljati Nadzornoj vlasti, lokalnoj policijskoj stanici ili bilo kojoj drugoj lokaciji koju u tu svrhu odredi Nadzorna vlast ili predsjednik;
 - D. Mehanizmu i Nadzornoj vlasti ću dostaviti adresu na kojoj boravim u Hrvatskoj, a o eventualnom prijedlogu o promjeni adrese ću ih obavjestiti 14 dana unaprijed;
 - E. Neću stupati ni u kakav kontakt sa žrtvama ili svjedocima koji su svjedočili u mom predmetu ili u drugim predmetima pred Međunarodnim kaznenim sudom za bivšu Jugoslaviju (dalje u tekstu: MKSJ) ili Mehanizmom, ni s članovima njihovih obitelji, niti ću direktno ili indirektno pokušati da ih povrijedim, zastrašim ili na drugi način uznemiravam, osim kontakta isključivo sa svjedocima koji su svjedočili u moju obranu;
 - F. Ni na koji način neću ometati postupke Mehanizma ni provođenje pravde;
 - G. Neću prekršiti nijedan nalog MKSJ-a ili Mehanizma i ni na koji način neću otkriti identitet svjedoka ili potencijalnih svjedoka;
 - H. O mom predmetu, uključujući bilo koji aspekt događaja u bivšoj Jugoslaviji koji su bili predmet mog suđenja, neću razgovarati putem društvenih mreža, s medijima, niti s bilo kim osim s mojim eventualnim pravnim zastupnikom kojeg je priznao Mehanizam, i to samo u slučaju da za to unaprijed dobijem konkretno odobrenje od predsjednika;
 - I. Neću davati nikakve izjave kojima se negiraju zločini nad kojima je MKSJ imao nadležnost i nad kojima Mehanizam zadržava nadležnost, a koji su počinjeni tijekom sukoba u bivšoj Jugoslaviji;
 - J. Ni pod kojim okolnostima neću, direktno ili indirektno, javno izraziti slaganje s veličanjem osoba koje je osudio MKSJ ili Mehanizam, niti ću na bilo koji način doprinijeti veličanju tih osoba;

- K. O eventualnoj namjeri da putujem van Hrvatske unaprijed ću obavijestiti Nadzornu vlast kako bi ona zatražila upute od predsjednika, koji u krajnjoj instanci ima diskrecijsku ovlast da putovanje odobri ili ne;
 - L. U zajednici u kojoj budem boravio ponašat ću se časno i miroljubivo i neću sudjelovati u sastancima ili udrugama čiji je cilj planiranje građanskih nereda niti aktivno sudjelovati u bilo kakvim političkim aktivnostima, osim glasanja;
 - M. Sve vatreno i drugo oružje za koje je potrebna dozvola pohranit ću kod organa vlasti Hrvatske koje odredi Nadzorna vlast i neću kupovati, posjedovati, upotrebljavati niti rukovati bilo kakvim vatrenim ili drugim oružjem za koje je potrebna dozvola;
 - N. Neću počinuti nijedno kazneno djelo koje je kažnjivo kaznom zatvora, niti ću javno ili privatno poticati ili zagovarati takvo kazneno djelo;
 - O. Nadzornu vlast ću obavijestiti o eventualnim uhićenjima, pozivima ili ispitivanjima od strane službenika organa gonjenja; i
 - P. Istrajat ću u naporima da doprinesem svojoj rehabilitaciji i resocijalizaciji.
4. Shvaćam i suglasan sam s tim da se ovdje navedeni uvjeti odnose na mene, osim ako ne budu poništeni ili izmijenjeni, sve do isteka moje kazne 9. listopada 2027.
5. Shvaćam i suglasan sam s tim da svaku izmjenu gore navedenih uvjeta može odobriti isključivo predsjednik.
6. Shvaćam i suglasan sam s tim da, ukoliko prekršim ili u potpunosti ne ispunim bilo koji od uvjeta navedenih u ovom sporazumu, predsjednik može, isključivo na osnovi svoje diskrecijske ovlasti, poništiti moje prijevremeno puštanje na slobodu.
7. Shvaćam i prihvaćam kao uvjet za moje prijevremeno puštanje na slobodu da je Hrvatska dužna: (a) da u kaznenu evidenciju u Hrvatskoj unese pravomoćnu presudu koju mi je izrekao MKSJ; (b) da ukine sve dozvole za vatreno ili drugo oružje koje eventualno imam i osigura da mi se do isteka kazne ne izdaju nove dozvole; i (c) da me, na zahtjev Mehanizma, bez odlaganja dovede pod njegov nadzor.
8. Osim toga, shvaćam i prihvaćam kao uvjet mog prijevremenog puštanja na slobodu da je Hrvatska dužna da kao Nadzornu vlast odredi zastupnika ili pravnu osobu da: (a) nadzire i provodi gore navedene uvjete; (b) u roku od 24 sata izvijesti Mehanizam o svakom mom nepridržavanju tih uvjeta; (c) odmah me uhiti na zahtjev Mehanizma; (d) odmah me uhiti ako budem predstavljao opasnost po žrtve ili svjedoke, izvršim bilo koje kazneno djelo koje je, prema zakonu Hrvatske, kažnjivo kaznom zatvora, ili pokušam napustiti teritorij Hrvatske bez potrebne dozvole u skladu s ovim uvjetima, ili ako Hrvatska ili Nadzorna vlast inače budu smatrale da je potrebno da se osigura pridržavanje svih ovdje navedenih uvjeta; i (e) podnosi tromjesečne izvještaje Mehanizmu o provođenju ovih uvjeta.

9. Shvaćam i prihvaćam da će sve gore navedene obveze prestati važiti u 23:59 sati na dan 9. listopada 2027., kada ističe moja kazna.

10. Shvaćam da će, čim potpišem mjerodavnu englesku verziju ovog dokumenta, kao i službeni prijevod na b/h/s, originalni potpisani dokument (na oba jezika) biti proslijeđen Tajništvu Mehanizma, koji će ga zatim zvesti kao javni dokument u spis predmeta *Tužilac protiv Milivoja Petkovića*, predmet br. MICT-17-112-ES.5, i da iz sigurnosnih razloga ova stvar mora ostati povjerljiva sve dok ne budem prebačen u mjesto boravka u Hrvatskoj.

Potpis: _____

Ime i prezime: _____

Datum: _____

Svjedok (za Milivoja Petkovića):

Potpis: _____

Ime i prezime: _____

Datum: _____

Svjedok (za Mehanizam):

Potpis: _____

Ime i prezime: _____

Datum: _____



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			No. of Pages/ Nombre de pages : 26
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