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International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-46-ES.1

Date: 10 September 2019

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THE PRESIDENT OF THE MECHANISM

Before: **Judge Carmel Agius, President**

Registrar: **Mr. Olufemi Elias**

Decision of: **10 September 2019**

THE PROSECUTOR

v.

RADISLAV KRSTIĆ

PUBLIC REDACTED VERSION

DECISION ON THE EARLY RELEASE OF RADISLAV KRSTIĆ

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Radislav Krstić

Mr. Vladimir Petrović

The Republic of Poland

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of a notification from the Republic of Poland (“Poland”) of Mr. Radislav Krstić’s (“Krstić”) eligibility pursuant to Polish law to apply for conditional early release, received by the Registry of the Mechanism (“Registry”) on 22 January 2018 (“Notification”) and conveyed to my predecessor, Judge Theodor Meron, on 25 January 2018.¹

I. BACKGROUND

2. Krstić was arrested on 2 December 1998 in Bosnia and Herzegovina and transferred to the United Nations Detention Unit in The Hague the following day.² At his initial appearance on 7 December 1998, Krstić pleaded not guilty to all charges contained in the initial indictment.³

3. On 2 August 2001, Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) convicted Krstić for committing genocide, persecution as a crime against humanity, as well as murder as a violation of the laws or customs of war.⁴ The Trial Chamber sentenced Krstić to 46 years of imprisonment.⁵

4. On 19 April 2004, the Appeals Chamber of the ICTY (“Appeals Chamber”) set aside Krstić’s convictions for committing genocide and partially set aside his convictions for committing murder as a violation of the laws or customs of war, and instead found him guilty of aiding and abetting these same crimes.⁶ The Appeals Chamber affirmed the remaining convictions for committing persecution as a crime against humanity and murder as a violation of the laws or customs of war, and reduced Krstić’s sentence to 35 years of imprisonment.⁷

¹ Internal Memorandum from the Acting Officer-in-Charge, Registry, Hague branch, to the then-President, dated 25 January 2018, transmitting a letter from Poland, dated 22 December 2017 and received by the Registry on 22 January 2018. Unless otherwise stated, all references herein are to the English translation of the documents received in connection with Krstić’s Notification.

² *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“Trial Judgement”), para. 718. See also Press Release “Initial Appearance of Radislav Krstić on Monday 7 December at 11 a.m.”, 4 December 1998, available at <http://www.icty.org/en/press/initial-appearance-radislav-krstic-monday-7-december-1100-am>.

³ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33, Public Transcript of Hearing, 7 December 1998, pp. 28-31.

⁴ Trial Judgement, paras. 653, 687-688, 719, 727.

⁵ Trial Judgement, para. 727.

⁶ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 (“Appeal Judgement”), p. 87.

⁷ Appeal Judgement, p. 87.

5. Krstić was transferred to the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) to serve the remainder of his sentence on 20 December 2004.⁸ Per order of 19 July 2013, Krstić was thereafter transferred from the United Kingdom to Poland to continue to serve the remainder of his sentence.⁹

6. On 30 June 2016, Krstić filed an application for early release,¹⁰ which was denied by the then-President on 13 December 2016.¹¹

II. NOTIFICATION OF ELIGIBILITY

7. On 22 January 2018, the Polish Ministry of Justice notified the Mechanism that Krstić has been eligible to apply for conditional early release since 3 December 2013.¹² The Notification included a report from the Deputy Director of the Piotrków Trybunalski Prison (“Prison”), dated 6 November 2017 (“First Prison Report”).¹³

8. On 30 January 2018, the then-President of the Mechanism requested the Registry to undertake the steps prescribed in paragraphs 4 and 5 of the 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”).¹⁴ On 28 June 2018, the Registry conveyed to my predecessor: (i) a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”), dated 9 February 2018 (“Prosecution Memorandum”), regarding any cooperation provided by Krstić to the Prosecution; (ii) a communication from the Embassy of Poland to the Netherlands, dated 5 April 2018, conveying: (a) a letter from the Head of the Penitentiary Section, dated 2 February 2018 (“Letter from Head of

⁸ Press Release “Radislav Krstić Transferred to the United Kingdom to Serve his Prison Sentence”, 20 December 2004, available at <http://www.icty.org/en/press/radislav-krstic-transferred-united-kingdom-serve-his-prison-sentence>. See Order Designating the State in which Radislav Krstić is to Serve the Remainder of his Sentence, 19 July 2013 (“Order of 19 July 2013”), p. 2.

⁹ See Order of 19 July 2013, p. 2. See also *Prosecutor v. Radislav Krstić*, Case No. IT-13-46-ES.1, Decision of the President on the Early Realease of Radislav Krstić (“First Decision”), 13 December 2016, para. 4.

¹⁰ Radislav Krstić’s Request for Pardon, Commutation of Sentence or Early Release with Confidential Annexes, 30 June 2016 (confidential).

¹¹ First Decision, para. 39.

¹² Notification, pp. 1-2.

¹³ Annex to the Notification.

¹⁴ Internal Memorandum from the then-President to the Registrar, dated 30 January 2018, para. 2. The Practice Direction was recently revised, adding in particular a new paragraph 8 on Third Party Submissions. I will refer to the current version of the Practice Direction in this decision, MICT/3/Rev. 2, issued on 20 February 2019.

Penitentiary Section"); and (b) a report prepared by the Prison, dated 25 January 2018 ("Second Prison Report").¹⁵

9. On 18 July 2018, the Registry transmitted the collated information to Krstić in accordance with the Practice Direction.¹⁶ On 27 August 2018, the Registry informed my predecessor that no response had been received from Krstić.¹⁷

10. On 11 June 2019, the Registry conveyed to me a letter from the Ambassador of Poland to the Kingdom of the Netherlands transmitting the following documents: (i) a letter from the Regional Court in Piotrków Trybunalski ("Regional Polish Court") to the Polish Ministry of Justice, dated 15 April 2019 ("Letter from Regional Polish Court"); (ii) a motion for conditional early release submitted by Krstić to the Polish Regional Court ("Motion before the Regional Polish Court"); and (iii) a report from the Deputy Director of the Prison to the Regional Polish Court ("Prison Report to the Regional Polish Court").¹⁸ The Regional Polish Court indicates that Krstić fulfils the conditions for early release under Polish law.¹⁹ However, since the "early release of persons sentenced by the ICTY falls within the exclusive discretion of the President", the Polish authorities kindly request the President of the Mechanism to take a position on "whether conditional early release is advisable".²⁰

III. CONSULTATION

11. In coming to my decision on whether to grant early release to Krstić, I have consulted with Judge Theodor Meron, who was a Judge of the sentencing Chamber and is presently a Judge of the Mechanism, pursuant to Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules"). In addition, since no other Judge who imposed the sentence continues to be a Judge of the Mechanism, I decided to consult with two other Judges of the Mechanism, Judge Alphons Orie and Judge Liu Daqun.

¹⁵ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the then-President, dated 28 June 2018.

¹⁶ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the then-President, dated 27 August 2018 ("Registry Memorandum of 27 August 2018"), para. 2.

¹⁷ Registry Memorandum of 27 August 2018, para. 2. On 11 June 2019, the Registry confirmed that Krstić did not send a response. *See* Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 11 June 2019, para. 3.

¹⁸ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 11 June 2019, *conveying* a letter from the Ambassador of Poland to the President, dated 24 May 2019 ("Letter from Poland").

¹⁹ Letter from Regional Polish Court, p. 2. *See* Letter from Poland.

²⁰ Letter from Regional Polish Court, pp. 1-2. *See* Letter from Poland.

IV. APPLICABLE LAW

12. Article 26 of the Statute of the Mechanism (“Statute”) states: “There 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.” Pursuant to this provision, the State enforcing the sentence shall notify the Mechanism if a convicted person is eligible for pardon or commutation of sentence under the laws of that State.²¹ While Article 26 of the Statute, like the Statutes of the International Criminal Tribunal for Rwanda (“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.

13. Rule 150 of the Rules specifies that the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism or, if none of the Judges who imposed the sentence are Judges of the Mechanism, at least two other Judges.²² Rule 151 of the Rules sets out general standards for granting pardon, commutation of sentence, or early release. It provides that in making his or her determination, 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.

14. Paragraph 2 of the Practice Direction specifies that the notification of eligibility under domestic law shall occur, where practicable, at least 45 days prior to the date of such eligibility. Paragraph 4 of the Practice Direction sets out the duties of the Registrar to inform the convicted person and collect information following the notification of eligibility. Paragraph 6 of the Practice Direction states that the convicted person shall be given 10 days to examine the information received by the Registrar, thereafter the President shall hear him or her. Paragraph 10 of the Practice Direction specifies that the President shall determine whether early release is to be granted having regard to the criteria specified in Rule 151 of the Rules, the interests of justice, the general principles of law and any other information that he or she considers relevant.

²¹ See also Rule 149 of the Rules.

²² See also Practice Direction, para. 10.

15. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the ICTY, the ICTR, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. Article 3(4) of the Agreement between the Government of Poland and the United Nations on the Enforcement of Sentences of the ICTY, dated 18 September 2008 (“Enforcement Agreement”), applied *mutatis mutandis* to the Mechanism, provides that the conditions of imprisonment shall be governed by the law of Poland, subject to the supervision of the Mechanism.²³ Article 8(1) of the Enforcement Agreement provides that if the convicted person is eligible for pardon or commutation of the sentence pursuant to the applicable national law of Poland, the Minister of Justice of Poland shall notify the Registrar accordingly. Article 8(2) of the Enforcement Agreement specifies that: (i) the President of the Mechanism shall determine, in consultation with the Judges of the Mechanism, whether pardon or commutation of the sentence is appropriate; and (ii) if the President determines that a pardon or commutation of the sentence is not appropriate, Poland shall act accordingly.

V. ANALYSIS

A. ELIGIBILITY

1. Eligibility before the Mechanism

16. When the Mechanism began its work, the then-President determined that all convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the Tribunal that convicted them.²⁴ Although the two-thirds practice originates from the ICTY, it applies to all prisoners convicted by

²³ Security Council Resolution 1966 (2010) of 22 December 2010 provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 (“[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]”). According to Article 25(2) of the Statute, “[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States”.

²⁴ *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) (“Bisengimana Decision”), para. 20.

the ICTR, the ICTY, or the Mechanism, given the need for equal treatment and thus for a uniform eligibility threshold applicable to all prisoners supervised by the Mechanism.²⁵

17. Furthermore, I recall that in the Mechanism's first decision on early release, the two-thirds mark was described as being "in essence, an admissibility threshold"²⁶ and that this decision has been relied upon in subsequent early release decisions before the Mechanism.²⁷ Only in compelling or exceptional circumstances has early release been granted before this threshold is reached.²⁸ It has also been repeatedly emphasised that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for, but not entitled to, early release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.²⁹

18. In this regard, I observe that, while the two-thirds threshold has generally been addressed under the heading of "treatment of similarly-situated prisoners",³⁰ a factor listed in Rule 151 of the Rules, which sets out the "general standards for granting pardon, commutation of sentence, or early release", it is essentially a pre-condition. Furthermore, I note that the two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a notification from the relevant enforcement State or

²⁵ *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 ("Galić Decision"), para. 15. See *Bisengimana* Decision, paras. 17, 20.

²⁶ *Bisengimana* Decision, para. 19.

²⁷ *Musema* Decision, p. 3, referring to, e.g., *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019 ("Simba Decision"), paras. 31-32; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (public redacted version) ("Miletić Decision"), para. 23; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted version) ("Lukić Decision"), paras. 16-17; *Semanza* Decision, paras. 18-19.

²⁸ See, e.g., *Prosecutor v. Ljubiša Beara*, 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. 27, 47-50, 52; *Prosecutor v. Mladen Naletilić*, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, paras. 32-35; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-6012-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012, paras. 25-28. See also *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or other Relief of Drago Nikolić, 13 October 2015, para. 21.

²⁹ See, e.g., *Musema* Decision, p. 3; *Galić* Decision, para. 24; *Simba* Decision, para. 32; *Miletić* Decision, para. 23.

³⁰ See, e.g., *Prosecutor v. Valentin Čorić*, Further Readcted Public Redacted Version of the Decision of the President on the Early Release of Valentin Čorić and Related Motions ("Čorić Decision"), 16 January 2019, paras. 36-42; *Simba* Decision, paras. 30-34; *Miletić* Decision, paras. 22-25.

a direct petition of the convicted person.³¹ To better reflect this existing practice of the Mechanism, and in the interests of fairness and transparency, I will examine eligibility as a preliminary matter³² and use the terminology of “eligible to *be considered* for early release” rather than “eligible to *apply* for early release” when referring to the two-thirds admissibility threshold.

19. Turning to Krstić’s eligibility to be considered for early release, I note that, according to information provided by the Registry, Krstić has at present served over 20 years of his sentence of 35 years of imprisonment and will have served two-thirds of his sentence as of 28 March 2022. Krstić is thus not eligible to be considered for early release at this stage.

2. Eligibility under Polish Law

20. The Polish authorities first notified the Mechanism of Krstić’s eligibility to apply for conditional early release under Polish law as of 3 December 2013, on 8 September 2014.³³

21. Pursuant to Article 3(3) of the Enforcement Agreement, “[i]n the event that the sentence pronounced by the International Tribunal exceeds the upper limit of the statutory penalty stipulated in the Polish law for the same kind of offence, the part of the sentence amounting to the upper limit of penalty envisaged for a given offence in the Polish domestic law shall be enforceable in Poland.” In line with this provision, on 26 May 2014, the District Court of Warsaw determined that the maximum term of Krstić’s sentence executable in Poland is 25 years of imprisonment.³⁴ I note that, if for any legal or practical reason the enforcement of Krstić’s sentence in Poland becomes impossible, Articles 3(3) and 10 of the Enforcement Agreement foresee that the Polish Minister of Justice shall notify the Registrar in view of a possible “transfer of the convicted person”.

³¹ See, e.g., Ćorić Decision, para. 42; Simba Decision, para. 34; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017, para. 23; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (“Kunarac Decision”), para. 23. In relation to eligibility under domestic law, the jurisprudence of the Mechanism and its predecessor Tribunals consistently emphasised that “the early release of persons convicted by [the ICTY, the ICTR or the Mechanism] falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules”. See, e.g., *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Application of Alfred Musema Related to Early Release, 7 August 2019 (“Musema Decision”), p. 3; Galić Decision, para. 23; Simba Decision, para. 29; Lukić Decision, para. 14; Kunarac Decision, para. 16. See also Enforcement Agreement, para. 6.

³² Galić Decision, paras. 15-23.

³³ Internal Memorandum from the Officer-In-Charge, Registry, Hague branch, to the then-President, dated 23 September 2014 (“Registry Memorandum of 23 September 2014”), conveying *inter alia* a letter from the Polish Ministry of Justice to the then-Registrar, dated 14 August 2014 (“Letter from the Polish Ministry of Justice”), p. 2.

³⁴ First Decision, para. 11. See Registry Memorandum of 23 September 2014, conveying *inter alia* a Decision from the District Court of Warsaw dated 26 May 2014.

22. Further, pursuant to the relevant Polish regulations, a person serving a sentence of 25 years of imprisonment becomes entitled to apply for conditional early release under Polish law after serving 15 years of the sentence.³⁵ In accordance with these regulations, and the decision of the District Court of Warsaw, Krstić “has had the formal entitlement to apply for early release since 3 December 2013” pursuant to Polish law.³⁶ Krstić has availed himself of this entitlement and on 27 February 2019 applied for conditional early release before the Regional Polish Court.³⁷

23. I note in this regard, however, that pursuant to Article 3(1) of the Enforcement Agreement, the Polish authorities are bound by the duration of the sentence pronounced by the ICTY, which remains at 35 years of imprisonment. Furthermore, Article 3(6) of the Enforcement Agreement clarifies that the President of the Mechanism shall determine whether any early release is appropriate and if he determines that it is not appropriate, Poland shall act accordingly. In recognition of this principle, the Regional Polish Court before whom Krstić has filed a Motion seeking conditional early release, requested “the competent authority of the International Tribunal to take a position on ‘whether conditional early release is advisable’”.³⁸

24. In any event, even if Krstić were to be considered eligible for conditional early release under the domestic law of Poland, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.³⁹

B. GENERAL STANDARDS FOR GRANTING

25. Krstić is not yet eligible to be considered for early release and for me, that alone, in the absence of any compelling or exceptional circumstances, is enough to deny his request. However, in light of the extensive information provided by the Polish authorities and since my predecessor requested the Registrar to undertake the steps prescribed in paragraph 4 of the Practice Direction, I will proceed below to set out the information received in relation to the general standards for granting pardon, commutation of sentence, or early release set out in Rule 151 of the Rules, as applicable to this case.

³⁵ Letter from the Polish Ministry of Justice, p. 2.

³⁶ Notification, p. 1. *See also* Letter from Head of Penitentiary Section.

³⁷ Motion before the Polish Regional Court, p.1.

³⁸ Letter from the Polish Regional Court; Letter from Poland.

³⁹ *See, e.g.*, *Galić* Decision, para. 23; *Lukić* Decision, para. 14; *Kunarac* Decision, para. 6.

1. Gravity of Crimes

26. The crimes for which Krstić was convicted are of particularly high gravity. The Trial Chamber held that the extreme gravity of the crimes committed by Krstić was established by their scale and organisation and the speed with which they were perpetrated in a ten day period.⁴⁰ In assessing the gravity of the crimes, the Trial Chamber recalled its findings on “how all Bosnian Muslims in Srebrenica were uprooted, how up to 25,000 Bosnian Muslim women, children and elderly persons were expelled toward Bosnian Muslim controlled territory and how 7,000 to 8,000 Bosnian Muslim men and boys were executed in the most cruel manner”.⁴¹ The Trial Chamber noted “the physical and psychological suffering inflicted on the victims and the obvious psychological suffering of the survivors. The survivors lost their male family members; three generations of Muslim men from the Srebrenica area disappeared in a single week.”⁴² The Trial Chamber concluded that Krstić was responsible *inter alia* as a co-perpetrator for genocide and for murders committed between 13 and 19 July 1995 as a violation of the laws or customs of war.⁴³

27. On appeal, certain of Krstić’s convictions were affirmed but the Appeals Chamber found that his actions did not rise to the level of a co-perpetrator for the crime of genocide and the murders committed between 13 and 19 July 1995 as a violation of the laws or customs of war.⁴⁴ The Appeals Chamber also determined that Krstić lacked the requisite intent, which diminished his responsibility for these crimes.⁴⁵ Instead, the Appeals Chamber found him guilty for aiding and abetting these crimes.⁴⁶ Nevertheless, the Appeals Chamber made clear that this finding should not undercut the gravity of the crimes for which Krstić was convicted, and noted that these violations are still “very serious”, particularly the crime of genocide, which “is universally viewed as an especially grievous and reprehensible violation.”⁴⁷

⁴⁰ Trial Judgement, para. 720.

⁴¹ Trial Judgement, para. 720.

⁴² Trial Judgement, para. 720.

⁴³ Trial Judgement, paras. 668, 687.

⁴⁴ Appeal Judgement, paras. 143-144.

⁴⁵ Appeal Judgement, para. 268.

⁴⁶ Appeal Judgement, p. 87.

⁴⁷ Appeal Judgement, para. 275.

2. Treatment of similarly-situated prisoners

28. In this respect, I recall that persons sentenced by the ICTY, like Krstić, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision, and that all convicted persons supervised by the Mechanism are considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the Tribunal that convicted them.⁴⁸ As outlined above,⁴⁹ given that Krstić has not yet served two-thirds of his sentence, he is currently not eligible to be considered for early release.

3. Demonstration of Rehabilitation

29. The information set forth in the Notification, the First Prison Report, and the Second Prison Report, as well as in the Prison Report to the Regional Polish Court, provides an overall positive account of Krstić’s time in detention. The Second Prison Report reflects that Krstić “is a controlled individual” and that no violations of order or discipline have been noted.⁵⁰ The Second Prison Report further states that Krstić “is always tactful and calm towards his superiors” and friendly towards inmates, with no instances of aggressive conduct or self-harm.⁵¹ He was not “referred for learning” due to his previously obtained higher education, and has been employed at the Prison library since 18 July 2014.⁵² According to his superiors, Krstić is a diligent and disciplined employee who “goes to work willingly”.⁵³ Upon request of his supervisors, he benefitted on multiple occasions from the Prison’s “awards” and “reliefs” system, “mostly on the grounds of exemplary conduct and proper performance of his employment duties”.⁵⁴ The Second Prison Report also indicates that Krstić keeps in touch with his close family and friends through visits at the Prison, correspondence, phone calls and online communication, and learns Polish in his free time.⁵⁵ The Second Prison Report concludes that, if released, he will not require post-penitentiary assistance.⁵⁶

30. The Second Prison Report’s description of Krstić’s behaviour, including his connection to his family members, provides positive indicators of his behaviour at the Prison. However, while

⁴⁸ See *supra*, paras. 16, 18.

⁴⁹ See *supra*, para. 19.

⁵⁰ Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵¹ Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵² Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵³ Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵⁴ Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵⁵ Second Prison Report, para. 2. *See also* Notification, para. 2.

⁵⁶ Second Prison Report, para. 2. *See also* Notification, para. 2.

such elements are of great importance in assessing rehabilitation in a national context, I recall that Krstić has been convicted for the commission of a crime against humanity and a violation of the laws or customs of war, as well as aiding and abetting genocide and murder as a violation of the laws or customs of war. I further recall that the crimes for which Krstić was convicted are of particularly high gravity. In my view, rehabilitation entails that a convicted person can be trusted to successfully and peacefully reintegrate into a given society. Consequently, in the context of these particularly grave crimes, good behaviour in prison cannot, on its own, demonstrate rehabilitation.

31. The Second Prison Report also notes that Krstić does not participate in any rehabilitation programs, that he is unwilling to talk about his crimes and has a “critical opinion about the offences he committed”.⁵⁷ However, the Prison Report to the Regional Polish Court, which was transmitted to me, provides further information in this regard and highlights Krstić’s participation in an aggression and violence prevention programme with a trainer who speaks Serbian.⁵⁸ The trainers positively evaluated Krstić’s participation.⁵⁹ The Prison Report to the Regional Polish Court specifies that, during this training, Krstić learned to control anger and behave appropriately in situations that provoke aggression, and he made attempts to morally justify his decisions.⁶⁰

32. While Krstić has not provided any comments pursuant to paragraph 6 of the Practice Direction, in his Motion before the Regional Polish Court, he indicates that this training provided him with the opportunity to “confront [his] own moral judgements and choices, taking into account respect for the dignity of other people.”⁶¹ He also submits that [REDACTED] because of the crime I committed and its victims, about whom I deeply reflect, feeling regret, guilt and responsibility”.⁶² He further indicates having thoroughly analysed the “circumstances that led to the perpetration of the acts” for which he is serving his sentence, and that he is “critical towards them and can see their tragic consequences”.⁶³ Krstić also submits to the Regional Polish Court that “[a]s far as [he] is capable and as far as it is possible” he wishes “to make amends for the harm [he] has done”.⁶⁴ Upon release, he intends to live in [REDACTED] supported by his daughter and son-in-law. Krstić

⁵⁷ Second Prison Report, para. 2. The Notification in para. 2 indicates that he is “unwilling to talk about his crimes”.

⁵⁸ Prison Report to the Regional Polish Court, para. 2.

⁵⁹ Prison Report to the Regional Polish Court, para. 2.

⁶⁰ Prison Report to the Regional Polish Court, para. 2.

⁶¹ Motion before the Regional Polish Court, p. 2.

⁶² Motion before the Regional Polish Court, p. 2.

⁶³ Motion before the Regional Polish Court, p. 2.

⁶⁴ Motion before the Regional Polish Court, p. 3.

further indicates his intention to be a law-abiding citizen and to focus on [REDACTED] rebuilding family ties.⁶⁵

33. The opportunities for training [REDACTED] provided to Krstić to enable him to engage in a meaningful reflection on his crimes are commendable. In addition, I have taken positive note of the fact that Krstić appears to have begun to reflect upon his crimes, the circumstances that led to their commission, and the victims of these crimes, although these statements were made before the Regional Polish Court rather than before me. Moreover, his statements remain abstract and I am uncertain about the meaning of Krstić's supposed "critical opinion" regarding the offences committed and what precisely he has in mind when he says he wishes to make amends. Any further information that can be provided in this regard will be of great importance for future early release applications.

34. I consider that the information currently before me is not sufficient to fully assess whether Krstić can be considered rehabilitated and whether he would reintegrate well into society upon his release. However, given that Krstić has not yet served two-thirds of his sentence, I do not find it necessary to request further information at this point.

4. Substantial Cooperation with the Prosecution

35. The Prosecution Memorandum states that "Krstić did not cooperate with the [Prosecution] in the course of his trial or appeal, nor at any point while serving his sentence".⁶⁶ Krstić did not provide any comments in this regard.

36. I observe that the Prosecution has not indicated that there was any substantial cooperation with the Prosecution. I also recall that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.⁶⁷ In light of this and since Krstić has not yet served two-thirds of his sentence, it is not necessary for me to make any determinations regarding this factor at present.

⁶⁵ Motion before the Regional Polish Court, p. 3.

⁶⁶ Prosecution Memorandum, para. 2.

⁶⁷ *Simba* Decision, para. 49; *Corić* Decision, para. 55; *Miletić* Decision, para. 40.

VI. OTHER CONSIDERATIONS

37. Previous decisions on early release have determined that other considerations, such as the state of the convicted person's health, may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.⁶⁸ In some instances, compelling or exceptional circumstances have led to early release or conditional release being granted prior to serving two-thirds of the sentence, provided that other factors also weigh in favour of early release.⁶⁹

38. Krstić has not filed any submissions in response to the present Notification. Consequently, and in the absence of any new information regarding Krstić's current health condition, there is no indication of any compelling or exceptional circumstances that would warrant his release before he has served two-thirds of sentence.

VII. CONCLUSION

39. In light of the above, I decide to deny Krstić early release because he is currently not eligible to be considered therefor. Further, having carefully reviewed the information before me, there is no indication that any compelling or exceptional circumstances exist which would justify Krstić's release before he has served the minimum number of years necessary to be considered eligible for early release. The Judges who have been consulted in the present matter agree with this assessment.

40. As explained above, and with reference to paragraph 11 of the Practice Direction, I recall that Krstić will become eligible to be considered for early release on 28 March 2022.

VIII. DISPOSITION

41. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 10 of the Practice Direction, and Article 6 of the Enforcement Agreement, I hereby **DENY** Krstić early release.

⁶⁸ See, e.g., *Galić* Decision, para. 42; *Prosecutor v. Ferdinand Nahimana*, Case No. MICT-13-37-ES.1, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana, 5 December 2016, para. 31; *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014, para. 21.

⁶⁹ See *supra*, para. 17. See also *Prosecutor v. Dario Kordić*, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić, 6 June 2014, fn. 21.

42. The Registrar is hereby **DIRECTED** to inform the authorities of Poland of this decision as soon as practicable, as prescribed in paragraph 14 of the Practice Direction.

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



Done this 10th day of September 2019,
At The Hague,
The Netherlands.

Judge Carmel Agius
President



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