

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-15-85-ES.5

Date: 24 June 2022

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Abubacarr M. Tambaou

**Decision of:** 24 June 2022

**PROSECUTOR**

v.

**RADIVOJE MILETIĆ**

*PUBLIC*

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**DECISION ON THE APPLICATION  
FOR EARLY RELEASE OF RADIVOJE MILETIĆ**

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**Counsel for Mr. Radivoje Miletić:**

Ms. Natacha Fauveau Ivanovic

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of Mr. Radivoje Miletić’s direct petition for early release filed on 2 January 2022 (“Miletić” and “Application”, respectively).<sup>1</sup>

## I. BACKGROUND

2. On 24 February 2005, Miletić surrendered and on 28 February 2005 he was transferred to the International Criminal Tribunal for the former Yugoslavia (“ICTY”).<sup>2</sup> At his further initial appearance on 15 April 2005, Miletić pleaded not guilty to all charges against him.<sup>3</sup> Following the assignment of his case to Trial Chamber II of the ICTY (“Trial Chamber”) and amendments to the indictment, Miletić entered new pleas of not guilty on 6 July 2006.<sup>4</sup>

3. On 10 June 2010, the Trial Chamber found Miletić guilty pursuant to Article 7(1) of the Statute of the ICTY of murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity.<sup>5</sup> The Trial Chamber sentenced Miletić to 19 years of imprisonment.<sup>6</sup>

4. On 30 January 2015, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) reversed, in part, Miletić’s convictions for persecution and inhumane acts (forcible transfer) as crimes against humanity;<sup>7</sup> (ii) affirmed the remainder of his convictions for murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity;<sup>8</sup> (iii) entered a conviction against Miletić pursuant to Article 7(1) of the Statute of the ICTY for murder as a violation of the laws or customs of war;<sup>9</sup> and (iv) reduced Miletić’s sentence to 18 years of imprisonment.<sup>10</sup>

5. On 4 April 2016, Miletić was transferred to the Republic of Finland (“Finland”) to serve the remainder of his sentence.<sup>11</sup>

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<sup>1</sup> Requête de Radivoje Miletić aux fins de libération anticipée, 2 January 2022. An English translation of the Application was filed on 21 January 2022. *See* Radivoje Miletić’s Request for Early Release, 21 January 2022. All references herein are to the English translation of the Application and related documents.

<sup>2</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted) (“Trial Judgement”), Annex 2, para. 6.

<sup>3</sup> Trial Judgement, Annex 2, para. 6; *Prosecutor v. Radivoje Miletić*, Case No. IT-04-80-I, Transcript of 15 April 2005, T. 59, 63-64.

<sup>4</sup> Trial Judgement, Annex 2, paras. 2, 7.

<sup>5</sup> Trial Judgement, para. 2108, p. 830.

<sup>6</sup> Trial Judgement, p. 830.

<sup>7</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (“Appeal Judgement”), paras. 785, 2113, 2117.

<sup>8</sup> Appeal Judgement, para. 2117.

<sup>9</sup> *See* Appeal Judgement, paras. 1717-1718, 2113, 2117.

<sup>10</sup> Appeal Judgement, para. 2117.

<sup>11</sup> Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (public redacted) (“Second Decision Denying Early Release”), para. 3. *See also* Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017 (“First Decision Denying Early Release”), para. 3; Order Designating State in which Radivoje Miletić is to Serve his Sentence, 15 December 2015, pp. 1-2.

6. Miletić has been denied early release on three separate occasions thus far. On 26 July 2017 and again on 23 October 2018, my predecessor, Judge Theodor Meron, denied Miletić’s early release.<sup>12</sup> More recently, on 5 May 2021, I denied Miletić’s early release due to significant factors strongly militating against his early release, including the high gravity of his crimes and his failure to demonstrate sufficient signs of rehabilitation.<sup>13</sup>

## II. APPLICATION

7. On 2 January 2022, Miletić filed the Application, indicating that if released early he would reside in the Republic of Serbia (“Serbia”).<sup>14</sup> As part of the Application, Miletić made public his letter dated 16 November 2018,<sup>15</sup> which has been filed as a confidential annex to Miletić’s earlier direct petition for early release.<sup>16</sup>

8. On 9 January 2022, I received an unsolicited joint letter from two victims’ associations, namely the Association of the Victims and Witnesses of Genocide and the Association of Mothers of the Srebrenica and Žepa Enclaves, informing me of their view that Miletić does not deserve early release.<sup>17</sup>

9. On 26 April 2022, after deciding to accept the Associations’ Letter in line with paragraph 14 of the applicable Practice Direction,<sup>18</sup> I asked the Registrar of the Mechanism (“Registrar”) to communicate the Associations’ Letter to Miletić, caution him that it is to remain confidential, and inform him that he would have 14 days on which to make any written submissions on its content.<sup>19</sup>

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<sup>12</sup> Second Decision Denying Early Release, paras. 46-47; First Decision Denying Early Release, paras. 35-36.

<sup>13</sup> Decision on the Early Release of Radivoje Miletić, 5 May 2021 (confidential) (“Third Decision Denying Early Release”), paras. 40, 60, 78-79. A public redacted version of this Decision was filed on the same day.

<sup>14</sup> Application, paras. 40, 45.

<sup>15</sup> Application, Annex (“Miletić’s Letter”).

<sup>16</sup> See Third Decision Denying Early Release, paras. 7, 52, 56 referring to *Requête de Radivoje Miletić aux fins de libération anticipée*, 5 March 2019 (confidential) (“Earlier Application”), Annex (Miletić’s letter dated 16 November 2018). An English translation of the Earlier Application was filed on 12 March 2019. See Radivoje Miletić’s Request for Early Release, 12 March 2019 (confidential). Miletić filed a public redacted version of the Earlier Application, which did not make public Miletić’s Letter, on 2 August 2019 and the English translation thereof was filed on 21 October 2019. See *Notification de la défense de Radivoje Miletić*, 2 August 2019; Notice from Defence for Radivoje Miletić, 21 October 2019.

<sup>17</sup> Joint Letter from the Association of the Victims and Witnesses of Genocide and the Association of the Mothers of the Srebrenica and Žepa Enclaves to the President, dated 7 January 2022 (“Associations’ Letter”), p. 1.

<sup>18</sup> 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”).

<sup>19</sup> Internal Memorandum from the President to the Registrar, dated 26 April 2022 (confidential), paras. 2-3. This material was subsequently sent to Miletić on 9 May 2022. See Email communication from the Office of the Registrar to the Office of the President, dated 10 May 2022, p. 1.

10. On 23 May 2022, Miletić filed his observations on the Associations' Letter.<sup>20</sup>

11. With regard to the Application, I have consulted with Judge William H. Sekule in his capacity as a Judge of the sentencing Chamber,<sup>21</sup> as foreseen under Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules"). As no other Judges who imposed the sentence upon Miletić are Judges of the Mechanism besides myself, I also consulted with Judge Lee G. Muthoga, in accordance with Rule 150 of the Rules and paragraph 16 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.

14. 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.

15. 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.

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<sup>20</sup> Observations de Radivoje Miletić concernant sa demande de libération anticipée, 23 May 2022 (confidential) ("Miletić's Observations"). The English translation of Miletić's Observations was filed on 27 May 2022.

<sup>21</sup> See Appeal Judgement.

16. 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.

17. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry of the Mechanism to collect information which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 13 of the Practice Direction states that the convicted person shall be given 14 days to examine the information received by the Registrar, following which he or she may provide any written submissions in response.

18. 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.

19. The enforcement agreement between the United Nations and Finland,<sup>22</sup> which applies *mutatis mutandis* to the Mechanism,<sup>23</sup> 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 Finland shall act accordingly.

## IV. ANALYSIS

### A. Eligibility

#### 1. Eligibility before the Mechanism

20. 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.<sup>24</sup>

<sup>22</sup> Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of Finland on the Enforcement of Sentences of the International Tribunal, 7 May 1997.

<sup>23</sup> See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

<sup>24</sup> *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 17 June 2022 (“*Galić Decision of 17 June 2022*”), 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*”).

Serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”.<sup>25</sup>

21. Miletić served two-thirds of his sentence on 17 May 2018.<sup>26</sup> He is therefore eligible to be considered for early release.

## 2. Eligibility under Finnish Law

22. The Finnish authorities have previously informed the Mechanism that sentences imposed by the ICTY or the Mechanism are enforced in accordance with the Finnish Act on International Co-operation in the Enforcement of Certain Penal Sanctions (21/1987).<sup>27</sup> Pursuant to section 14 of that Act, the provisions of the Criminal Code of Finland on conditional release shall not apply to persons convicted by the ICTY or the Mechanism who serve their sentence in Finland.<sup>28</sup> The Finnish authorities accept that the decision on release is to be made by the President of the Mechanism pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.<sup>29</sup>

## B. General Standards for Granting

23. 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, 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.<sup>30</sup> I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be taken into account by the President, which I will address in turn below.

### 1. Gravity of Crimes

24. While I note that the gravity of the crimes is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental

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Decision”), para. 29; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

<sup>25</sup> *Galić* Decision of 17 June 2022, p. 3; *Pavković* Decision, para. 29; *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.

<sup>26</sup> Second Decision Denying Early Release, paras. 24-25, 45.

<sup>27</sup> See Third Decision Denying Early Release, para. 30 referring to Notification from the Central Administration Unit of the Finnish Criminal Sanctions Agency, dated 18 November 2019, p. 1.

<sup>28</sup> See Third Decision Denying Early Release, para. 30.

<sup>29</sup> See Third Decision Denying Early Release, para. 30. See also *Galić* Decision of 17 June 2022, p. 3; *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.

<sup>30</sup> *Pavković* Decision, para. 33; *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. 36; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted) (“*Galić* Decision of 26 June 2019”), para. 24.

importance.<sup>31</sup> It is precisely the gravity of the crimes, understood as an overall assessment of the severity of a convicted person's criminal conduct, which is the primary consideration in determining the length of a sentence imposed by the sentencing Chamber.<sup>32</sup> I emphasise in this respect that, as a general rule, a sentence should be served in full unless it can be demonstrated that a convicted person should be granted early release.<sup>33</sup> Moreover, the graver the criminal conduct in question, the more compelling such a demonstration should be.<sup>34</sup> In other words, while the gravity of the crimes by itself cannot be seen as depriving a convicted person of an opportunity to argue his or her case for early release, it may be said to determine the threshold that the arguments in favour of early release must reach.<sup>35</sup>

25. As set out above, Miletić was convicted for murder, persecution, and inhumane acts (forcible transfer) as crimes against humanity, as well as for murder as a violation of the laws or customs of war.<sup>36</sup> The Trial Chamber found in particular that Miletić participated in, and significantly contributed to, the joint criminal enterprise to forcibly remove the Bosnian Muslim civilians from the Srebrenica and Žepa enclaves, and that he shared the common criminal intent with the other members of this joint criminal enterprise.<sup>37</sup>

26. In assessing the gravity of the crimes, the Trial Chamber first made some observations in relation to the crimes committed by the accused persons, including Miletić.<sup>38</sup> As Miletić has pointed out, he was not charged with or convicted for genocide.<sup>39</sup> Instead, he was held responsible for his pivotal role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa.<sup>40</sup>

27. The Trial Chamber found that the calculated destruction of the Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War.<sup>41</sup> It held that the extermination of the Bosnian Muslim males from Srebrenica, accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves all together encompass the gravest of crimes under international

<sup>31</sup> *Pavković* Decision, para. 34; *Ntabakuze* Decision, para. 37; Third Decision Denying Early Release, para. 39.

<sup>32</sup> *Pavković* Decision, para. 34; *Ntabakuze* Decision, para. 37; *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. 36.

<sup>33</sup> *Pavković* Decision, para. 34; *Ntabakuze* Decision, para. 37; Third Decision Denying Early Release, para. 39.

<sup>34</sup> *Pavković* Decision, para. 34; *Ntabakuze* Decision, para. 37; Third Decision Denying Early Release, para. 39.

<sup>35</sup> *Pavković* Decision, para. 34; *Ntabakuze* Decision, para. 37; Third Decision Denying Early Release, para. 39.

<sup>36</sup> *See supra*, paras. 3-4.

<sup>37</sup> Trial Judgement, para. 1718. *See* Appeal Judgement, para. 1719. *See also* Third Decision Denying Early Release, paras. 33-37.

<sup>38</sup> Trial Judgement, paras. 2148-2152. Neither Miletić nor any other convicted person in his case challenged these statements on appeal. *See* Appeal Judgement, paras. 1970, 1974-1977, 1985.

<sup>39</sup> Miletić's Observations, paras. 3, 5; Earlier Application, paras. 24-25. *See* Trial Judgement, para. 4, p. 836.

<sup>40</sup> Trial Judgement, paras. 1716, 2195. *See* Appeal Judgement, para. 743.

<sup>41</sup> Trial Judgement, para. 2148.

criminal law.<sup>42</sup> The Trial Chamber further found that the genocide, extermination, murder, and persecution were executed with systematic and cold brutality and that the forcible transfer of the Bosnian Muslims from Potočari and Žepa was a massive operation, involving the removal of tens of thousands of people over a few days.<sup>43</sup> In this respect, it recalled in particular the heart-wrenching evidence of the “screening” in Potočari, where hundreds of husbands, fathers, sons, and brothers were separated from their families.<sup>44</sup> Moreover, the Trial Chamber held that the campaign of persecution on the basis of the ethnicity of the victims was massive in scale and was the underlying motif of both joint criminal enterprises.<sup>45</sup> The manifold persecutory acts that were committed with discriminatory intent were not random or isolated incidents; these were crimes committed in a pattern on a large scale accompanied by brutality, which increases the gravity of the crimes.<sup>46</sup>

28. The Trial Chamber also found that the gravity of the crimes was further demonstrated by their terrible impact on the victims and their relatives.<sup>47</sup> For the thousands who lost their lives at the many execution sites, the consequences were absolute.<sup>48</sup> The few survivors of the executions and the Bosnian Muslim women, children, and elderly people forcibly removed from Srebrenica suffered not only their own physical and mental trauma as a result of the conditions of life in Potočari and their separation from their men, but also the sudden loss and disappearance of their male family members or the uncertainty about the fates of the men yet unaccounted for.<sup>49</sup> The Trial Chamber further emphasised that those who were forcibly removed from Srebrenica also experienced a sharp decline in their standard of life due to the loss of their homes and possessions as a result of the expulsions.<sup>50</sup> The Trial Chamber concluded that “[t]he sheer scale and cruelty of these crimes and the continuing impact they have had and still have on so many victims and their relatives is overwhelming”.<sup>51</sup>

29. Specific to Miletić, the Trial Chamber found that as Chief of the Administration for Operations and Training within the Main Staff of the Army of Republika Srpska (“VRS”), he played a pivotal coordinating role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa from inception, through implementation to fruition, during which time he made continuous contributions at all stages, with the specific intent to discriminate on political,

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<sup>42</sup> Trial Judgement, para. 2148.

<sup>43</sup> Trial Judgement, para. 2149.

<sup>44</sup> Trial Judgement, para. 2149.

<sup>45</sup> Trial Judgement, para. 2150.

<sup>46</sup> Trial Judgement, para. 2150.

<sup>47</sup> Trial Judgement, para. 2151.

<sup>48</sup> Trial Judgement, para. 2151.

<sup>49</sup> Trial Judgement, para. 2151.

<sup>50</sup> Trial Judgement, para. 2151.

<sup>51</sup> Trial Judgement, para. 2152.



racial, or religious grounds.<sup>52</sup> He drafted Directive 7, which tasked the VRS Drina Corps with an illegal plan for an attack on the civilian population involving the creation of “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>53</sup> He “skilfully and efficiently used his unique position of knowledge” to enable the plan to be successfully implemented, resulting in the forced removal of thousands of Bosnian Muslims from the respective enclaves.<sup>54</sup> Accordingly, Miletić had a significant impact on the functioning and operation of the VRS as a whole and he clearly occupied a central position of authority.<sup>55</sup> Moreover, Miletić was in a position to foresee that this large-scale forced movement of the population would lead to “opportunistic” killings in Potočari, and he willingly took the risk that these killings would occur.<sup>56</sup>

30. Among the aggravating circumstances, the Trial Chamber emphasised the fact that the victims of the crimes were particularly vulnerable and that Miletić’s participation in the commission of the crimes was prolonged and systematic.<sup>57</sup> Furthermore, the Trial Chamber considered Miletić’s acts during two meetings in 1999 and 2000 at the Zvornik Brigade Headquarters, where he had appealed to the attendees not to provide information related to events at Srebrenica to the ICTY, which was aimed at obstructing justice as well as the work of the ICTY.<sup>58</sup> The mitigating factors included Miletić’s voluntary surrender, apparent good character before the events covered by the indictment, as well as good behaviour during trial, at the detention unit, and while on provisional release.<sup>59</sup>

31. The Appeals Chamber affirmed the Trial Chamber’s convictions with respect to Miletić, except for: (i) reversing his convictions for persecution and inhumane acts (forcible transfer) as crimes against humanity in connection with the forcible transfer of men who crossed the Drina River; and (ii) entering a new conviction against Miletić for murder as a violation of the laws or customs of war for the “opportunistic” killings in Potočari.<sup>60</sup> In light of this, as well as the finding that the Trial Chamber should not have considered Miletić’s use of his authority within the VRS

<sup>52</sup> Trial Judgement, paras. 1715-1716, 1726, 1729, 2195-2197. *See also* Trial Judgement, paras. 1622-1629; Appeal Judgement, paras. 1460, 1474.

<sup>53</sup> Trial Judgement, paras. 762, 1716; Appeal Judgement, paras. 1495, 1498-1504. *See* Appeal Judgement, paras. 1505-1511.

<sup>54</sup> Trial Judgement, para. 1716; Appeal Judgement, para. 1555. *See also* Trial Judgement, paras. 1717-1718, 2195; Appeal Judgement, para. 1569.

<sup>55</sup> Trial Judgement, para. 2196; Appeal Judgement, paras. 1460, 1474, 2026.

<sup>56</sup> Trial Judgement, paras. 1726-1727; Appeal Judgement, paras. 1669, 1715-1719.

<sup>57</sup> Trial Judgement, paras. 2153, 2197; Appeal Judgement, paras. 2038, 2040.

<sup>58</sup> Trial Judgement, para. 2199; Appeal Judgement, para. 2047.

<sup>59</sup> *See* Trial Judgement, paras. 2155-2156, 2200-2202.

<sup>60</sup> *See* Appeal Judgement, paras. 2113, 2117.

Main Staff as an aggravating circumstance, the Appeals Chamber reduced his sentence by one year, to 18 years of imprisonment.<sup>61</sup>

32. Miletić reiterates in the Application that the crimes for which he was sentenced “are grave”, as are all crimes under the jurisdiction of the ICTY, the ICTR, or the Mechanism.<sup>62</sup> He also repeats his submissions that although this gravity must be taken into account, it must not be the sole reason for denying early release, as there is no international rule preventing early release from being granted to persons convicted of the gravest crimes, and because the gravity was already assessed when the sentence was determined.<sup>63</sup> In this respect, I recall that while gravity is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is a factor of fundamental importance.<sup>64</sup> Article 26 of the Statute reflects that early release could be granted “if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law”.<sup>65</sup>

33. It remains the case that the high gravity of Miletić’s crimes is not in doubt, and that the severity is reflected throughout the judgements against him. In these circumstances, I am of the view that this factor weighs very strongly against his early release.

## 2. Treatment of Similarly-Situated Prisoners

34. Persons sentenced by the ICTY, like Miletić, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision.<sup>66</sup> As noted above, all convicted persons supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.<sup>67</sup> Having passed this two-thirds threshold on 17 May 2018,<sup>68</sup> Miletić is eligible to be considered for early release.

35. Miletić again acknowledges that “[i]t is extremely difficult to compare the situation of convicted persons”,<sup>69</sup> but argues that early release is generally granted to persons convicted of extremely serious crimes with sentences similar to the one Miletić received, after they have served

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<sup>61</sup> See Appeal Judgement, paras. 2113, 2117.

<sup>62</sup> Application, para. 23. See also Third Decision Denying Early Release, para. 39.

<sup>63</sup> Application, para. 29. See also Third Decision Denying Early Release, para. 39.

<sup>64</sup> See *supra*, para. 24. See also Third Decision Denying Early Release, para. 39.

<sup>65</sup> See *supra*, para. 13.

<sup>66</sup> *Pavković* Decision, para. 42; *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. 40; *Bisengimana* Decision, paras. 16-17.

<sup>67</sup> See *supra*, para. 20.

<sup>68</sup> See *supra*, para. 21.

<sup>69</sup> Application, para. 24; Earlier Application, para. 19.

two-thirds of their sentence.<sup>70</sup> Once more, to substantiate his argument he refers to cases where early release was granted to high-ranking persons serving a similar sentence for crimes of a similar gravity, to others convicted of the crimes committed in Srebrenica, and to persons convicted of genocide.<sup>71</sup> I consider such comparisons to other cases to be inconsequential, given that each case presents unique circumstances that must be considered on their own merits by the President when determining whether pardon, commutation of sentence, or early release is to be granted.<sup>72</sup>

### 3. Demonstration of Rehabilitation

36. Before turning to an individualised assessment of Miletić's demonstration of rehabilitation, I recall that I have previously set forth some of the considerations that will guide my assessment of whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules.<sup>73</sup>

37. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.<sup>74</sup> For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.<sup>75</sup>

38. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past or may be of persuasive relevance.<sup>76</sup> 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

<sup>70</sup> Application, paras. 25-27. See Earlier Application, paras. 20-22.

<sup>71</sup> Application, paras. 26-27. See Earlier Application, paras. 20-22. Miletić adds that he is now 73 years old and that he has served more than three-quarters of his sentence. Application, paras. 11, 43.

<sup>72</sup> *Pavković* Decision, para. 51; *Dorđević* Decision, para. 44; Third Decision Denying Early Release, para. 42.

<sup>73</sup> *Pavković* Decision, paras. 43-47; *Ntabakuze* Decision, paras. 50-54; *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.

<sup>74</sup> *Pavković* Decision, para. 44; *Ntabakuze* Decision, para. 51; *Bralo* Decision, para. 38.

<sup>75</sup> *Pavković* Decision, para. 44; *Ntabakuze* Decision, para. 51; *Bralo* Decision, para. 38.

<sup>76</sup> *Pavković* Decision, para. 45; *Ntabakuze* Decision, para. 52; *Bralo* Decision, para. 39.

positive assessment of a convicted person's prospects to successfully reintegrate into society.<sup>77</sup> This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in order to demonstrate rehabilitation.<sup>78</sup> It falls, however, upon the convicted person to convince me that sufficient progress has been made in his or her rehabilitation, and that granting release before the full sentence is served would be a responsible exercise of my discretion.<sup>79</sup>

39. Rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.<sup>80</sup> Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.<sup>81</sup> I will, therefore, generally consider the convicted person's post-release plans, including the envisaged place of residence.<sup>82</sup> If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.<sup>83</sup> As a general matter, I do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a greater degree of rehabilitation.<sup>84</sup>

40. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on the early release of a convicted person who is eligible to be considered for such relief.<sup>85</sup> Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.<sup>86</sup>

(a) Recent Third Decision Denying Early Release

41. I recall that, as part of an extensive and holistic consideration of all material before me,<sup>87</sup> I recently denied Miletić's previous early release application. In doing so, I examined, *inter alia*: (i) the information provided by the Finnish authorities;<sup>88</sup> and (ii) Miletić's submissions in his

<sup>77</sup> *Pavković* Decision, para. 45; *Ntabakuze* Decision, para. 52; *Bralo* Decision, para. 39 and references cited therein.

<sup>78</sup> *Pavković* Decision, para. 45; *Ntabakuze* Decision, para. 52; *Bralo* Decision, para. 39.

<sup>79</sup> *Pavković* Decision, para. 45; *Ntabakuze* Decision, para. 52; *Bralo* Decision, para. 39.

<sup>80</sup> *Pavković* Decision, para. 46; *Ntabakuze* Decision, para. 53; *Galić* Decision of 26 June 2019, para. 38.

<sup>81</sup> *Pavković* Decision, para. 46; *Ntabakuze* Decision, para. 53; *Bralo* Decision, para. 40.

<sup>82</sup> *Pavković* Decision, para. 46; *Ntabakuze* Decision, para. 53; *Bralo* Decision, para. 40.

<sup>83</sup> *Pavković* Decision, para. 46; *Ntabakuze* Decision, para. 53; *Bralo* Decision, para. 40 and references cited therein.

<sup>84</sup> *Pavković* Decision, para. 46; *Ntabakuze* Decision, para. 53; *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.

<sup>85</sup> *Pavković* Decision, para. 47; *Ntabakuze* Decision, para. 54; *Bralo* Decision, para. 41.

<sup>86</sup> *Pavković* Decision, para. 47; *Ntabakuze* Decision, para. 54; *Bralo* Decision, para. 41.

<sup>87</sup> Third Decision Denying Early Release, paras. 48-60.

<sup>88</sup> See Third Decision Denying Early Release, paras. 49-51, 59.

Earlier Application, including Miletić's Letter,<sup>89</sup> which has now been resubmitted before me as a public annex to the present Application.

42. In my prior assessment of the content of Miletić's Letter, I considered that "[a]lthough Miletić expresses sympathy towards all victims, he appears to attribute the responsibility for them becoming victims to the objective concept of 'the war'".<sup>90</sup> In this respect, I stated that:

I find it concerning that even in a confidential letter prepared for the very specific purpose of convincing me that he has been rehabilitated and is deserving of early release, Miletić could not unequivocally admit his personal responsibility for the concrete crimes committed against concrete victims. Instead, even now, Miletić keeps hiding behind the notion of war as an evil imposed on him where all the soldiers bear responsibility for the crimes committed by virtue of their mere participation in hostilities and in which his choices were to a large extent predetermined. This picture, painted by a person who held a very prominent position within the VRS and who was responsible for the cold-blooded planning and executing of the brutal ethnic cleansing campaign, does not convince me that Miletić has truly accepted his responsibility for the crimes he was convicted of.<sup>91</sup>

43. In addition to these concerns, I also considered that Miletić had deliberately acted to keep the precise content of his letter from the public and that this did not accord with the notion of a genuine expression of remorse.<sup>92</sup>

44. Consequently, and after having taken into account a vast array of detailed material concerning whether Miletić had demonstrated rehabilitation, I concluded that:

Miletić has shown satisfactory behaviour during his time served in the Prison and he can expect to receive the support of his family to help him reintegrate into society. These factors, however, are outweighed by my serious concern about Miletić's Letter. In addition to containing an expression of remorse, which does not appear genuine, and which additionally was not shared with the victims for whom it professes compassion, it raises doubts as to whether Miletić has truly accepted his individual responsibility for the crimes which he was found guilty of. From the information presented to me I am not convinced that Miletić has demonstrated that he has been sufficiently rehabilitated so as to merit early release as a responsible exercise of my discretion or to make me believe that he can be safely reintegrated into a region still deeply divided by the past armed conflicts.<sup>93</sup>

45. I have remained mindful of the material leading to this conclusion, including that which Miletić relies upon in seeking early release at present,<sup>94</sup> and will now turn to assess whether Miletić's current Application demonstrates that he has been sufficiently rehabilitated.

#### (b) The Application

46. At the outset, I note that Miletić filed the Application eight months after I rendered the Third Decision Denying Early Release and that the majority of Miletić's arguments raised in

<sup>89</sup> See e.g. Third Decision Denying Early Release, paras. 50, 52-58.

<sup>90</sup> Third Decision Denying Early Release, para. 53.

<sup>91</sup> Third Decision Denying Early Release, para. 55.

<sup>92</sup> Third Decision Denying Early Release, para. 52.

<sup>93</sup> Third Decision Denying Early Release, para. 60.

<sup>94</sup> Application, paras. 30-32, 34-36, 38-42, 44-46, Annex.

support of the Application are nearly verbatim to his Earlier Application.<sup>95</sup> The main difference in the current Application is that Miletić has chosen to make public his 2018 letter that had previously been maintained as confidential.<sup>96</sup> Notwithstanding this change in approach, it cannot assuage the concerns I expressed with the content of the letter itself.<sup>97</sup> Furthermore, although the Application makes certain representations on Miletić's behalf,<sup>98</sup> I observe that Miletić has preferred not to adjust or otherwise supplement his 2018 letter, but instead suggests that its concerning content results from his lack of skill as a writer.<sup>99</sup> In these circumstances, I cannot conclude that Miletić has now demonstrated that he has been sufficiently rehabilitated.

47. Instead, in support of his contention that he has now demonstrated rehabilitation, Miletić merely states that he: (i) “fully comprehends the gravity of the crimes for which he was sentenced and his behaviour demonstrates full rehabilitation and reintegration into society”;<sup>100</sup> (ii) provides comments on his letter in which he considers “he expresses his profound regret and sincere compassion for the victims and their families”<sup>101</sup> and in which he “acknowledges that he has made mistakes and his role”;<sup>102</sup> (iii) emphasises that “he is not skilful writer” and that he wrote this letter “sincerely and without any calculations, using his own words and expressing his own feelings”;<sup>103</sup> and (iv) reiterates “his regret and compassion for the victims and their families”.<sup>104</sup> Miletić also contends that he has never been involved in politics and has no intention to do so if granted early release.<sup>105</sup>

48. These additional contentions are largely unsubstantiated and do not convince me that Miletić has demonstrated any additional degree of rehabilitation since I issued the Third Decision Denying Early Release.

### (c) Overall Assessment

49. In the Application, Miletić repeats nearly verbatim many of his prior submissions that were already considered in the Third Decision Denying Early Release.<sup>106</sup> While he has now shared his 2018 letter with the public and the surviving victims of his crimes, I am concerned by this letter's

<sup>95</sup> See Application, paras. 22-27, 29, 36-41, 43, 46-48; Earlier Application, paras. 17-23, 27-36.

<sup>96</sup> See Application, Annex. See also Third Decision Denying Early Release, para. 52.

<sup>97</sup> See *supra*, paras. 42-44.

<sup>98</sup> See e.g. Application, paras. 30-32, 34-35, 44.

<sup>99</sup> See Application, para. 34.

<sup>100</sup> Application, para. 30.

<sup>101</sup> Application, para. 31.

<sup>102</sup> Application, para. 32.

<sup>103</sup> Application, para. 34.

<sup>104</sup> Application, para. 35.

<sup>105</sup> Application, para. 44.

<sup>106</sup> See *supra*, para. 46.

content, as already explained in my recent Decision and as set out again above. Yet despite his awareness of those concerns, Miletić decided to resubmit the same letter with the current Application, choosing not to adjust or otherwise supplement its content. From the information presented to me in the Application, along with that already assessed in the Third Decision Denying Early Release, I remain unconvinced that Miletić has demonstrated that he has been sufficiently rehabilitated so as to merit early release as a responsible exercise of my discretion.

#### 4. Substantial Cooperation with the Prosecutor

50. The Office of the Prosecutor of the Mechanism (“Prosecution”) has previously confirmed that Miletić did not cooperate with it or with the Office of the Prosecutor of the ICTY at any point,<sup>107</sup> and Miletić has not indicated that he has provided any such cooperation in the intervening period.<sup>108</sup> Accordingly, I note that Miletić did not cooperate with the Prosecution and as such this merits no weight in my consideration of the Application.

### C. Other Considerations

#### 1. Comments and Information Provided by the Prosecution, Views of Serbia, and Impact on Witnesses and Victims

51. In reaching the Third Decision Denying Early Release, I requested, received, and took into account detailed information concerning the: (i) comments and information provided by the Prosecution;<sup>109</sup> (ii) views of Serbia;<sup>110</sup> and (iii) anticipated impact on witnesses and victims were Miletić to be granted early release.<sup>111</sup>

52. In this regard, I recall in particular the Prosecution’s submission that early release was not warranted in light of the high gravity of Miletić’s crimes and the insufficient evidence of his rehabilitation, including that Miletić has continued to discount his own culpability.<sup>112</sup> With respect to Serbia, I recall that it provided assurances that the relevant authorities would be prepared to monitor the fulfilment of any conditions imposed by the Mechanism on Miletić.<sup>113</sup> Moreover, I recall the information provided by the Witness Support and Protection Unit of the Mechanism (“WISP”) concerning the vulnerability of a number of witnesses who testified in Miletić’s trial and

<sup>107</sup> See Third Decision Denying Early Release, para. 61.

<sup>108</sup> See Application, para. 38.

<sup>109</sup> See Third Decision Denying Early Release, paras. 9, 12, 19-20, 62-65.

<sup>110</sup> See Third Decision Denying Early Release, paras. 17, 66.

<sup>111</sup> See Third Decision Denying Early Release, paras. 14, 16, 18, 72-75.

<sup>112</sup> See Third Decision Denying Early Release, paras. 63-64.

<sup>113</sup> See Third Decision Denying Early Release, para. 66.

the impact that the early release of a convicted person could have on witnesses and victims.<sup>114</sup> I also recall that the Association of Mothers of the Srebrenica and Žepa Enclaves, as well as the Association of the Women of Podrinje, expressed their opposition to Miletić's early release.<sup>115</sup>

53. Further, after Miletić filed the present Application and made public his previously confidential letter from 2018, two victims' associations, namely the Association of the Victims and Witnesses of Genocide and the Association of Mothers of the Srebrenica and Žepa Enclaves, expressed their view that Miletić does not deserve early release.<sup>116</sup> According to these victims' associations, Miletić's Letter shows that his attitude towards the genocide committed in Srebrenica has not changed since he does not mention either Srebrenica or the genocide in his letter and, instead, merely refers in a generalised way to his regret over the war and suffering.<sup>117</sup> These victims' associations consider that Miletić's Letter is an "insult" to the victims.<sup>118</sup>

54. In response to the Associations' Letter, Miletić states that he understands the pain of the victims and does not wish to comment on their observations.<sup>119</sup> However, Miletić underlines that he did not commit, nor was found guilty of, genocide.<sup>120</sup>

55. While Miletić was not convicted of genocide,<sup>121</sup> the grave crimes for which he was convicted of were committed in the Srebrenica and Žepa enclaves.<sup>122</sup> I recall that the Appeals Chamber affirmed Miletić's "central participation in the drafting process of Directive 7, which laid out the plan to forcibly remove" the Bosnian Muslim civilians from the Srebrenica and Žepa enclaves as well as "his pivotal role in the implementation of [this] plan".<sup>123</sup> In spite of the content of the Associations' Letter and the opportunity to express himself on the suffering of the victims, Miletić chose not to offer any words of remorse or regret. Instead, Miletić blandly claims that he "has understanding for [their] pain",<sup>124</sup> and otherwise emphasises that he was not convicted of genocide while stressing that the victims did not pay "much heed to legal language and the subtleties of criminal law".<sup>125</sup>

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

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<sup>114</sup> See Third Decision Denying Early Release, para. 72.

<sup>115</sup> See Third Decision Denying Early Release, para. 73.

<sup>116</sup> Associations' Letter, p. 1.

<sup>117</sup> Associations' Letter, p. 1.

<sup>118</sup> Associations' Letter, p. 1.

<sup>119</sup> Miletić's Observations, paras. 3-4.

<sup>120</sup> Miletić's Observations, paras. 3, 5.

<sup>121</sup> See *supra*, paras. 3-4.

<sup>122</sup> See *supra*, paras. 25-29, 31.

<sup>123</sup> Appeal Judgement, para. 743. See Trial Judgement, para. 1718; Appeal Judgement, para. 1719.

<sup>124</sup> Miletić's Observations, para. 3.

<sup>125</sup> Miletić's Observations, para. 4.



## 2. Health of the Convicted Person

57. Previous decisions on early release have determined that the state of the convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.<sup>126</sup>

58. The Third Decision Denying Early Release relied on a detailed medical report from the Finnish prison authorities concerning Miletić's health over the previous 20 years.<sup>127</sup> It also considered Miletić's submissions concerning his state of health, which are quite similar to those he makes in the present Application.<sup>128</sup>

59. In the Application, Miletić now adds that he underwent hip surgery in 2020 and that he has undergone several eye operations, with the most recent one in 2021.<sup>129</sup>

60. In light of this information, I do not consider that there are compelling humanitarian grounds which would warrant granting early release, notwithstanding the overall negative assessment above.

## 3. Consultation

61. In coming to my decision on whether to grant the Application I have consulted with two other Judges of the Mechanism.<sup>130</sup> Judge Sekule and Judge Muthoga agree that the Application should be denied as it is based on the same grounds as the Earlier Application, and in view of the gravity of Miletić's crimes and his insufficient demonstration of rehabilitation.

62. 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

63. I consider that the Application should be denied. Although Miletić is eligible to be considered for early release, there continue to be significant factors strongly militating against early release, including the high gravity of his crimes. In addition, I find that Miletić has failed to

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<sup>126</sup> *Galić* Decision of 17 June 2022, p. 5; *Pavković* Decision, para. 81; *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.

<sup>127</sup> See Third Decision Denying Early Release, paras. 15, 69-70.

<sup>128</sup> See Third Decision Denying Early Release, para. 68. See also Application, para. 43.

<sup>129</sup> Application, para. 43.

<sup>130</sup> See *supra*, para. 11.

demonstrate sufficient signs of rehabilitation. Finally, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

## VI. DISPOSITION

64. 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.

65. The Registrar is hereby **DIRECTED** to provide the authorities of Finland and the Prosecutor of the Mechanism with a copy of this Decision as soon as practicable.

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

Done this 24th day of June 2022  
At The Hague,  
The Netherlands.



Judge Carmel Agius  
President

[Seal of the Mechanism]



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