

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-17-112-ES.4

Date: 21 February 2020

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Olufemi Elias

**Decision of:** 21 February 2020

**PROSECUTOR**

v.

**VALENTIN ČORIĆ**

*PUBLIC*

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**DECISION ON MOTIONS RELATED TO VALENTIN ČORIĆ'S  
REQUEST FOR VARIATION OF EARLY RELEASE CONDITIONS**

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**Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Mathias Marcussen

**Counsel for Mr. Valentin Čorić:**

Mr. Dražen Plavec

**Association of Defence Counsel practising before the International Courts and Tribunals:**

Mr. Geoffrey Roberts

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of a motion filed by Mr. Valentin Ćorić (“Ćorić”) on 2 April 2019, wherein he requests legal aid (“Request for Legal Aid”) as well as the clarification, variation, or removal of the conditions under which he was granted early release (“Motion on Early Release Conditions”).<sup>1</sup> The Office of the Prosecutor of the Mechanism (“Prosecution”) filed submissions opposing the Motion on Early Release Conditions on 9 April 2019 (“Prosecution’s Submissions”).<sup>2</sup> I am also seized of a motion to strike the Prosecution’s Submissions filed on 16 April 2019 by Ćorić (“Motion to Strike”).<sup>3</sup> The Prosecution filed a response opposing the Motion to Strike on 23 April 2019,<sup>4</sup> and Ćorić filed a reply on 30 April 2019.<sup>5</sup> Finally, I am seized of a motion filed on 24 April 2019 by the Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”) seeking leave to appear as *amicus curiae*, with proposed submissions annexed thereto (“ADC-ICT Motion for Leave to Appear”).<sup>6</sup> On 6 May 2019, the Prosecution responded to that motion.<sup>7</sup>

## I. BACKGROUND

2. On 29 May 2013, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively), *inter alia*, convicted Ćorić of: persecution on political, racial and religious grounds, murder, rape, deportation, inhumane acts (forcible transfer), imprisonment, inhumane acts (conditions of confinement), and inhumane acts as crimes against humanity; wilful killing, inhuman treatment (sexual assault), unlawful deportation of a civilian, unlawful transfer of a civilian, unlawful confinement of a civilian, inhuman treatment (conditions of confinement), inhuman treatment, extensive destruction of property not justified by

<sup>1</sup> Urgent Motion Seeking Variation of Conditions of Early Release Decision of 15 January 2019 and Request for Legal Aid, 2 April 2019 (public with confidential and *ex parte* annex).

<sup>2</sup> Prosecution’s Submissions Regarding Valentin Ćorić’s Request for Variation of Conditions of Release, 9 April 2019.

<sup>3</sup> Motion to Strike “Prosecution’s Submissions Regarding Valentin Ćorić’s Request for Variation of Conditions of Release”, 16 April 2019 (public with confidential and *ex parte* annex).

<sup>4</sup> Prosecution’s Response to Ćorić’s Motion to Strike “Prosecution’s Submissions Regarding Valentin Ćorić’s Request for Variation of Conditions of Release”, 23 April 2019 (“Prosecution’s Response to Motion to Strike”), paras. 1-2.

<sup>5</sup> Reply in Support of the Motion to Strike “Prosecution’s Submissions Regarding Valentin Ćorić’s Request for Variation of Conditions of Release”, 30 April 2019 (“Reply on Motion to Strike”). I recall that Rule 153(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), which permits the filing of a reply only with the leave of the relevant Chamber, is applicable *mutatis mutandis* to proceedings before the President. *See Prosecutor v. Momir Nikolić*, Case No. MICT-14-65-ES & IT-09-92-T, Public Redacted Version of the 27 January 2017 Decision on Ratko Mladić’s Requests for Leave to Reply and Reconsideration or, Alternatively, Certification or Disqualification, 6 June 2018, para. 18. *See also* Interim Order on Valentin Ćorić’s Urgent Motion Seeking Variation of Conditions of Early Release, 25 April 2019 (“Interim Order”), fn. 6. Ćorić indicates that he filed the Reply on Motion to Strike pursuant to the Interim Order, which noted that the time for any reply would expire after 30 April 2019. *See* Interim Order, p. 2. I hereby grant the necessary leave and accept the Reply on Motion to Strike as being properly before me.

<sup>6</sup> Association of Defence Counsel Practising Before the International Courts and Tribunals (ADC-ICT) Motion for Leave to Appear as *Amicus Curiae*, 24 April 2019 (public with public annex).

military necessity and carried out unlawfully and wantonly, and appropriation of property not justified by military necessity and carried out unlawfully and wantonly as grave breaches of the Geneva Conventions; and unlawful labour, destruction or wilful damage done to institutions dedicated to religion or education, plunder of public or private property, unlawful attack on civilians, and unlawful infliction of terror on civilians as violations of the laws or customs of war. The Trial Chamber sentenced Ćorić to 16 years of imprisonment for these crimes.<sup>8</sup>

3. On 29 November 2017, the Appeals Chamber of the ICTY, *inter alia*, reversed certain convictions entered against Ćorić, affirmed the remainder of Ćorić's convictions under each count for which he was convicted, allowed certain grounds of appeal from the Office of the Prosecutor of the ICTY but declined to quash the acquittals or enter new convictions, and affirmed Ćorić's sentence of 16 years of imprisonment, subject to credit being given for the period already spent in detention.<sup>9</sup>

4. On 6 December 2017, the Registrar recognised Mr. Dražen Plavec ("Counsel") to act as *pro bono* counsel for Ćorić in relation to all post-conviction matters.<sup>10</sup>

5. On 15 January 2019, my predecessor, Judge Theodor Meron, granted Ćorić early release and ordered that he abide by a series of conditions, namely that: (i) Ćorić shall have no contact whatsoever, directly or indirectly try to harm, intimidate or otherwise interfere, with victims or witnesses who testified at his trial or the trial of other ICTY-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice; (ii) Ćorić shall conduct himself honourably and peacefully in the community to which he is released, and shall not engage in secret meetings intended to plan civil unrest or engage in any political activities; (iii) Ćorić shall not discuss his case, including any aspects of the events in the former Yugoslavia that were the subject of his trial, with anyone, including the media, other than *pro bono* counsel, if any; (iv) Ćorić shall not purchase, possess, use or handle any weapons;

<sup>7</sup> Prosecution's Response to Association of Defence Counsel Motion for Leave to Appear as *Amicus Curiae*, 6 May 2019 ("Prosecution's Response to ADC-ICT Motion").

<sup>8</sup> See *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 29 May 2013 (English translation) ("Trial Judgement"), Vol. 1, para. 26; Vol. 4, Disposition.

<sup>9</sup> See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017 (public with confidential annex), paras. 3364, 3366. See also *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-R.1, Decision on a Request for Review, 16 March 2018, paras. 3, 11 (the Appeals Chamber of the Mechanism ("Appeals Chamber") dismissed Ćorić's request that the Appeals Chamber review the calculation of the time he served in detention during his proceedings).

<sup>10</sup> *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-R.1, Registrar's Notice of Recognition of *Pro Bono* Counsel to Valentin Ćorić, 13 December 2017, para. 1 (identifying Ms. Dijana Tomašević-Tomić and Mr. Dražen Plavec as *pro bono* counsel for Ćorić). See also Registrar's Notice of Recognition of *Pro Bono* Counsel, 8 January 2019, para. 1 (indicating that Ms. Dijana Tomašević-Tomić had requested her withdrawal as *pro bono* counsel, and that Mr. Dražen Plavec was now the sole *pro bono* counsel for Ćorić).

(v) Ćorić shall not commit any offence; (vi) Ćorić shall be held in contempt of court, pursuant to Rule 90 of the Rules, if he violates any of the stated conditions; (vii) the decision granting Ćorić conditional release shall be revoked if he violates any of the stated conditions, and his conditional release will be terminated; (viii) Ćorić shall be subject to the terms of the stated conditions, unless these conditions are revoked or modified, until the expiration of his sentence; and (ix) any change in the foregoing conditions can only be authorised by the President.<sup>11</sup> My predecessor also granted Ćorić's motion to strike the Prosecution's submissions regarding the early release application.<sup>12</sup>

6. On 2 April 2019, Ćorić filed the Motion on Early Release Conditions in which he seeks, *inter alia*, that his early release conditions either be clarified or varied to permit his participation in domestic legal proceedings or otherwise that the conditions be removed entirely.<sup>13</sup> According to Ćorić, in 2015 he initiated such proceedings against Mr. Josip Manolić ("Domestic Proceedings" and "Manolić", respectively) before the Municipal Criminal Court in Zagreb, Republic of Croatia ("Croatia").<sup>14</sup> In the Domestic Proceedings, Ćorić alleges that Manolić violated the Croatian criminal code by publishing and disseminating a book in which he wrote untrue material about Ćorić.<sup>15</sup> Ćorić submits that the Domestic Proceedings are unrelated to Manolić's testimony in Ćorić's case before the ICTY.<sup>16</sup> He further submits that the Domestic Proceedings had been on hold until his early release so that he could testify in them, that the next hearing had been scheduled for 30 April 2019, and that the Judge in those proceedings "ordered Ćorić to address the Mechanism to clarify the conditions contained" in the Early Release Decision.<sup>17</sup>

7. On 25 April 2019, I ordered Ćorić to comply strictly with the conditions of his early release and thus refrain from participating in the Domestic Proceedings while the Motion on Early Release Conditions is pending before me and unless the conditions are revoked or modified in accordance with the Early Release Decision.<sup>18</sup>

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<sup>11</sup> See Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 ("Early Release Decision") (providing a further redacted public redacted version of the decision rendered confidentially on 15 January 2019), paras. 76, 78.

<sup>12</sup> See Early Release Decision, paras. 10-20, 80.

<sup>13</sup> See Motion on Early Release Conditions, paras. 11-13, 29.

<sup>14</sup> Motion on Early Release Conditions, para. 9.

<sup>15</sup> Motion on Early Release Conditions, paras. 9, 11.

<sup>16</sup> Motion on Early Release Conditions, para. 11. See Motion on Early Release Conditions, fn. 6. See also Trial Judgement, Vol. 5, Annex 4 (identifying Manolić as having been a *viva voce* witness for the Office of the Prosecutor of the ICTY).

<sup>17</sup> Motion on Early Release Conditions, paras. 10-11.

<sup>18</sup> Interim Order, p. 3.

8. On 30 April 2019, Ćorić notified me that he complied with my order by sending it, through counsel, to the Municipal Criminal Court in Zagreb and that he “obtained a continuance” in the Domestic Proceedings.<sup>19</sup>

## II. DISCUSSION

9. I will first address Ćorić’s request for legal aid at the expense of the Mechanism. Afterwards, I will consider whether to strike the Prosecution’s Submissions from the record, before turning to consider whether to grant leave to the ADC-ICT to appear as *amicus curiae*. Finally, I will consider Ćorić’s request for the clarification, variation, or removal of his early release conditions.

### A. Request for Legal Aid

10. Ćorić requests that I authorise the Mechanism to remunerate Counsel for 20 hours of unforeseen and extraordinary work during the post-sentence phase.<sup>20</sup> Ćorić recognises that the provision of legal aid to a convicted person is a matter of discretion and not one of right, but emphasises that because this is a matter of first instance before the Mechanism, it required considerable research by Counsel to prepare the Motion on Early Release Conditions.<sup>21</sup> Ćorić also submits that his Counsel will have to take further steps to provide him with legal support in relation to the Domestic Proceedings and on how to comply with the present Decision.<sup>22</sup> In addition, Ćorić submits that he could only seek legal aid through the Motion on Early Release Conditions, instead of doing so in advance, because this matter arose urgently due to a judicial order and a scheduled court date in the Domestic Proceedings.<sup>23</sup> Finally, Ćorić contends that counsel in other post-conviction matters have received even higher remuneration for less unique work, and states that the prior determination that he is indigent continues to be in effect.<sup>24</sup>

11. Article 19(4) of the Statute of the Mechanism (“Statute”) provides that “[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality” and lists, *inter alia*, the right to have “legal assistance assigned to him or her, in any case where the interests of justice so require, and

<sup>19</sup> Reply on Motion to Strike, para. 12.

<sup>20</sup> Motion on Early Release Conditions, Sub-Annex A1, paras. 1, 6, 10. *See also* Motion on Early Release Conditions, para. 4.

<sup>21</sup> Motion on Early Release Conditions, Sub-Annex A1, paras. 4-5, 9.

<sup>22</sup> *See* Motion on Early Release Conditions, Sub-Annex A1, para. 5.

<sup>23</sup> Motion on Early Release Conditions, Sub-Annex A1, paras. 1, 4, 9. *See also* Motion on Early Release Conditions, Sub-Annex A1, paras. 2-3, Sub-Annexes A2-A3.

<sup>24</sup> Motion on Early Release Conditions, Sub-Annex A1, para. 8.

without payment by him or her in any such case if he or she does not have sufficient means to pay for it”.<sup>25</sup> Notwithstanding the foregoing, I note that the Statute, Rules, and Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism (“Practice Direction”)<sup>26</sup> do not provide for assignment of counsel to convicted persons following issuance of final judgements against them,<sup>27</sup> including for any proceedings related to early release.<sup>28</sup>

12. The Appeals Chamber has determined that while convicted persons are not entitled to the provision of legal assistance at the Mechanism’s expense, a convicted person may be granted legal assistance at the expense of the Mechanism pursuant to a judicial order in exceptional circumstances.<sup>29</sup> In respect of proceedings involving pardon, commutation of sentence, or early release, exceptional circumstances exist if such assistance is deemed necessary to ensure the fairness of those proceedings.<sup>30</sup>

13. Ćorić fails to demonstrate that Counsel’s assistance was necessary to ensure the fairness of the proceedings related to his early release. To the contrary, Ćorić submits that he filed his Motion on Early Release Conditions because he was ordered by the Municipal Criminal Court in Zagreb to approach the Mechanism concerning the impact that the early release conditions might have on the Domestic Proceedings initiated by Ćorić before that Court.<sup>31</sup> The Motion on Early Release Conditions thus appears to be an effort to comply with an order in a separate, domestic proceeding. That does not warrant the exceptional provision of legal aid to a convicted person, at the Mechanism’s expense.

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<sup>25</sup> Article 19(4)(d) of the Statute.

<sup>26</sup> MICT/3/Rev.2, 20 February 2019.

<sup>27</sup> *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Supplemental Request for Legal Aid, 19 February 2019 (“*Semanza* Decision of 19 February 2019”), para. 7; *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on Alfred Musema’s Request for Assignment of Counsel, 14 August 2018 (“*Musema* Decision”), para. 6; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Request for Assignment of Counsel, 2 August 2018 (“*Semanza* Decision of 2 August 2018”), para. 6; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on Dominique Ntawukulilyayo’s Request for Legal Aid, 12 June 2018 (“*Ntawukulilyayo* Decision”), para. 8; *In the Case Against Florence Hartmann*, Case No. MICT-15-87-ES, Decision of the President on the Urgent Request for Legal Aid, 29 March 2016 (“*Hartmann* Decision”), para. 14. Cf. *François Karera v. Prosecutor*, Case No. MICT-12-24-R, Decision on Request for Assignment of Counsel, 4 December 2012, para. 10.

<sup>28</sup> *Semanza* Decision of 19 February 2019, para. 7.

<sup>29</sup> See, e.g., *Semanza* Decision of 19 February 2019, para. 8; *Musema* Decision, paras. 7, 9; *Semanza* Decision of 2 August 2018, paras. 7, 9; *Ntawukulilyayo* Decision, paras. 9, 11; *Hartmann* Decision, paras. 13, 15; *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Review and Assignment of Counsel, 13 July 2015, para. 8.

<sup>30</sup> See, e.g., *Semanza* Decision of 19 February 2019, para. 8; *Musema* Decision, para. 9; *Semanza* Decision of 2 August 2018, para. 9.

<sup>31</sup> See Motion on Early Release Conditions, Sub-Annex A1, para. 4(a). See also Motion on Early Release Conditions, Sub-Annex A1, para. 4(d).

14. I therefore deny the Request for Legal Aid.

### **B. Motion to Strike**

15. Ćorić submits that the Prosecution's Submissions should be struck from the record for lack of standing.<sup>32</sup> He contends that the Early Release Decision "is explicit and binding" in holding that the Prosecution has no standing in post-conviction matters, and he asserts that this issue cannot be appealed or revisited.<sup>33</sup>

16. The Prosecution responds that the Motion to Strike should be denied.<sup>34</sup> It submits that the President has broad discretion and authority to ensure the execution of orders issued by the Mechanism, including the execution of the Early Release Decision, and that this discretion is not restricted by the Statute, Rules, Practice Direction, or previous decisions.<sup>35</sup> Moreover, the Prosecution recalls that it has a direct interest in this matter because Ćorić seeks to vary conditions of release affecting Prosecution witnesses who testified before the ICTY.<sup>36</sup>

17. I recall that as part of the Early Release Decision, my predecessor granted Ćorić's motion to strike the Prosecution submissions on the basis, *inter alia*, that the Prosecution did not explicitly address its standing and failed to demonstrate compelling reasons or special circumstances for why it should be permitted to make submissions in that case.<sup>37</sup> Notably, my predecessor stated that "it has been repeatedly held that, in principle, the Prosecution has no standing to make submissions on sentence enforcement matters under the Statute and the Rules other than when consulted in the context of early release applications", which only concerns substantial cooperation provided by the convicted person to the Prosecution.<sup>38</sup> Consequently, my predecessor found that there was "no need to consider the Prosecution Submissions except insofar as the information provided therein relates to Ćorić's cooperation with the Prosecution".<sup>39</sup>

18. I do not share the view that the applicable legal framework bars consideration of submissions from the Prosecution with respect to matters pertaining to early release.<sup>40</sup> Rather, I will give adequate consideration to submissions from the Prosecution whenever I deem them to be

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<sup>32</sup> Motion to Strike, paras. 5-6, 10, 13. *See* Reply on Motion to Strike, paras. 18, 21.

<sup>33</sup> Motion to Strike, paras. 7-10. *See* Reply on Motion to Strike, paras. 5, 13-16, 18-20.

<sup>34</sup> Prosecution's Response to Motion to Strike, paras. 1-2.

<sup>35</sup> Prosecution's Response to Motion to Strike, paras. 1-2.

<sup>36</sup> Prosecution's Response to Motion to Strike, para. 1.

<sup>37</sup> *See* Early Release Decision, paras. 10-20, 80.

<sup>38</sup> Early Release Decision, para. 14, fn. 20.

<sup>39</sup> Early Release Decision, para. 17.

<sup>40</sup> *See 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. 67-69.

relevant to the matter before me. In this regard, I note that while the Statute and the Rules are silent on this issue, they certainly do not prevent the President from accepting submissions from relevant sources in the context of a decision pertaining to early release.<sup>41</sup> To the contrary, the Statute and the Rules provide full discretion to the President in deciding matters pertaining to early release, and it is in the interests of justice for the President to consider all information that he or she deems relevant to an application related to early release.<sup>42</sup>

19. In the present case, I consider the Prosecution's Submissions to be relevant to my consideration of this issue. Not only is the Prosecution particularly well placed to identify instances where Ćorić may be making contact with a witness who testified at his trial or the trial of other ICTY-convicted persons, it is also well placed to comment on whether Ćorić has discussed his case or any aspects that were the subject of his trial, both of which concern conduct that is prohibited by the Early Release Decision<sup>43</sup> and could be at issue here. Indeed, the Prosecution's Submissions provide important information about potential violations of the conditions underlying Ćorić's early release.

20. Accordingly, I deny the Motion to Strike and accept the Prosecution's Submissions as properly before me.

### **C. ADC-ICT Motion for Leave to Appear**

21. The ADC-ICT seeks leave to appear as *amicus curiae* in order to file submissions on the conditions imposed on Ćorić in the Early Release Decision.<sup>44</sup> The ADC-ICT submits that its expertise could assist in resolving issues raised by Ćorić.<sup>45</sup> Specifically, the ADC-ICT submits that it could address the effect that the Early Release Decision will have on future applications for early release<sup>46</sup> and show the extent to which the Early Release Decision departed from previous practice by providing "a more comprehensive view" of relevant jurisprudence.<sup>47</sup> The ADC-ICT clarifies that it will not address the factual circumstances specific to Mr. Ćorić's motion or the Prosecution's arguments, except as they relate to the wider consequences of the Early Release Decision.<sup>48</sup>

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<sup>41</sup> *Bralo* Decision, para. 67.

<sup>42</sup> See *Bralo* Decision, paras. 68-69.

<sup>43</sup> See Early Release Decision, paras. 78(a), 78(c).

<sup>44</sup> ADC-ICT Motion for Leave to Appear, paras. 1, 14.

<sup>45</sup> ADC-ICT Motion for Leave to Appear, paras. 5-9.

<sup>46</sup> ADC-ICT Motion for Leave to Appear, para. 10.

<sup>47</sup> ADC-ICT Motion for Leave to Appear, paras. 1, 11.

<sup>48</sup> ADC-ICT Motion for Leave to Appear, para. 12.



22. Čorić submits that the ADC-ICT Motion for Leave to Appear should be granted.<sup>49</sup> He also states that he approves of the contents of the proposed ADC-ICT brief, which he seeks to incorporate by reference into his own submissions.<sup>50</sup>

23. The Prosecution responds that the ADC-ICT Motion for Leave to Appear should be denied, as the ADC-ICT does not demonstrate that its proposed submissions would assist the President.<sup>51</sup> With regard to any shift in the case law regarding conditional early release, the Prosecution submits that this issue has already been extensively briefed by Čorić and so the ADC-ICT's repetitive submissions offer no assistance.<sup>52</sup> As for the effect of the Early Release Decision on future applications for early release, the Prosecution submits that the ADC-ICT's opinion will not assist in determining such applications as they will be dependent on individual circumstances and because some convicted persons might continue to accept the imposition of appropriate conditions for early release.<sup>53</sup>

24. Rule 83 of the Rules, which is applicable *mutatis mutandis* to proceedings before the President,<sup>54</sup> provides that “[a] Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organisation, or person to appear before it and make submissions on any issue specified by the Chamber”. This is a discretionary decision.<sup>55</sup> The primary criterion in determining whether to grant leave to an *amicus curiae* to make submissions is whether this would assist the President in his or her consideration of the issue.<sup>56</sup>

25. I am not convinced that the ADC-ICT's proposed submissions would assist in my consideration of the Motion on Early Release Conditions. The ADC-ICT proposes to supplement the Motion on Early Release Conditions with additional detail on the early release jurisprudence and practice in the Mechanism, the International Criminal Tribunal for Rwanda (“ICTR”), and the ICTY.<sup>57</sup> As this is jurisprudence and practice of which I am acutely aware in my capacity as a Judge of all three institutions, I do not consider that further discussion of it by the ADC-ICT would assist me in determining the Motion on Early Release Conditions. I also note that the ADC-ICT

<sup>49</sup> Reply on Motion to Strike, para. 11.

<sup>50</sup> Reply on Motion to Strike, para. 11.

<sup>51</sup> Prosecution's Response to ADC-ICT Motion, paras. 1, 5.

<sup>52</sup> See Prosecution's Response to ADC-ICT Motion, para. 2.

<sup>53</sup> Prosecution's Response to ADC-ICT Motion, para. 3.

<sup>54</sup> See *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Decision on Requests for Notification and Reclassification, 7 August 2019, p. 2.

<sup>55</sup> See *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Request for Leave to Make Submissions as *Amicus Curiae*, 25 September 2017 (“*Karadžić Decision*”), p. 1; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Decision on Application by the Republic of Croatia for Leave to Appear as *Amicus Curiae* and to Submit *Amicus Curiae* Brief, 18 July 2016 (“*Prlić et al Decision*”), para. 7.

<sup>56</sup> See *Karadžić Decision*, p. 1; *Prlić et al. Decision*, para. 7.

affirms that it will not address the circumstances specific to Ćorić, but instead seeks to make submissions with a view towards possible future applications for early release that may arise in other cases.<sup>58</sup> As such matters are not at issue in the Motion on Early Release Conditions, I do not consider the proposed submissions to be helpful to my consideration of the matter before me.

26. Consequently, I deny the ADC-ICT Motion for Leave to Appear.

27. With regard to Ćorić's attempt to incorporate the ADC-ICT's proposed brief into his Reply on Motion to Strike,<sup>59</sup> I do not consider this to be appropriate and have not taken into account the ADC-ICT's proposed submissions in considering the merits of the Motion on Early Release Conditions.

#### **D. Motion on Early Release Conditions**

28. Ćorić requests that his early release conditions be removed entirely, or that they be clarified or varied to permit his participation as a party and witness in ongoing and future legal proceedings in Croatia.<sup>60</sup> He argues that the imposition of these conditions: (i) was *ultra vires*;<sup>61</sup> (ii) treats him unequally and inconsistently with other convicted persons from the ICTY;<sup>62</sup> and (iii) affects his ability to exercise his rights, duties, and obligations in relation to the Domestic Proceedings.<sup>63</sup>

29. Ćorić submits that by imposing early release conditions, my predecessor acted *ultra vires* by amending the Rules, which may only be done by the Judges of the Mechanism in accordance with Article 13 of the Statute.<sup>64</sup> Ćorić contends that by adopting this power and applying conditions that are not mentioned by the Rules or the Practice Direction, my predecessor acted contrary to the interests of justice and the general principles of law which are to be the basis of early release decisions under the Statute.<sup>65</sup> Ćorić asserts that the Judges of the Mechanism did not support the implementation of a new Rule on early release, as seen from their refusal to amend the Rules to establish a programme for conditional early release.<sup>66</sup> Ćorić also contends that Security Council

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<sup>57</sup> See ADC-ICT Motion for Leave to Appear, paras. 10-11.

<sup>58</sup> See ADC-ICT Motion for Leave to Appear, paras. 10, 12-13.

<sup>59</sup> Reply on Motion to Strike, para. 11.

<sup>60</sup> Motion on Early Release Conditions, p. 10. See Motion on Early Release Conditions, paras. 4, 12-13, 28-29.

<sup>61</sup> See Motion on Early Release Conditions, paras. 14-23.

<sup>62</sup> See Motion on Early Release Conditions, paras. 24-28.

<sup>63</sup> See Motion on Early Release Conditions, paras. 8-13.

<sup>64</sup> See Motion on Early Release Conditions, paras. 16, 23.

<sup>65</sup> Motion on Early Release Conditions, para. 16.

<sup>66</sup> See Motion on Early Release Conditions, paras. 17-20.

resolution 2422 (2018), on which the Early Release Decision relied,<sup>67</sup> is not binding upon the Mechanism and cannot supplant a prior determination of the Judges not to amend the Rules.<sup>68</sup>

30. Čorić further submits that he is being treated differently from other persons convicted by the ICTY, including another person convicted in the same case, in contravention of Rule 151 of the Rules.<sup>69</sup> Čorić also submits that the duration of the conditions is not defined and contends that, if they are to last forever or as a matter of judicial discretion, this would be a further instance of treating him inconsistently with other similarly situated persons convicted by the ICTY.<sup>70</sup>

31. Čorić also contends that since his early release, he is now subject to the same rights, duties, and obligations as any ordinary Croatian citizen.<sup>71</sup> Čorić asserts that, at the very least, a clarification or variation of the early release conditions is required so that he may exercise his right to participate in the Domestic Proceedings as well as any future proceedings in Croatia.<sup>72</sup>

32. The Prosecution responds that the Motion on Early Release Conditions should be denied.<sup>73</sup> It submits that the imposition of early release conditions was not *ultra vires*, as conditions have previously been adopted in both ICTR and ICTY cases and as the imposition of early release conditions falls within the President's broad discretion.<sup>74</sup> The Prosecution further submits that conditional release regimes are prevalent in many legal systems and are in line with international standards for the treatment of prisoners.<sup>75</sup>

33. With respect to the contention that Čorić has been treated unfairly relative to other convicted persons, the Prosecution submits that he was granted early release after an assessment of his individual circumstances, including well-founded concerns about his lack of rehabilitation.<sup>76</sup> It asserts that the early release conditions were tailored to Čorić and are consistent with recommendations from the Witness Support and Protection Unit of the Mechanism ("WISP").<sup>77</sup> Moreover, the Prosecution argues that even if other convicted persons received an "unjustified

<sup>67</sup> See Motion on Early Release Conditions, para. 14, referring to Early Release Decision, para. 73.

<sup>68</sup> Motion on Early Release Conditions, paras. 21-23.

<sup>69</sup> Motion on Early Release Conditions, paras. 24-26, referring to *Prosecutor v. Berislav Pušić*, Case No. MICT-17-112-ES.1, Public Redacted Version of the 20 April 2018 Decision of the President on the Early Release of Berislav Pušić, 24 April 2018 (releasing Mr. Berislav Pušić early without the imposition of any conditions).

<sup>70</sup> Motion on Early Release Conditions, para. 27. See Motion on Early Release Conditions, para. 28.

<sup>71</sup> Motion on Early Release Conditions, para. 8. See also Motion on Early Release Conditions, paras. 4, 9, 11-12, referring to European Convention on Human Rights, Art. 8 (concerning the right to respect for private and family life).

<sup>72</sup> Motion on Early Release Conditions, paras. 12, 29.

<sup>73</sup> Prosecution's Submissions, paras. 1, 14.

<sup>74</sup> Prosecution's Submissions, paras. 8-9, 12.

<sup>75</sup> Prosecution's Submissions, para. 9, Annex C.

<sup>76</sup> Prosecution's Submissions, para. 10.

<sup>77</sup> Prosecution's Submissions, para. 10.

windfall” by being released without conditions, Ćorić is not entitled to a similar windfall because there is no right to early release.<sup>78</sup>

34. Finally, the Prosecution submits that Ćorić might be pursuing the Domestic Proceedings in order to challenge the ICTY’s findings against him,<sup>79</sup> and that in any event a recent news article suggests that Ćorić may have violated the early release conditions.<sup>80</sup> In this respect, the Prosecution annexes a media article alleging that Ćorić directly confronted Manolić during a court hearing on 5 March 2019.<sup>81</sup> It argues that although this media account is inconclusive, Ćorić should be required to provide documentation concerning the Domestic Proceedings to allow for an assessment of whether he has violated the early release conditions.<sup>82</sup>

35. In a subsequent filing, Ćorić provides the record concerning the hearing of 5 March 2019, which he submits shows that he raised the early release conditions immediately to the Municipal Criminal Court in Zagreb.<sup>83</sup> He also submits that this court record demonstrates that he did not directly confront Manolić, and that the media was excluded from the proceedings in accordance with the early release conditions.<sup>84</sup>

36. Turning now to the applicable law, Article 26 of the Statute provides that “[t]here shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law”.

37. Rule 150 of the Rules concerns the “Determination by the President” of pardon, commutation of sentence, and early release. It provides that “[t]he President shall, upon such notice or upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate”.

38. With regard to Ćorić’s argument that my predecessor’s decision to impose conditions was *ultra vires*, I note at the outset that the determination to grant early release to Ćorić was contingent on these conditions.<sup>85</sup> As such, it follows that if the imposition of conditions was *ultra vires*, the decision to grant Ćorić early release would be void, and he would be required to return to the

<sup>78</sup> Prosecution’s Submissions, para. 11. *See* Prosecution’s Submissions, para. 1.

<sup>79</sup> Prosecution’s Submissions, paras. 1, 3-6. *See* Prosecution’s Submissions, Annex A.

<sup>80</sup> Prosecution’s Submissions, para. 7.

<sup>81</sup> Prosecution’s Submissions, Annex B. *See* Prosecution’s Submissions, paras. 7, 14.

<sup>82</sup> Prosecution’s Submissions, paras. 1, 3, 7, 14. *See* Prosecution’s Submissions, paras. 1, 3-7, Annex A.

<sup>83</sup> Motion to Strike, para. 11, *referring to* Motion to Strike, Annex.

<sup>84</sup> Motion to Strike, para. 11, *referring to* Motion to Strike, Annex.

<sup>85</sup> *See* Early Release Decision, paras. 72, 74, 76, 78(g).

United Nations Detention Unit in The Hague to resume serving his sentence until an appropriate enforcement State could be designated.<sup>86</sup> Moreover, Ćorić was at liberty to reject the conditions if he considered them improper, in which case he would now be serving his sentence in an enforcement State rather than on conditional early release.

39. As to whether the imposition of conditions was *ultra vires*, Article 26 of the Statute reflects that the Security Council entrusted the President of the Mechanism with the sole discretion to decide whether to grant pardon or commutation of sentence and, by extension, early release.<sup>87</sup> Therefore, regardless of whether the Judges declined to amend the Rules to expressly provide for conditional early release,<sup>88</sup> this could not have any impact on the discretion afforded to the President under Article 26 of the Statute. Contrary to Ćorić's suggestion,<sup>89</sup> the Early Release Decision does not amount to a *de facto* amendment of the Rules, but rather concerns the application of the discretion entrusted to the President by the Security Council. In this respect, I recall that in 2018 the Security Council encouraged the Mechanism to consider "putting in place conditions on early release in appropriate cases",<sup>90</sup> which the Security Council would not have done if it considered that this would fall outside the Statute it adopted when establishing the Mechanism.<sup>91</sup> More importantly, however, the discretion to impose conditions has always rested with the President, who could have exercised this discretion prior to the Security Council's encouragement in 2018, if he considered it warranted by the circumstances.<sup>92</sup> In light of the above, I find no merit in Ćorić's argument that imposing conditions was *ultra vires*.

40. Ćorić's argument that he has not been treated equally to similarly-situated prisoners also lacks merit. Although he contends that there was no reason for him to be treated differently from another convicted person in the same case,<sup>93</sup> this overlooks the explanation that conditions were imposed on Ćorić in particular "in line with the recommendations" made by the WISP.<sup>94</sup> In this regard, I emphasise that each early release matter must be addressed on its own merits, and it is

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<sup>86</sup> I recall that this is where Ćorić was serving his sentence when my predecessor granted him conditional early release. See Early Release Decision, para. 4.

<sup>87</sup> See, e.g., *Bralo* Decision, para. 17 (observing that the Statutes of the ICTR and the ICTY also do not specifically mention the early release of convicted persons); *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 11.

<sup>88</sup> See Motion on Early Release Conditions, paras. 17-19.

<sup>89</sup> See Motion on Early Release Conditions, para. 20.

<sup>90</sup> Security Council resolution 2422 (2018), para. 10.

<sup>91</sup> Security Council resolution 1966 (2010), para. 1.

<sup>92</sup> See, e.g., *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. 48 ("it was recommended by the Judges of the sentencing Chamber, who are also Judges of the Mechanism, that Beara be granted a conditional release and that reporting obligations be placed on the State of release"), 49-50, 52 (granting release subject to specified conditions).

<sup>93</sup> See Motion on Early Release Conditions, paras. 25-26.

evident that in the view of my predecessor, this particular factor differentiated Ćorić's situation from that of other convicted persons who had been released early without any conditions.<sup>95</sup> As for the contention that the duration of the conditions is undefined, I note that the Early Release Decision clearly states that, unless revoked or modified, Ćorić shall be subject to the terms of the conditions until his sentence expires.<sup>96</sup> In this respect, I observe that the final day of Ćorić's sentence will be 22 January 2024.<sup>97</sup>

41. Ćorić also fails to demonstrate that any restrictions on his ability to exercise his rights, duties, and obligations in relation to the Domestic Proceedings warrant clarification, variation, or removal of his early release conditions. Contrary to his submissions,<sup>98</sup> he has not returned to the life of an ordinary citizen. Instead, he has been released early from serving his sentence in confinement, subject to his strict fulfilment of specified conditions, including certain restrictions on the rights that ordinary citizens may exercise.

42. Finally, I note with concern that Ćorić appears to have been attempting to continue litigation against someone who testified as a witness at his trial, notwithstanding the conditions of his early release. While I have taken note that Ćorić initiated the Domestic Proceedings several years before he was granted conditional early release,<sup>99</sup> he has since been released early on condition, *inter alia*, that he "shall have no contact whatsoever, directly or indirectly try to harm, intimidate or otherwise interfere, with victims or witnesses who testified at his trial or the trial of other ICTY-convicted persons, or otherwise interfere in any way with the proceedings of the Mechanism, or the administration of justice".<sup>100</sup> No clarification is necessary to conclude that Ćorić's continued pursuit of litigation against a witness who testified at his trial would breach this condition.

43. In this regard, I observe that following the Prosecution's indication that Ćorić should provide me with further information concerning what took place at the hearing on 5 March 2019,<sup>101</sup> Ćorić provided the court record from that hearing.<sup>102</sup> Ćorić has also affirmed his compliance with the Interim Order and is thus refraining from participating in the Domestic Proceedings while the

<sup>94</sup> Early Release Decision, paras. 72-73.

<sup>95</sup> See Early Release Decision, paras. 71-73.

<sup>96</sup> Early Release Decision, para. 78(h).

<sup>97</sup> This information was provided by the Immediate Office of the Registrar through an informal communication on 19 February 2020.

<sup>98</sup> See Motion on Early Release Conditions, paras. 8-9.

<sup>99</sup> See, e.g., Motion on Early Release Conditions, para. 9 (stating that the Domestic Proceedings were initiated in 2015); Motion to Strike, Annex (same).

<sup>100</sup> Early Release Decision, para. 78(a). See also Interim Order, p. 3.

<sup>101</sup> See Prosecution's Submissions, paras. 1, 3, 7, 14.

<sup>102</sup> See Motion to Strike, Annex. See also Prosecution's Submissions, paras. 1, 7, 14.

conditions of his early release remain in force.<sup>103</sup> In these circumstances, I am satisfied that no further information is required from Čorić so long as he continues to abide strictly by the conditions upon which his early release was granted, and therefore I see no need to address any further the Prosecution's request for additional information.

### III. CONCLUSION

44. For the foregoing reasons, I hereby:

**DENY** the Request for Legal Aid and the Motion to Strike;

**DENY** the ADC-ICT Motion for Leave to Appear; and

**DENY** the Motion on Early Release Conditions.

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

Done this 21st day of February 2020,  
At The Hague,  
The Netherlands.



Judge Carmel Agius  
President

[Seal of the Mechanism]

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<sup>103</sup> Reply on Motion to Strike, para. 12. *See* Interim Order, p. 3.



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