

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-60-ES
Date: 22 December 2021
Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambadou

Decision of: 22 December 2021

PROSECUTOR

v.

MILOMIR STAKIĆ

PUBLIC

**DECISION ON SENTENCE REMISSION AND EARLY RELEASE
OF MILOMIR STAKIĆ**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Milomir Stakić:

Mr. Branko Lukić

French Republic

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of: (i) a notification by the French Republic of Mr. Milomir Stakić’s eligibility under French law for sentence remissions, dated 25 March 2021 (“France”, “Stakić”, and “Sentence Remission Notification”, respectively); and (ii) France’s notification that Stakić has become eligible, under French law, to be considered for conditional release, dated 25 March 2021 (“Application”).¹

I. BACKGROUND

2. On 23 March 2001, Stakić was arrested in Belgrade, Republic of Serbia, and was transferred to the United Nations Detention Unit in The Hague, the Netherlands that same day.² On 28 March 2001, at his initial appearance before the International Criminal Tribunal for the former Yugoslavia (“ICTY”), Stakić pleaded not guilty to the charge of genocide, and subsequently pleaded not guilty to all additional counts contained in the fourth amended indictment.³

3. On 31 July 2003, Trial Chamber II of the ICTY (“Trial Chamber”) found Stakić guilty of extermination as a crime against humanity, murder as a violation of the laws or customs of war, and persecution as a crime against humanity, incorporating murder and deportation as crimes against humanity.⁴ The Trial Chamber sentenced Stakić to life imprisonment.⁵

4. On 22 March 2006, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) affirmed Stakić’s convictions for extermination as a crime against humanity, murder as a

¹ Internal Memorandum from the Registrar of the Mechanism (“Registrar”) to the President, dated 8 September 2021 (confidential), *transmitting* a *note verbale* from the Embassy of France to the Kingdom of the Netherlands (“Netherlands”) to the Office of the Registrar, dated 31 August 2021 (“*Note Verbale* of 31 August 2021”), *conveying, inter alia*, two letters from the Vice-President in charge of sentence enforcement at the Colmar Court of Appeals to the President, dated 25 March 2021. All references herein are to the English translation of documents where available. I use the term “Application” to refer to the notification from France as to Stakić’s eligibility under French law to be considered for conditional release, consistent with Article 2 of the 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”). I note that in the Sentence Remission Notification France refers to “sentence reductions”. The word “reduction” will be used in this decision to reflect France’s national law, and otherwise the word “remission” will be used.

² *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003 (“Trial Judgement”), para. 10.

³ Trial Judgement, para. 945.

⁴ Trial Judgement, p. 253. I note that the Trial Chamber also found Stakić not guilty of genocide, complicity in genocide, and other inhumane acts (forcible transfer) as a crime against humanity.

⁵ Trial Judgement, p. 253. In sentencing Stakić to life imprisonment the Trial Chamber stipulated, *inter alia*, that for a “competent court”, the review date would be once 20 years had been served and, that in the case of early release, Stakić was entitled to credit for deprivation of liberty for the purposes of the proceedings (“Trial Chamber’s Disposition”). Trial Judgement, pp. 253-254. However, the Trial Chamber also emphasised that Rules 123-125 of the ICTY Rules of Procedure and Evidence (“ICTY Rules”), and the Practice Direction on Pardon, Commutation of Sentence and Early Release remained unaffected by the disposition. Trial Judgement, para. 937, *referring to* the Rules of Procedure and Evidence, IT/32/Rev.28, 28 July 2003, and Practice Direction on the Procedure for the Determination of Applications

violation of the laws or customs of war, and persecution as a crime against humanity;⁶ (ii) resolved that the Trial Chamber had incorrectly found Stakić not guilty for other inhumane acts (forcible transfer) as a crime against humanity;⁷ and (iii) imposed upon Stakić a single sentence of 40 years' imprisonment, subject to credit being given for time already spent in detention.⁸

5. On 12 January 2007, Stakić was transferred to France to serve his sentence.⁹

6. On four previous occasions, France has notified the ICTY, and subsequently the Mechanism, of Stakić's eligibility under French Law for sentence remissions. On the first occasion the then-President of the ICTY, Judge Patrick Robinson, "declined to grant" Stakić sentence remission.¹⁰ Later, on 19 December 2013 and 6 October 2017, Judge Theodor Meron, in his capacity as President of the Mechanism, provisionally recognised sentence remissions of 30 months and 15 months, respectively.¹¹ On 31 December 2020, I provisionally recognised sentence

for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal, IT/146, 7 April 1999.

⁶ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 ("Appeal Judgement"), p. 142.

⁷ Appeal Judgement, p. 142.

⁸ Appeal Judgement, p. 142. The Appeals Chamber held that the Trial Chamber's Disposition did not impose a minimum sentence on Stakić and did not preclude a review of the sentence before Stakić had served 20 years. Referring to Rules 123 and 124 of the ICTY Rules, the Appeals Chamber stated that if the laws of the Host State allow for pardon or commutation of sentence before 20 years of Stakić's "life sentence" have passed, the Host State shall notify the ICTY, and the President of the ICTY shall determine whether pardon or commutation is appropriate. However, the Appeals Chamber found that the apparent imposition of "a '20-year review obligation' on the Host State" was inconsistent with, and contrary to, the provisions contained in the Statute of the ICTY, the ICTY Rules, the relevant Practice Direction, and the model agreement for enforcing sentences. The Appeals Chamber also considered that "by vesting the courts of the Host State with the power to suspend the sentence, the Trial Chamber effectively removes the power from the President of the Tribunal to make the final determination regarding the sentence". In light of this, the Appeals Chamber found that the Trial Chamber had acted *ultra vires* by imposing a review obligation on the Host State, and set aside the Trial Chamber's Disposition "insofar as it imposed an obligation on the Host State to review [Stakić's] sentence after a specified time had elapsed". Appeal Judgement, paras. 391-393, p. 142. I also note that the Appeals Chamber affirmed the Trial Chamber's acquittal of Stakić for genocide and complicity in genocide. See Appeal Judgement, p. 141.

⁹ See ICTY Press Release, Milomir Stakić transferred to serve sentence in France, 12 January 2007, <https://www.icty.org/en/press/milomir-staki%C4%87-transferred-serve-sentence-france>. See also *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Order Designating the State in Which Milomir Stakić is to Serve His Prison Sentence, 31 August 2006, p. 2; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Order Withdrawing the Confidential Status of Order Designating the State in Which Milomir Stakić is to Serve His Prison Sentence, 29 October 2008, p. 2.

¹⁰ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 15 July 2011 ("Stakić Decision of 15 July 2011"), para. 40. I recall that while Judge Robinson "decline[d] to grant [...] Stakić sentence remission", the conclusion of the decision in fact referred to the recognition of sentence remission. Indeed, Judge Robinson stated: "Although I would have been willing, as a matter of law, to recognise the sentence remissions of Mr. Stakić, his very limited demonstration of rehabilitation and the very high gravity of his crimes lead me to the conclusion that such remissions [...] are not appropriate, based upon all the information that has been submitted to me". *Stakić* Decision of 15 July 2011, para. 38. Subsequent decisions on sentence remissions have referred to the provisional recognition of sentence remissions, as opposed to whether such remissions are granted or denied. See e.g. *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-ES, Decision of the President on Sentence Remission of Goran Jelisić, 28 May 2013 (public redacted version of decision issued 11 April 2013 and subsequently made confidential), paras. 34, 36; Decision of the President on Sentence Remission of Milomir Stakić, 6 October 2017 ("Stakić Decision of 6 October 2017"), paras. 32-33.

¹¹ Decision of the President on Sentence Remission of Milomir Stakić, 17 March 2014 (public redacted version of decision issued confidentially on 19 December 2013), para. 32; *Stakić* Decision of 6 October 2017, para. 33.

remissions of 10 months and denied his early release, having also received a notification from France that Stakić had become eligible under French law to be considered for conditional release.¹²

7. In a notification dated 31 August 2021, and received by the Registry of the Mechanism (“Registry”) the following day, France transmitted to the Registry the Sentence Remission Notification and the Application.¹³

8. On 28 October 2021, I notified the Registrar that I did not anticipate requesting the Registry to collect information pursuant to paragraph 10 of the Practice Direction, but that I would appreciate receiving confirmation once the Registry had completed the steps set out in paragraphs 9(a) and 9(c) of the same.¹⁴ On 2 November 2021, I received such confirmation.¹⁵

9. Subsequently, since no Judges who imposed the sentence upon Stakić continue to be Judges of the Mechanism, I consulted with two other Judges of the Mechanism, Judge Claudia Hofer and Judge Fatimata Sanou Touré.

II. SENTENCE REMISSION NOTIFICATION

10. In the Sentence Remission Notification, the French authorities indicate that Stakić is eligible for four months of sentence reduction credit for the period 31 January 2019 to 31 January 2021, and six months of additional sentence reduction for the same period.¹⁶ Such sentence reductions arise under the “principles of equality and fairness in the treatment of persons imprisoned in France” and pursuant to French law.¹⁷

11. It is stated that sentence reduction credit is calculated on the basis of the duration of the sentence served in France, and can amount to up to three months for the first year, and two months for each successive year.¹⁸ After one year of imprisonment, additional sentence reductions may follow, subject to a judicial decision.¹⁹ In such instances, a judge examines, on a yearly basis, the

¹² Decision on Sentence Remission and Early Release of Milomir Stakić, 31 December 2020 (“*Stakić* Decision of 31 December 2020”), paras. 1, 51-52.

¹³ See *supra*, fn. 1; Sentence Remission Notification, pp. 1-2.

¹⁴ Internal Memorandum from the President to the Registrar, dated 28 October 2021 (confidential), para. 2.

¹⁵ See Email communication from the Office of the Registrar to the Office of the President, dated 2 November 2021 (confidential).

¹⁶ Sentence Remission Notification, pp. 1-2.

¹⁷ *Note Verbale* of 31 August 2021, p. 1.

¹⁸ See *Note Verbale* of 31 August 2021, p. 1.

¹⁹ *Note Verbale* of 31 August 2021, p. 1.

situation of the convicted person and decides whether or not to reduce the sentence.²⁰ Such additional reductions cannot exceed three months per year of incarceration.²¹

12. The Sentence Remission Notification concludes that Stakić could benefit from four months of sentence reduction credit and six months of additional sentence reduction for the period 31 January 2019 to 31 January 2021.²²

III. APPLICATION

13. In the Application, the relevant French legal provisions are set out, according to which “conditional release may be granted if the length of the sentence served by [the] convicted person is at least equal to the length of the sentence remaining to be served, and if he has demonstrated meaningful efforts towards social reintegration [...]”.²³

14. According to the French authorities, pursuant to their domestic law Stakić became eligible for conditional release on 7 May 2019, having served half of his sentence.²⁴ It is reported that Stakić has not submitted any such application for conditional release to date.²⁵

IV. APPLICABLE LAW

15. 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.

16. 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 of Procedure and Evidence of the Mechanism (“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.

²⁰ *Note Verbale* of 31 August 2021, p. 1.

²¹ *Note Verbale* of 31 August 2021, p. 1.

²² *See Note Verbale* of 31 August 2021, p. 2; Sentence Remission Notification, pp. 1-2.

²³ Application, p. 2.

²⁴ *See Note Verbale* of 31 August 2021, p. 2; Application, p. 2. The concurrent eligibility thresholds of the Mechanism and France are discussed in detail below. *See infra*, paras. 29-35.

²⁵ *Note Verbale* of 31 August 2021, p. 2; Application, p. 2.

17. Rule 149 of the Rules provides that if, according to the law of the State of imprisonment, a convicted person is eligible for pardon, commutation of sentence, or early release the State shall, in accordance with Article 26 of the Statute, notify the Mechanism of such eligibility.

18. Rule 150 of the Rules provides that the President shall, upon receipt of such notice or 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.

19. 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 Prosecutor.

20. Paragraph 3 of the Practice Direction provides that upon the convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the State in which the convicted person is serving his or her sentence, the State shall, in accordance with Article 26 of the Statute and with its agreement with the United Nations, notify the Mechanism accordingly.

21. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which the President considers may be relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate.²⁶

22. The enforcement agreement between the United Nations and France,²⁷ which applies *mutatis mutandis* to the Mechanism,²⁸ provides in Article 3(1) that the competent French authorities

²⁶ Practice Direction, para. 10 (“To assist in his or her determination of an Application, the President may direct the Registry, where applicable, to collect information such as: (a) [a]ny reports and observations from the appropriate authorities in the enforcement State as to the behaviour of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned; (b) [a]ny psychiatric or psychological evaluations prepared on the mental condition of the convicted person, including in relation to any risks posed by release, as well as any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes; (c) [a]ny medical reports on the physical condition of the convicted person, including whether the convicted person is capable of serving his or her sentence in the enforcement State; (d) [i]nformation on where the convicted person intends to live if released early; (e) [a] detailed report from the [...] Prosecution [...] on any co-operation of the convicted person with the Prosecution of the ICTR, the ICTY, or the Mechanism and the significance thereof, as well as any other comments or information that the Prosecution considers of relevance for the determination of the Application; and (f) [a]ny other information that the President considers relevant.”).

²⁷ Agreement Between the United Nations and the Government of the French Republic on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, 25 February 2000 (“Enforcement Agreement”).

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

are bound by the duration of the sentence under the conditions set out in the Statute and the Enforcement Agreement. Article 3(2) stipulates that the conditions of imprisonment shall be governed by French law, subject to the supervision of the Mechanism. Article 3(3) specifies that France shall notify the Registrar if the convicted person becomes eligible under national law for release on parole or any other measure altering the conditions or length of detention. Article 3(4) provides that if the President determines that the convicted person is not eligible for release on parole or any other measure altering the conditions or length of detention, the Registrar shall inform France and France will inform the Registrar if it intends either to continue to enforce the sentence of the convicted person under the same conditions or to transfer the convicted person to the Mechanism.

23. Article 8 of the Enforcement Agreement relates to pardon and commutation of sentences, with Article 8(1) requiring that, if the convicted person becomes eligible under national law for pardon or commutation of sentence, France shall notify the Registrar accordingly. Article 8(2) provides, in relevant part, that if the President determines that pardon or commutation of the sentence is inappropriate, the Registrar will inform France, and France shall then “transfer the convicted person to the [Mechanism]” pursuant to the procedure set out in Article 10 of the Enforcement Agreement.

V. ANALYSIS

24. I will first consider the Sentence Remission Notification, and thereafter the Application.

A. Sentence Remission Notification

25. I have previously set out the distinction between sentence remissions at the domestic level before the enforcement State, and applications for commutation of sentence at the international level before the Mechanism.²⁹ In particular I clarified that when a convicted person becomes eligible for sentence remission under the domestic law of the enforcement State, I am willing to recognise this on a provisional basis.³⁰ However, while sentence remission decisions taken by an enforcement State may affect the enforcement State’s *own* calculation of the length of a convicted person’s sentence, they will not impact the Mechanism’s calculation of: (i) the two-thirds threshold for the purpose of early release; or (ii) the end date of the convicted person’s sentence.³¹

²⁹ *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision on Sentence Remission and Early Release of Goran Jelisić, 11 March 2021 (“*Jelisić Decision*”), paras. 23, 31, 35; *Stakić Decision* of 31 December 2020, paras. 25, 33, 37.

³⁰ *Jelisić Decision*, para. 31; *Stakić Decision* of 31 December 2020, para. 33.

³¹ *Jelisić Decision*, para. 31; *Stakić Decision* of 31 December 2020, para. 33.

26. In other words, sentence remissions stemming from the domestic laws of an enforcement State do not amount to commutation of sentence *before the Mechanism*, but instead equate to commutation of sentence *before the enforcement State*.³² In such situations it is unnecessary for me to embark on an assessment of the factors set out in Rule 151 of the Rules.³³ I consider it appropriate to conduct a Rule 151 assessment only when seised of an application for pardon, commutation of sentence, or early release *before the Mechanism*, and where the convicted person has reached two-thirds of his or her sentence.³⁴

27. In light of the foregoing, I am of the opinion that the sentence remission of ten months, for which Stakić has become eligible under French law, should be provisionally recognised. Nevertheless, such provisional recognition of this sentence remission will not impact the Mechanism’s calculation of the two-thirds threshold for the purposes of early release, or the end date of Stakić’s sentence.

28. It is important to note, however, that the factors underlying sentence remission decisions taken by an enforcement State may be used to evidence good behaviour and progress with regard to rehabilitation for the purposes of applications for pardon, commutation of sentence, or early release before the Mechanism.³⁵

B. Application

1. Eligibility before the Mechanism

29. 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.³⁶

³² *Jelišić* Decision, para. 35; *Stakić* Decision of 31 December 2020, para. 37

³³ *Jelišić* Decision, para. 35; *Stakić* Decision of 31 December 2020, para. 37.

³⁴ *Jelišić* Decision, para. 35.

³⁵ *Jelišić* Decision, para. 31. *See also Stakić* Decision of 31 December 2020, para. 33.

³⁶ *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. 32; *Prosecutor v. Élie Ndayambaje*, Case No. MICT-15-90-ES.1, Decision on the Applications for Early Release and Commutation of Sentence of Élie Ndayambaje, 15 November 2021 (“*Ndayambaje* Decision”), p. 3; *Prosecutor v. Pauline Nyiramasuhuko*, Case No. MICT-15-90-ES.3, Decision on the Application for Early Release of Pauline Nyiramasuhuko, 10 November 2021 (“*Nyiramasuhuko* Decision”), p. 3.

Serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”.³⁷

30. By adhering to the eligibility threshold of two-thirds of the sentence having been served, this means that if a convicted person applies for early release or commutation of sentence before having served two-thirds of his or her sentence, the application may be considered promptly, and without necessarily triggering the multi-step and resource-intensive process of requesting, receiving, translating, sharing, and considering additional information before determining whether the application should be denied as premature.³⁸

31. Stakić will only have served two-thirds of his sentence in November 2027,³⁹ and he is therefore not yet eligible to be considered for early release by the Mechanism.

32. Having said this, compelling or exceptional circumstances could arise in specific instances prior to the two-thirds threshold having been reached, which, in the exercise of my discretion as President, may overcome any eligibility concerns.⁴⁰

2. Eligibility under French law

33. As set out above the Application conveys that according to French law, Stakić has been eligible for conditional release since 7 May 2019, being the date the French authorities calculate as his having served half of his sentence.⁴¹ While in French law this is the threshold for a convicted person to be considered eligible for conditional release, it stands in contrast with the Mechanism’s eligibility threshold of the convicted person having to have served two-thirds of his or her sentence.

34. I recall that, even if Stakić is eligible for conditional release under French law, 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.⁴²

35. In these circumstances, it is important to strictly adhere to the two-thirds threshold, not only for judicial certainty, but also because any departure from this minimum time period would

³⁷ *Dorđević* Decision, para. 32; *Ndayambaje* Decision, p. 3; *Nyiramasuhuko* Decision, p. 3.

³⁸ See *Ndayambaje* Decision, pp. 3-4; *Nyiramasuhuko* Decision, p. 3; *Prosecutor v. Jadranko Prlić*, Case No. MICT-17-112-ES.2, Decision on the Early Release of Jadranko Prlić, 23 March 2021, p. 4.

³⁹ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

⁴⁰ *Ndayambaje* Decision, p. 4; *Nyiramasuhuko* Decision, p. 3; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 24 March 2021 (public redacted), para. 24.

⁴¹ See *supra*, paras. 13-14.

⁴² *Dorđević* Decision, para. 34; *Ndayambaje* Decision, p. 4; *Nyiramasuhuko* Decision, p. 3.

result in the unequal treatment of persons convicted by the ICTR, the ICTY, or the Mechanism who are serving their sentences in enforcement States with varying thresholds for eligibility for early release.⁴³ With regard to Stakić, the two-thirds threshold has not been met and therefore it follows that Stakić is not yet eligible to be considered for early release.

3. Existence of compelling or exceptional circumstances

36. With regard to the potential existence of compelling or exceptional circumstances, I note that the Application reveals no compelling or exceptional circumstances that may warrant Stakić's early release prior to his reaching the two-thirds eligibility threshold. Further, no submissions to this effect have been provided by Stakić upon being informed of the Application.

C. Consultation

37. In coming to my decision on whether to provisionally recognise the Sentence Remission Notification and whether to grant the Application, I have consulted with two other Judges of the Mechanism.⁴⁴ Judge Hofer and Judge Sanou Touré have both indicated that they agree that: (i) the Sentence Remission Notification should be provisionally recognised, but that this should have no impact on the Mechanism's calculation of the two-thirds date of Stakić's sentence; and (ii) Stakić is not yet eligible to be considered for early release by the Mechanism, having not yet served two-thirds of his sentence, and that no compelling or exceptional circumstances have been demonstrated that might nevertheless warrant granting early release.

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

VI. CONCLUSION

39. I consider that the four months of sentence reduction credit and six months of additional sentence reduction for the period 31 January 2019 to 31 January 2021, for which Stakić has become eligible under French law, should be provisionally recognised. However, this provisionally recognised sentence remission will not impact the Mechanism's calculation of the two-thirds threshold for the purpose of early release or the end date of Stakić's sentence.

⁴³ See *Jelisić* Decision, para. 47; *Stakić* Decision of 31 December 2020, para. 48.

⁴⁴ See *supra*, para. 9.

40. Further, I find that Stakić is not eligible to be considered for early release at this stage as he has not yet reached the Mechanism's threshold of having served two-thirds of his sentence. Separately, no compelling or exceptional circumstances have been demonstrated that might nevertheless warrant granting early release.

VII. DISPOSITION

41. For the foregoing reasons, and pursuant to Articles 25 and 26 of the Statute and Rule 150 of the Rules, I hereby provisionally recognise a sentence remission of 10 months for which Stakić has become eligible under French law. Further, for the foregoing reasons, and pursuant to Articles 25 and 26 of the Statute and Rule 150 of the Rules, I hereby **DENY** the Application.

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

Done this 22nd day of December 2021,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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