

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-16-98-ES

Date: 13 December 2024

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Graciela Gatti Santana, President

**Registrar:** Mr. Abubacarr M. Tambadou

**Decision of:** 13 December 2024

**PROSECUTOR**

**v.**

**DRAGOMIR MILOŠEVIĆ**

***PUBLIC REDACTED VERSION***

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**DECISION ON THE APPLICATION  
FOR EARLY RELEASE OF DRAGOMIR MILOŠEVIĆ**

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**Counsel for Mr. Dragomir Milošević:**

Mr. Novak Lukić

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for early release filed by Mr. Dragomir Milošević on 23 October 2023 (“Milošević” and “Application”, respectively).<sup>1</sup>

## I. BACKGROUND

2. Milošević voluntarily surrendered and was transferred, on 3 December 2004, to the United Nations Detention Unit in The Hague, the Netherlands.<sup>2</sup> At his initial appearance before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 7 December 2004, Milošević pleaded not guilty to all charges against him.<sup>3</sup>

3. On 12 December 2007, Trial Chamber III of the ICTY (“Trial Chamber”) found Milošević guilty, pursuant to Article 7(1) of the Statute of the ICTY (“ICTY Statute”) of the crime of terror as a violation of the laws or customs of war, and murder and inhumane acts as crimes against humanity, and sentenced him to 33 years of imprisonment.<sup>4</sup>

4. On 12 November 2009, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) set aside Milošević’s convictions for certain crimes; (ii) replaced his convictions with respect to certain crimes under Article 7(1) of the ICTY Statute with convictions pursuant to Article 7(3) of the ICTY Statute; and (iii) reduced his sentence to 29 years of imprisonment.<sup>5</sup>

5. On 22 March 2011, Milošević was transferred to the Republic of Estonia (“Estonia”) to serve the remainder of his sentence.<sup>6</sup>

6. Milošević previously applied for commutation of sentence or early release with conditions, following the filing of a notification by Estonia regarding his eligibility under Estonian law to be considered for release on parole under electronic surveillance.<sup>7</sup> My predecessor, Judge Carmel Agius,

<sup>1</sup> Dragomir Milošević’s Second Application for Early Release, 23 October 2023 (public with confidential and *ex parte* annex).

<sup>2</sup> See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgement, 12 December 2007 (“Trial Judgement”), paras. 3, 1009.

<sup>3</sup> Trial Judgement, para. 3; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Transcript of 7 December 2004, pp. 8-11.

<sup>4</sup> Trial Judgement, paras. 1006, 1008.

<sup>5</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009 (“Appeal Judgement”), p. 144.

<sup>6</sup> *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-ES, Order Designating State in which Dragomir Milošević is to Serve his Sentence, 14 February 2011, pp. 1-2. See also *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision of the Early Release of Dragomir Milošević, 29 July 2020 (“Decision of 29 July 2020”), p. 1.

<sup>7</sup> Application for Commutation of Sentence or Early Release, 15 August 2019 (confidential with confidential annexes 1, 2A-2D, 3); Application for Commutation of Sentence or Early Release, 15 August 2019 (public redacted version). See Internal Memorandum from the Deputy Chief of Registry to the President, dated 30 May 2019 (confidential) transmitting the notification, dated 24 May 2019. See also Registrar’s Submission of Notification Transmitted by the Republic of Estonia, 25 March 2020 (public, with public redacted annex).

denied this application and State notification on 29 July 2020, on the basis that Milošević had not reached the two-thirds eligibility threshold at that time and that nothing in his submissions demonstrated compelling or exceptional circumstances that would warrant granting him early release prior to having served two-thirds of his sentence.<sup>8</sup>

## II. APPLICATION

7. On 23 October 2023, Milošević filed the Application, indicating that if released early he would reside in [REDACTED], Republic of Serbia (“Serbia”).<sup>9</sup>

8. On 30 October 2023, I requested that the Registrar of the Mechanism (“Registrar”), *inter alia*, obtain, as soon as possible: (i) the information enumerated in paragraphs 9(b), 10(a) through 10(c), and 10(e) of the relevant Practice Direction (MICT/3/Rev.3); (ii) information on the victims of the crimes for which Milošević was convicted and who testified in his case; (iii) information regarding the existence of any relevant victims’ associations or other groups in relation to the crimes for which Milošević was convicted; and (iv) any media reports concerning Milošević that had been published in the region of the former Yugoslavia in the past two years.<sup>10</sup>

9. On 29 November 2023, the Registrar conveyed to me a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 24 November 2023, providing its comments and information in relation to the Application.<sup>11</sup>

10. On 30 January 2024, the Registrar provided me with a strictly confidential memorandum from the Witness Support and Protection Unit of the Mechanism (“WISP”), conveying information related to the witnesses who provided evidence against Milošević or testified in his case.<sup>12</sup>

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<sup>8</sup> Decision of 29 July 2020, p. 4.

<sup>9</sup> Application, para. 24.

<sup>10</sup> Internal Memorandum from the President to the Registrar, dated 30 October 2023 (confidential) (“Memorandum of 30 October 2023”), paras. 3-6. I note that this matter first arose while an earlier version of the Practice Direction on this topic was in force. *See* 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. Unless otherwise indicated, reference will be made to the current version of the Practice Direction. *See* 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.4, 1 July 2024 (“Practice Direction”).

<sup>11</sup> Internal Memorandum from the Registrar to the President, dated 29 November 2023 (confidential), *transmitting* an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Officer-in-Charge, Registry, Hague branch, dated 24 November 2023 (confidential redacted) (“Prosecution Memorandum”). The Prosecution Memorandum includes a list of relevant media reports and victims’ associations. *See* Prosecution Memorandum, Annexes A-B.

<sup>12</sup> Internal Memorandum from the Registrar to the President, dated 30 January 2024 (strictly confidential), *transmitting* an Internal Memorandum from the Head of WISP to the Registrar, dated 30 January 2024 (strictly confidential) (“WISP Memorandum”).

11. On 22 February 2024, the Registrar communicated to me an overview of media reports concerning Milošević that have been published in the region of the former Yugoslavia since October 2021.<sup>13</sup>
12. On 15 April 2024, the Registrar conveyed to me a *note verbale* from the Embassy of Estonia to the Netherlands, dated 15 April 2024, transmitting a letter from the Estonian Prison Service.<sup>14</sup>
13. On 25 April 2024, I invited the authorities of Serbia to, *inter alia*, provide any views that they may wish to offer with regard to the Application, indicate their willingness to monitor the conditions imposed by the Mechanism in the event of an early release in this case, and provide guarantees to this effect.<sup>15</sup>
14. On the same day, I asked the Registry of the Mechanism (“Registry”) to invite relevant victims’ associations and other groups that exist in relation to the crimes for which Milošević was convicted to submit their views on the Application if they so wished.<sup>16</sup>
15. On 15 May 2024, I received a *note verbale* from the Embassy of Serbia to the Netherlands, dated 13 May 2024, conveying the information requested in the invitation.<sup>17</sup>
16. On 7 June 2024, the Registrar communicated to me the responses received from four victims’ associations (“Victims’ Associations”).<sup>18</sup>

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<sup>13</sup> Internal Memorandum from the Registrar to the President, dated 22 February 2024 (confidential), *transmitting* an Internal Memorandum from the Public Information Officer, Hague branch, to the Registrar, dated 22 February 2024 (strictly confidential).

<sup>14</sup> Internal Memorandum from the Registrar to the President, dated 15 April 2024 (confidential), *conveying* a *note verbale* from the Embassy of Estonia to the Netherlands, dated 15 April 2024, *transmitting* a letter from the Estonian Prison Service, dated 5 April 2024 (“Letter from Estonian Prison Service”).

<sup>15</sup> Invitation to the Republic of Serbia Related to the Application for Early Release of Dragomir Milošević, 25 April 2024 (confidential and *ex parte*), p. 2.

<sup>16</sup> Internal Memorandum from the President to the Registrar, dated 25 April 2024 (confidential) (“Memorandum of 25 April 2024”), paras. 2-4.

<sup>17</sup> *Note verbale* from the Embassy of Serbia to the Mechanism, dated 13 May 2024, *conveying* a letter from the Minister of Justice of Serbia, dated 9 May 2024 (“Letter of Serbian Ministry of Justice of 9 May 2024”). The Letter of Serbian Ministry of Justice of 9 May 2024 was filed on the record on 15 May 2024. *See Note verbale* from the Embassy of the Republic of Serbia to the Kingdom of the Netherlands, 15 May 2024 (confidential and *ex parte*), Annex. I note that, on 11 September 2024, I received another *note verbale* from the Embassy of Serbia to the Netherlands dated 4 September 2024, conveying a similar letter. *Note verbale* from the Embassy of Serbia to the Mechanism, dated 4 September 2024, *conveying* a letter from the Minister of Justice of Serbia, dated 6 August 2024 (“Letter of Serbian Ministry of Justice of 6 August 2024”). The Letter of Serbian Ministry of Justice of 6 August 2024 was filed on the record on 12 September 2024. *See Note verbale* from the Embassy of the Republic of Serbia to the Kingdom of the Netherlands, 12 September 2024 (confidential and *ex parte*), Annex.

<sup>18</sup> Internal Memorandum from the Registrar to the President, dated 7 June 2024 (confidential), paras. 2-3, *transmitting* a letter from the President of the Association of Parents of Killed Children in Besieged Sarajevo 1992-1995, dated 29 May 2024; a letter from the President of the Association “Women Victims of War” Sarajevo, dated 29 May 2024; a letter from the President of the Association of the Victims and Witnesses of Genocide, dated 31 May 2024; a letter from the President and the General Secretary of the Association – Union of Civilian War Victims of Sarajevo Canton, dated

17. On 12 June 2024, I instructed the Registry to provide all materials received in relation to the Application, with the exception of Annex A of the Prosecution Memorandum and the WISP Memorandum, to Milošević for his comments in accordance with paragraph 12 of the Practice Direction (MICT/3/Rev.3).<sup>19</sup>

18. On 23 August 2024, the Registrar transmitted to me a letter from Milošević, dated 12 August 2024, containing his comments regarding the materials transmitted to him in relation to the Application.<sup>20</sup>

19. With regard to the Application, I have consulted with Judge Liu Daqun in his capacity as a Judge of the sentencing Chamber on appeal<sup>21</sup> and, given that no other Judges who imposed the sentence upon Milošević are Judges of the Mechanism, with Judge Ivo Nelson de Caires Batista Rosa, in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.

### 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.

22. 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.

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6 June 2024 (“Letter from Association of Parents of Killed Children in Besieged Sarajevo”, “Letter from Association “Women Victims of War” Sarajevo”, “Letter from Association of the Victims and Witnesses of Genocide”, and “Letter from Association – Union of Civilian War Victims of Sarajevo Canton”, respectively). I note that the Letter from the Association – Union of Civilian War Victims of Sarajevo Canton was received six days after the two-week deadline specified in the Memorandum of 25 April 2024 but consider that it is appropriate for this communication to be taken into account, particularly because this has not impacted the timeline for adjudicating the Application.

<sup>19</sup> Internal Memorandum from the President to the Registrar, dated 12 June 2024 (confidential), paras. 2-3.

<sup>20</sup> Internal Memorandum from the Registrar to the President, dated 23 August 2024 (confidential), para. 3, *transmitting* a letter from Milošević, dated 12 August 2024 (“Comments”).

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

If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

23. 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.

24. 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.

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

26. 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.

27. The enforcement agreement between Estonia and the United Nations,<sup>22</sup> which applies *mutatis mutandis* to the Mechanism,<sup>23</sup> provides in Article 3(3) that the conditions of imprisonment shall be governed by Estonian law, subject to the supervision of the Mechanism. It further states in Article 8, *inter alia*, that if a convicted person has become eligible for early release under Estonian law, the President will provide his or her views as to whether such early release is appropriate, and Estonia will consider these views and respond to the President before taking any decision on the matter.

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<sup>22</sup> Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, 11 February 2008.

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

## IV. ANALYSIS

### A. Eligibility

28. Previous decisions have determined that all convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for early release upon having served two-thirds of their sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a notification from the relevant enforcement State or a direct petition by the convicted person.<sup>24</sup> Further, serving two-thirds of a sentence has been described by the Mechanism’s jurisprudence as being “in essence, an admissibility threshold”.<sup>25</sup>

29. Milošević served two-thirds of his sentence in March 2024<sup>26</sup> and is therefore eligible to be considered for early release before the Mechanism.

### B. General Standards for Granting Early Release

30. According to the Mechanism’s jurisprudence, a convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered for early release and not entitled to such release.<sup>27</sup> Against this backdrop, it is therefore necessary for me, in determining whether early release is appropriate, to analyse and consider the convicted person’s current situation, taking into account the non-exhaustive list of factors set out in Rule 151 of the Rules.<sup>28</sup> In this regard, the mere passage of time cannot constitute sufficient grounds for early release.<sup>29</sup>

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<sup>24</sup> *Prosecutor v. Sredoje Lukić*, Case No. MICT-13-52-ES.2, Decision on the Application for Early Release of Sredoje Lukić, 17 October 2024 (public redacted) (“*Lukić Decision*”), para. 31; *Prosecutor v. Matthieu Ngirumpatse*, Case No. MICT-14-73-ES.2, Decision on the Application for Commutation of Sentence or Early Release of Matthieu Ngirumpatse, 9 October 2024 (public redacted), para. 22; *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> *Lukić Decision*, para. 31; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on the Application for Early Release of Dragoljub Kunarac, 22 July 2024 (“*Kunarac Decision*”), para. 26; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the 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> Decision of 29 July 2020, p. 4.

<sup>27</sup> *Lukić Decision*, para. 33; *Kunarac Decision*, para. 30; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 24.

<sup>28</sup> *Lukić Decision*, para. 33; *Kunarac Decision*, para. 30; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (public redacted) (“*Krstić Decision*”), para. 32.

<sup>29</sup> *Lukić Decision*, para. 33; *Kunarac Decision*, para. 30; *Prosecutor v. Bruno Stojić*, Case No. MICT-17-112-ES.3, Decision on the Application for Early Release of Bruno Stojić, 17 January 2024 (public redacted), para. 100.

## 1. Gravity of Crimes

31. In my opinion, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism for genocide, crimes against humanity, or war crimes should be exceptional.<sup>30</sup>

32. In relation to the gravity of crimes, past decisions have established that: (i) as a general rule, a sentence should be served in full given the gravity of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, unless it can be demonstrated that a convicted person should be granted early release; (ii) while the gravity of the crimes is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental importance; (iii) the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be; and (iv) while the gravity of the crimes cannot be seen as depriving a convicted person of an opportunity to argue his or her case, it may be said to determine the threshold that the arguments in favour of early release must reach.<sup>31</sup>

33. As set out above, Milošević was found guilty, pursuant to Articles 7(1) and 7(3) of the ICTY Statute, of the crime of terror as a violation of the laws or customs of war, and murder and inhumane acts as crimes against humanity.<sup>32</sup>

34. According to the findings of the Trial Chamber and the Appeals Chamber, Milošević was *de jure* and *de facto* commander of the Sarajevo Romanija Corps (“SRK”) between August 1994 and November 1995 and had effective control over it.<sup>33</sup> The Trial Chamber noted that “there is an abundance of evidence of a campaign of sniping and shelling carried out consistently throughout the Indictment period by the SRK forces of which the Accused was the commander”.<sup>34</sup> The Appeals Chamber confirmed the Trial Chamber’s findings that “the shelling involving modified air bombs and mortars fired by the SRK in Sarajevo during the Indictment period could only occur pursuant to Milošević’s orders”, and that, given that “modified air bombs were a highly inaccurate weapon, sometimes even described as uncontrollable, yet with extremely high explosive force”, Milošević had the required *mens rea* for ordering the crime of terror as a violation of the laws or customs of war and crimes against humanity, either deliberately targeting civilians or attacking them indiscriminately.<sup>35</sup>

<sup>30</sup> *Lukić* Decision, para. 34; *Kunarac* Decision, para. 31; *Krstić* Decision, para. 33.

<sup>31</sup> *Lukić* Decision, para. 35; *Kunarac* Decision, para. 32; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted), para. 39.

<sup>32</sup> *See supra* paras. 3-4.

<sup>33</sup> Appeal Judgement, para. 281. *See also* Trial Judgement, paras. 959, 962-964, 966.

<sup>34</sup> Trial Judgement, para. 965.

<sup>35</sup> Appeal Judgement, para. 273. *See also* Trial Judgement, paras. 97-100, 822, 905, 907, 962-964, 970-971, 978.



35. In determining the sentence, the Trial Chamber observed that all crimes for which Milošević was convicted were “very serious” and committed “during a campaign of sniping and shelling over a period of 14 months”, leaving the civilian population of Sarajevo with limited possibilities to escape the “hazardous and threatening circumstances”.<sup>36</sup> It also considered the indiscriminate nature of the sniping and shelling that characterised the behaviour of the SRK troops, which resulted in many civilians being killed or seriously injured.<sup>37</sup> Further, it noted that the crime of terror has an intent that is “particularly indicative of a disregard for human life and integrity”, and that the SRK troops had aimed to strike persons at the very core of their being, by instilling insecurity and fear that affected every aspect of civilian life in Sarajevo, resulting in immense suffering.<sup>38</sup> The Trial Chamber and the Appeals Chamber accepted that Milošević made the entire civilian population of Sarajevo the direct target of countless acts of violence, and acted in direct breach of the basic principles of international humanitarian law.<sup>39</sup>

36. Among the aggravating circumstances, the Trial Chamber took into account, *inter alia*, that: (i) Milošević was the commander of the SRK, the corps that conducted a protracted campaign of sniping and shelling of civilians, civilian areas, and the civilian population of Sarajevo; (ii) as corps commander, Milošević held one of the highest positions within the *Republika Srpska* Army and, in this capacity, had a special responsibility to uphold the standards of international humanitarian law; (iii) Milošević was highly respected by the officers and soldiers of the SRK; (iv) he willingly continued the campaign for over a year, playing a “very active role in the commission of the crimes”; and (v) he introduced to the Sarajevo theatre, and made regular use of, the modified air bombs, the indiscriminate nature of which was known within the SRK, resulting in Milošević “playing with the lives of the civilians in Sarajevo”.<sup>40</sup> As a mitigating factor, the Trial Chamber considered the fact that, on certain occasions, Milošević instructed the troops to abide by the Geneva Conventions and not to shoot at civilians.<sup>41</sup>

37. Milošević accepts that he has been convicted of “extremely grave crimes” committed over a long period of time with an “immense number of victims”, and submits that the gravity of his crimes, his high-ranking position, and his role in the crimes resulted in a very serious sentence.<sup>42</sup> He, however,

<sup>36</sup> Trial Judgement, para. 991. *See also* Appeal Judgement, para. 323; Trial Judgement, para. 967.

<sup>37</sup> Trial Judgement, para. 991. *See also* Appeal Judgement, para. 323.

<sup>38</sup> Trial Judgement, paras. 992-993. *See also* Appeal Judgement, para. 323; Trial Judgement, paras. 968-969.

<sup>39</sup> Trial Judgement, para. 994. *See also* Appeal Judgement, paras. 323-324.

<sup>40</sup> Trial Judgement, paras. 999-1001. *See also* Appeal Judgement, paras. 301-310.

<sup>41</sup> Trial Judgement, para. 1003. *See also* Appeal Judgement, paras. 965-966; Trial Judgement, paras. 970-971.

<sup>42</sup> Application, para. 7.

argues that this criterion cannot exclude the possibility that other relevant criteria may justify granting the Application.<sup>43</sup>

38. In the light of the above, there is no doubt as to the high gravity of Milošević's crimes. Accordingly, I am of the view that this factor weighs very strongly against his early release.

## 2. Treatment of Similarly-Situated Prisoners

39. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Milošević, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.<sup>44</sup> As noted above, the eligibility threshold of having served two-thirds of the sentence applies to all convicted persons serving a sentence under the Mechanism's supervision.<sup>45</sup>

40. Milošević accepts that the jurisprudence of the ICTR, the ICTY, and the Mechanism has clarified the meaning of the criterion regarding the treatment of similarly-situated prisoners in the context of early release, interpreting it as the eligibility threshold of having served two-thirds of their sentence.<sup>46</sup> He submits that he has in the meantime met this threshold.<sup>47</sup>

41. As previously mentioned, having passed this two-thirds threshold in March 2024,<sup>48</sup> Milošević is indeed eligible to be considered for early release.

## 3. Demonstration of Rehabilitation

42. A decision on whether to grant an early release application is taken by the President on the basis of the interests of justice and the general principles of law, having regard, *inter alia*, to the criteria specified in Rule 151 of the Rules.<sup>49</sup> The prisoner's demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.<sup>50</sup>

43. Before turning to an individualised assessment of Milošević's demonstration of rehabilitation, I note that the Mechanism's jurisprudence expands upon certain elements pertaining to whether a

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<sup>43</sup> Application, para. 8.

<sup>44</sup> *Lukić* Decision, para. 44; *Kunarac* Decision, para. 41; *Bisengimana* Decision, paras. 16-17.

<sup>45</sup> See *supra* para. 28.

<sup>46</sup> Application, para. 9.

<sup>47</sup> Application, para. 10.

<sup>48</sup> See *supra* para. 29.

<sup>49</sup> See *supra* paras. 21, 26.

<sup>50</sup> See *supra* para. 23.

convicted person has demonstrated rehabilitation under Rule 151 of the Rules, and I find it appropriate to set this out here.<sup>51</sup>

44. A number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism have been recognised as such in the past or may be of persuasive relevance.<sup>52</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 positive assessment of a convicted person's prospects to successfully reintegrate into society.<sup>53</sup> This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.<sup>54</sup>

45. It falls upon the convicted person to demonstrate that sufficient progress has been made in his or her rehabilitation, and that granting release before the full sentence is served would be a responsible exercise of the President's discretion.<sup>55</sup> Given that genocide, crimes against humanity, and war crimes are among the gravest crimes known to humankind, it is not appropriate to view the rehabilitation of perpetrators of such crimes as one would view the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.<sup>56</sup>

46. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.<sup>57</sup> In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.<sup>58</sup>

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<sup>51</sup> *Lukić* Decision, para. 46; *Kunarac* Decision, paras. 44-48; *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>52</sup> *Lukić* Decision, para. 47; *Kunarac* Decision, para. 45; *Bralo* Decision, para. 39.

<sup>53</sup> *Lukić* Decision, para. 47; *Kunarac* Decision, para. 45; *Bralo* Decision, para. 39 and references cited therein.

<sup>54</sup> *Lukić* Decision, para. 47; *Kunarac* Decision, para. 45; *Bralo* Decision, para. 39.

<sup>55</sup> *Lukić* Decision, para. 48; *Kunarac* Decision, para. 46; *Bralo* Decision, para. 39.

<sup>56</sup> *Lukić* Decision, para. 48; *Kunarac* Decision, para. 46; *Bralo* Decision, para. 38.

<sup>57</sup> *Lukić* Decision, para. 49; *Kunarac* Decision, para. 47; *Krstić* Decision, para. 49.

<sup>58</sup> *Lukić* Decision, para. 49; *Prosecutor v. Stojan Župljanin*, Case No. MICT-13-53-ES.1, Decision on the Application for Early Release of Stojan Župljanin, 18 January 2024 (public redacted) ("*Župljanin* Decision"), para. 46; *Bralo* Decision, para. 38.

47. Further, a convicted person who intends to return to the region where his or her crimes were committed before serving his or her full sentence will ordinarily have to demonstrate a greater degree of rehabilitation.<sup>59</sup>

48. Turning to the extent to which Milošević has demonstrated rehabilitation, I note that the most probative materials before me are Milošević's submissions in the Application and in the Comments, as well as the Letter from Estonian Prison Service.

(a) Behaviour in Prison

49. The Estonian Prison Service attests that Milošević's behaviour while in prison in Estonia has been peaceful and without any problems.<sup>60</sup> It indicates that Milošević has not faced disciplinary actions and has no issues with other prisoners.<sup>61</sup> Although Milošević has expressed dissatisfaction with some aspects of the prison regime, he responds to and complies with orders.<sup>62</sup> Additionally, according to the information from the Estonian Prison Service, Milošević has taken the opportunity to communicate individually with a chaplain and visit the chapel occasionally to pray, but he declined to learn Estonian due to his advanced age and does not participate in any hobby groups or other activities offered by the prison.<sup>63</sup>

50. Milošević's position on his behaviour in prison is that he has positively engaged with the carceral system, which he rates as "very high".<sup>64</sup> He observes that the prison offers a variety of activities, such as educational courses, rehabilitation programmes, language learning, and sports competitions.<sup>65</sup> He indicates that he has participated in several of these and commends the professionalism of the prison staff.<sup>66</sup> Further, Milošević feels that they do not see him as a problematic prisoner, but treat him with respect and fairness.<sup>67</sup>

51. Based on the available information, Milošević's behaviour in prison has been good and, as such, merits some positive weight in my consideration of his rehabilitation. However, as set out above, good behaviour in prison cannot on its own demonstrate rehabilitation of a person convicted

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<sup>59</sup> *Lukić* Decision, para. 50; *Kunarac* Decision, para. 48; *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>60</sup> Letter from Estonian Prison Service, p. 1.

<sup>61</sup> Letter from Estonian Prison Service, p. 1.

<sup>62</sup> Letter from Estonian Prison Service, p. 1.

<sup>63</sup> Letter from Estonian Prison Service, pp. 1-2.

<sup>64</sup> Comments, p. 2.

<sup>65</sup> Comments, p. 2.

<sup>66</sup> Comments, pp. 2-3.

<sup>67</sup> Comments, p. 3.

for some of the most heinous international crimes.<sup>68</sup> It is therefore necessary to consider other elements, to which I now turn.

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

52. The Mechanism’s jurisprudence has recognised that: (i) an important factor in assessing a convicted person’s progress towards rehabilitation is the acceptance of responsibility for his or her crimes, even if this does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release; and (ii) a convicted person’s partial acceptance of responsibility for his or her crimes will merit positive weight, however, any notable difference between the role a convicted person ascribes to himself or herself, and the role actually played, can suggest a lack of sufficient critical reflection upon his or her crimes.<sup>69</sup>

53. In my view, a statement made or referred to in support of an early release application should not be considered in isolation from its greater context.<sup>70</sup> The content of any such statement should be corroborated by positive actions taken by the convicted person, which indicate that he or she has critically reflected upon his or her crimes and is genuinely remorseful.<sup>71</sup> Tangible evidence of rehabilitation is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse or regret from more opportunistic ones.<sup>72</sup>

54. Milošević submits that, although in the ICTY jurisprudence, rehabilitation was merely one of the criteria with no special weight, more recently, a series of conditions of importance for the determination of whether this factor has been fulfilled was developed.<sup>73</sup> According to Milošević, it is for the prison authorities in the enforcement State to evaluate his degree of rehabilitation, as they have been able to constantly observe him.<sup>74</sup> Further, he indicates that he is ready to affirm that he is fully aware of the nature of the crimes for which he was convicted, and that he admits the crimes and his responsibility, as established by the ICTY, “without any reservations”.<sup>75</sup> He also expresses his

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<sup>68</sup> See *supra* para. 46.

<sup>69</sup> *Lukić* Decision, para. 56; *Kunarac* Decision, para. 53; *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), para. 70.

<sup>70</sup> *Lukić* Decision, para. 57; *Župljanin* Decision, para. 53; *Krstić* Decision, para. 61.

<sup>71</sup> *Lukić* Decision, para. 57; *Župljanin* Decision, para. 53; *Krstić* Decision, para. 61.

<sup>72</sup> *Lukić* Decision, para. 57; *Župljanin* Decision, para. 53; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Application for Early Release of Miroslav Bralo, 28 December 2023 (public redacted), para. 62.

<sup>73</sup> Application, para. 11.

<sup>74</sup> Application, para. 12.

<sup>75</sup> Application, para. 13.

“personal remorse and deepest condolence” to all victims who were killed or suffered as a result of his conduct.<sup>76</sup>

55. The Estonian Prison Service declares that Milošević does not contest the ICTY’s findings regarding his crimes and responsibility, but that he calls what happened a “cruel and difficult conflict”, where “his fault lies in failing to prevent the actions of his subordinates”, and that he has expressed regret for having been “largely unaware” of their actions.<sup>77</sup> According to the Estonian Prison Service, while Milošević does not want to talk about his crimes, he understands their gravity.<sup>78</sup>

56. In response, Milošević affirms that he is fully aware of the nature of the crimes for which he was convicted and acknowledges that the crimes committed against the civilian population of Sarajevo occurred as established by the ICTY, accepting his responsibility for these crimes.<sup>79</sup> He states that he respects the victims of his crimes and expresses regret that they were innocent victims in Sarajevo.<sup>80</sup> He recognises that his remorse may never lessen the pain caused by his actions and that words alone may not suffice.<sup>81</sup> Milošević is committed to not adding to the suffering of the victims and hopes his genuine contrition can contribute to a better future.<sup>82</sup> Although he has not contacted the victims or their families directly, concerned about their potential reactions, he did reach out to their “commanders”, as there was no clear guidance on how to proceed.<sup>83</sup>

57. In my opinion, Milošević’s statements on his rehabilitation reflect significant shortcomings in terms of genuine responsibility, personal insight, and remorse.

58. First, Milošević claims to accept responsibility for his crimes, but the description of his role raises concerns. Specifically, the Estonian Prison Service portrays that he has accepted that his actions failed to prevent his subordinates’ conduct, with him also asserting that he was largely unaware of their actions. This interpretation disregards his convictions at trial – upheld on appeal – for ordering the shelling of the civilian population in Sarajevo and participating in a 14-month campaign of terror.<sup>84</sup> Such a limited view of responsibility fails to reflect the gravity of the crimes and casts doubt on the sincerity of his acceptance of responsibility.

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<sup>76</sup> Application, para. 14.

<sup>77</sup> Letter from Estonian Prison Service, p. 2.

<sup>78</sup> Letter from Estonian Prison Service, p. 2.

<sup>79</sup> Comments, pp. 1, 3.

<sup>80</sup> Comments, pp. 1, 3-5.

<sup>81</sup> Comments, p. 4.

<sup>82</sup> Comments, p. 5.

<sup>83</sup> Comments, p. 5.

<sup>84</sup> Appeal Judgement, paras. 273, 282, 294, p. 144; Trial Judgement, paras. 910, 912-913, 967, 978-979, 991, 1006.

59. Second, Milošević's statements lack depth, offering vague expressions of regret without addressing the specific harm caused to the victims. His reluctance to engage in discussions about his crimes, as reported by the Estonian Prison Service, suggests an unwillingness to confront the full scope of his actions. Moreover, his expression of remorse appears formulaic, reinforcing the impression that his regret lacks authenticity. This detachment from the consequences of his actions demonstrates a failure to reflect meaningfully on the impact of his crimes and take complete responsibility for them.

60. Milošević's selective interpretation of his role, superficial reflections, and detached expression of remorse undermine his credibility in the rehabilitation process. These factors challenge the sincerity of his engagement and suggest that his statements may be insincere or incomplete. Further, his claim that the assessment of his rehabilitation should rest with the prison authorities in the enforcement State overlooks the fact that it is for the President to address such matters, in accordance with the Mechanism's framework, which takes into account the unique nature of international crimes.

61. Given the above, I remain unconvinced that Milošević has genuinely accepted responsibility for his crimes or shown sufficient signs of critical reflection, genuine regret, or compassion for the victims.

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

62. Milošević submits that, if released early, he would reside in [REDACTED], Serbia.<sup>85</sup> I take note of the fact that Milošević has kept regular contact with his family, by telephone and correspondence, while incarcerated, and has received several visits from his wife and some visits from his sister and children.<sup>86</sup> While he has not provided any information as to how he plans to sustain himself in [REDACTED], I consider that his family ties would be supportive of any effort to reintegrate into society, should he be released early. Further, Milošević states that he is ready to abide by any conditions imposed upon his early release.<sup>87</sup>

63. Regarding Milošević's mental state, I note that the Sentencing Enforcement Division of the Prisons Department of the Ministry of Justice of Estonia informed me of [REDACTED].<sup>88</sup>

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<sup>85</sup> Application, para. 24.

<sup>86</sup> Letter from Estonian Prison Service, p. 2.

<sup>87</sup> Application, para. 23.

<sup>88</sup> Letter from Estonian Prison Service, p. 2.

64. Accordingly, while Milošević's close family ties and his willingness to abide by any conditions imposed upon his early release do not, in themselves, demonstrate rehabilitation, I consider that they merit positive weight in my consideration of his prospects for successfully reintegrating into society and, more generally, his rehabilitation.

(d) Overall Assessment

65. Milošević has shown good behaviour in prison and any attempt he may make to reintegrate into society would be supported by the close ties he has maintained with his family. I recall, however, that the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.<sup>89</sup> In this regard, Milošević provides minimal indication that he has critically reflected on the crimes for which he was convicted, shown genuine regret or compassion for the victims, or fully accepted responsibility for his actions. His statements on this matter remain unconvincing and lack supporting evidence of positive actions. Consequently, based on the information presented to me, I cannot conclude that Milošević has demonstrated sufficient signs of rehabilitation to merit early release as a responsible exercise of my discretion.

4. Substantial Cooperation with the Prosecutor

66. The Prosecution confirmed that Milošević did not cooperate with it at any point.<sup>90</sup> On this issue, Milošević submits that neither he nor his Counsel were ever addressed by the Prosecution, noting that the ICTY's and the Mechanism's jurisprudence is unanimous in stating that the lack of such cooperation should not be considered an aggravating circumstance in the context of early release.<sup>91</sup> It is clear that Milošević did not cooperate with the Prosecution and, accordingly, this merits no weight in my consideration of the Application.

**C. Other Considerations**

1. Comments and Information Provided by the Prosecution

67. Decisions on early release have established that the President may receive and consider general comments and information from the Prosecution with regard to early release applications.<sup>92</sup> In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment

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<sup>89</sup> See *supra* para. 32.

<sup>90</sup> Prosecution Memorandum, paras. 3, 14, 24.

<sup>91</sup> Application, para. 21. See Comments, p. 4.

<sup>92</sup> *Lukić* Decision, para. 71; *Kunarac* Decision, para. 73; *Bralo* Decision, para. 69.



of the convicted person, and carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.<sup>93</sup>

68. The Prosecution asserts that Milošević has not demonstrated that his early release is warranted due to the high gravity of his crimes,<sup>94</sup> insufficient evidence of rehabilitation,<sup>95</sup> and lack of substantial cooperation with the Prosecution.<sup>96</sup> In the event that I would nevertheless grant the Application, the Prosecution requests that appropriate conditions be imposed upon his release, as well as measures to ensure compliance with all ordered conditions.<sup>97</sup>

69. In particular, the Prosecution submits that the high gravity of Milošević's crimes heavily weighs against his early release, given their extremely serious nature and scale, committed over 14 months, with Milošević playing an active and central role in the campaign of terror against the civilian population of Sarajevo.<sup>98</sup> The Prosecution also contends that Milošević has not provided sufficient evidence of rehabilitation to justify early release, lacking genuine expressions of remorse or critical reflection on his actions, instead offering only generic statements without supporting evidence of positive actions.<sup>99</sup> Further, the Prosecution submits that consulting affected parties will help assess Milošević's progress toward rehabilitation.<sup>100</sup> Consideration must also be given to the security of victims and witnesses, as well as the potential impact of his release on them and the community he will join, especially in light of the climate of revisionism and glorification of convicted war criminals in Serbia, where he intends to reside.<sup>101</sup> Concerning Milošević's claims about his medical condition, the Prosecution submits that these claims lack support and that he should not be granted early release due to health concerns unless his condition renders it inappropriate for him to remain in prison any longer.<sup>102</sup>

70. In response, Milošević states that he has never said anything negative about Sarajevo, nor has he used derogatory words or insults based on ethnicity.<sup>103</sup> He contends that he grieves sincerely for the victims and does not believe that his remorse is any less genuine than that of the Prosecution.<sup>104</sup> He also argues that there is no reason to form assumptions about his conduct or link him with

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<sup>93</sup> *Lukić* Decision, para. 71; *Kunarac* Decision, para. 73; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted), para. 83.

<sup>94</sup> Prosecution Memorandum, paras. 3, 5-8, 24.

<sup>95</sup> Prosecution Memorandum, paras. 3, 9-12, 24.

<sup>96</sup> Prosecution Memorandum, paras. 3, 14, 24.

<sup>97</sup> Prosecution Memorandum, paras. 3, 19-24.

<sup>98</sup> Prosecution Memorandum, paras. 5-8.

<sup>99</sup> Prosecution Memorandum, paras. 9-12.

<sup>100</sup> Prosecution Memorandum, paras. 15-16.

<sup>101</sup> Prosecution Memorandum, paras. 17-18.

<sup>102</sup> Prosecution Memorandum, para. 13.

<sup>103</sup> Comments, p. 3.

<sup>104</sup> Comments, p. 3.

individuals in Serbia.<sup>105</sup> His focus now is on rehabilitation, not politics or associations.<sup>106</sup> Apart from his family, no one has supported him, and he has never spoken to the media.<sup>107</sup> Milošević claims that there is no basis to see him as a threat if released, and he has no desire to harm anyone.<sup>108</sup>

71. I have given due regard to the Prosecution's comments and information in relation to the Application, as well as to Milošević's response thereto.

## 2. Views of Serbia

72. The Serbian Minister of Justice [REDACTED].<sup>109</sup> She also [REDACTED].<sup>110</sup>

73. I have taken note of Serbia's [REDACTED].

## 3. Impact on Victims and Witnesses

74. WISP observes that the early release of a convicted person may impact victims and witnesses in different ways.<sup>111</sup> Learning of a convicted person's release through the media, other channels or through an unexpected encounter in public could increase the perception of risk by victims and witnesses, affect their psycho-social wellbeing, or re-traumatise them.<sup>112</sup> Other victims and/or witnesses may potentially come under threat of being physically harmed or intimidated by the convicted person or his supporters as retribution for their involvement in the proceedings and for contributing to the ICTY's convictions.<sup>113</sup>

75. According to WISP, from the 133 surviving witnesses reviewed, 39 are witnesses the Prosecution classifies as "victim witnesses" and seven whom the Prosecution considers "sensitive witnesses".<sup>114</sup> No victims or sensitive witnesses reside in [REDACTED].<sup>115</sup> The WISP nevertheless expresses the view that Milošević's early release could have a significant negative impact on the victims and witnesses residing elsewhere.<sup>116</sup>

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<sup>105</sup> Comments, p. 3.

<sup>106</sup> Comments, pp. 3-4.

<sup>107</sup> Comments, p. 4.

<sup>108</sup> Comments, p. 4.

<sup>109</sup> Letter of Serbian Ministry of Justice of 9 May 2024, Registry Pagination ("RP") 348. *See* Letter of Serbian Ministry of Justice of 6 August 2024, RP 452.

<sup>110</sup> Letter of Serbian Ministry of Justice of 9 May 2024, RP 348-347. *See* Letter of Serbian Ministry of Justice of 6 August 2024, RP 451-450.

<sup>111</sup> WISP Memorandum, para. 7.

<sup>112</sup> WISP Memorandum, para. 7.

<sup>113</sup> WISP Memorandum, para. 7.

<sup>114</sup> WISP Memorandum, paras. 3-4.

<sup>115</sup> WISP Memorandum, para. 13.

<sup>116</sup> WISP Memorandum, para. 17.

76. Furthermore, the Victims Associations oppose Milošević's early release, emphasising the severity of the crimes for which he was convicted and the lack of any public expression of remorse.<sup>117</sup> Two of them express the view that the sentence he has received is not adequate considering the nature and scope of his crimes.<sup>118</sup>

77. The Association of Parents of Killed Children in Besieged Sarajevo 1992-1995 points to the fact that Serbia, which acts as a guarantor for Milošević's early release, cannot provide a reliable guarantee as it has not cooperated with the Mechanism and has failed to confront its past and accept the ICTY's and Mechanism's judgements.<sup>119</sup> The Association also states that Milošević has never reached out to express remorse or shown willingness to testify against his subordinates, concluding that, given the seriousness of his crimes, his sentence is appropriate and that granting him early release would cause additional distress to the parents whose children were targeted during the siege of Sarajevo.<sup>120</sup>

78. The Association "Women Victims of War" Sarajevo underscores that the siege of Sarajevo, in relation to which Milošević was convicted, was a "coordinated, long-term, widespread and systematic campaign", involving the use of warfare that was "playing with the lives of civilians" and deliberately aimed at civilians.<sup>121</sup> It also challenges Milošević's assertion that his rehabilitation must first be evaluated by the prison authorities in the enforcement State and expresses its certainty that irrespective of Milošević's medical condition, he receives full medical treatment in prison.<sup>122</sup> It further points out that Milošević has never issued a public apology or expressed public repentance, and it doubts Serbia's competence to provide guarantees for early release, as it serves as the main refuge for convicted war criminals and actively participates in their glorification, promotion, and celebration.<sup>123</sup> This association, moreover, expresses the view that persons convicted by the ICTY and the Mechanism should serve their sentences in full and that an eventual early release would be traumatising and insulting for the victims.<sup>124</sup>

79. The Association of the Victims and Witnesses of Genocide declares that Milošević has defended the actions of the SRK, remained silent regarding a report adopted by the government of

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<sup>117</sup> Letter from Association of Parents of Killed Children in Besieged Sarajevo 1992-1995, p. 1; Letter from Association "Women Victims of War" Sarajevo, p. 5; Letter from Association of the Victims and Witnesses of Genocide, p. 2; Letter from Association – Union of Civilian War Victims of Sarajevo Canton, pp. 1-2.

<sup>118</sup> Letter from Association "Women Victims of War" Sarajevo, p. 5; Letter from Association – Union of Civilian War Victims of Sarajevo Canton, p. 2.

<sup>119</sup> Letter from Association of Parents of Killed Children in Besieged Sarajevo 1992-1995, p. 1.

<sup>120</sup> Letter from Association of Parents of Killed Children in Besieged Sarajevo 1992-1995, p. 1.

<sup>121</sup> Letter from Association "Women Victims of War" Sarajevo, pp. 2-3.

<sup>122</sup> Letter from Association "Women Victims of War" Sarajevo, pp. 3-4.

<sup>123</sup> Letter from Association "Women Victims of War" Sarajevo, pp. 3-4.

<sup>124</sup> Letter from Association "Women Victims of War" Sarajevo, p. 5.

the *Republika Srpska* denying the siege of Sarajevo and the crimes committed during it, shown disregard for the victims, and has never expressed remorse for his crimes.<sup>125</sup>

80. Finally, the Association – Union of Civilian War Victims of Sarajevo Canton emphasises that the crimes for which Milošević was convicted were extremely serious, were committed for a long period of time, and targeted innocent civilians.<sup>126</sup>

81. In response, Milošević states that he respects and values the work of the associations and does not intend to deny their positions or minimise the number of victims.<sup>127</sup> He also submits that he fully accepts the ICTY’s findings regarding his crimes and responsibility, and regrets the suffering of all victims, both civilians and soldiers.<sup>128</sup> He further claims that his feelings and thoughts are far from those of a “monster”.<sup>129</sup>

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

#### 4. Health of the Convicted Person and Other Humanitarian Considerations

83. Previous decisions have taken into account the state of the convicted person’s health in the context of an early release application.<sup>130</sup> In particular, I observe that a convicted persons’ health must be considered when the seriousness of his or her condition makes it inappropriate for the convicted person to remain in prison any longer.<sup>131</sup>

84. Milošević contends that [REDACTED].<sup>132</sup> He also states that he [REDACTED].<sup>133</sup> Furthermore, Milošević submits that his wife’s [REDACTED], the “extreme distance” from her residence to the prison, and [REDACTED] have limited her visits to once a year, while his children are similarly unable to visit him due to distance and [REDACTED], with no other family members able to visit either.<sup>134</sup>

85. The Sentencing Enforcement Division of the Prisons Department of the Ministry of Justice of Estonia provides that Milošević [REDACTED]. Regarding Milošević’s mental state, it informed me

<sup>125</sup> Letter from Association of the Victims and Witnesses of Genocide, pp. 1-2.

<sup>126</sup> Letter from Association – Union of Civilian War Victims of Sarajevo Canton, p. 1.

<sup>127</sup> Comments, p. 4.

<sup>128</sup> Comments, p. 4.

<sup>129</sup> Comments, p. 4.

<sup>130</sup> *Lukić* Decision, para. 86; *Kunarac* Decision, para. 85; *Bisengimana* Decision, para. 32.

<sup>131</sup> *Lukić* Decision, para. 86; *Kunarac* Decision, para. 85; *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>132</sup> Application, para. 16.

<sup>133</sup> Application, paras. 17-19.

<sup>134</sup> Application, paras. 25-26, Annex.

that he [REDACTED].<sup>135</sup> Concerning the visits Milošević receives, the Sentencing Enforcement Division of the Prisons Department of the Ministry of Justice of Estonia states that he has also received five visits from his sister since his transfer to Estonia and that his son visited him twice in 2013 and 2014.<sup>136</sup>

86. In response, Milošević contends that the information submitted by the Sentencing Enforcement Division of the Prisons Department of the Ministry of Justice of Estonia [REDACTED].<sup>137</sup> [REDACTED].<sup>138</sup> Milošević notes that, [REDACTED].<sup>139</sup> [REDACTED].<sup>140</sup> Additionally, he [REDACTED].<sup>141</sup> He also [REDACTED].<sup>142</sup>

87. I recall that most of these health conditions and his family's difficulties to visit him have already been considered in the context of the Decision of 29 July 2020, wherein my predecessor concluded that nothing in Milošević's submissions demonstrated compelling or exceptional circumstances that would warrant granting early release.<sup>143</sup> I note that some additional problems have been diagnosed since then, which, however, have been assessed by specialists and for which, where possible, a treatment has been offered.<sup>144</sup> In addition, the information before me does not lead to the conclusion that Milošević's health conditions are so serious so as to make his continued imprisonment inappropriate. Accordingly, I consider that Milošević has not demonstrated that there are compelling humanitarian grounds which would warrant his early release. I have nevertheless taken the information on Milošević's health conditions into account in reaching my decision on the Application, as part of my overall assessment of the various factors.

## 5. Consultation

88. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.<sup>145</sup> Judge Liu and Judge Rosa both concur that the Application should be denied. Judge Liu emphasises the gravity of Milošević's crimes and observes that mitigating factors have already been taken into account by the Appeals Chamber, leading to a sentence reduction. Judge Liu also highlights

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<sup>135</sup> Letter from Estonian Prison Service, p. 2.

<sup>136</sup> Letter from Estonian Prison Service, p. 2.

<sup>137</sup> Comments, p. 2.

<sup>138</sup> Comments, p. 2.

<sup>139</sup> Comments, p. 2.

<sup>140</sup> Comments, p. 2.

<sup>141</sup> Comments, p. 2.

<sup>142</sup> Comments, p. 2.

<sup>143</sup> Decision of 29 July 2020, p. 4.

<sup>144</sup> See Letter from Estonian Prison Service, p. 2. See also Comments, pp. 2-3.

<sup>145</sup> See *supra* para. 19.

the absence of evidence of rehabilitation or compelling humanitarian grounds to justify early release. Similarly, Judge Rosa finds the Application unsubstantiated.

89. 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

90. I am of the opinion that the Application should be denied. While Milošević is eligible to be considered for early release, there are significant factors militating against his early release, including the high gravity of his crimes and his failure to demonstrate sufficient signs of rehabilitation. Further, there is no evidence before me that establishes the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

## VI. DISPOSITION

91. 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.

92. The Registrar is **DIRECTED** to provide the authorities of Estonia and Serbia, as well as the Prosecutor of the Mechanism, with the public redacted version of this decision as soon as practicable.

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

Done this 13th day of December 2024,  
At The Hague,  
The Netherlands.

  
\_\_\_\_\_  
Judge Graciela Gatti Santana  
President

[Seal of the Mechanism]



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<b>From/ De :</b>	<input checked="" type="checkbox"/> President/ Président	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense
			<input type="checkbox"/> Registrar/ Greffier	<input type="checkbox"/> Other/ Autre
<b>Case Name/ Affaire :</b>	Prosecutor v. Dragomir Milošević		<b>Case Number/ Affaire n° :</b> MICT-16-98-ES	
<b>Date Created/ Daté du :</b>	13 December 2024		<b>Date transmitted/ Transmis le :</b>	13 December 2024
			<b>Number of Pages/ Nombre de pages :</b>	22
<b>Original Language/ Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S
	<input type="checkbox"/> Other/ Autre (specify/ préciser):			
<b>Title of Document/ Titre du document :</b>	Decision on the application for early release of Dragomir Milošević			
<b>Classification Level/ Catégories de classification :</b>	<input checked="" type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue		
	<input type="checkbox"/> Confidential/ Confidential	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu		
		<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu		
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<b>Document type/ Type de document :</b>	<input type="checkbox"/> Motion/ Requête <input type="checkbox"/> Judgement/ Jugement/Arrêt <input type="checkbox"/> Book of Authorities/ Recueil de sources <input type="checkbox"/> Warrant/ Mandat <input checked="" type="checkbox"/> Decision/ Décision <input type="checkbox"/> Submission from parties/ Écritures déposées par des parties <input type="checkbox"/> Affidavit/ Déclaration sous serment <input type="checkbox"/> Notice of Appeal/ Acte d'appel <input type="checkbox"/> Order/ Ordonnance <input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers <input type="checkbox"/> Indictment/ Acte d'accusation			

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

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise
<input checked="" type="checkbox"/> 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 du document est jointe)
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<b>Traduction/ Traduction en :</b> <input type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ Autre (specify/ préciser):
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