UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: MICT-14-67-ES.2

Date: 18 May 2022

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THE PRESIDENT OF THE MECHANISM

Before: **Judge Carmel Agius, President**

Registrar: **Mr. Abubacarr Tambadou**

Decision of: **18 May 2022**

PROSECUTOR

v.

NEBOJŠA PAVKOVIĆ

PUBLIC REDACTED VERSION

DECISION ON THE APPLICATION FOR EARLY RELEASE OF NEBOJŠA PAVKOVIĆ

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Nebojša Pavković:

Mr. Aleksandar Aleksić

Republic of Finland

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals ("President" and "Mechanism", respectively), am seised of the notification from the Republic of Finland dated 9 June 2020 ("Application" and "Finland", respectively) informing the Mechanism of the date on which Mr. Nebojša Pavković ("Pavković") will have served two-thirds of his sentence.[1]

I. BACKGROUND

2. On 25 April 2005, Pavković surrendered and was transferred to the custody of the International Criminal Tribunal for the former Yugoslavia ("ICTY").[2]

3. On 26 February 2009, Trial Chamber III of the ICTY ("Trial Chamber") convicted Pavković of murder, persecution, deportation, and other inhumane acts (forcible transfer) as crimes against humanity and murder as a violation of the laws or customs of war.[3] The Trial Chamber sentenced Pavković to 22 years of imprisonment.[4]

4. On 23 January 2014, the Appeals Chamber of the ICTY ("Appeals Chamber"): (i) affirmed Pavković's convictions for murder, persecution, deportation, and other inhumane acts (forcible transfer) as crimes against humanity and murder as a violation of the laws or customs of war; (ii) reversed, in part, Pavković's convictions for these crimes insofar as they concerned specific incidents; and (iii) affirmed Pavković's sentence of 22 years of imprisonment.[5]

5. On 25 August 2014, Pavković was transferred to Finland to serve the remainder of his sentence.[6]

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[1] Internal Memorandum from the Registrar of the Mechanism ("Registrar") to the President, dated 15 June 2020 (confidential) ("Registrar Memorandum of 15 June 2020"), *transmitting* Communication from the Ministry of Justice of Finland, dated 9 June 2020. I use the term "Application" to refer to this State notification, 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"). Following communication between the Registry of the Mechanism ("Registry") and Finnish authorities, the Application was filed confidentially on the judicial record on 28 August 2020. *See* Registrar Memorandum of 15 June 2020, para. 3; Internal Memorandum from the Registrar to the President, dated 17 July 2020 (confidential) ("Registrar Memorandum of 17 July 2020"), para. 3; Internal Memorandum from the President to the Registrar, dated 27 August 2020 (confidential), para. 2; Registrar's Submission of Information Transmitted by the Republic of Finland, 28 August 2020 (confidential).

[2] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 ("Trial Judgement"), vol. 1, para. 2; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-PT, Decision on Nebojša Pavković's Provisional Release, 30 September 2005, pp. 2, 4.

[3] Trial Judgement, vol. 1, para. 6, vol. 3, para. 1210.

[4] Trial Judgement, vol. 3, para. 1210.

[5] *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014 ("Appeal Judgement"), paras. 9, 1844, 1847.

[6] Email Communication from the Office of the Registrar to the Office of the President, dated 3 December 2019 (confidential). *See also* Order Designating State in which Nebojša Pavković is to Serve his Sentence, 13 March 2014, pp. 1-2.

II. APPLICATION

6. On 16 June 2020, I received the Application,[7] in which Finland informed the Mechanism, with reference to Article 8 of the enforcement agreement between the United Nations and Finland,[8] as well as paragraph 7 of the Practice Direction, that Pavković would have served two-thirds of his sentence on 25 August 2020.[9]

7. On 17 June 2020, I asked the Registrar for clarification as to whether the Application concerned Pavković's eligibility for pardon, commutation of sentence, or early release under Finnish law.[10] I also requested that the Registry collect the information enumerated in paragraphs 10(a) through 10(e) of the Practice Direction.[11]

8. On 17 July 2020, the Registrar informed me that his predecessor had written to the Ambassador of Finland to the Kingdom of the Netherlands to inquire about Pavković's eligibility under Finnish law, and to obtain further material.[12] The Registrar also confirmed that Pavković had been informed of the Application and the early release procedure in accordance with paragraph 9(c) of the Practice Direction, and that the Office of the Prosecutor of the Mechanism ("Prosecution") had been asked to provide any comments it had in relation to the Application.[13]

9. On 4 August 2020, the Registrar transmitted to me the Prosecution's comments on the Application.[14]

10. On 9 October 2020, the Registrar conveyed to me material received from the Finnish authorities concerning Pavković's behaviour during his incarceration, the general conditions under which he is imprisoned, reports concerning his medical status, and the address near [REDACTED], Republic of Serbia ("Serbia") where Pavković intends to live if released early.[15]

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[7] Email Communication from the Office of the Registrar to the President, dated 16 June 2020 (confidential), *transmitting* the Registrar Memorandum of 15 June 2020, *conveying* the Application.
[8] Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of Finland on the Enforcement of Sentences of the International Tribunal, dated 7 May 1997 ("Enforcement Agreement"). This agreement applies *mutatis mutandis* to the Mechanism. *See* Security Council Resolution 1966 (2010), 22 December 2010, para. 4.
[9] Application, p. 1.
[10] Internal Memorandum from the President to the Registrar, dated 17 June 2020 (confidential) ("Memorandum of 17 June 2020"), para. 3.
[11] Memorandum of 17 June 2020, para. 4.
[12] Registrar Memorandum of 17 July 2020, para. 2.
[13] Registrar Memorandum of 17 July 2020, para. 2.
[14] Internal Memorandum from the Registrar to the President, dated 4 August 2020 (confidential), *transmitting* Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch to the Deputy Chief, Registry, Hague branch, dated 24 July 2020 (confidential) ("Prosecution Memorandum").
[15] Internal Memorandum from the Registrar to the President, dated 9 October 2020 (confidential), *transmitting* a *note verbale* from the Embassy of Finland to the Mechanism, dated 6 October 2020, *conveying* a notification from the

11. On 16 October 2020, the Registrar informed me that the Finnish authorities had clarified that under Finnish law, offenders are entitled to early release upon reaching either one-half or two-thirds of the sentence, and that Finland's practice with the ICTY had been to notify the Tribunal regarding possible early release when the two-thirds threshold was approaching.[16]

12. On 20 January 2021, I requested in line with paragraph 10(f) of the Practice Direction that the Registry provide me with further relevant material, namely: (i) information from the Witness Support and Protection Unit of the Mechanism ("WISP") concerning the victims of the crimes for which Pavković was convicted and who testified in his case, including whether they are currently residing in the vicinity of [REDACTED], Serbia, given Pavković's reported intention to live there if released early; (ii) any media reports concerning Pavković that had been published in Serbia in the past two years; and (iii) an indication whether there are any victims' associations or other groups that exist in relation to the crimes for which Pavković was convicted.[17]

13. On 12 March 2021, the Registrar provided me with information concerning victims' associations that could pertain to the crimes for which Pavković was convicted.[18]

14. On 1 April 2021, the Registrar provided me with a strictly confidential memorandum from the Head of WISP, conveying information relating to 113 witnesses who testified in Pavković's case.[19]

15. On 30 April 2021, the Registrar conveyed to me a compilation of media reports concerning Pavković that had been published in Serbia in the previous two years.[20]

Criminal Sanctions Agency of the Finnish Ministry of Justice, dated 4 September 2020, *enclosing* a statement by the Senior Physician of Health Care Services for Prisoners in the region where Pavković is serving his sentence, dated 20 August 2020 ("Physician Statement") and a statement by the Director of the prison where Pavković is serving his sentence, dated 17 July 2020 ("Prison Report"). Throughout this Decision, all references are to the English version of documents where available.

[16] Internal Memorandum from the Registrar to the President, dated 16 October 2020 (confidential) ("Registrar Memorandum of 16 October 2020"), para. 2.

[17] Internal Memorandum from the President to the Registrar, dated 20 January 2021 (confidential) ("Memorandum of 20 January 2021"), paras. 2-5.

[18] Internal Memorandum from the Registrar to the President, dated 12 March 2021 (confidential) ("Registrar Memorandum of 12 March 2021"), para. 2, Annex.

[19] Internal Memorandum from the Registrar to the President, dated 1 April 2021 (strictly confidential) ("Registrar Memorandum of 1 April 2021"), *transmitting* Internal Memorandum from the Head of WISP to the Registrar, dated 1 April 2021 (strictly confidential) ("WISP Memorandum"), paras. 3-5. The Registrar also observed that this information was provided on a strictly confidential basis and should not be made available to Pavković or the Prosecution. *See* Registrar Memorandum of 1 April 2021, para. 2.

[20] Internal Memorandum from the Registrar to the President, dated 30 April 2021 (confidential), *transmitting* Internal Memorandum from the Officer-in-Charge, External Relations Office, Hague branch to the Registrar, dated 30 April 2021 (confidential) ("External Relations Office Memorandum").

16. On 4 May 2021, I requested the Registrar to communicate to Pavković relevant material with respect to the Application in a language he understands, and to inform him that he would thereafter have 14 days to examine the information and make any written submissions.[21]

17. On 17 June 2021, I granted a motion filed by Pavković, in which he indicated he had received a significant amount of material on 9 June 2021 and requested an extension of time to file written submissions thereon.[22] On 22 July 2021, Pavković filed submissions in relation to this material.[23]

18. On 15 October 2021, I ordered Pavković to file a public redacted version of his final submissions,[24] which he did on 27 October 2021.[25]

19. With regard to the Application, I have consulted with Judge Liu Daqun and Judge Iain Bonomy in their capacity as Judges of the respective sentencing Chambers,[26] in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules").

III. APPLICABLE LAW

20. 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.

21. 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.

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[21] Internal Memorandum from the President to the Registrar, dated 4 May 2021 (confidential), paras. 2-3.
[22] Decision on Extension of Time to File Written Submissions, 17 June 2021 (confidential), pp. 1-2. *See also* Urgent Request Seeking Extension of Time to File Written Submission to the President, 15 June 2021 (confidential), paras. 2-3, 5.
[23] Nebojša Pavković's Submission Pursuant to Paragraph 13 of the Practice Direction for the Determination of Applications for Pardon, Commutation of Sentence or Early Release, 22 July 2021 (confidential) ("Pavković's Submission"). As part of this filing, Pavković annexed three documents, including a letter that he addressed to me as President. *See* Pavković's Submission, Annex A. Because Pavković made this letter public, reference will be made to the corresponding pages of the public redacted version of Pavković's Submission. *See infra*, fn. 25.
[24] Order for the Filing of a Public Redacted Version of Nebojša Pavković's Final Submissions, 15 October 2021, p. 2.
[25] Nebojša Pavković's Submission Pursuant to Paragraph 13 of the Practice Direction for the Determination of Applications for Pardon, Commutation of Sentence or Early Release, 27 October 2021 (public redacted).
[26] *See generally* Trial Judgement; Appeal Judgement.

22. 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.

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

24. 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.

25. 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 its agreement with the United Nations, notify the Mechanism accordingly.

26. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers may be 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.

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

28. The Enforcement Agreement provides in Article 3(1) that in enforcing a sentence pronounced by the ICTY, the Finnish authorities shall be bound by the duration of the sentence. Articles 3(3) and 8(1) of the Enforcement Agreement provide that if the convicted person is eligible

for pardon, commutation of sentence, or early release under the applicable national law, then Finland is to notify the Registrar accordingly. Following the President's determination of the matter in consultation with the Judges of the Mechanism, the Registrar is to inform the Finnish authorities of the outcome, and if the President determines that pardon, commutation of sentence, or early release is not appropriate, then the Finnish authorities shall act accordingly, pursuant to Articles 3(5) and 8(2) of the Enforcement Agreement.

IV. ANALYSIS

A. Eligibility

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.[27] Serving two-thirds of a sentence has been described as being "in essence, an admissibility threshold".[28]

30. As Pavković served two-thirds of his sentence on 28 August 2020,[29] he is eligible to be considered for early release.

2. Eligibility under Finnish Law

31. The Finnish authorities informed the Mechanism with reference to, *inter alia*, Article 8 of the Enforcement Agreement that Pavković would have served two-thirds of his sentence in August 2020.[30] In this respect, Article 8 of the Enforcement Agreement provides that while the Finnish authorities are to notify the Mechanism should a convicted person, such as Pavković, become eligible under Finnish law for pardon or commutation of sentence, it is the President of the

[27] *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) ("*Stojić* Decision"), para. 28; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application for Early Release of Radoslav Brđanin, 1 April 2022 (public redacted) ("*Brđanin* Decision"), para. 21; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 22 December 2021, para. 29.
[28] *Prosecutor v. Hassan Ngeze*, Case No. MICT-13-37-ES.2, Decision on the Application for Commutation of Sentence of Hassan Ngeze and Related Motions, 14 April 2022 (public redacted) ("*Ngeze* Decision"), para. 101; *Stojić* Decision, para. 28; *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), para. 19.
[29] Internal Memorandum from the Registrar to the President, dated 16 May 2022 (confidential), Annex, pp. 1-2.

Mechanism who determines such an application, and that Finland is to act in accordance with this determination. The Finnish authorities subsequently clarified that under national law, offenders are entitled to early release upon reaching either one-half or two-thirds of the sentence, and that Finland had previously adopted a practice of notifying the ICTY regarding possible early release when a convicted person's two-thirds date was approaching.[31]

32. In this respect, I recall that even if Pavković is eligible for release under Finnish law, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President's discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.[32]

B. General Standards for Granting

33. A convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.[33] I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

34. While I note that the gravity of the crimes is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental importance.[34] 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.[35] 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.[36] Moreover, the graver the criminal conduct in question, the more compelling such a demonstration should be.[37] 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

[30] Application, p. 1.
[31] *See* Registrar Memorandum of 16 October 2020, para. 2.
[32] *Stojić* Decision, para. 30; *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. 34; *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, p. 4.
[33] *Stojić* Decision, para. 31; *Brđanin* Decision, para. 23; *Đorđević* Decision, para. 35.
[34] *Ngeze* Decision, para. 105; *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24.
[35] *Ngeze* Decision, para. 105; *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24.
[36] *Ngeze* Decision, para. 105; *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24.
[37] *Ngeze* Decision, para. 105; *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24.

or her case for early release, it may be said to determine the threshold that the arguments in favour of early release must reach.[38]

35. Pavković, who was the Commander of the 3rd Army of the Yugoslav Army ("VJ"), was found to have committed his crimes with the intent to "forcibly displace the Kosovo Albanian population, both within and without Kosovo, and thereby ensure continued [Federal Republic of Yugoslavia] and Serbia control over the province", an intent he shared with other members of a joint criminal enterprise ("JCE").[39] Pavković contributed significantly to this JCE,[40] including through his "command and control of all the VJ forces in Kosovo throughout the period when the crimes were committed",[41] his ordering and support of VJ operations and joint operations with the Serbian Ministry of Internal Affairs ("MUP"),[42] and his contributions to "the creation and maintenance of an environment of impunity" that encouraged the commission of crimes by forces under the control of JCE members.[43] Pavković was found responsible for the crimes committed by VJ and MUP personnel in accordance with the common plan,[44] and also found to bear criminal responsibility for when it was foreseeable to him that another JCE member or a person used by a JCE member might commit a crime in furtherance of the common purpose and he willingly took this risk.[45]

36. In addressing the gravity of Pavković's crimes, the Trial Chamber found that they were "of a high level of gravity".[46] The Trial Chamber emphasised that Pavković and other co-accused in his case were:

> [G]uilty of committing or aiding and abetting the forcible displacement of hundreds of thousands of Kosovo Albanians. These crimes were not isolated instances, but rather part of a widespread and systematic campaign of terror and violence over a period of just over two months. Some of the victims were of a particularly vulnerable nature, such as young women, elderly people, and children.[47]

37. The Appeals Chamber, even after reversing some of Pavković's convictions, considered that the crimes for which he remained convicted were "very serious crimes" that warranted a 22-year sentence.[48]

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[38] *Ngeze* Decision, para. 105; *Stojić* Decision, para. 33; *Brđanin* Decision, para. 24.
[39] Trial Judgement, vol. 3, para. 781. *See* Trial Judgement, vol. 3, para. 636; Appeal Judgement, paras. 3, 1250.
[40] Trial Judgement, vol. 3, para. 782. *See* Appeal Judgement, para. 1250.
[41] Trial Judgement, vol. 3, para. 1132. *See* Appeal Judgement, paras. 1097, 1250.
[42] Trial Judgement, vol. 3, paras. 782, 1132. *See* Appeal Judgement, paras. 1097, 1250. *See also* Trial Judgement, vol. 1, para. 8.
[43] Trial Judgement, vol. 3, para. 782. *See* Appeal Judgement, paras. 1097, 1250.
[44] Trial Judgement, vol. 3, paras. 783, 1132. *See* Appeal Judgement, para. 1264.
[45] *See e.g.* Trial Judgement, vol. 3, paras. 784-786, 788, 790; Appeal Judgement, para. 1557.
[46] Trial Judgement, vol. 3, para. 1174.
[47] Trial Judgement, vol. 3, para. 1173. Pavković was sentenced for committing these crimes through his participation in a JCE. Trial Judgement, vol. 3, para. 788. *See also* Appeal Judgement, paras. 1838, 1842.
[48] Appeal Judgement, para. 1844.

38. Turning to the specific crimes, Pavković was found responsible for committing deportation and other inhumane acts (forcible transfer) as crimes against humanity at multiple locations.[49] Pavković committed these crimes in accordance with the common plan shared by him and other members of the JCE.[50] Pavković was also found responsible for murder and persecution as crimes against humanity, murder as a violation of the laws or customs of war, and persecution as a crime against humanity for the destruction of or damage to religious property as well as for sexual assault.[51]

39. In determining Pavković's sentence, the Trial Chamber considered that he abused his superior position in the VJ and that this was an aggravating factor.[52] No mitigating circumstances were identified by the Trial Chamber.[53]

40. Pavković submits that the gravity of the crimes for which he was convicted "is something that he never disputed".[54] He emphasises that he "is fully aware of those crimes and accepted them as such",[55] on account of his command responsibility "for everything that happened" in the area under his purview.[56] In this regard, I observe that Pavković was not convicted of these crimes on account of his superior responsibility, but for his commission of them as an active member of the JCE, a matter to which I return below.[57]

41. In conclusion, Pavković was convicted of very serious crimes, and their high gravity is reflected throughout the judgements in his case. This factor consequently weighs heavily against releasing Pavković early.

[49] Trial Judgement, vol. 3, para. 788. *See* Appeal Judgement, p. 740.
[50] *See e.g.* Trial Judgement, vol. 3, para. 784; Appeal Judgement, para. 283.
[51] Trial Judgement, vol. 3, para. 788. *See* Appeal Judgement, p. 740.
[52] Trial Judgement, vol. 3, para. 1190 ("[…] Pavković continued to approve of joint MUP and VJ operations, despite his knowledge of crimes being committed against Kosovo Albanians during previous joint operations, and refrained from taking effective measures, which were at his disposal, in relation to crimes committed by his subordinates. This conduct, which was undertaken by Pavković in his official capacity as the Commander of the 3rd Army, constitutes an abuse of his superior position and thus aggravates his sentence. This finding is made despite the Chamber's acknowledgement that Pavković was acting in the midst of a complicated situation, including the defence of the country against NATO bombing and some combat operations against the [Kosovo Liberation Army]."). *See* Appeal Judgement, para. 1813.
[53] *See* Trial Judgement, vol. 3, paras. 1191-1194. *See also* Appeal Judgement, para. 1816.
[54] Pavković's Submission, para. 5.
[55] Pavković's Submission, para. 5.
[56] Pavković's Submission, Annex A, Registry Pagination ("RP") 65.
[57] *See infra*, para. 56.

2. Treatment of Similarly-Situated Prisoners

42. Persons sentenced by the ICTY, like Pavković, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.[58] As noted above, all convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.[59] Having passed this two-thirds threshold on 28 August 2020,[60] Pavković is eligible to be considered for early release.

3. Demonstration of Rehabilitation

43. Before turning to an individualised assessment of Pavković'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.[61]

44. 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.[62] 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.[63]

45. 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.[64] 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

[58] *Stojić* Decision, para. 40; *Brđanin* Decision, para. 35; *Đorđević* Decision, para. 42.
[59] *See supra*, para. 29.
[60] *See supra*, para. 30.
[61] *Ngeze* Decision, paras. 116-120; *Stojić* Decision, paras. 43-47; *Brđanin* Decision, paras. 36-40.
[62] *Ngeze* Decision, para. 117; *Stojić* Decision, para. 44; *Brđanin* Decision, para. 37.
[63] *Ngeze* Decision, para. 117; *Stojić* Decision, para. 44; *Brđanin* Decision, para. 37.
[64] *Ngeze* Decision, para. 118; *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38.

rehabilitation programmes in prison; (vii) a convicted person's mental health status; and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.[65] This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in order to demonstrate rehabilitation.[66] 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.[67]

46. Rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.[68] Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.[69] I will, therefore, generally consider the convicted person's post-release plans, including the envisaged place of residence.[70] 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.[71] 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.[72]

47. 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.[73] 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.[74]

48. Turning to the extent to which Pavković has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the Prison Report provided by the Finnish authorities; (ii) the statements attributed to Pavković that are reflected in the External Relations Office Memorandum and the Prosecution Memorandum; and (iii) Pavković's Submission, including his letter conveying regret.

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[65] *Ngeze* Decision, para. 118; *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38.
[66] *Ngeze* Decision, para. 118; *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38.
[67] *Ngeze* Decision, para. 118; *Stojić* Decision, para. 45; *Brđanin* Decision, para. 38.
[68] *Ngeze* Decision, para. 119; *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39.
[69] *Ngeze* Decision, para. 119; *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39.
[70] *Ngeze* Decision, para. 119; *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39.
[71] *Ngeze* Decision, para. 119; *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39.
[72] *Ngeze* Decision, para. 119; *Stojić* Decision, para. 46; *Brđanin* Decision, para. 39.
[73] *Ngeze* Decision, para. 120; *Stojić* Decision, para. 47; *Brđanin* Decision, para. 40.
[74] *Ngeze* Decision, para. 120; *Stojić* Decision, para. 47; *Brđanin* Decision, para. 40.

(a) Behaviour in Prison

49. The Prison Report indicates that since his arrival in 2014, Pavković's behaviour with respect to both staff and other inmates "has been impeccable".[75] He stays in the prison's open ward, where the cell doors are open for most of the day, and has received independent work duties as well as permission to use the activity room.[76] According to the Prison Report, Pavković has also benefitted from ten extended family visits, [REDACTED], and his "impeccable" behaviour during these visits is "[a]nother indication of Pavković's good behaviour and reliability".[77] He has further been granted [REDACTED], which "have also gone smoothly".[78]

50. Pavković refers to these passages of the Prison Report and states that good behaviour in prison has been "one of the significant factors in deciding on applications for early release", including with respect to other co-accused in his case.[79] He adds that he does not rely solely on his good behaviour in prison to demonstrate rehabilitation.[80]

51. I am well aware that my predecessor, in at least two cases involving co-accused of Pavković, appeared to rely mainly on good conduct in prison in forming his opinion that there had been a demonstration of rehabilitation weighing in favour of early release.[81] However, I recall that each case presents unique circumstances that must be considered on their own merits by the President when determining whether early release is to be granted, and that comparisons to other cases are therefore inconsequential in the context of an early release application.[82]

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[75] Prison Report, p. 1.
[76] Prison Report, p. 1.
[77] Prison Report, p. 1.
[78] Prison Report, p. 1.
[79] Pavković's Submission, para. 8, *referring to Prosecutor v. Vladimir Lazarević*, Case No. MICT-14-67-ES.3, Public Redacted Version of the 7 September 2015 Decision of the President on the Early Release of Vladimir Lazarević, 3 December 2015 ("*Lazarević* Decision"), paras. 18-20; *Prosecutor v. Nikola Šainović*, Case No. MICT-14-67-ES.1, Public Redacted Version of the 10 July 2015 Decision of the President on the Early Release of Nikola Šainović, 27 August 2015 ("*Šainović* Decision"), paras. 20-22; *Prosecutor v. Dragoljub Ojdanić*, Case No. IT-05-87-ES.1, Public Redacted Version of the 10 July 2013 Decision of the President on Early Release of Dragoljub Ojdanić, 29 August 2013 ("*Ojdanić* Decision"), paras. 18-19. *See* Pavković's Submission, para. 7.
[80] Pavković's Submission, para. 6.
[81] *See Lazarević* Decision, paras. 19-20 (even though the prison report "is quite brief and contains no mention of Lazarević's degree of rehabilitation or ability to reintegrate into society if he is released", my predecessor formed "the opinion that Lazarević has demonstrated signs of rehabilitation, and [my predecessor was] therefore inclined to count this factor as weighing in favour of his early release"); *Šainović* Decision, para. 22 (the analysis of rehabilitation was that "Šainović's submissions and the description of his behavior while detained in Sweden suggest that he is capable of reintegrating into society if he is released" and therefore my predecessor was "of the opinion that Šainović has demonstrated signs of rehabilitation, and […] therefore inclined to count this factor as weighing in favour of his early release"). With regard to another of Pavković's co-accused, my predecessor relied not only on the "generally good and productive behavior whilst detained", but also the "acceptance of the Trial Chamber's findings" and "expressions of regret to the victims" as positive indicators of rehabilitation. *See Ojdanić* Decision, para. 19.
[82] *Đorđević* Decision, para. 44; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) ("*Miletić* Decision"), para. 42; *Prosecutor v. Laurent*

52. I acknowledge that the Finnish prison authorities have assessed Pavković's behaviour in prison positively. However, as mentioned above, I do not consider that good behaviour in prison can, on its own, demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.[83]

(b) Signs of Critical Reflection and Expressions of Genuine Remorse or Regret

53. Pavković argues that his rehabilitation is also evidenced by his letter, in particular by his statement that "[w]hen my prison sentence expires and when I will be released, I will bear the burden of punishment in its psychological, sociological and historical sense".[84] According to Pavković, he "expressed his personal views in that letter".[85]

54. At the outset, I observe that portions of Pavković's letter are nearly identical to a letter written by another convicted person in the same case, Mr. Nikola Šainovic ("Šainović"). This extends to the very statement that Pavković emphasises in his submission as reflecting his personal rehabilitation. Indeed, the phrase "will carry the burden of the sentence in its psychological, sociological and historical senses", was used in Šainović's communication to my predecessor in 2015.[86] In my view, this calls into question the "personal" nature of Pavković's letter.

55. Similarly, Pavković's "personal" expression of regret is very similar to that of Šainović.[87] In light of these and other irregularities, I am not convinced that Pavković has engaged in critical reflection of the crimes for which he was convicted, or that his expressions of remorse are genuine.

56. Moreover, even if Pavković's letter does reflect his own views, it would appear that he has not come to terms with his own criminal conduct, but instead continues to minimise his responsibility as established by the ICTY. In this respect, he claims that he was guilty of not exercising greater control over his subordinates and was wrong to rely on their "professionalism"

Semanza, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza's Application for Early Release, 17 September 2020 (public redacted), para. 43.

[83] *See supra*, para. 44.

[84] Pavković's Submission, para. 6, *referring to* Pavković's Submission, Annex A, RP 66 ("Kada moja zatvorska kazna istekne i budem pusten na slobodu, nosicu teret kazne u njenom psiholoskom, socijoloskom i istoriskom smislu.").

[85] Pavković's Submission, para. 6.

[86] *Šainović* Decision, para. 21, *referring to* Letter from Mr. Nikola Šainović to then-President Theodor Meron, dated 12 June 2015 ("Šainović Letter"), p. 2 ("Kad moja zatvorska kazna istekne i budem pušten na slobodu, nosiću teret kazne u njenom psihološkom, sociološkom i istorijskom smislu."), *transmitted by* Internal Memorandum from the Deputy Chief, Immediate Office of the Registrar, ICTY to the then-President, dated 18 June 2015 (confidential).

[87] *Cf.* Pavković's Submission, Annex A, RP 69, 65 ("Rekao sam takodje da zalim za svim civilnim zrtvama rata i da cu zaliti dok sam ziv i to ovom prilikom ponavljam", translated as "I have also said and again repeat that I regretted all the civilian war casualties and I would regret them as long as I lived"); Šainović Letter, pp. 1, 3 ("Rekao sam, takodje, da žalim za civilnim žrtvama rata u mojoj zemlji i da ću žaliti dok sam živ i to ovde mogu samo da ponovim", translated as "I also said that I was sorry for the civilian victims of the war in my country and that I will feel sorry for them until I die, and I can only repeat this once again").

when "accepting their reports and briefings with infinite confidence".[88] Pavković even appears to claim that the ICTY imposed a strict liability standard on him as a military commander, such that he was found "responsible for everything that had happened in [the VJ's] area of responsibility" under his control.[89] To the contrary, however, Pavković was convicted of committing grave crimes based upon his active contributions with the necessary intent,[90] and the abuse of his superior position constituted an aggravating factor rather than the basis for his multiple convictions.[91]

57. While a convicted person's acceptance of responsibility does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release, it is nevertheless an important factor in assessing the progress of a convicted person's rehabilitation.[92] In this respect, a partial acceptance of responsibility for one's crimes will merit positive weight, but any notable difference between the role a convicted person ascribes to himself or herself, and the role he or she actually played, can likewise suggest that the convicted person has not sufficiently engaged in critical reflection upon his or her crimes.[93] With regard to the Application, I consider that Pavković's attempts to recharacterise the scope of his judicially established responsibility, while seeking to minimise the extent of his personal conduct in the crimes he committed, indicate that he has yet to reflect critically on his own responsibility.

58. This conclusion is strengthened by other statements made by Pavković to the media over recent years. A non-exhaustive search reflects that he engaged in multiple interviews in 2019 and 2020, during which he disputed his criminal responsibility, claimed he was unjustly convicted, glorified the contributions of all VJ soldiers for their action in "stopp[ing] thousands of insane terrorists",[94] and used a slur for Albanians on multiple occasions.[95] The tone of these interviews is troubling and reflects that there may still be a risk of Pavković reoffending once released. Moreover, this concern is heightened by Pavković's pattern of making similar statements going back a number of years when promoting books that he authored.[96]

59. After being offered the opportunity to comment on this voluminous material, Pavković responded merely that he has "never disrespected the victims", including when speaking with

[88] Pavković's Submission, Annex A, RP 65.
[89] Pavković's Submission, Annex A, RP 65.
[90] *See supra*, paras. 35-38.
[91] *See supra*, para. 39.
[92] *Stojić* Decision, para. 62; *Đorđević* Decision, para. 70; *Miletić* Decision, para. 56.
[93] *See Đorđević* Decision, para. 70.
[94] External Relations Office Memorandum, Annex, p. 2.
[95] External Relations Office Memorandum, Annex, pp. 4, 18-19, fn. 4.
[96] *See* Prosecution Memorandum, paras. 10-16, Annexes A-E.

various reporters.[97] He added that he has written books that are not "propaganda material" but that instead present "all events, including crimes committed by the members of my Army and those who were not my subordinates", and that he was inspired to do so "by the fact that Ramush Haradinaj wrote a book while he was still at the [United Nations] Detention Unit, describing how he killed soldiers, police officers and civilians without anyone holding it against him".[98]

60. I observe that Pavković does not dispute the authenticity of the interviews attributed to him, nor does he meaningfully explain his multiple prior statements that display a lack of critical reflection or genuine remorse for the crimes that he committed.

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

61. The Prison Report states that Pavković's mental state "is extremely well-balanced" and that the Finnish prison authorities "are not aware nor have […] made any observations suggesting any mental problems",[99] while the Physician Statement indicates that [REDACTED].[100] The Prison Report also reflects that Pavković has received numerous extended visits from his family and that he has participated in certain communal activities [REDACTED].[101]

62. Pavković submits that he has maintained regular and close contact with his family and that this should be considered as a significant factor in assessing the Application.[102] He further states that upon release, he will dedicate himself to his family and will not engage in other activities, especially politics.[103]

63. I have taken note of the Finnish prison authorities' assessment of Pavković's mental state, as well as the extent to which Pavković has maintained strong family ties during his period of imprisonment. Both factors indicate that Pavković might be able to reintegrate into society successfully once released.

64. I am concerned, however, that Pavković's recent statements to the media reflect a serious risk of reoffending following his release.[104] Not only is the content itself disconcerting, but Pavković also does not dispel the appearance that he has either agreed to, or acquiesced in, the

[97] Pavković's Submission, Annex A, RP 64.
[98] Pavković's Submission, Annex A, RP 64.
[99] Prison Report, p. 1.
[100] Physician Statement, p. 1.
[101] Prison Report, p. 1. *See supra,* para. 49.
[102] Pavković's Submission, para. 15.
[103] Pavković's Submission, para. 15, Annex A, RP 64-63.
[104] *See supra*, para. 58.

production of material to be used as propaganda material within Serbia.[105] Taken individually and cumulatively, I do not consider that Pavković could be trusted to successfully reintegrate into society at this time. Being mindful of disturbing instances of public glorifications of persons convicted by the ICTY and/or the Mechanism in the region of the former Yugoslavia, I accord particular importance to this factor.

(d) Overall Assessment

65. I am unconvinced that Pavković has demonstrated that he is sufficiently rehabilitated. While his conduct in prison and maintenance of strong family ties are commendable, Pavković has shown no critical reflection for the crimes he committed. In addition, the striking similarities between Pavković's statement of regret and that of another convicted person raise questions as to the genuineness of his remorse. Finally, I consider that Pavković's continued expression of views which, *inter alia*, serve to glorify the role played by those under his command, along with his attempts to minimise his own role in the crimes, portray a person at high risk of reoffending if circumstances permit. When considered holistically, Pavković's insufficient demonstration of rehabilitation is a factor that weighs against his early release.

4. Substantial Cooperation with the Prosecutor

66. According to the Prosecution, Pavković has not cooperated at any point.[106] While acknowledging that the Office of the Prosecutor of the ICTY ("ICTY Prosecution") had interviewed Pavković before indicting him, the Prosecution observes that neither the Trial Chamber nor the Appeals Chamber found this to constitute substantial cooperation.[107]

67. Pavković responds that this interview was used against him by the ICTY Prosecution and was quoted multiple times by the Trial Chamber when issuing its judgement.[108] He also submits that even before he was interviewed in 2002, he had disclosed significant and voluminous material to the Prosecutor of the ICTY ("ICTY Prosecutor"), which he claims was "of immense importance to the Prosecution" in the case against him as the underlying documents were "massively used" and "frequently introduced as exhibits" during his trial.[109] Pavković further refers to other cases where participating in interviews and providing documents to the Prosecution has constituted

[105] *See* Pavković's Submission, Annex A, RP 64.
[106] Prosecution Memorandum, para. 21.
[107] Prosecution Memorandum, para. 21.
[108] Pavković's Submission, para. 10.
[109] Pavković's Submission, para. 11. *See also* Pavković's Submission, Annex A, RP 64, Annex B.

cooperation.[110] Finally, Pavković submits that he cooperated with the Office of the War Crimes Prosecutor of Serbia when an official "took" voluminous documentation from his house.[111]

68. I observe that the Trial Chamber expressly found that Pavković's interview with the ICTY Prosecution "does not qualify on the balance of probabilities as evidence of substantial co-operation with the Prosecution".[112] The Appeals Chamber, in turn, concluded that Pavković had failed to show any error in this determination.[113] Likewise, with respect to his provision of material to the ICTY Prosecutor, the Appeals Chamber dismissed Pavković's contention that this constituted substantial cooperation requiring the mitigation of his sentence.[114]

69. Having considered this procedural background along with the information before me in relation to the Application, I do not consider that Pavković cooperated substantially with the ICTY Prosecution. Moreover, I note that Pavković does not claim that he has provided any cooperation, substantial or otherwise, since 2002 and there is no suggestion that he has offered any assistance since the proceedings against him concluded in 2014. I recall that less-than-substantial cooperation with the Prosecutor merits consideration as part of the overall assessment of an application for early release,[115] and I have taken into account Pavković's pre-arrest communications with the ICTY Prosecution accordingly.

70. Finally, I note that Pavković has not substantiated his assertion that he cooperated with the Office of the War Crimes Prosecutor of Serbia. In particular, although Pavković refers to an "official record" indicating that copious material had been taken from his home,[116] he has neither provided this record nor offered any support for his claim that this constituted cooperation, substantial or otherwise. Consequently, no weight can be placed upon this unsubstantiated claim.

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[110] Pavković's Submission, para. 12, *referring to Lazarević* Decision, para. 22 (my predecessor stated that he was "satisfied that when an accused person participates in interviews with and provides documents to the Prosecution, this constitutes cooperation") *and Šainović* Decision, paras. 23, 25 (my predecessor considered that even when the Trial Chamber determined the sentence of Šainović with reference to his interview with the ICTY Prosecution, this "cooperation with the Prosecution" still "weigh[s], up to a point, in favour of early release").
[111] Pavković's Submission, Annex A, RP 64.
[112] Trial Judgement, vol. 3, para. 1194.
[113] Appeal Judgement, para. 1816.
[114] *See* Appeal Judgement, paras. 1814-1816, fn. 5882, *referring to Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, General Pavković's Submission of his Amended Appeal Brief, 30 September 2009, para. 364.
[115] *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision on the Application for Early Release of Sreten Lukić, 7 October 2021 (public redacted) ("*Lukić* Decision"), para. 76.
[116] Pavković's Submission, Annex A, RP 64.

C. Other Considerations

1. Comments and Information Provided by the Prosecution

71. I have previously explained that I will use my discretion to receive and consider general comments and information from the Prosecution with regard to early release applications.[117] In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and will carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.[118]

72. The Prosecution submits that Pavković's early release is not warranted.[119] According to the Prosecution, "Pavković has made extensive efforts to perpetuate a false narrative in the public sphere in an effort to undermine the findings of ICTY Trial and Appeals Chambers regarding his criminal responsibility for heinous crimes", which "is not indicative of rehabilitation".[120] In this respect, the Prosecution states that even after his final conviction, Pavković has continued denying responsibility for his crimes and has "perpetuated his own alternative narrative in an effort to undermine the ICTY's findings, and glorified the perpetrators through public interviews, an open letter to former members of the VJ 3rd Army and the publication of two books".[121] The Prosecution states that even if there were evidence of rehabilitation, it could not outweigh the high gravity of Pavković's crimes, which were brutal in nature and massive in scope.[122]

73. Pavković does not respond to these submissions except to aver that "it could be said with certainty that he has shown significant signs of rehabilitation",[123] and to justify the motive and content of his public statements.[124]

74. I have given due regard to the Prosecution's views on the Application, as well as Pavković's response to them.

2. Views of Serbia

75. As part of his submission, Pavković refers to Serbia's ability and willingness to monitor and enforce any conditions underlying his early release,[125] and annexes a copy of Serbia's guarantee in

[117] *Ngeze* Decision, para. 144; *Stojić* Decision, para. 71; *Đorđević* Decision, para. 82.
[118] *Stojić* Decision, para. 71; *Đorđević* Decision, para. 82; *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Decision on the Early Release of Théoneste Bagosora, 1 April 2021 (public redacted), para. 54.
[119] Prosecution Memorandum, para. 2, p. 2.
[120] Prosecution Memorandum, para. 2.
[121] Prosecution Memorandum, para. 9. *See* Prosecution Memorandum, paras. 10-20, Annexes A-G.
[122] Prosecution Memorandum, paras. 2, 5-6, 30.
[123] Pavković's Submission, para. 6.
[124] Pavković's Submission, Annex A, RP 64. *See supra*, para. 59.

this respect.[126] In it, the Government of Serbia proposes that Pavković be granted early release and guarantees its ability to monitor and implement all necessary conditions of any early release.[127] Although I did not solicit Serbia's views with respect to the present matter, I have taken them into account in my overall consideration of the Application.

3. Impact on Witnesses and Victims

76. WISP conveyed information concerning 113 witnesses, comprising 59 who were identified as victim witnesses, 15 identified as insider witnesses, and 39 selected on the basis of other factors.[128] This information related to the places of residence of these witnesses and victims, according to WISP's records, as well as any psycho-social or previously reported security concerns.[129]

77. WISP observed that it was not in a position to assess whether Pavković would be capable of, or intends to, harm any witnesses.[130] Even with this caveat, however, WISP considered that certain witnesses were not only likely to experience a heightened perception of risk were Pavković to be released early, but that his release may also increase their level of actual risk.[131]

78. WISP added that it could not determine the extent of risk solely by referring to its records, and that a fuller assessment would require a range of additional information, involving contact with each witness.[132] In this regard, I remain cognisant that contacting witnesses too frequently could negatively impact them, particularly in terms of their need to move on in their lives, and especially if some years have passed since they have been contacted by the Mechanism or its predecessor tribunals.[133] I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit further information from them with respect to the Application.

79. In light of the importance I place on receiving the views of victims' associations where feasible, I also inquired with the Registrar about the existence of any such associations or groups that exist in relation to the crimes for which Pavković was convicted.[134] The Registrar provided some information concerning possible groups, including their area of focus, the most recent

[125] Pavković's Submission, para. 14.
[126] Pavković's Submission, Annex C (Conclusion of the Government of Serbia, dated 24 June 2021 (confidential), *appending* Guarantee of the Government of the Republic of Serbia, dated 24 June 2021 (confidential)).
[127] Pavković's Submission, Annex C, RP 33.
[128] WISP Memorandum, paras. 3-4.
[129] WISP Memorandum, paras. 5-7, 9-11, 13-14.
[130] WISP Memorandum, para. 16.
[131] WISP Memorandum, paras. 8, 15.
[132] WISP Memorandum, para. 16.
[133] *Stojić* Decision, para. 79; *Đorđević* Decision, para. 88; *Lukić* Decision, para. 85.
[134] Memorandum of 20 January 2021, para. 5.

mention of them in a media source, and whether they have an online presence.[135] Having considered this information carefully, along with the fact that the Prosecution did not identify a victims' association that could be approached for this purpose,[136] I will rely on the information already before me with respect to the Application.

80. In this regard and given the information received from WISP, I am concerned that releasing Pavković prematurely may endanger the safety and well-being of witnesses. While my overall conclusion does not turn solely on this consideration, I have taken this into account as an additional factor in assessing the Application.

4. Health of the Convicted Person

81. 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.[137]

82. Pavković does not raise his health in connection with his Application, save for submitting that, as he is "now aged and ill", he would dedicate himself to his family and health if released early.[138]

83. The Finnish prison authorities arranged a general health examination of Pavković and reported that [REDACTED].[139] His medical situation [REDACTED].[140] Moreover, [REDACTED].[141]

84. I therefore conclude that Pavković's health does not constitute an impediment to his continued detention. Consequently, there are no compelling humanitarian grounds which would warrant granting early release notwithstanding the overall negative assessment above.

5. Consultation

85. In coming to my decision on whether to grant the Application I have consulted with two other Judges of the Mechanism.[142] Judge Liu agrees that the Application should be denied, and he

[135] Registrar Memorandum of 12 March 2021, Annex.
[136] *See* Prosecution Memorandum, paras. 22-24.
[137] *Stojić* Decision, para. 81; *Brđanin* Decision, para. 59; *Đorđević* Decision, para. 90.
[138] Pavković's Submission, Annex A, RP 64. *See* Pavković's Submission, para. 15.
[139] Physician Statement, p. 2. *See* Physician Statement, p. 4.
[140] Physician Statement, p. 4.
[141] Physician Statement, p. 4.
[142] *See supra*, para. 19.

expressed the view, *inter alia*, that Pavković's various statements to the media over recent years, in particular, reflect negatively on the demonstration of sufficient rehabilitation. Judge Bonomy has indicated that even though there are some points favourable to the Application, it could be denied. In this respect, Judge Bonomy observed, *inter alia*, that on a number of fairly recent occasions, Pavković has asserted his innocence and glorified the actions of the 3rd Army of the VJ, while showing no signs of abandoning this false narrative.

86. 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

87. I consider that the Application should be denied. Although Pavković is eligible to be considered for early release, the high gravity of his crimes, as well as his evident lack of sufficient rehabilitation, militate strongly against releasing him early. Finally, there is no evidence that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

VI. DISPOSITION

88. 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.

89. The Registrar is hereby **DIRECTED** to provide the authorities of Serbia with the public redacted version of this Decision as soon as practicable.

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

Done this 18th day of May 2022,
At The Hague,
The Netherlands.

Judge Carmel Agius
President

[Seal of the Mechanism]

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Classification Level/ *Catégories de classification* :	☒ Unclassified/ *Non classifié* ☐ Confidential/ *Confidentiel* ☐ Strictly Confidential/ *Strictement confidentiel*	☐ Ex Parte Defence excluded/ *Défense exclue* ☐ Ex Parte Prosecution excluded/ *Bureau du Procureur exclu* ☐ Ex Parte R86(H) applicant excluded/ *Art. 86 H) requérant exclu* ☐ Ex Parte Amicus Curiae excluded/ *Amicus curiae exclu* ☐ Ex Parte other exclusion/ *autre(s) partie(s) exclue(s)* (specify/*préciser*) :		

Document type/ *Type de document* :

☐ Motion/ *Requête*	☐ Judgement/ *Jugement/Arrêt*	☐ Book of Authorities/ *Recueil de sources*	☐ Warrant/ *Mandat*
☒ Decision/ *Décision*	☐ Submission from parties/ *Écritures déposées par des parties*	☐ Affidavit/ *Déclaration sous serment*	☐ Notice of Appeal/ *Acte d'appel*
☐ Order/ *Ordonnance*	☐ Submission from non-parties/ *Écritures déposées par des tiers*	☐ Indictment/ *Acte d'accusation*	

II - TRANSLATION STATUS ON THE FILING DATE/ *ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT*

☐ Translation not required/ *La traduction n'est pas requise*

☒ Filing Party hereby submits only the original, and requests the Registry to translate/
La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :
(Word version of the document is attached/ *La version Word est jointe)*

☐ English/ *Anglais* ☒ French/ *Français* ☐ Kinyarwanda ☒ B/C/S ☐ Other/*Autre*(specify/*préciser*) :

☐ Filing Party hereby submits both the original and the translated version for filing, as follows/
La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :

Original/ *Original en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :
Translation/ *Traduction en*	☐ English/ *Anglais*	☐ French/ *Français*	☐ Kinyarwanda ☐ B/C/S	☐ Other/*Autre* (specify/*préciser*) :

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s)/
La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :

☐ English/ *Anglais* ☐ French/ *Français* ☐ Kinyarwanda ☐ B/C/S ☐ Other/*Autre* (specify/*préciser*) :