

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-83-ES

Date: 24 March 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambaou

Decision of: 24 March 2021

PROSECUTOR

v.

STANISLAV GALIĆ

PUBLIC REDACTED VERSION

DECISION ON THE EARLY RELEASE OF STANISLAV GALIĆ

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Stanislav Galić:

Mr. Stéphane Piletta-Zanin

Federal Republic of Germany

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of a notification from the Federal Republic of Germany (“Germany”) informing me that Mr. Stanislav Galić (“Galić”) has become eligible under German law “to have the enforcement of the remainder of his sentence suspended on probation” (“Application”).¹

I. BACKGROUND

2. Galić was arrested on 20 December 1999 and was transferred to the United Nations Detention Unit in The Hague, the Netherlands, on 21 December 1999.² At his initial appearance on 29 December 1999 before Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively), Galić pleaded not guilty to the seven counts in the indictment with which he was charged.³

3. On 5 December 2003, the Trial Chamber found Galić guilty pursuant to Article 7(1) of the Statute of the ICTY of murder and other inhumane acts through sniping and shelling as crimes against humanity, and acts of violence the primary purpose of which was to spread terror among the civilian population as a violation of the laws or customs of war.⁴ The Trial Chamber sentenced Galić to 20 years of imprisonment.⁵

4. On 30 November 2006, the Appeals Chamber of the ICTY issued its judgement and dismissed all 19 of Galić’s grounds of appeal, increasing his sentence to life imprisonment.⁶

¹ See Internal Memorandum from the Registrar to the President, dated 9 October 2020 (confidential) *transmitting a note verbale* from the Embassy of Germany to The Hague, dated 2 September 2020 (confidential) (“*Note Verbale*”) conveying (i) Letter from the Ministry of Justice and European Affairs, dated 23 July 2020 (confidential) (“Application”); (ii) Letter from the Office of the Public Prosecutor General, dated 16 July 2020 (confidential) (“Public Prosecutor Report”); (iii) Letter from the Prison Director, dated 30 June 2020 (confidential) (“Prison Director Report”); and (iv) Ruling of the Higher Regional Court, dated 6 December 2018 (confidential). See Application, p. 1. I use the term “Application” to refer to the notification from Germany, consistent with paragraph 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 the *Note Verbale* was filed confidentially on 9 March 2021, while the attachments conveyed with the *Note Verbale* were not filed. See Registrar’s Submission of a Note Verbale Received from the Embassy of the Federal Republic of Germany to the Netherlands, 9 March 2021 (confidential). See also Internal Memorandum from the President to the Registrar, dated 1 February 2021 (confidential) (“Memorandum of 1 February 2021”), paras. 3-4; Internal Memorandum from the Registrar to the President, dated 19 February 2021 (confidential), para. 3; Internal Memorandum from the President to the Registrar, dated 25 February 2021 (confidential).

² *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003 (“Trial Judgement”), para. 774.

³ Trial Judgement, paras. 772, 777.

⁴ Trial Judgement, paras. 751-752, 769.

⁵ Trial Judgement, para. 769.

⁶ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 (“Appeal Judgement”), p. 185; Annex A, para. 4.

5. On 15 January 2009, Galić was transferred to Germany to serve the remainder of his sentence.⁷

6. On 5 December 2014, the then-President, Judge Theodor Meron, denied Galić early release with “reasons to follow”.⁸ These reasons were issued on 23 June 2015.⁹

7. Germany submitted notifications to the Mechanism regarding Galić’s eligibility to have the remainder of his sentence suspended on probation dated 30 August 2016¹⁰ and 14 August 2018,¹¹ which were decided upon on 18 January 2017¹² and 26 June 2019,¹³ respectively.

II. APPLICATION

8. On 9 October 2020, I received the Application whereby Germany indicates that upon having served 15 years of his life sentence on 18 December 2014, Galić became “eligible to have the remainder of his sentence suspended on probation”.¹⁴ Germany recalls that pursuant to the relevant enforcement agreement in place,¹⁵ and in accordance with the applicable provisions of German law, the German authorities have to review the possibility of a probationary suspension of the remainder of Galić’s sentence.¹⁶ The first such review was to take place by 10 October 2016, followed by subsequent reviews at least every two years, either *proprio motu* or upon the convicted

⁷ See Press Release, Stanislav Galić Transferred to Germany to Serve Sentence, dated 15 January 2009, available at <http://www.icty.org/sid/10037>. See also *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-ES, Order Designating the State in Which Stanislav Galić is to Serve his Prison Sentence, 3 November 2008, p. 2.

⁸ Public Version of the 5 December 2014 Decision with Reasons to Follow on the Early Release of Stanislav Galić, 23 June 2015, p. 2. See Internal Memorandum from the Officer-in-Charge, Immediate Office of the Registrar, to then-President, dated 15 October 2014 (confidential) *transmitting a note verbale* from Germany, dated 10 October 2014 (confidential), p. 1.

⁹ Reasons for the President’s Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted) (“*Galić 2015 Decision*”).

¹⁰ Internal Memorandum from the Officer-in-Charge, Registry, to then-President, dated 8 September 2016 (confidential) *transmitting a note verbale* from Germany, dated 30 August 2016 (confidential), p. 1.

¹¹ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to then-President, dated 17 August 2018 (confidential) *transmitting a note verbale* from Germany, dated 14 August 2018 (confidential).

¹² Decision of the President on the Early Release of Stanislav Galić, 18 January 2017 (public redacted) (“*Galić 2017 Decision*”), paras. 40-41.

¹³ Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted) (“*Galić 2019 Decision*”), paras. 47, 49.

¹⁴ Public Prosecutor Report, pp. 1-2. See Application, p. 1.

¹⁵ Agreement between the ICTY and the Government of Germany, dated 16 December 2008 and amended on 13 February 2015 (“Enforcement Agreement”), para. 2(3). See Exchange of Letters between the Mechanism and Germany, dated 11 and 13 February 2015, amending the Enforcement Agreement to allow for the continuation of the enforcement of Galić’s sentence of life imprisonment in Germany. See also Security Council Resolution 1966 (2010), 22 December 2010.

¹⁶ Public Prosecutor Report, p. 2.

person's request.¹⁷ Germany further recalls its responsibility to notify the Mechanism of the outcome of the review accordingly.¹⁸ [REDACTED].¹⁹

9. On 1 February 2021, I requested the Registrar to, *inter alia*, inform Galić of the Application in accordance with paragraph 9 of the Practice Direction.²⁰

10. Subsequently, I consulted with Judge Theodor Meron and Judge Alphons Orié in their capacity as Judges of the sentencing Chambers,²¹ as foreseen under Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules").

11. I note that the documentation provided by Germany contains comprehensive information on Galić's conditions of detention and health. However, as set out in detail further below, this documentation does not reveal any compelling or exceptional circumstances warranting his early release prior to reaching the two-thirds eligibility threshold. In light of this and considering the length of Galić's sentence which remains to be served, I have been able to come to a decision on the Application based on the material before me without the need to request additional submissions or information pursuant to paragraph 10 of the Practice Direction.

III. APPLICABLE LAW

12. 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.

13. 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.

¹⁷ Public Prosecutor Report, p. 2. *See also* Enforcement Agreement, para. 2(4).

¹⁸ Public Prosecutor Report, p. 2.

¹⁹ Prison Director Report, p. 3.

²⁰ Memorandum of 1 February 2021, para. 5.

²¹ *See* Trial Judgement; Appeal Judgement.

14. 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.

15. Rule 150 of the Rules stipulates that the President shall, upon such notice or 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.

16. The general standards for granting pardon, commutation of sentence, or 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.

17. 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 and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly.

18. 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.²²

19. Paragraph 2(2) of the Enforcement Agreement provides that the conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the

²² See 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 Office of the Prosecutor ("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".

Mechanism.²³ Paragraph 2(4) of the Enforcement Agreement provides, *inter alia*, that a review by the German enforcement authorities of eligibility for suspension of enforcement of the remainder of the sentence pursuant to applicable national law shall take place at the latest every two years. Paragraph 7(2) of the Enforcement Agreement provides, *inter alia*, that the President shall determine whether pardon or commutation of sentence is appropriate, and where the President determines that a pardon or commutation of the sentence is not appropriate, Germany shall act accordingly.

IV. DISCUSSION

20. To reflect the existing practice of the Mechanism, in assessing the Application, I will start by addressing Galić's eligibility for early release.²⁴

A. Eligibility before the Mechanism

21. All convicted persons whose enforcement is supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences.²⁵ Given the need for equal treatment, this uniform eligibility threshold applies irrespective of whether the person was convicted by the ICTR, the ICTY, or the Mechanism.²⁶ Similarly, the two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.²⁷ This eligibility threshold is one aspect that I have continued to stress in all my decisions on applications for early release.²⁸ The eligibility threshold does not entitle a convicted person to early release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.²⁹

²³ See Security Council Resolution (2010), 22 December 2010, para. 4.

²⁴ See *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*”), para. 40; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 31 December 2020 (“*Stakić Decision*”), para. 41; *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) (“*Semanza Decision*”), para. 25; *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) (“*Brđanin Decision*”), para. 28.

²⁵ *Jelisić Decision*, para. 41; *Stakić Decision*, para. 42; *Semanza Decision*, para. 26; *Brđanin Decision*, para. 29.

²⁶ *Jelisić Decision*, para. 41; *Stakić Decision*, para. 42; *Semanza Decision*, para. 26; *Brđanin Decision*, para. 29.

²⁷ *Jelisić Decision*, para. 41; *Stakić Decision*, para. 42; *Semanza Decision*, para. 26; *Brđanin Decision*, para. 29.

²⁸ *Jelisić Decision*, para. 41; *Stakić Decision*, para. 42.

²⁹ *Jelisić Decision*, para. 41; *Stakić Decision*, para. 42; *Galić 2019 Decision*, para. 24 *relying on Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019, para. 32; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (public redacted), para. 23;

22. As noted above, Galić was sentenced to life imprisonment.³⁰ The question of whether a person sentenced to life imprisonment could become eligible for early release was originally addressed in 2015, in a decision on Germany’s first notification of Galić’s eligibility to have the remainder of his sentence suspended on probation.³¹ In that decision the then-President concluded that persons sentenced to life imprisonment may be considered eligible for early release.³² As stated previously, I share this view and do not intend to depart from the Mechanism’s practice in this regard.³³

23. When applying the two-thirds eligibility threshold to Galić, the then-President treated Galić’s sentence of life imprisonment “as equivalent to more than a sentence of 45 years”.³⁴ This was based in part on the fact that, at the time, the highest fixed-term sentence imposed by the ICTR, the ICTY, or the Mechanism, was imprisonment for 45 years.³⁵ In relation to Galić, I have already noted in the *Galić* 2019 Decision that his two-thirds eligibility threshold has been set as 13 December 2029.³⁶ Therefore, Galić is not yet eligible to be considered for early release.

24. 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.³⁷

B. Eligibility under German law and the competence of the Mechanism

25. As set out in the Application, according to German law, upon having served 15 years of his sentence on 18 December 2014, Galić became “eligible to have the remainder of his sentence suspended on probation”.³⁸

26. The Mechanism’s two-thirds threshold exists not only to ensure equal treatment of similarly-situated convicted persons, but also reflects the gravity of the crimes persons before the

Prosecutor v. Sreten Lukić, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“*Lukić* Decision”), para. 17.

³⁰ *See supra*, para. 4.

³¹ *Galić* 2015 Decision, paras. 18, 23.

³² *Galić* 2015 Decision, para. 24.

³³ *Prosecutor v. Vujadin Popović*, Case No. MICT-15-85-ES.2, Decision on the Early Release of Vujadin Popović, 30 December 2020 (public redacted) (“*Popović* Decision”), p. 4; *Galić* 2019 Decision, para. 16.

³⁴ *Galić* 2015 Decision, para. 35. *See Galić* 2017 Decision, para. 23; *Popović* Decision, p. 4.

³⁵ *Galić* 2015 Decision, para. 35. *See Popović* Decision, p. 4.

³⁶ *Galić* 2019 Decision, paras. 18-19. *See Galić* 2017 Decision, para. 23.

³⁷ *Jelić* Decision, para. 44; *Stakić* Decision, para. 44. *See e.g. Prosecutor v. Milan Martić*, Case No. MICT-14-82-ES, Decision on the Early Release of Milan Martić, 7 August 2020, p. 4; *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Early Release of Dragomir Milošević, 29 July 2020, p. 4; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), para. 17; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019, p. 3, fn. 17; *Lukić* Decision, para. 16 and references cited therein.

ICTR, the ICTY, or the Mechanism have been convicted of. In the present case the Appeals Chamber characterised Galić's crimes as exceptionally brutal and cruel.³⁹ Moreover, his participation in them was found to be systematic, prolonged, and premeditated, and he was considered to have abused his position of Corps commander.⁴⁰ In these circumstances I consider it particularly important to use my discretion in strictly adhering to the two-thirds threshold, and I consider that, as Galić has not served two-thirds of his sentence, he is not yet eligible to be considered for early release at this stage.

C. Existence of compelling or exceptional circumstances

27. With regard to the potential existence of compelling or exceptional circumstances, I note the information submitted by the German authorities on Galić's health.

28. [REDACTED].⁴¹ [REDACTED].⁴² [REDACTED].⁴³ [REDACTED].⁴⁴ [REDACTED].⁴⁵

29. [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸ [REDACTED].⁴⁹ [REDACTED].⁵⁰ [REDACTED].⁵¹ [REDACTED].⁵²

30. Having carefully considered the information submitted, [REDACTED] nothing suggests that Galić's mental state or physical health is such as to warrant him unfit to continue serving his sentence in Germany.

31. [REDACTED]. I thus intend to continue monitoring the situation closely and in this respect request that Germany inform me immediately if Galić's health deteriorates to the extent that his further detention would merit serious reconsideration. However, at this time I am unconvinced that the Application reveals any compelling or exceptional circumstances that might warrant granting early release before Galić has served two-thirds of his sentence.

³⁸ Public Prosecutor Report, pp. 1-2. *See* Application, p. 1.

³⁹ Appeal Judgement, para. 455.

⁴⁰ Appeal Judgement, para. 455.

⁴¹ Prison Director Report, p. 2.

⁴² Prison Director Report, p. 2. *See* Prison Director Report, p. 6.

⁴³ Prison Director Report, p. 2.

⁴⁴ Prison Director Report, p. 2. *See* Prison Director Report, p. 6.

⁴⁵ Prison Director Report, pp. 3-4.

⁴⁶ Prison Director Report, p. 2.

⁴⁷ Prison Director Report, p. 2.

⁴⁸ Prison Director Report, p. 2.

⁴⁹ Prison Director Report, pp. 2-3.

⁵⁰ Prison Director Report, p. 3.

⁵¹ Prison Director Report, p. 3.

⁵² Prison Director Report, p. 3.

D. Consultation

32. In coming to my decision on whether to grant the Application I have consulted with two other Judges of the Mechanism.⁵³ Judge Meron and Judge Orié have both indicated that they agree Galić is not yet eligible for early release, having not yet served two-thirds of his sentence, and that no compelling or exceptional circumstances have been provided which would justify departing from the two-thirds eligibility threshold.

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

V. CONCLUSION


34. Based on the foregoing, Galić is not yet eligible to be considered for early release at this stage as he has not yet served two-thirds of his sentence. Further, no compelling or exceptional circumstances have been provided that might nevertheless warrant granting early release.

VI. DISPOSITION

35. 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 24th day of March 2021,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]

⁵³ See *supra*, para. 10.



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