UNITED
NATIONS

Mechanism for International Criminal Tribunals

Case No.: MICT-14-63-ES
Date: 11 August 2017
Original: English

THE PRESIDENT OF THE MECHANISM

Before: **Judge Theodor Meron, President**

Registrar: **Mr. Olufemi Elias**

Decision of: **11 August 2017**

PROSECUTOR

v.

GORAN JELISIĆ

PUBLIC

PUBLIC REDACTED VERSION OF 22 MAY 2017 DECISION OF THE PRESIDENT ON RECOGNITION OF COMMUTATION OF SENTENCE, REMISSION OF SENTENCE, AND EARLY RELEASE OF GORAN JELISIĆ

The Office of the Prosecutor

Mr. Serge Brammertz

The Applicant

Mr. Goran Jelisić

The Italian Republic

1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("President" and "Mechanism", respectively), am seised of an application for recognition of commutation, remission of sentence, and early release from Mr. Goran Jelisić ("Jelisić") dated 28 December 2015 ("Application") and received on 13 January 2016.[1] I consider the Application pursuant to Article 26 of the Statute of the Mechanism ("Statute"), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and paragraph 3 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").[2]

I. BACKGROUND

2. Jelisić was arrested on 22 January 1998 and was immediately transferred to the United Nations Detention Unit in The Hague, The Netherlands.[3] On 29 October 1998, Jelisić entered a plea of not guilty to the count of genocide and pleaded guilty to 31 counts comprising violations of the laws or customs of war and crimes against humanity of the second amended indictment filed against him.[4] Trial Chamber I of the International Criminal Tribunal for the Former Yugoslavia ("Trial Chamber" and "ICTY", respectively) was satisfied that the guilty plea entered by Jelisić was voluntary, informed, and unequivocal, and declared Jelisić guilty of the crimes he admitted to in his guilty plea.[5] The proceedings before the Trial Chamber were accordingly limited to the single count of genocide.[6]

3. On 14 December 1999, the Trial Chamber entered convictions against Jelisić on 16 violations of the laws or customs of war, 12 for murder, three for cruel treatment, and one for plunder, as well as 15 counts of crimes against humanity, including 12 counts of murder and three counts of inhumane acts.[7] Pursuant to Rule 98*bis* of the ICTY Rules of Procedure and Evidence, the Trial Chamber acquitted Jelisić of the count of genocide.[8] The Trial Chamber sentenced Jelisić to a single sentence of 40 years of imprisonment.[9] On 5 July 2001, the Appeals Chamber of the ICTY

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[1] Letter from Jelisić to Judge Theodor Meron, President, dated 28 December 2015 (with annexes), received on 13 January 2016 and filed on 28 April 2016. All references herein are to the English translation of the Application.
[2] MICT/3, 5 July 2012.
[3] *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, Judgement, 14 December 1999 ("Trial Judgement"), paras. 5, 123, 135.
[4] Trial Judgement, paras. 8, 11, 24. *See also Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001 ("Appeal Judgement"), para. 2.
[5] Trial Judgement, paras. 11, 24, 26-27, 58.
[6] *See* Trial Judgement, paras. 11-15.
[7] Trial Judgement, paras. 58, 109, 138.
[8] Trial Judgement, paras. 16, 108.
[9] Trial Judgement, para. 139.

unanimously affirmed the sentence of 40 years of imprisonment.[10] Jelisić was transferred to the Italian Republic ("Italy") on 29 May 2003 to serve the remainder of his sentence.[11]

II. THE APPLICATION

4. On 18 February 2016, I conveyed to the Registry of the Mechanism ("Registry") the Application,[12] which includes: (i) a request for early release addressed to the Massa Supervising Magistrate, dated 5 August 2015; (ii) a letter from the Director of the Penitentiary Administration Department, Massa Penitentiary Facility, dated 27 August 2014, attaching a report of the Vice Commander for observation and treatment during Jelisić's detention, dated 18 July 2014; (iii) a general report of Jelisić's time in detention, dated 26 August 2014, and (iv) a letter from the Deputy Commander of the Prison Administration Department, Prison Police Department Command, to the Department Commander, dated 26 August 2014.[13] On 28 April 2016, I filed the Application on the record. On the same day, having determined to deal with the Application as a request for early release on the basis that Jelisić asserted early release in the context of recognition of commutation of his sentence in the national courts, taken together with the contended cumulative effects of remission(s) of sentence, I requested the Registry to undertake the steps prescribed in the Practice Direction.[14]

5. On 22 June 2016, I received a memorandum from the Registry conveying information collected in accordance with paragraphs 3, 4, and 5 of the Practice Direction,[15] including: (i) a letter from the Director of the Department of Penitentiary Administration, Penitentiary Facility in Massa, to the Italian Ministry of Justice, dated 31 May 2016, conveying, first, Jelisić's behavioural report dated 31 May 2016 ("Behavioural Report"), and, second, [REDACTED] and (ii) a letter from the Director, Judicial Affairs Department of the Ministry of Justice, Directorate General of Penal Justice, Office II – International Judicial Cooperation, to the Italian Embassy in The Hague, dated 27 May 2016 ("27 May 2016 Letter"), conveying a letter from the Office of the Prosecutor of the Republic Attached to the Court of Appeals of Rome to the Ministry of Justice and the Management

[10] Appeal Judgement, p. 41, para. 7.
[11] *See* Press Release, Goran Jelisic Transferred to Italy to Serve Prison Sentence, dated 29 May 2003, *available at* http://www.icty.org/en/press/goran-jelisic-transferred-italy-serve-prison-sentence.
[12] Internal Memorandum from Judge Theodor Meron, President, to Mr. John Hocking, Registrar, dated 18 February 2016 *transmitting* the Application.
[13] I note that the dates on the English translations of these documents do not accord with the Italian versions of the documents. The original dates, contained in the Italian versions, are authoritative.
[14] Internal Memorandum from Judge Theodor Meron, President, to Mr. John Hocking, then Registrar, dated 28 April 2016. On 2 May 2016, via letter, I informed Jelisić that I was considering his Application as a request for early release, Letter from Judge Theodor Meron, President, to Mr. Goran Jelisić, 2 May 2016 (confidential)("Letter of Notification").

of the Massa Penitentiary Facility Education Centre, dated 23 May 2016 ("23 May 2016 Letter"), transmitting a certificate of updated status of enforcement, dated 19 May 2016 ("Certificate of Enforcement").

6. On 1 June 2016, the Registry conveyed to me a memorandum from the Office of the Prosecutor of the Mechanism ("Prosecution"), dated 30 May 2016 ("Prosecution" and "Prosecution Memorandum", respectively).[16] The Registry informed me that in accordance with paragraphs 5 and 6 of the Practice Direction, the collated documents were transmitted to Jelisić on 4 July 2016.[17]

7. On 14 July 2016, Jelisić sent me a letter informing me that he had received the collated documents on 12 July 2016, and submitted his response thereto ("Observations").[18] In his Observations, Jelisić raised that the 22 June 2016 Memorandum was missing a report concerning [REDACTED] dated 30 May 2016 ("Missing Report").[19] On 15 August 2016, having not received further information about the Missing Report, I informed Jelisić that on 11 August 2016, I had instructed the Registrar of the Mechanism to inquire with the Italian authorities about this matter and to request a copy of the Missing Report.[20]

8. On 20 August 2016, I received a further letter from Jelisić clarifying, *inter alia*, that he was seeking a 180 days sentence remission for the period of 22 July 2013 to 22 July 2015, and that he had sent a new request for a further 90 days sentence remission for the period from 22 July 2015 to

[15] Internal Memorandum from Mr. Gus de Witt, Officer-in-Charge, Registry, Hague Branch, to Judge Theodor Meron, President, dated 22 June 2016 ("22 June 2016 Memorandum"). All references to the attachments are to the English translations thereof.
[16] Internal Memorandum from Mr. Gus de Witt, Officer-in-Charge, Registry, Hague branch, to Judge Theodor Meron, President, dated 1 June 2016 ("Registry Memorandum").
[17] Registry Memorandum.
[18] Letter from Mr. Goran Jelisić to the President, dated 14 July 2016 and received by me on 27 July 2016. The English translation of the letter was received on 3 August 2016. All references to the letter and the attachments are to the English translations thereof. As part of his Observations, Jelisić attaches 14 separate documents, including: (i) a letter from NULIFE srl. to Mr. Goran Jelisić, dated January 2016 ("Employment Letter"); (ii) Certificate of Acquired Knowledge for training course, dated 7 June 2013 ("Certificate for Training"); (iii) Two Reports of Grades from Institution of Vocational Education "Fermo Solari", dated 2011/2012 ("Reports of Grades"); (iv) Diploma of completion of first cycle of education, dated 22 June 2010 ("Diploma"); (v) Certificates of Competence for Italian Language levels A2 and B1, dated 4 June 2010 and 24 September 2010 ("Language Certificates"); (vi) Certificate of Attendance on the course of "General Culture", dated 6 June 2008 ("Certificate of Attendance"); (vii) two Letters from the Office of the Prosecutor of Bosnia and Herzegovina to Mr. Goran Jelisić, entitled "Witness Interview", dated 18 June 2014 ("Letters from the Prosecutor of Bosnia and Herzegovina"); (viii) Judgement of Judge for Preliminary Investigations, Court of Padua, dated 29 October 2010 ("Judgement of Padua Court"); (ix) Record of the unsolicited statement given by the detainee, issued by the Penitentiary Facility Massa, dated 24 June 2014 ("Unsolicited Statement"); (x) Letter from Counsel Alessandro Maneschi to The Honourable Preliminary Investigation Judge of the Court in Massa, dated 14 April 2015 ("Letter from Counsel").
[19] Observations, p. 1. *See also*, Letter from Mr. Goran Jelisić to Judge Theodor Meron, President, 20 August 2016 (confidential)("Letter of 20 August 2016").
[20] Letter from Judge Theodor Meron, President, to Mr. Goran Jelisić, 15 August 2016.

22 July 2016 to the relevant Italian authorities.[21] On 16 September 2016, I informed Jelisić that I was still awaiting receipt of a Missing Report from the Italian authorities.[22]

9. On 6 October 2016, I received from the Registry a report on [REDACTED], dated 6 September 2016, provided by the Italian authorities.[23]

10. On 1 November 2016, Jelisić notified me that the Missing Report I was not provided with was a report from [REDACTED], asserted to have been compiled on 30 May 2016.[24] Jelisić also renewed his request for 180 days sentence remission for the period from 22 July 2013 to 22 July 2015, and for a further 90 days for the period 22 July 2015 to 22 July 2016.[25]

11. On 17 February 2017, the Registry conveyed to me a *note verbale* from the Italian authorities, dated 27 January 2017, informing the Mechanism that only two expert reports in fact existed: (i) a [REDACTED] report dated 31 May 2016 prepared by [REDACTED], referred to as the Behavioural Report; and (ii) a report dated 6 September 2016, prepared by [REDACTED], which was previously incorrectly dated 30 May 2015 and which the Italian authorities informed was due to a computer error [REDACTED].[26]

12. Noting the above described circumstances, essential aspects of the process under the Practice Direction, notably the follow up on materials being sought from the Italian authorities, and the need for confirmation as to the existence and correct dating of certain materials, while undertaken in the most efficient manner possible, have lengthened the period of time necessary to render this decision.

III. APPLICABLE LAW

13. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Article 26 of the Statute further provides

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[21] Letter of 20 August 2016 (confidential).
[22] Letter to Mr. Goran Jelisić from Judge Theodor Meron, President, 16 September 2016 (confidential).
[23] Internal Memorandum from Ms. Kate Mackintosh, Deputy Registrar, ICTY, to Judge Theodor Meron, President, dated 6 October 2016.
[24] Letter from Mr. Goran Jelisić to Judge Theodor Meron, President, 1 November 2016 (confidential)("Letter of 1 November 2016"). While Jelisić contends that there is a [REDACTED] compiled on 30 May 2016, upon my request for clarification as to the medical reports available, the Italian authorities confirmed that only two expert reports existed, one prepared by [REDACTED] and the other by [REDACTED], Internal Memorandum from Ms. Åsa Rydberg van der Sluis, Acting Officer in Charge, Registry, to Judge Theodor Meron, President, dated 17 February 2017, conveying a *note verbale* from the Italian authorities, dated 27 January 2017.
[25] Letter of 1 November 2016.
[26] [REDACTED].

that 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.

14. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President shall, upon such notice, 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. Pursuant to Rule 151 of the Rules, 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.

15. Paragraph 2 of the Practice Direction provides that upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with Article 26 of the Statute and with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly.

16. The above provisions also apply to a request for sentence remission, as a reduction of a detainee's sentence while in detention amounts, in essence, to a commutation of sentence.[27]

17. Article 3(1) of the Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, dated 6 February 1997 ("Enforcement Agreement"), provides that the Italian authorities shall be bound by the duration of the sentence imposed by the ICTY.[28] Article 3(2) of

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[27] *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision of the President on the Sentence Remission of Goran Jelisić, 1 June 2015 (confidential)("*Jelisić* 2015 Remission Decision"), para. 9; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision of the President on Sentence Remission of Milomir Stakić, 19 December 2013 (confidential)("*Stakić* Remission Decision"), para. 11, *citing Prosecutor v. Goran Jelisić*, Case No. IT-95-10-ES, Decision of the President on Sentence Remission of Goran Jelisić, 28 May 2013 (public redacted version)("*Jelisić* 2013 Remission Decision"), para. 13.

[28] Security Council Resolution 1966 (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

the Enforcement Agreement provides that the conditions of imprisonment shall be governed by the law of Italy, subject to the supervision of the Mechanism.[29] According to Article 3(3) of the Enforcement Agreement, if a detainee becomes eligible for non-custodial measures or working activities outside the prison, or is entitled to benefit from conditional release under Italian law, the relevant Italian authorities are to notify the President.[30] Article 8 of the Enforcement Agreement provides, *inter alia*, that, following notification from the Italian authorities of a detainee's eligibility for pardon or commutation under Italian law, the President shall determine, in consultation with Judges of the Mechanism, whether pardon or commutation is appropriate, and the Registrar shall inform the Italian authorities of the President's determination, who shall act accordingly.[31]

IV. DISCUSSION

18. None of the Judges of the sentencing Chamber are Judges of the Mechanism. In light thereof, no consultations with other Judges of the Mechanism are required under Rule 150 of the Rules in connection with determining Jelisić's eligibility for pardon, commutation of sentence, or early release.

19. On 2 May 2016, I informed Jelisić that his Application was being considered as a request for early release, arising from his request for recognition of the commutation of sentence from 40 years to 30 years of imprisonment granted by a decision of the exequatur Appeals Judgement of the Italian Supreme Court of 9 December 2002 ("Commutation Decision"), in conjunction with recognition of any and all remissions of sentence that had been granted by the Italian authorities for the purposes of considering his eligibility for early release.[32]

20. Accordingly, in order to consider Jelisić's early release, there are three matters that need to be considered: (ii) Jelisić's request for recognition of the Commutation Decision; (ii) Jelisić's Sentence Remission Requests; and (iii), in light of the conclusions on these matters, the consequential impact in terms of Jelisić's request for early release.

A. Recognition of the Commutation Decision

21. Jelisić contends that if the 30 year sentence handed down by the Italian authorities in the Commutation Decision, rather than the 40 years of imprisonment imposed by the ICTY, is accepted

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".

[29] *See supra*, fn. 28.

[30] *See supra*, fn. 28.

[31] *See supra*, fn. 28.

[32] Letter of Notification.

by the Mechanism, then he has currently served two-thirds of his sentence and therefore would be eligible for early release.[33]

22. I have previously considered the Commutation Decision, and observed that, pursuant to Article 3(1) of the Enforcement Agreement, "[i]n enforcing the sentence pronounced by the [ICTY], the competent national authorities of the requested State shall be bound by the duration of the sentence". I went on formally to reserve the right to terminate the enforcement of Jelisić's sentence in Italy, and to continue enforcement in another State, in accordance with the sentence pronounced in the Appeal Judgement of 40 years of imprisonment.[34]

23. Accordingly, I emphasise that Jelisić's sentence, for the purpose of considering his present Application, and any such application in the future, shall therefore be construed as 40 years of imprisonment.

B. Provisional recognition of remission of sentence

24. Under both settled ICTY and Mechanism precedents, sentence remission claimed or granted under the domestic systems of the enforcing States may be recognized "provisionally" at the time claimed so long as the other criteria of Rule 151 of the Rules weigh in favour of said recognition; however, such remission remain subject to the supervision of the Mechanism and "may be withdraw[n] at a subsequent time" when the convicted person's eligibility for early release is at issue.[35]

25. I have, on previous occasion, twice provisionally recognised remission of sentence granted to Jelisić by the Italian authorities.[36] Jelisić now requests the provisional recognition of a further 180 days sentence remission for the period from 22 July 2013 to 22 July 2015, and for a further 90 days for the period from 22 July 2015 to 22 July 2016.[37]

[33] Observations, p. 3.
[34] *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-ES, Amended Order Designating the State in which Goran Jelisić is to Serve his Sentence, 2 April 2003 (confidential)("2003 Amended Order"), p. 2. *See also,* Behavioural Report, p. 2 (Registry pagination); 23 May 2016 Letter, p. 6 (Registry pagination); Certificate of Enforcement, pp. 8-9 (Registry pagination).
[35] *Jelisić* 2015 Remission Decision, para. 14; *Stakić* Remission Decision, paras. 16-17; *Jelisić* 2013 Remission Decision, para. 19; *Prosecutor v. Haradin Bala*, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, 15 October 2010 ("*Bala* Decision"), para. 15.
[36] *See Jelisić* 2013 Remission Decision, paras. 34, 36. *See also Jelisić* 2015 Remission Decision, paras. 28-29.
[37] Application; Letter of 20 August 2016; Letter of 1 November 2016.

1. Eligibility under Italian Law and Treatment of Similarly-Situated Prisoners

26. I have been informed by the relevant Italian authorities that under Italian law, up until 22 July 2014, Jelisić has been granted a total of 1440 days of sentence remission by the Italian authorities.[38] Any sentence remission granted by the relevant State authorities is not final and is subject to the final approval of the Mechanism. However, in provisionally recognising periods of sentence remissions, I must necessarily be guided by the information provided by the relevant State authorities as to the number of days that have been in fact granted.

27. Turning to the period of time included in Jelisić's Sentence Remission Request encompassing 22 July 2014 until the present, based on inquiries by the Registry with the Italian authorities and as I have informed Jelisić, I have to date received no indication of the disposition by the requisite Italian authorities of Jelisić's request for additional days of sentence remission following 22 July 2014. Nevertheless, upon receipt of further information as to any decision by the Italian authorities of additional period(s) of sentence remission, I would be in a position, in application of the usual criteria, to further consider such additional provisional remission in accordance with the Practice Direction.

28. In the present case, Jelisić is therefore eligible under Italian law for the recognition of a sentence remission of 1440 days in total, up until 22 July 2014, for which I have been formally notified of by the Italian authorities, provided that the other criteria of Rule 151 of the Rules militate in favour of such recognition.[39] Such recognition, however, is without prejudice to the President's full discretion to count this sentence remission in calculating the amount of time served for other purposes, including in determining whether Jelisić has completed two-thirds of his sentence.[40]

29. In terms of provisional recognition of sentence remission, I recall that sentence remission is generally regarded as an effective tool of prisoner management in domestic systems and that non-Mechanism prisoners in these domestic prisons largely benefit from it. If the Mechanism did not recognise any sentence remission to which a convicted person was entitled under the laws of the enforcing State, it would result in discriminatory treatment of Mechanism prisoners vis-à-vis other prisoners in the same prison and, consequently, could render their management more difficult.[41]

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[38] Certificate; Behavioural Report.
[39] *See Jelisić* 2013 Remission Decision, para. 21. *See also Bala* Decision, para. 16.
[40] *Jelisić* 2013 Remission Decision, paras. 34, 36.
[41] *Jelisić* 2015 Remission Decision, para. 15; *Jelisić* 2013 Remission Decision, para. 20; *Stakić* Remission Decision, para. 18.

30. While the sentence remission of 1440 days granted under Italian law is subject to final approval of the President, I would provisionally recognise the sentence remission for which Jelisić has become eligible, provided that the other factors set out in Rule 151 of the Rules, discussed below, taken together, also on balance militate in favour of this recognition.

2. Gravity of Crimes

31. Under Rule 151 of the Rules, for present purposes of recognition of remission of sentence. the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

32. The crimes for which Jelisić has been convicted are of a high gravity. Jelisić pleaded guilty to, and was convicted for, crimes related to his participation in attacks against the non-Serbian civilian population of Brčko.[42] In this regard, the Trial Chamber noted the "repugnant, bestial and sadistic nature" of Jelisić's behaviour in committing these crimes, and concluded that "[h]is cold-blooded commission of murders and mistreatment of people attest to a profound contempt for mankind and the right to life".[43] As established by witness testimony and Jelisić's own presentations at his initial hearing before the Trial Chamber, Jelisić fashioned himself to be a "Serbian Adolf [Hitler]", motivated by the goal of killing Muslims.[44] The Trial Chamber further stated that Jelisić abused his power to decide which of his "defenceless victims" would live or die, which had far-reaching consequences on both his victims and the witnesses to these crimes.[45] In this regard, the Trial Chamber also ultimately recommended that Jelisić receive psychological and psychiatric follow-up treatment.[46]

In these circumstances, I am of the view that the high gravity of the crimes for which Jelisić pleaded guilty, and was convicted of, weighs strongly against recognising remissions of sentence.

3. Demonstration of Rehabilitation

33. Rule 151 of the Rules provides that the President shall take into account a "prisoner's demonstration of rehabilitation" in determining whether, for present purposes, recognition of remission of sentence is appropriate. In addressing the convicted person's rehabilitation, paragraph 4(b) of the Practice Direction states that the Registrar shall:

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[42] Trial Judgement, paras. 24, 57, 109, 128.
[43] Trial Judgement, para. 130.
[44] Trial Judgement, para. 102.
[45] Trial Judgement, paras. 131-132.
[46] Trial Judgement, para. 140.

> [r]equest reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration[.]

34. According to the Behavioural Report, since his arrival at the Massa prison, Jelisić has fully complied with the rules of detention of the facility, which resulted in him being granted the sentence remissions totalling to a period of 1440 days currently at issue.[47] The Behavioural Report states that Jelisić was previously employed in a tailor's establishment, and thereafter was employed at a company manufacturing coffee pod machines, where he received positive feedback from his employer and showed an aptitude for teamwork, and this work was described as "central" to his reintegration into society.[48] The Behavioural Report and [REDACTED] state that Jelisić finds his employment "profitable and personally highly rewarding", [REDACTED].[49]

35. The Behavioural Report states that his employment is the central component of Jelisić's resocialisation course, that he is "shy" and "reserved" and that he participates only occasionally in "treatment activities of cultural, sporting or recreational nature", preferring to "dedicate his leisure time to reading, reflection and rest".[50] Jelisić has participated in a photography workshop, where he demonstrated "considerable artistic sensitivity".[51] Jelisić submits that it is not feasible for him to always participate in such activities because he works up to 14 hours a day and the activities end at 5:00 p.m.,[52] and that he has taken part in various training courses.[53]

36. According to the Behavioural Report, Jelisić has maintained frequent telephone contact with his immediate family, [REDACTED].[54]

37. [REDACTED].[55] [REDACTED].[56] [REDACTED].[57] [REDACTED].[58]

38. The Behavioural Report [REDACTED].[59] [REDACTED].[60] [REDACTED].[61]

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[47] Behavioural Report, p. 2 (Registry pagination).
[48] Behavioural Report, p. 2 (Registry pagination).
[49] Behavioural Report, p. 3 (Registry pagination); [REDACTED].
[50] Behavioural Report, p. 2 (Registry pagination).
[51] Behavioural Report, p. 2 (Registry pagination).
[52] Observations, p. 1; Employment Letter.
[53] Observations, p. 1; Certificate for Training; Reports of Grades; Diploma; Language Certificates; Certificate of Attendance.
[54] Behavioural Report, pp. 2-3 (Registry pagination).
[55] Behavioural Report, p. 3 (Registry pagination); [REDACTED].
[56] Behavioural Report, p. 3 (Registry pagination); [REDACTED].
[57] Behavioural Report, p. 3 (Registry pagination); [REDACTED].
[58] Behavioural Report, p. 3 (Registry pagination); [REDACTED].

39. [REDACTED].[62]

40. Jelisić submits that because he actively cooperated with [REDACTED].[63] [REDACTED].[64]

41. Jelisić states that he has been cooperating with [REDACTED] because it is his "moral and human obligation to tell the truth", in order to ensure that those who committed crimes are accordingly punished.[65] He asserts that the victims and their families "deserve respect and homage" and that, therefore, he would do all he can for them to "learn the truth and find the mortal remains of their family members".[66] He further contends that "[t]here is no justification for what [he] did in the period between 7 May and 17 May 1992", that he is "filled with sorrow, regret and shame" and that his actions were "repulsive and disgusting".[67]

42. Based on the above, and in this context, noting the fact that Jelisić's behaviour in detention has been appropriate and has not given rise to any disciplinary complaints, and that he expresses regret and shame for the crimes he committed, his current signs of rehabilitation weighs in favour of provisionally recognising the sentence remission for which he is eligible under Italian law.

4. Substantial Cooperation with the Prosecution

43. Rule 151 of the Rules states that the President shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution "to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof".

44. According to the Prosecution, Jelisić did not substantially cooperate with the Prosecution and/or the Prosecutor of the ICTY ("ICTY Prosecution") in the course of his trial, appeal, or at any point while serving his sentence.[68]

45. Jelisić submits that he agrees with my assessment of his cooperation with the Prosecution in the *Jelisić* 2015 Remission Decision, that his guilty pleas beneficially impacted the efficient administration of justice.[69]

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[59] Behavioural Report, p. 3 (Registry pagination).
[60] Behavioural Report, p. 3 (Registry pagination).
[61] [REDACTED].
[62] Observations, p. 2.
[63] Observations, p. 2; Letters from the Prosecutor of Bosnia and Herzegovina; Judgement of Padua Court; Unsolicited Statement; Letter from Counsel.
[64] Observations, p. 2; Unsolicited Statement.
[65] Observations, p. 2.
[66] Observations, p. 2.

46. I recall that Jelisić pleaded guilty to a majority of the crimes for which he was indicted, and that the entry of such a guilty plea by an accused constitutes a degree of cooperation with the Prosecution, as said plea beneficially impacts the efficient administration of justice.[70] I therefore consider that Jelisić's cooperation, in this regard, is a factor that provides some support in favour of provisional recognition of Jelisić's sentence remission for which he is eligible under Italian law.

5. Conclusion on remission of sentence

47. Consistent with the Mechanism's practice on sentence remission, and taking into consideration the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, specifically his behaviour while being incarcerated and his guilty plea at the ICTY, I am of the view that the 1440 days of sentence remission, granted up until the 22 July 2014 by the Italian authorities further to Jelisić's eligibility under Italian law, should be provisionally recognized by the Mechanism. I stress that this recognition is provisional and without prejudice to the discretion of the President not to count this provisionally-recognised remission of sentence, or additional future remissions granted or claimed under Italian law, in calculating the amount of time served for other purposes, including in determining Jelisić's eligibility for early release pursuant to the practice of the Mechanism.[71]

C. Early Release

48. Having reached the above conclusions with respect to recognition of commutation sentence and of remission of sentence, it falls to consider the matter within the context of early release. Jelisić asserts that he is eligible for early release in the context of commutation of his sentence in the national courts taken together with the contended cumulative effect of remission of sentence.

49. I will now, in turn, address the customary factors that shall be taken into account, as provided for in Rule 151 of the Rules, in making a determination as to the early release of a convicted person.

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[67] Observations, p. 2.
[68] Prosecution Memorandum, para. 2.
[69] Observations, p. 3. *See Jelisić* 2015 Remission Decision, paras. 25-27.
[70] *Jelisić* 2015 Remission Decision, para. 26.
[71] *Jelisić* 2013 Remission Decision, paras. 19, 34, 36; *Bala* Decision, para. 15.

1. Gravity of Crimes

50. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

51. As I concluded in my discussion of this element in the context of provisional recognition of remission of sentence, the crimes for which Jelisić has been convicted are of a high gravity and weigh strongly against early release.

2. Treatment of Similarly-Situated Prisoners

52. Pursuant to Rule 151 of the Rules I am required to consider, as a separate factor, the need for equal treatment of similarly-situated prisoners when deciding early release applications. In this respect, I recall that ICTY convicts, like Jelisić, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision and that all convicts supervised by the Mechanism are to be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them.[72] I also note that a convicted person may apply for early release even before the completion of the two-thirds of his or her sentence. In such circumstances, the President would consider a convicted person's application or eligibility for early release, in exceptional cases, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, and where other factors have also weighed in favour of early release.[73]

53. However, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.[74] In the present case, recalling that Jelisić has been granted 1440 days of sentence remission under Italian law which have been provisionally recognised, I note that Jelisić has not

[72] *See 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 (public redacted version), para. 22. *See also 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"), paras. 17, 20.
[73] *See, e.g., Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Decision of the President on the Early Release of Aloys Simba, 2 February 2016 (public redacted version), para. 17; *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; *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-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović (public redacted version), 29 February 2012, paras. 25-28.

completed two-thirds of his 40 year sentence of imprisonment imposed by the ICTY, given that all the remissions he is entitled to receive under Italian law counted towards his sentence would result in a release date of 13 October 2020.

54. In the context of the early release analysis, therefore, the treatment of similarly situated persons weighs against his early release.

3. Demonstration of Rehabilitation

55. Rule 151 of the Rules provides that the President shall take into account a "prisoner's demonstration of rehabilitation" in determining whether early release is appropriate. I refer to the detailed description of the record above with respect to the demonstration in this case. For the same reasons set out above, specifically that Jelisić's behaviour in detention has been appropriate and has not given rise to any disciplinary complaints, and that he expresses regret and shame for the crimes he committed, his current signs of rehabilitation likewise weighs in favour of early release.

4. Substantial Cooperation with the Prosecution

56. Rule 151 of the Rules states that the President shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution "to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof".

57. As I noted in my discussion of this element in the context of recognition of remission of sentence, and for the same reasons there set out, I therefore consider that Jelisić's cooperation, in this regard, is a factor that provides some support in favour of his early release.

5. Conclusion on early release

58. In light of the above, and having carefully considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on the record, I am inclined to deny Jelisić's Application in so far as it constitutes a request for early release. While his guilty plea and cooperation with the Prosecution weighs in favour of his early release, as does, his progress towards rehabilitation, the crimes for which Jelisić was convicted are very grave. Recalling further, that Jelisić has not yet served two-thirds of his sentence imposed by the ICTY, even taking into account the recognition of the cumulative remission of sentence that has been provisionally granted to date,

[74] *See Prosecutor v. Alphonse Nteziryayo*, Case No. MICT-15-90, Decision of the President on the Early Release of Alphonse Nteziryayo, 9 March 2016 (public redacted version), para. 16; *Bisengimana* Decision, paras. 21, 35.

I am therefore not persuaded that Jelisić has demonstrated that exceptional circumstances exist warranting his early release at this time.

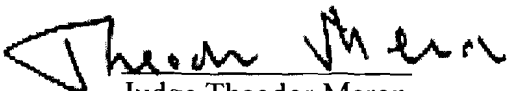
V. DISPOSITION

59. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby provisionally recognize the sentence remission of 1440 days, up until 22 July 2014, for which Jelisić has become eligible under Italian law, without prejudice to consideration of further periods of remission as may be notified by the Italian authorities. The remainder of Jelisić's Application is **DENIED**.

60. The Registrar is hereby **DIRECTED** to inform the authorities of Italy of this decision as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

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

Done this 11th day of August 2017,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]

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Case Name/ *Affaire* :	**Prosecutor v. Goran Jelisic**		**Case Number/ *Affaire n°* :**	**MICT-14-63-ES**
Date Created/ *Daté du* :	**11 August 2017**	**Date transmitted/ *Transmis le* :** **11 August 2017**	**No. of Pages/ *Nombre de pages* :**	**16**
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