

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 15 November 2022

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THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 15 November 2022

PROSECUTOR

v.

RADISLAV KRSTIĆ

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF RADISLAV KRSTIĆ**

Counsel for Mr. Radislav Krstić:

Mr. Tomislav Višnjić
Mr. Vladimir Petrović

Republic of Poland

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of Mr. Radislav Krstić’s direct petition for early release filed on 21 April 2022 (“Krstić” and “Application”, respectively) before my predecessor.¹

I. BACKGROUND

2. On 2 December 1998, Krstić was arrested in Bosnia and Herzegovina and transferred to the United Nations Detention Unit in The Hague, Kingdom of the Netherlands (“Netherlands”), the following day.² At his initial appearance before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 7 December 1998, Krstić pleaded not guilty to all charges against him in the initial indictment³ and subsequently pleaded not guilty to the additional counts contained in the amended indictment.⁴

3. On 2 August 2001, Trial Chamber I of the ICTY (“Trial Chamber”) convicted Krstić for committing genocide, persecution as a crime against humanity, and murder as a violation of the laws or customs of war.⁵ The Trial Chamber sentenced Krstić to 46 years of imprisonment.⁶

4. On 19 April 2004, the Appeals Chamber of the ICTY (“Appeals Chamber”): (i) set aside Krstić’s conviction for committing genocide, and partially set aside his conviction for committing murder as a violation of the laws or customs of war, and instead found him guilty of aiding and abetting these crimes; and (ii) affirmed the remaining convictions for committing persecution as a crime against humanity and murder as a violation of the laws or customs of war.⁷ The Appeals Chamber reduced Krstić’s sentence to 35 years of imprisonment.⁸

¹ Petition for Early Release, 21 April 2022 (public with confidential Annex B).

² *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“Trial Judgement”), para. 718; Press Release, Initial Appearance of Radislav Krstić on Monday 7 December at 11 a.m., 4 December 1998, <http://www.icty.org/en/press/initial-appearance-radislav-krstic-monday-7-december-1100-am>.

³ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-I, Public Transcript of Hearing, 7 December 1998, pp. 28-31.

⁴ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-PT, Public Transcript of Hearing, 25 November 1999, pp. 145-147.

⁵ Trial Judgement, paras. 687-688, 719, 727.

⁶ Trial Judgement, para. 727.

⁷ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 (“Appeal Judgement”), p. 87. The Appeals Chamber concluded that the Trial Chamber had incorrectly disallowed Krstić’s convictions for committing extermination and persecution as crimes against humanity between 13 and 19 July 1995, and considered that his level of responsibility with respect to these crimes was that of an aider and abettor, not that of a principal perpetrator. However, given that the Office of the Prosecutor of the ICTY had not sought an increase in sentence on the basis of these convictions, the Appeals Chamber did not take Krstić’s participation in these crimes into account in determining his sentence. See Appeal Judgement, paras. 227, 229, 237, 269, p. 87.

⁸ Appeal Judgement, p. 87.

5. On 20 December 2004, Krstić was transferred to the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) to serve the remainder of his sentence.⁹ Pursuant to an order of 19 July 2013, Krstić was transferred from the United Kingdom to the Republic of Poland (“Poland”) to continue to serve the remainder of his sentence.¹⁰

6. On 30 June 2016, Krstić filed a direct petition for early release.¹¹ This was denied by the then-President on 13 December 2016 on the basis that, although Krstić had demonstrated some signs of rehabilitation, the crimes for which he had been convicted were very grave, and, in addition, he had failed to demonstrate any exceptional circumstances warranting his early release prior to having served two-thirds of his sentence.¹²

7. On 22 January 2018, Poland notified the Mechanism that Krstić had become eligible pursuant to Polish law to apply for conditional early release.¹³ On 10 September 2019, my predecessor denied Krstić’s early release given that he had not yet served two-thirds of his sentence, and there were no compelling or exceptional circumstances justifying his release before having served the minimum number of years necessary to be considered for early release.¹⁴

II. APPLICATION

8. On 21 April 2022, Krstić filed the Application, in which he requests that he be granted early release and indicates that, if released early, he would reside in [REDACTED], Republic of Serbia (“Serbia”).¹⁵

9. On 5 May 2022, following his preliminary review of the Application, my predecessor requested the Registry to obtain confirmation from the Polish authorities that Krstić continues to be eligible pursuant to Polish law to apply for conditional early release, and to provide a copy of the

⁹ Press Release, Radislav Krstić Transferred to the United Kingdom to Serve his Prison Sentence, 20 December 2004, <http://www.icty.org/en/press/radislav-krstic-transferred-united-kingdom-serve-his-prison-sentence>; Order Designating the State in Which Radislav Krstić is to Serve his Prison Sentence, 11 November 2004, pp. 2-3.

¹⁰ Order Designating the State in Which Radislav Krstić is to Serve the Remainder of his Sentence, 19 July 2013, pp. 1-2. *See also* Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted) (“Decision of 10 September 2019”), para. 5; Decision of the President on the Early Release of Radislav Krstić, 13 December 2016 (public redacted) (“Decision of 13 December 2016”), para. 4.

¹¹ Radislav Krstić’s Request for Pardon, Commutation of Sentence or Early Release with Confidential Annexes, 30 June 2016 (confidential).

¹² Decision of 13 December 2016, paras. 39-40.

¹³ Internal Memorandum from the Acting Officer-in-Charge, Registry, Hague branch, to the then-President, dated 25 January 2018, *transmitting* a Letter from the Polish Ministry of Justice, dated 22 December 2017 and received by the Registry of the Mechanism (“Registry”) on 22 January 2018 (“Polish Ministry of Justice Letter of 22 December 2017”), pp. 1-2.

¹⁴ Decision of 10 September 2019, paras. 39, 41.

¹⁵ Application, paras. 1, 16, 31, 39.

applicable Practice Direction to Krstić.¹⁶ My predecessor also requested the Registry to collect the information enumerated in paragraphs 10(a) through 10(c), and 10(e) of the Practice Direction.¹⁷ My predecessor further requested: (i) information from the Mechanism’s Witness Support and Protection Unit (“WISP”) on the victims of the crimes for which Krstić was convicted and who testified in his case, and if any of them reside in the vicinity of [REDACTED], Serbia, given Krstić’s indication that he would reside there if the Application was to be granted; and (ii) any media reports concerning Krstić published in Serbia since the Decision of 10 September 2019.¹⁸

10. On the same day, my predecessor invited the authorities of Serbia to, *inter alia*: (i) provide any views they may wish to offer with regard to the Application and Krstić’s indication that, if released early, he would reside in [REDACTED], Serbia; and (ii) indicate if the Serbian 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

11. On 11 May 2022, my predecessor received an unsolicited joint letter from the Association of Mothers of Srebrenica and Žepa Enclaves and the Association of Victims and Witnesses of Genocide, conveying their views on the Application.²⁰

12. On 25 May 2022, my predecessor received a letter from the Serbian Minister of Justice, indicating that there are no obstacles to Krstić residing in [REDACTED], Serbia, and that the competent Serbian authorities are willing to monitor any conditions imposed by the Mechanism in the event of Krstić’s early release, and to provide the necessary guarantees to this effect.²¹

13. On 3 June 2022, the Registrar of the Mechanism (“Registrar”) transmitted to my predecessor a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), providing its comments and information concerning Krstić’s Application.²²

¹⁶ Internal Memorandum from the then-President to the Registrar, dated 5 May 2022 (confidential) (“Memorandum of 5 May 2022”), para. 3. *See supra*, para. 7. *See also* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”).

¹⁷ Memorandum of 5 May 2022, para. 4.

¹⁸ Memorandum of 5 May 2022, paras. 5-6.

¹⁹ Invitation to the Republic of Serbia Related to the Application for Early Release of Radislav Krstić, 5 May 2022 (confidential and *ex parte*), p. 2.

²⁰ Joint Letter from the Association of Mothers of Srebrenica and Žepa Enclaves and the Association of Victims and Witnesses of Genocide to the then-President, dated 11 May 2022 (“Associations’ Letter of 11 May 2022”).

²¹ *Note verbale* from the Embassy of Serbia to the Netherlands, dated 25 May 2022, *transmitting* a Letter from the Minister of Justice of Serbia to the then-President, dated 24 May 2022 (“Serbian Minister of Justice Letter of 24 May 2022”).

²² Internal Memorandum from the Registrar to the then-President, dated 3 June 2022 (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 3 June 2022 (confidential) (“Prosecution Memorandum”).

14. On 13 July 2022, the Registrar conveyed to me a compilation of media reports concerning Krstić that had been published in Serbia since the Decision of 10 September 2019.²³

15. On 4 August 2022, the Registrar transmitted to me a memorandum from the Head of WISP, conveying information related to 82 witnesses who testified or provided evidence against Krstić during his trial.²⁴

16. On 9 August 2022, I requested that the Registrar inform me of the efforts undertaken to date to receive: (i) confirmation from the Polish authorities that Krstić continues to be eligible pursuant to Polish law to apply for conditional early release; and (ii) the information enumerated in paragraphs 10(a) through (c) of the Practice Direction.²⁵ On 11 August 2022, the Registrar transmitted to me a *note verbale* from the Embassy of Poland to the Netherlands, dated 9 August 2022, conveying the said confirmation.²⁶

17. On 23 August 2022, I instructed the Registry to provide all materials received in relation to the Application, with the exception of the strictly confidential information provided by WISP, to Krstić for his comments in accordance with paragraph 12 of the Practice Direction.²⁷ Krstić submitted his comments on 6 October 2022.²⁸

18. As no Judge who imposed the sentence upon Krstić is a Judge of the Mechanism, I consulted with Judge Seon Ki Park and Judge Ivo Nelson de Caires Batista Rosa in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 16 of the Practice Direction.

²³ Internal Memorandum from the Registrar to the President, dated 13 July 2022 (confidential), *transmitting* an Internal Memorandum from the Officer-in-Charge, External Relations Office, Hague branch to the Registrar, dated 13 July 2022 (confidential).

²⁴ Internal Memorandum from the Registrar to the President, dated 4 August 2022 (strictly confidential) (“Registrar Memorandum of 4 August 2022”), *transmitting* an Internal Memorandum from the Head of WISP to the Registrar, dated 4 August 2022 (strictly confidential) (“WISP Memorandum”), paras. 3-5. The Registrar noted that the information contained in the WISP Memorandum was provided on a strictly confidential basis and should not be made available to Krstić or the Prosecution. *See* Registrar Memorandum of 4 August 2022, para. 2.

²⁵ Internal Memorandum from the President to the Registrar, dated 9 August 2022 (confidential), paras. 1-2.

²⁶ Internal Memorandum from the Registrar to the President, dated 11 August 2022 (confidential) (“Registrar Memorandum of 11 August 2022”), *transmitting* a *note verbale* from the Embassy of Poland to the Netherlands, dated 9 August 2022, *conveying*: (i) a Letter from the Polish Ministry of Justice, dated 22 June 2022 (“Polish Ministry of Justice Letter of 22 June 2022”); (ii) a report from the Head of the Penitentiary Section of the Regional Court in Piotrków Trybunalski, dated 10 June 2022 (“Prison Report”); and (iii) a medical report from the Detention Centre Piotrków Trybunalski, dated 7 June 2022 (“Medical Report”). *See* Registrar Memorandum of 11 August 2022, paras. 1-2.

²⁷ Internal Memorandum from the President to the Registrar, dated 23 August 2022 (confidential), para. 2. On 27 September 2022, the Registry provided the said materials to Krstić in a language that he understands. *See* Informal Communication from the Registry to the Office of the President, 27 September 2022.

²⁸ Written Submission in Support [of] Petition for Early Release, 6 October 2022 (confidential) (“Comments”).

III. APPLICABLE LAW

19. According to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda (“ICTR”), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States.

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

21. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

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

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

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

25. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. Paragraph 20 of the Practice Direction states that if early release is granted, it may be subject to conditions.

26. The enforcement agreement between the United Nations and Poland,²⁹ which applies *mutatis mutandis* to the Mechanism,³⁰ provides in Article 8(2) that the President shall determine whether pardon or commutation of sentence is appropriate, and, if the President determines that pardon or commutation of sentence is not appropriate, Poland shall act accordingly.

IV. ANALYSIS

27. As a preliminary matter, I note that Krstić filed the Comments confidentially “because paragraph 18 of the Practice Direction requires that the information submitted to the President be treated as confidential”, but would prefer that the Comments be part of the public record and would have no objection to their reclassification as public.³¹ I recall that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential.³² I consider that nothing in the Comments justifies continued confidentiality and I am therefore inclined to direct the Registrar to reclassify the Comments from confidential to public.

A. Eligibility

1. Eligibility before the Mechanism

28. 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

²⁹ Agreement between the Government of the Republic of Poland and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 18 September 2008.

³⁰ See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

³¹ Comments, fn. 1 (italics omitted).

³² See e.g. *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Order for a Public Redacted Version of Radoslav Brđanin’s Application for Early Release and Urgent Motion, 8 September 2022, p. 1; *In the Matter of Jérôme-Clément Bicamumpaka*, Case No. MICT-14-75, Decision on Registrar’s Submission Requesting Reclassification, 9 June 2022, p. 2; *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Decision on Ngirabatware’s Motion for Reclassification of Filings, 1 June 2022, p. 1.

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

29. Krstić served two-thirds of his sentence on 28 March 2022 and is therefore eligible to be considered for early release.

2. Eligibility under Polish Law

30. Krstić is currently serving his sentence in Poland.³⁵ According to Polish law, Krstić can apply for conditional early release after having served one half of his sentence.³⁶ The Polish authorities have recently confirmed that Krstić continues to be eligible pursuant to Polish law to apply for conditional early release.³⁷

31. In this respect, even if Krstić continues to meet the conditions for early release under Polish law, I recall that the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President’s discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.³⁸

B. General Standards for Granting

32. According to the Mechanism’s jurisprudence, a convicted person, having served two-thirds of his or her sentence, shall be merely eligible to be considered for early release and not entitled to such release.³⁹ 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.

³³ *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application for Early Release of Radoslav Brđanin, 3 September 2022 (“*Brđanin* Decision of 3 September 2022”), p. 3; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Application for Early Release of Radivoje Miletić, 24 June 2022 (“*Miletić* Decision of 24 June 2022”), para. 20; Decision of 10 September 2019, paras. 16, 18.

³⁴ *Miletić* Decision of 24 June 2022, para. 21; *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Decision on the Application for Early Release of Milan Lukić, 24 June 2022 (public redacted) (“*Lukić* Decision”), p. 3; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted) (“*Bisengimana* Decision”), para. 19.

³⁵ *See supra*, para. 5.

³⁶ Prison Report, p. 1.

³⁷ Prison Report, p. 1; Polish Ministry of Justice Letter of 22 June 2022, p. 1.

³⁸ *Lukić* Decision, p. 3; *Prosecutor v. Nebojša Pavković*, Case No. MICT-14-67-ES.2, Decision on the Application for Early Release of Nebojša Pavković, 18 May 2022 (public redacted) (“*Pavković* Decision”), para. 32; *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.

³⁹ *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Reasons for the 3 September 2022 Decision on the Application for Early Release of Radoslav Brđanin, 26 September 2022 (public redacted) (“Reasons for *Brđanin* Decision of 3 September 2022”), para. 36; *Miletić* Decision of 24 June 2022, para. 23; *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.

1. Gravity of Crimes

33. 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.

34. In relation to the gravity of crimes, past decisions have established that: (i) as a general rule, a sentence should be served in full given the gravity of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, unless it can be demonstrated that a convicted person should be granted early release;⁴⁰ (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;⁴¹ (iii) the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be;⁴² and (iv) while the gravity of the crimes cannot be seen as depriving a convicted person of an opportunity to argue his or her case, it may be said to determine the threshold that the arguments in favour of early release must reach.⁴³

35. As set out above, Krstić was found guilty of aiding and abetting genocide and murder as a violation of the laws or customs of war, and of committing persecution as a crime against humanity and murder as a violation of the laws or customs of war.⁴⁴ The Appeals Chamber noted that Krstić had aided and abetted or committed “grave crimes”, namely “very serious violations of international humanitarian law”, including genocide which “is universally viewed as an especially grievous and reprehensible violation”.⁴⁵

36. All of the crimes committed following the take-over of Srebrenica occurred in the zone of responsibility of the Drina Corps, a formation of the Bosnian Serb Army (“VRS”) of which Krstić was the Chief of Staff and, subsequently, the Commander.⁴⁶ The extreme gravity of Krstić’s crimes was established by “their scale and organisation” and “the speed with which they were perpetrated in a ten day period”.⁴⁷ The Trial Chamber described that “all Bosnian Muslims in Srebrenica were uprooted, [...] up to 25,000 Bosnian Muslim women, children and elderly persons were expelled toward Bosnian Muslim controlled territory and [...] 7,000 to 8,000 Bosnian Muslim men and boys

⁴⁰ *Miletić* Decision of 24 June 2022, para. 24; *Pavković* Decision, para. 34; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) (“*Miletić* Decision of 5 May 2021”), para. 39.

⁴¹ *Miletić* Decision of 24 June 2022, para. 24; *Pavković* Decision, para. 34; *Miletić* Decision of 5 May 2021, para. 39.

⁴² *Miletić* Decision of 24 June 2022, para. 24; *Pavković* Decision, para. 34; *Miletić* Decision of 5 May 2021, para. 39.

⁴³ *Miletić* Decision of 24 June 2022, para. 24; *Pavković* Decision, para. 34; *Miletić* Decision of 5 May 2021, para. 39.

⁴⁴ *See supra*, paras. 3-4.

⁴⁵ Appeal Judgement, para. 275.

⁴⁶ Appeal Judgement, para. 135; Trial Judgement, paras. 3, 331, 718.

⁴⁷ Trial Judgement, para. 720.

were executed in the most cruel manner”.⁴⁸ The Trial Chamber also emphasised the physical and psychological suffering inflicted on the victims and the survivors, noting that “[t]he survivors lost their male family members”, “three generations of Muslim men from the Srebrenica area disappeared in a single week”, and many of the women and children survivors “suffer what is now known as the ‘Srebrenica Syndrome’: an inability to get on with their lives because of the lack of definite news on the fate of their lost sons, husbands and fathers”.⁴⁹

37. Krstić’s criminal responsibility for aiding and abetting genocide and murder as a violation of the laws or customs of war arose from the execution of the Bosnian Muslims of Srebrenica between 13 and 19 July 1995.⁵⁰

38. The Trial Chamber established, and the Appeals Chamber endorsed, that the Bosnian Serb forces had perpetrated genocide, crimes against humanity and war crimes against Bosnian Muslims of Srebrenica in July 1995.⁵¹ The Appeals Chamber considered that it was reasonable for the Trial Chamber to conclude that: (i) at least from 15 July 1995, Krstić “had knowledge of the genocidal intent of some of the Members of the VRS Main Staff”; (ii) he “was aware that the Main Staff had insufficient resources of its own to carry out the executions and that, without the use of the Drina Corps resources, the Main Staff would not have been able to implement its genocidal plan”; and (iii) he “knew that by allowing Drina Corps resources to be used he was making a substantial contribution to the execution of the Bosnian Muslim prisoners”.⁵² However, given that Krstić was not a supporter of the genocidal plan, the Appeals Chamber found that his criminal responsibility was more properly expressed as that of an aider and abettor to genocide, and not as that of a principal perpetrator as had previously been established by the Trial Chamber.⁵³

39. Further, the Appeals Chamber’s examination of Krstić’s participation in the crime of genocide had implications for his criminal responsibility for the murders of the Bosnian Muslim civilians as a violation of the laws or customs of war.⁵⁴ The Appeals Chamber found that Krstić’s criminal responsibility for murder was that of an aider and abettor, and not of a principal co-perpetrator as had been previously established by the Trial Chamber.⁵⁵

⁴⁸ Trial Judgement, para. 720.

⁴⁹ Trial Judgement, para. 720.

⁵⁰ *See supra*, para. 4.

⁵¹ Appeal Judgement, paras. 32, 35, 37, 39; Trial Judgement, para. 599. *See* Trial Judgement paras. 621-622.

⁵² Appeal Judgement, para. 137.

⁵³ Appeal Judgement, para. 137. *See* Trial Judgement, paras. 687-688, 719, 727.

⁵⁴ Appeal Judgement, para. 144.

⁵⁵ Appeal Judgement, para. 144. *See* Trial Judgement, paras. 687-688, 719, 727.

40. Krstić’s criminal responsibility for committing persecution as a crime against humanity, and murder as a violation of the laws or customs of war, arose from his participation in a joint criminal enterprise (“JCE”) to forcibly remove the Bosnian Muslim civilians from Potočari between 10 and 13 July 1995.⁵⁶ In this regard, Krstić was found to have “subscribed to the creation of a humanitarian crisis as a prelude to the forcible transfer of the Bosnian Muslim civilians” and had been “a key participant in the forcible transfer, working in close co-operation with other military officials of the VRS Main Staff and the Drina Corps”.⁵⁷ Further, Krstić “willingly participated in the forcible transfer of all women, children and elderly from Srebrenica”⁵⁸ and “was aware that the Bosnian Muslim civilians at Potočari would be subject to murders, rapes, beatings and abuses”.⁵⁹ Krstić was found guilty as a member of a JCE to forcibly transfer the Bosnian Muslim civilians from Potočari and also incurred liability for the incidental murders, rapes, beatings and abuses committed in the execution of the JCE at Potočari.⁶⁰

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

2. Treatment of Similarly-Situated Prisoners

42. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Krstić, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision.⁶¹ As noted above, the eligibility threshold of having served two-thirds of the sentence applies to all convicted persons serving a sentence under the Mechanism’s supervision.⁶² Having passed this two-thirds threshold on 28 March 2022,⁶³ Krstić is eligible to be considered for early release.

43. Krstić submits that seven persons convicted of crimes related to the events that took place in Srebrenica in 1995 were granted early release and that all of them have successfully reintegrated into society.⁶⁴ Additionally, Krstić points out that many other persons sentenced by the ICTY have been released upon the completion of two-thirds of their sentence.⁶⁵ Further, he argues that aspects

⁵⁶ *See supra*, paras. 3-4.

⁵⁷ Trial Judgement, paras. 612, 615.

⁵⁸ Trial Judgement, para. 724.

⁵⁹ Appeal Judgement, paras. 147-151; Trial Judgement, paras. 616-617.

⁶⁰ Appeal Judgement, para. 151; Trial Judgement, para. 617.

⁶¹ *Miletić* Decision of 24 June 2022, para. 34; *Pavković* Decision, para. 42; *Bisengimana* Decision, paras. 16-17.

⁶² *See supra*, para. 28.

⁶³ *See supra*, para. 29.

⁶⁴ Comments, para. 6.

⁶⁵ Comments, para. 6.

of the case of Mr. Sreten Lukić (“Lukić”) can provide guidance to the President when considering the issue of rehabilitation.⁶⁶

44. Noting Krstić’s arguments in this regard, I am of the view 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. Therefore, any comparison to other cases in the context of an early release application is inconsequential to the President’s decision.⁶⁷

3. Demonstration of Rehabilitation

45. 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.⁶⁸ The prisoner’s demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.⁶⁹

46. Before turning to an individualised assessment of Krstić’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.⁷⁰

47. 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.⁷¹ 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.⁷² This is a

⁶⁶ Comments, para. 6.

⁶⁷ See e.g. *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-ES.1, Decision on the Application for Early Release of Aloys Ntabakuze, 17 May 2022 (public redacted) (“*Ntabakuze Decision*”), para. 49; *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. 44; *Miletić Decision* of 5 May 2021, para. 42.

⁶⁸ See *supra*, paras. 20, 25.

⁶⁹ See *supra*, paras. 22, 25.

⁷⁰ *Miletić Decision* of 24 June 2022, paras. 36-40; *Pavković Decision*, paras. 43-47; *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*”), paras. 37-41.

⁷¹ *Miletić Decision* of 24 June 2022, para. 38; *Pavković Decision*, para. 45; *Bralo Decision*, para. 39.

⁷² *Miletić Decision* of 24 June 2022, para. 38; *Pavković Decision*, para. 45; *Bralo Decision*, para. 39 and references cited therein.

non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.⁷³

48. 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.⁷⁴ Given that genocide, crimes against humanity, and war crimes are among the gravest crimes known to mankind, it is not appropriate to view the rehabilitation of perpetrators of such crimes as one would view the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.⁷⁵

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

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

51. Turning to the extent to which Krstić has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the Prison Report provided by the Polish authorities; and (ii) Krstić's submission, including his letter to my predecessor, dated 12 April 2022, which was filed as a public Annex to the Application.⁷⁸

(a) Behaviour in Prison

52. Krstić submits that the reports of his behaviour provided by the prison authorities in 2016 and 2019 were positive and he believes that a current assessment of his behaviour in prison will continue to be a positive one.⁷⁹

53. The Prison Report indicates that Krstić's behaviour is "very good".⁸⁰ It is stated that Krstić "has always been tactful and restrained in his interactions with staff" and "is viewed as an agreeable

⁷³ *Miletić* Decision of 24 June 2022, para. 38; *Pavković* Decision, para. 45; *Bralo* Decision, para. 39.

⁷⁴ *Miletić* Decision of 24 June 2022, para. 38; *Pavković* Decision, para. 45; *Bralo* Decision, para. 39.

⁷⁵ *Miletić* Decision of 24 June 2022, para. 37; *Pavković* Decision, para. 44; *Bralo* Decision, para. 38.

⁷⁶ See *Miletić* Decision of 24 June 2022, para. 37; *Pavković* Decision, para. 44; *Bralo* Decision, para. 38.

⁷⁷ *Miletić* Decision of 24 June 2022, para. 39; *Pavković* Decision, para. 46; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on Dragoljub Kunarac's Application for Early Release, 31 December 2020 (public redacted), para. 44.

⁷⁸ Application, Annex A, Registry Pagination ("RP") 297-296.

⁷⁹ Application, para. 24.

⁸⁰ Prison Report, p. 1.

and friendly person” in his contacts with other inmates.⁸¹ According to the Prison Report, Krstić “has not displayed any aggressive behaviours or self-harm tendencies” and “has not been subject to disciplinary measures”.⁸² The Prison Report also notes that Krstić has consistently been employed in the penitentiary’s library and that “he is a conscientious and disciplined worker”.⁸³ In total, Krstić has “received ninety awards on request of [t]he staff, mostly for excellent behaviour and proper performance of duties related to his job [at the penitentiary’s library], as well as five motivational measures on his own request”.⁸⁴

54. In response, Krstić reiterates that his behaviour in prison, as reported by the Polish authorities, should be considered as a factor in favour of his early release.⁸⁵

55. I acknowledge that, based on the reported information, Krstić’s behaviour in prison has been very good. 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.⁸⁶ 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;⁸⁷ 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.⁸⁸

⁸¹ Prison Report, p. 1.

⁸² Prison Report, p. 1.

⁸³ Prison Report, p. 1.

⁸⁴ Prison Report, p. 1.

⁸⁵ Comments, para. 10.

⁸⁶ *See supra*, para. 49.

⁸⁷ *Pavković* Decision, para. 57; *Prosecutor v. Bruno Stojić*, Case No. MICT-17-112-ES.3, Decision on the Application for Early Release of Bruno Stojić, 11 April 2022 (public redacted), para. 62; *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on the Application for Early Release of Vlastimir Đorđević, 30 November 2021 (public redacted) (“*Đorđević* Decision”), para. 70.

⁸⁸ *Pavković* Decision, para. 57; *Đorđević* Decision, para. 70.

57. Krstić submits that “he has indeed been rehabilitated”⁸⁹ and “he has demonstrated, through his actions and words, that he is worthy of early release”.⁹⁰ He contends that his acceptance of responsibility and remorse is genuine.⁹¹ According to Krstić, “[i]t has taken him a while to get out of the denial mode that permeated his thinking during his trial and appeal, and during his time in the United Kingdom”, but “[b]eing the victim of a horrific violent crime himself, he has been able to relate in a much more personal, granular way to the suffering of those in Srebrenica who suffered an even worse fate as a result of his crimes. Even after the attack in the United Kingdom, he had to overcome feelings of self-pity to finally relate what had happened to him to what had happened to those Muslims in Srebrenica who were executed by his forces”.⁹²

58. To a large extent, Krstić relies on his letter dated 12 April 2022 to demonstrate that he “has fully accepted responsibility for the crimes for which he has been convicted” and “has also expressed deep remorse for his actions”.⁹³ The letter states, *inter alia*, that:

This letter of mine is intended to be part of the public record of my full acceptance of responsibility for the crimes I have been convicted of before the ICTY, in order for my sincere remorse and my sincere apology can be read by all.

I want you to know that I fully accept the judgment of the Appeals Chamber in my case.

I accept that all the crimes listed in the judgement of the Appeals Chamber’s [*sic*] were committed in Srebrenica in 1995 and that I assisted and supported them by making available the resources and personnel of the Drina Corps under my command, which were used for the execution of Muslim-Bosniak prisoners.

In the 27 years since those horrific events, I have gone through an evolution with regard to those events and my responsibility for them. At first, I even denied to myself that I was responsible for those events. However, after my trial, my appeal, attacks on my life in the prison in the United Kingdom where I was left to die, my psychological recovery from that trauma, and finally my peaceful captivity in Poland, I understood and accepted the fact that I was indeed guilty of, and bear great personal responsibility for the horrific crimes committed during and after the fall of Srebrenica.

I always felt and expressed grief for the victims, even after my trial. But that expression of sadness was separate from the expression of my personal responsibility. Over the years, I have understood and accepted my responsibility for the suffering and death of these victims and their families. Although I am aware that it is now too late, I do want to offer my deepest apologies for my role in causing their suffering and death.

Words cannot express the painful remorse I feel every day because of my actions. In this letter, I will not try to convince you that I am rehabilitated. It is up to you to judge based on my behaviour. I invite you to inquire about it with the prison authorities here in Poland, who learned and have been observing how I behave and what I do. I am prepared to undergo psychiatric or psychological examinations that you deem appropriate. I accept my responsibility and I carry the same and

⁸⁹ Application, para. 30.

⁹⁰ Application, para. 16.

⁹¹ Application, para. 27.

⁹² Application, para. 27.

⁹³ Application, para. 25.

sorrow for my crimes to the core of my being. I believe that conclusion of any examination will show that all I am saying is true on my part.⁹⁴

59. In my opinion, the statements in Krstić's letter reveal that he has started to reflect upon his crimes, to accept responsibility for them, and to express grief and remorse. In particular, I note that he recognises that he is "guilty of, and bear[s] great personal responsibility for the horrific crimes committed during and after the fall of Srebrenica", accepts "full [...] responsibility for [his] crimes", refers to having "gone through an evolution with regard to those events and [his] responsibility for them", and feels "grief for the victims" and "painful remorse", all of which constitute evidence of progress and a step in the right direction.

60. Notwithstanding this, I consider that the generic nature of Krstić's statements indicate that he is still at an early stage of his rehabilitation process. While in the letter Krstić refers to "the crimes [he has] been convicted of before the ICTY", "all the crimes listed in the judgement of the Appeals Chamber", "the execution of Muslim-Bosniak prisoners", and "the horrific crimes committed during and after the fall of Srebrenica", I observe that he does not elaborate on the offences for which he was held responsible and the role he played in the events that took place in Srebrenica in 1995. I recall that, "without the use of the Drina Corps resources, the Main Staff would not have been able to implement its genocidal plan"⁹⁵ to execute between 7,000 and 8,000 Bosnian Muslim men and boys,⁹⁶ and that Krstić participated in the forcible removal of Bosnian Muslims civilians from Potočari.⁹⁷ Further, his vague expressions of grief and remorse give the impression that he is not yet able to elaborate on the reasons why he, personally, grieves and feels remorse.

61. When considered as a whole, the progress Krstić has made while in prison in Poland is encouraging. However, I am of the opinion that the generic nature of the statements contained in Krstić's letter evidences that he has insufficiently engaged in critical reflection upon his crimes and the role he played in relevant events. In any case, I consider that a letter sent to the President in support of an early release application, like Krstić's letter, should not be interpreted in isolation. Any such letter should be substantiated by positive actions taken by the convicted person which indicate that he or she has critically reflected upon his or her crimes. In Krstić's case, I have received no evidence of any positive action taken by him which would substantiate the content of his letter.

⁹⁴ Application, Annex A, RP 297.

⁹⁵ Appeal Judgement, para. 137.

⁹⁶ Trial Judgement, para. 720.

⁹⁷ *See supra*, para. 40.

62. Finally, in relation to his rehabilitation and his early release, Krstić invited me to hear him by video-link if I had any questions.⁹⁸ However, I do not consider that it is necessary to hear Krstić on this matter given that I am able to reach my decision on the Application based on the information before me.

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

63. Krstić believes that his mental health remains “a work in progress” and states that he is willing to fully cooperate with any and all evaluations of his mental health.⁹⁹ He indicates that he has “a concrete plan for life after prison”¹⁰⁰ and explains that “[h]e just wants to live quietly [REDACTED] and enjoy his freedom [REDACTED]”.¹⁰¹ In particular, he proposes to reside with [REDACTED] if released and provides a letter from [REDACTED], dated 28 March 2022, verifying [REDACTED], Serbia, and to supplement his monthly military pension if and when necessary.¹⁰²

64. Krstić commits to keeping an extremely low profile in Serbia, namely that “he will make no public statements about his case, the war, or any political issues[,] [...] [h]e will not glorify his own conduct, or that of others during the war[,] [...] [h]e will not engage in any form of genocide denial whatsoever”.¹⁰³ He recalls that, “[t]hroughout his trial, appeal, and imprisonment, [he] has assiduously avoided making any public statements and he is committed to continuing in that vein”.¹⁰⁴ Krstić also agrees to abide by any and all conditions of release that the President might impose, including the conditions imposed on Lukić at the time of his early release.¹⁰⁵

65. Further, Krstić mentions that he completed a 30-hour course on aggression and violence prevention in 2019.¹⁰⁶

66. The Prison Report indicates that Krstić’s mental condition “[REDACTED]”: “[REDACTED]”.¹⁰⁷ Krstić “[REDACTED]”, he “[REDACTED]”, and he “[REDACTED]”.¹⁰⁸ The Prison Report also notes that Krstić “maintains external contacts through phone calls, Skype, letters and visits taking place in the penitentiary”, mainly with family members, and “participates in

⁹⁸ Comments, para. 18.

⁹⁹ Application, para. 29.

¹⁰⁰ Application, para. 35.

¹⁰¹ Application, para. 32.

¹⁰² Application, para. 31, Annex B.

¹⁰³ Application, para. 32.

¹⁰⁴ Application, para. 32.

¹⁰⁵ Application, para. 34.

¹⁰⁶ Application, para. 28.

¹⁰⁷ Prison Report, p. 2.

¹⁰⁸ Prison Report, p. 2.

community activities”.¹⁰⁹ Krstić “did not consent to give interviews or provide information to the media” and “is reluctant to speak about the offences he committed”.¹¹⁰ The Prison Report further states that, in 2019, Krstić participated in a programme to counteract aggression and violence and, in 2021, he completed “60 plus”, a programme to develop social competences, with a positive score.¹¹¹

67. In response, Krstić submits that “[t]here is nothing in the materials collected by the Registry that would cast any doubt on [his] ability to successfully reintegrate into society in Serbia as a quiet and law-abiding pensioner”.¹¹²

68. It is apparent that Krstić has retained ties with his family and would have in place housing and finances if he were to be released, and has committed to keeping an extremely low profile in Serbia. I also acknowledge that Krstić has completed two rehabilitation programmes in prison. Although these elements do not in and of themselves demonstrate rehabilitation, I consider that they merit positive weight in my consideration of his rehabilitation.

(d) Overall Assessment

69. Although Krstić has taken steps towards his rehabilitation while in prison in Poland, I consider that these steps insufficiently demonstrate that he is rehabilitated. As stated above, the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.¹¹³ In this regard, I consider that the letter dated 12 April 2022 is evidence of progress and a step in the right direction. However, given its generic nature, it is apparent that Krstić has not sufficiently engaged in critical reflection upon his crimes and the role he played in the events that took place in Srebrenica in 1995. Further, his letter is not substantiated by any positive actions which indicate his critical reflection upon his crimes.

4. Substantial Cooperation with the Prosecutor

70. The Prosecution submits that Krstić did not substantially cooperate with it in the course of his trial or appeal, nor at any point while serving his sentence.¹¹⁴ Krstić does not dispute that he has

¹⁰⁹ Prison Report, p. 2.

¹¹⁰ Prison Report, p. 2.

¹¹¹ Prison Report, p. 2.

¹¹² Comments, para. 22.

¹¹³ *See supra*, para. 34.

¹¹⁴ Prosecution Memorandum, para. 19.

not engaged in substantial cooperation with the Prosecutor of the ICTY (“ICTY Prosecutor”) and the Prosecutor of the Mechanism (“Prosecutor”), and states that he has never been asked to do so.¹¹⁵

71. It is clear that Krstić did not cooperate with the Prosecutor or the ICTY Prosecutor. Accordingly, this merits no weight in my consideration of the Application.

C. Other Considerations

1. Comments and Information Provided by the Prosecution

72. Decisions on early release have established that the President may receive and consider general comments and information from the Prosecution with regard to early release applications.¹¹⁶ In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.¹¹⁷

73. The Prosecution asserts that Krstić has not demonstrated that his early release is warranted due to the particularly high gravity of his crimes,¹¹⁸ insufficient evidence of rehabilitation,¹¹⁹ and lack of substantial cooperation with the Prosecution.¹²⁰ In the event that I would nevertheless grant the Application, the Prosecution requests that appropriate conditions be imposed upon Krstić’s release.¹²¹

74. In particular, the Prosecution submits that “Krstić’s crimes are [...] of the utmost gravity and [that] he should therefore not be granted early release unless there is persuasive evidence of rehabilitation or substantial cooperation with the Prosecution”.¹²² The Prosecution argues that there is not.¹²³ Indeed, the Prosecution considers that the “positive steps towards rehabilitation [taken by Krstić] [...] [do] not [on their own] demonstrate rehabilitation of a person convicted for some of the most heinous international crimes”.¹²⁴ The Prosecution also contends that, while Krstić’s letter

¹¹⁵ Comments, para. 24; Application, para. 36.

¹¹⁶ *Pavković* Decision, para. 71; *Ntabakuze* Decision, para. 71; *Bralo* Decision, para. 69.

¹¹⁷ *Pavković* Decision, para. 71; *Ntabakuze* Decision, para. 71; *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.

¹¹⁸ Prosecution Memorandum, paras. 2, 4-12, 29.

¹¹⁹ Prosecution Memorandum, paras. 2, 13-18, 29.

¹²⁰ Prosecution Memorandum, paras. 2, 19, 29.

¹²¹ Prosecution Memorandum, paras. 24-26.

¹²² Prosecution Memorandum, para. 12.

¹²³ Prosecution Memorandum, para. 12.

¹²⁴ Prosecution Memorandum, para. 18.

dated 12 April 2022 is “potentially a positive indicator of rehabilitation, [it] does not discharge his early release burden to demonstrate rehabilitation that would warrant his release”.¹²⁵

75. I have given due regard to the Prosecution’s comments and information on the Application.

2. Views of Serbia

76. In the Application, Krstić states that he expects that “Serbia will undertake to receive him and to carry out any duties of monitoring or supervision requested by the Mechanism”.¹²⁶

77. Serbia submits that Krstić has served two-thirds of his sentence and expresses concern as to [REDACTED] and advanced age.¹²⁷ In this regard, Serbia recalls that Krstić was seriously wounded in prison.¹²⁸ Serbia also notes that Krstić has been assigned [REDACTED].¹²⁹

78. Should Krstić be released, Serbia indicates that there are no obstacles to his residing in [REDACTED], Serbia, and provides assurances that the competent authorities would be prepared to monitor any conditions imposed by the Mechanism, and to provide guarantees to this effect.¹³⁰

79. I have taken note of Serbia’s support of the Application.

3. Impact on Witnesses and Victims

80. WISP conveyed information concerning 82 witnesses, comprising 22 who were identified as victim witnesses, 19 identified as sensitive witnesses of which five were insider witnesses, and 41 selected on the basis of other factors.¹³¹ The information provided relates to the places of residence of these witnesses and victims, according to the Prosecution and the WISP’s records, as well as any physical and psycho-social issues or previously reported security concerns.¹³² Based on the available information, the vast majority of the witnesses do not live in Serbia.¹³³

81. WISP states that: “[t]he early release of a convicted person may impact victims and witnesses in different ways. Learning of a convicted person’s release through the media, other channels, or through an unexpected encounter in public could increase the perception of risk by victims and witnesses, affect their psycho-social wellbeing, or re-traumatize them. Other victims

¹²⁵ Prosecution Memorandum, para. 18.

¹²⁶ Application, para. 16.

¹²⁷ Serbian Minister of Justice Letter of 24 May 2022, p. 2.

¹²⁸ Serbian Minister of Justice Letter of 24 May 2022, p. 2.

¹²⁹ Serbian Minister of Justice Letter of 24 May 2022, p. 2.

¹³⁰ Serbian Minister of Justice Letter of 24 May 2022, p. 3.

¹³¹ WISP Memorandum, paras. 3-4.

¹³² WISP Memorandum, paras. 7-8, 11-13, 15-18.

¹³³ WISP Memorandum, paras. 7-8.

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]”.¹³⁴

82. WISP submits that “Krstić’s release will probably receive significant local media coverage and may thus impact witnesses located in Bosnia and Herzegovina”.¹³⁵ WISP also observes that it “is not in a position to assess whether Krstić would be capable of or intends to harm any witnesses”.¹³⁶ Even with this caveat, however, WISP considers that certain witnesses are not only likely to experience a heightened perception of risk were Krstić to be released early, but that his release may also increase their level of actual risk.¹³⁷

83. WISP adds that it cannot determine the extent of risk to the witnesses solely by referring to its records and that a fuller assessment would require a range of additional information, involving contact with each witness.¹³⁸ In this regard, and in light of the particular circumstances of this case, I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit further information from them with respect to the Application.

84. As set out earlier, my predecessor received an unsolicited joint letter from the Association of Mothers of Srebrenica and Žepa Enclaves and the Association of Victims and Witnesses of Genocide, conveying their views on the Application.¹³⁹ I have decided to accept the Associations’ Letter of 11 May 2022,¹⁴⁰ wherein the Associations emphasise that Krstić “never showed a single gesture that he was sorry or expressed remorse” and consider that “any ‘remorse’ [he] is showing is false and only aimed at his release as soon as possible”.¹⁴¹ The Associations also state that Krstić has “never worked with [the] victims” of his crimes and has never told them what he knows about “the biggest crime, the mass graves, the missing persons, their plans, [or] the names of the executors”.¹⁴²

85. In response, Krstić argues that “[i]t is understandable that the Srebrenica victims do not support [his] early release” and that he “understands their pain and especially the pain of those whose loved ones have not been found”.¹⁴³ However, he claims that “he does not know the location

¹³⁴ WISP Memorandum, para. 9.

¹³⁵ WISP Memorandum, para. 9.

¹³⁶ WISP Memorandum, para. 21.

¹³⁷ WISP Memorandum, para. 20.

¹³⁸ WISP Memorandum, paras. 5, 21.

¹³⁹ *See supra*, para. 11.

¹⁴⁰ *See Practice Direction*, para. 14.

¹⁴¹ Associations’ Letter of 11 May 2022, p. 2.

¹⁴² Associations’ Letter of 11 May 2022, pp. 1-2.

¹⁴³ Comments, paras. 6, 16.

of any undiscovered graves” and that, “[i]f he did, he would have long ago provided that information so that the remains could be recovered”.¹⁴⁴

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

4. Health of the Convicted Person

87. Previous decisions have taken into account the state of the convicted person’s health in the context of an early release application.¹⁴⁵ 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.¹⁴⁶

88. Krstić submits that he is 73 years old at the time of the Application and that he has [REDACTED].¹⁴⁷ In addition, he contends that, “[w]hile not amounting to exceptional circumstances”, “the injuries and trauma he has suffered as a result of the attack against him while in prison in the United Kingdom, ought to be taken into consideration when considering his early release at this stage”.¹⁴⁸ According to Krstić, “[t]his has been a punishment far greater than that which was envisioned when the Appeals Chamber imposed its sentence”.¹⁴⁹

89. The Medical Report indicates that Krstić [REDACTED].¹⁵⁰

90. In light of the information before me, I find no indication that Krstić’s continued detention is inappropriate given the absence of any compelling humanitarian grounds that would warrant his early release. I have nevertheless taken the information on Krstić’s health into account in reaching my decision on the Application.

5. Consultation

91. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism.¹⁵¹ Judge Park expresses the view that Application should be denied unless persons sentenced to 35 years of imprisonment or more by the ICTR, the ICTY, or the

¹⁴⁴ Comments, para. 16.

¹⁴⁵ See e.g. Reasons for *Brđanin* Decision of 3 September 2022, para. 36; *Miletić* Decision of 24 June 2022, para. 57; *Lukić* Decision, p. 4.

¹⁴⁶ Reasons for *Brđanin* Decision of 3 September 2022, para. 36; *Miletić* Decision of 24 June 2022, para. 57; *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.

¹⁴⁷ Application, para. 31.

¹⁴⁸ Application, para. 38. See also Comments, para. 25.

¹⁴⁹ Application, para. 38.

¹⁵⁰ Medical Report, p. 2.

¹⁵¹ See *supra*, para. 18.

Mechanism have been granted early release. Judge Rosa considers that the totality of the circumstances warrant granting Krstić early release, despite the high gravity of the crimes for which he was convicted.

92. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Application. However, as already stated, I am of the opinion 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.¹⁵² In light of this, I find that any comparison to other cases in the context of the Application is inconsequential to my decision.¹⁵³ Further, I consider that there are significant factors strongly militating against Krstić's early release, including the high gravity of his crimes and his insufficient demonstration of rehabilitation.

V. CONCLUSION

93. Although Krstić is eligible to be considered for early release having served two-thirds of his sentence, I am of the view that the Application should be denied. The high gravity of his crimes is a factor that strongly militates against granting him early release, as is his insufficient demonstration of rehabilitation. Further, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

VI. DISPOSITION

94. 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.

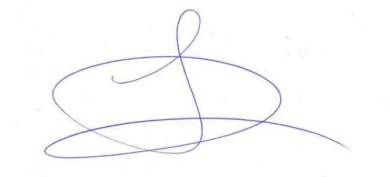
95. The Registrar is **DIRECTED** to provide the Serbian authorities and the Prosecutor with the public redacted version of this decision as soon as practicable.

¹⁵² See *supra*, para. 44.

¹⁵³ See *supra*, para. 44. In any case, to my knowledge, no person sentenced by the ICTR, the ICTY, or the Mechanism to 35 years of imprisonment or more, has ever been granted early release unless clear and compelling humanitarian reasons existed that made it no longer appropriate for the convicted person to remain in prison. See *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. 46-50, 52. Cf. *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Decision on Prosecution Appeal of the Decision Granting Provisional Release, 22 October 2015; *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015 (public redacted), paras. 33, 35-36, 38-39, 42-44 (in which the then-President of the Mechanism denied the request for early release or commutation of sentence filed by Mr. Drago Nikolić ("Nikolić"), but, given Nikolić's medical condition, granted him *proprio motu* provisional release, provided that Nikolić remained confined at his residence in Serbia under 24-hour armed surveillance).

96. The Registrar is further **DIRECTED** to reclassify the Comments from confidential to public.

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



Done this 15th day of November 2022,
At The Hague,
The Netherlands.

Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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