UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: MICT-14-76-ES

Date: 30 November 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: **Judge Carmel Agius, President**

Registrar: **Mr. Abubacarr Tambadou**

Decision of: **30 November 2021**

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC REDACTED VERSION

DECISION ON THE APPLICATIONS FOR EARLY RELEASE OF VLASTIMIR ĐORĐEVIĆ

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Vlastimir Đorđević:

Mr. Dragoljub Đorđević
Mr. Veljko Đurđić

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals ("President" and "Mechanism", respectively), am seised of the direct petition of Mr. Vlastimir Đorđević ("Đorđević") for early release filed on 22 January 2019,[1] as well as the notification from the Federal Republic of Germany ("Germany") dated 9 April 2019[2] (collectively, "Applications").[3]

I. BACKGROUND

2. On 17 June 2007, Đorđević was arrested in Montenegro and transferred to the custody of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), where he was detained at the United Nations Detention Unit ("UNDU").[4]

3. On 23 February 2011, Trial Chamber III of the ICTY ("Trial Chamber") convicted Đorđević of murder, persecutions, deportation, and other inhumane acts (forcible transfer) as crimes against humanity and murder as a violation of the laws or customs of war.[5] The Trial Chamber sentenced Đorđević to 27 years of imprisonment.[6]

4. On 27 January 2014, the Appeals Chamber of the ICTY ("Appeals Chamber"): (i) reversed, in part, Đorđević's convictions for murder, persecutions, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, and murder as a violation of the laws

[1] Request for Early Release, 22 January 2019 (confidential) ("Direct Petition"). On 19 July 2019, Đorđević filed a public redacted version of the Direct Petition. *See* Notice of Filing Public Redacted Version of the 22 January 2019 Request for Early Release, 19 July 2019.

[2] Internal Memorandum from the Deputy Chief, Registry, Hague branch to the President, dated 12 April 2019 (confidential), *transmitting*, *inter alia*, *Note verbale* from the Embassy of the Federal Republic of Germany to the Kingdom of the Netherlands to the Mechanism, dated 9 April 2019 ("Germany", "German Embassy", "the Netherlands", and "Notification", respectively). Following communication between my Office and the German Embassy, the Notification was filed confidentially on the judicial record on 17 December 2020. *See* Internal Memorandum from the President to the Registrar, dated 11 March 2020 (confidential), paras. 2-3; *Note verbale* from the German Embassy to the Mechanism, dated 14 September 2020 (confidential); Internal Memorandum from the President to the Registrar, dated 11 December 2020 (confidential), paras. 1, 3; Registrar's Submission of a Note Verbale Received from the Embassy of the Federal Republic of Germany in The Hague, 17 December 2020 (confidential).

[3] I use the term "Applications" to refer jointly to the Direct Petition and the Notification, consistent with paragraph 2 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 ("Practice Direction"). I note that this matter first arose while an earlier version of the Practice Direction on this topic was in force. *See* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.1, 24 May 2018. *See also* 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, MICT/3/Rev.2, 20 February 2019. Unless otherwise indicated, reference will be made to the current Practice Direction.

[4] *See Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Public Judgement with Confidential Annex, 23 February 2011 ("Trial Judgement"), para. 5; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-I, Order for Detention on Remand, 18 June 2007, p. 2.

[5] Trial Judgement, para. 2230.

[6] Trial Judgement, para. 2231.

or customs of war, insofar as they concerned several specific incidents; (ii) affirmed the remaining convictions for these crimes; (iii) revised Đorđević's conviction for persecution as a crime against humanity to include his responsibility for sexual assaults; and (iv) reduced Đorđević's sentence to 18 years of imprisonment.[7]

5. On 16 October 2014, Đorđević was transferred to Germany to serve his sentence.[8]

II. APPLICATIONS

6. On 22 January 2019, Đorđević filed the Direct Petition seeking his early release and indicating that, if released early, he would reside in the Republic of Serbia ("Serbia").[9]

7. On 12 April 2019, the Registry of the Mechanism ("Registry") transmitted to me the Notification, which indicates that Đorđević would in principle be eligible for a suspension of the remaining sentence after having served two-thirds of his sentence.[10] The Notification also attached a report from the Director of the prison in which Đorđević was serving his sentence at that time, which in turn identified the address in Serbia where Đorđević intends to reside if released early.[11]

8. On 19 July 2019, Đorđević submitted an addendum to the Direct Petition, in which he details a health incident that he experienced the previous month.[12]

9. On 2 August 2019, I rendered a decision dismissing as moot a motion from the Office of the Prosecutor of the Mechanism ("Prosecution") for Đorđević to file a public redacted version of the Direct Petition.[13]

10. On 2 March 2020, following my preliminary review of the Applications, I requested that the Registrar of the Mechanism ("Registrar") take further steps in relation to the Applications in line with paragraph 4(d) of the Practice Direction (MICT/3/Rev.2), namely to: (i) identify a psychologist who speaks Bosnian/Croatian/Serbian ("BCS") who could travel to the prison in

[7] *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Judgement, 27 January 2014 ("Appeal Judgement"), para. 981.
[8] Email Communication from the Office of the Registrar to the Office of the President, dated 23 September 2020 (confidential). *See also* Order Designating State in which Vlastimir Đorđević is to Serve his Sentence, 30 April 2014.
[9] Direct Petition, para. 21.
[10] Notification, p. 1.
[11] Notification, *transmitting* Letter from the Ministry of Justice and Consumer Protection of [REDACTED] to the German Federal Office of Justice, dated 4 March 2019, *conveying* Statement of the Prison Director, dated 20 February 2019 ("Prison Report"), p. 2. Throughout this decision, all references to documents are to the English versions thereof.
[12] *See* Addendum to Request for Early Release, 19 July 2019 (public with confidential annex) ("Direct Petition Addendum"), paras. 2-3, Annex.
[13] Decision on Prosecution Request for Public Redacted Version of Early Release Application, 2 August 2019, p. 1 (observing that the public redacted version of the Direct Petition was filed on 19 July 2019). *See also* Prosecution Request for Public Redacted Version of Vlastimir Đorđević's Request for Early Release, 6 June 2019.

Germany where Đorđević had been serving his sentence in order to conduct a psychological evaluation and risk assessment of Đorđević, with his consent; (ii) request the Prosecution to submit comments in relation to the Application, including a detailed report as to any cooperation that Đorđević had provided; (iii) have the Witness Support and Protection Unit of the Mechanism ("WISP") provide comprehensive information concerning the victims of the crimes for which Đorđević was convicted and who testified in his case, including whether any such victims are currently residing in the vicinity of Đorđević's intended place of residence if released early; and (iv) determine whether there are any media reports concerning Đorđević that had been published in the previous two years.[14]

11. On 24 March 2020, the Registrar transmitted to me comments from the Prosecution in relation to the Application.[15] The Registrar also informed me that a list of medical professionals had been identified and that the Registry had contacted the German Embassy concerning the psychological evaluation, but that due to the COVID-19 pandemic and ensuing travel restrictions, organising this evaluation would have to be delayed.[16]

12. On 8 April 2020, the Registrar provided a compilation of media reports concerning Đorđević that had been published in Serbia in the previous two years.[17]

13. On 1 May 2020, the Registrar provided me with a strictly confidential memorandum from the Head of WISP, conveying information relating to 115 witnesses who testified in Đorđević's case.[18]

14. On 15 June 2020, I inquired with the Registrar whether, in light of recent developments in the prison where Đorđević was serving his sentence, the Registry was now in a position to arrange a psychological evaluation of Đorđević.[19]

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[14] Internal Memorandum from the President to the Registrar, dated 2 March 2020 (confidential) ("Memorandum of 2 March 2020"), paras. 2-6.
[15] Internal Memorandum from the Registrar to the President, dated 24 March 2020 (confidential) ("Registrar Memorandum of 24 March 2020"), para. 2, *transmitting* Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch to the Deputy Chief, Registry, Hague branch, dated 19 March 2020 (confidential) ("Prosecution Memorandum").
[16] Registrar Memorandum of 24 March 2020, para. 3.
[17] Internal Memorandum from the Registrar to the President, dated 8 April 2020 (confidential) ("Registrar Memorandum of 8 April 2020"), para. 2, Annex.
[18] Internal Memorandum from the Registrar to the President, dated 1 May 2020 (confidential) ("Registrar Memorandum of 1 May 2020"), para. 2, *transmitting* Internal Memorandum from the Head, WISP to the Registrar, dated 1 May 2020 (strictly confidential) ("WISP Memorandum"). The Registrar also observed that this information was provided on a strictly confidential basis and should not be made available to Đorđević or the Prosecution. *See* Registrar Memorandum of 1 May 2020, para. 2.
[19] Internal Memorandum from the President to the Registrar, dated 15 June 2020 (confidential) ("Memorandum of 15 June 2020"), paras. 2-3.

15. After receiving Đorđević's consent, the Registry appointed a BCS-speaking psychiatrist who travelled to the prison in Germany to conduct an evaluation on 28 August 2020. The psychiatrist's report was received on 9 September 2020, and following its translation into English, the Registrar provided it to me on 24 September 2020.[20]

16. On 19 November 2020, I invited the authorities of Serbia to, *inter alia*, provide any views that they may wish to offer with regard to the Direct Petition and indicate their willingness to monitor any conditions imposed by the Mechanism in case of Đorđević's early release and to provide guarantees to this effect.[21]

17. On 1 December 2020, a letter from the Serbian Minister of Justice relating to the Direct Petition was filed on the judicial record.[22]

18. On 15 January 2021, the Registrar conveyed to me a *note verbale* from the German Embassy informing the Mechanism that Đorđević had been transferred to a prison with a higher security classification, owing to security concerns that were detailed in the *note verbale*.[23]

19. On 8 February 2021, I requested that the Registry inquire with the German Embassy whether its *note verbale* could be provided to Đorđević or whether he could otherwise be informed of its content, so that I could seek his views on this matter.[24] I also asked that the Registry seek to confirm with the German Embassy that material enclosed with the Notification could be transmitted to Đorđević on a confidential basis so that he could provide any written submissions in response.[25]

20. On 9 March 2021, the Registrar transmitted to me confirmation from the German Embassy indicating that this aforementioned material may be provided to Đorđević on a confidential basis.[26]

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[20] Internal Memorandum from the Registrar to the President, dated 24 September 2020 (confidential), para. 2, *transmitting* Psychiatric Expert Report, dated 6 September 2020 (confidential) ("Psychiatric Report").
[21] Invitation to the Republic of Serbia Related to the Application for Early Release of Vlastimir Đorđević, 19 November 2020 (confidential and *ex parte*), p. 2.
[22] Registrar's Submission in Relation to the 'Invitation to the Republic of Serbia Related to the Application for Early Release of Vlastimir Đorđević', 1 December 2020 (confidential and *ex parte*), Annex (Letter from the Minister of Justice of Serbia to the President, dated 26 November 2020) ("Letter of 26 November 2020").
[23] Internal Memorandum from the Registrar to the President, dated 15 January 2021 (confidential), para. 1, *transmitting Note verbale* from the German Embassy to the Mechanism, dated 13 January 2021 ("*Note Verbale* of 13 January 2021"), p. 1.
[24] Internal Memorandum from the President to the Registrar, dated 8 February 2021 (confidential) ("Memorandum of 8 February 2021"), para. 2.
[25] Memorandum of 8 February 2021, para. 3.
[26] Internal Memorandum from the Registrar to the President, dated 9 March 2021 (confidential), paras. 2-3, *transmitting Note verbale* from the German Embassy to the Mechanism, dated 1 March 2021, p. 1.

21. On 15 April 2021, I requested the Registrar to communicate to Đorđević relevant material with respect to the Applications in a language he understands.[27] On 2 June 2021, Đorđević filed submissions in relation to this material.[28]

22. On 14 October 2021, I ordered Đorđević to file a public redacted version of his final submissions,[29] which he did on 28 October 2021.[30]

23. As no Judge who imposed the sentence upon Đorđević is a Judge of the Mechanism, besides me, I also consulted with Judge Joseph E. Chiondo Masanche and Judge Seon Ki Park, in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules") and paragraph 16 of the Practice Direction.

III. APPLICABLE LAW

24. Pursuant to Article 26 of the Statute of the Mechanism ("Statute"), there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Rules reflect the President's power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

25. Rule 149 of the Rules provides that if, according to the law of the State of imprisonment, a convicted person is eligible for pardon, commutation of sentence, or early release the State shall, in accordance with Article 26 of the Statute, notify the Mechanism of such eligibility.

26. Rule 150 of the Rules provides that the President shall, upon receipt of such notice or a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

27. The general standards for granting early release are set out in Rule 151 of the Rules, which provides that in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the

[27] Internal Memorandum from the President to the Registrar, dated 15 April 2021 (confidential), paras. 2-3.
[28] Submissions on Documentation Related to Early Release Request, 2 June 2021 (confidential) ("Final Submissions").
[29] Order for the Filing of a Public Redacted Version of Vlastimir Đorđević's Final Submissions, 14 October 2021, p. 2.
[30] Notice of Filing Public Redacted Version of the 2 June 2021 Submissions on Documentation Related to Early Release Request, 28 October 2021.

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.

28. Paragraph 3 of the Practice Direction provides that upon the convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the State in which the convicted person is serving his or her sentence, the State shall, in accordance with Article 26 of the Statute and its agreement with the United Nations, notify the Mechanism accordingly. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible.

29. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information which he or she considers may be relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 13 of the Practice Direction states that the convicted person shall be given 14 days to examine the information received by the Registrar, following which he or she may provide any written submissions in response.

30. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. If early release is granted, it may be subject to conditions.[31]

31. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda ("ICTR"), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. The relevant enforcement agreement between the United Nations and Germany[32] provides in paragraph 2(1) that in enforcing Đorđević's sentence as pronounced by the Appeals Chamber, the German authorities shall be bound by the duration of the sentence. Paragraph 2(3) of the Enforcement Agreement states that the German legal provisions

[31] *See e.g.* Practice Direction, para. 20; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Motions Related to Valentin Ćorić's Request for Variation of Early Release Conditions, 21 February 2020, para. 39; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019, paras. 74, 76, 78; *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, paras. 81-82, Annex A.

[32] Agreement between the Mechanism and the Government of Germany, dated 28 July 2014 ("Enforcement Agreement").

regarding early release are not applicable, and that the President has the sole authority to decide on the early release of Đorđević. According to paragraph 2(4) of the Enforcement Agreement, if circumstances arise in which Đorđević would be eligible for early release under German law, then Germany shall notify the Registrar accordingly, and if the President considers that the application for early release is appropriate, the Registrar shall immediately notify the German authorities.

IV. ANALYSIS

A. Eligibility

1. Eligibility before the Mechanism

32. All convicted persons serving a sentence under the Mechanism's supervision are eligible to be considered for early release upon having served two-thirds of their sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.[33] Serving two-thirds of a sentence has been described as being "in essence, an admissibility threshold".[34] As Đorđević passed this two-thirds threshold on 14 June 2019,[35] he is eligible to be considered for early release.

2. Eligibility under German Law

33. The German authorities have informed the Mechanism that upon having served two-thirds of his sentence, Đorđević would in principle be eligible for the suspension of the remainder of his sentence.[36] This information was communicated to the Mechanism in accordance with the Enforcement Agreement,[37] which affirms that while German legal provisions concerning early release are not applicable to Đorđević, the German authorities are to inform the Mechanism should he become eligible for early release under German law.[38]

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[33] *Prosecutor v. Élie Ndayambaje*, Case No. MICT-15-90-ES.1, Decision on the Applications for Early Release and Commutation of Sentence of Élie Ndayambaje, 15 November 2021 ("*Ndayambaje* Decision"), p. 3; *Prosecutor v. Pauline Nyiramasuhuko*, Decision on the Application for Early Release of Pauline Nyiramasuhuko, Case No. MICT-15-90-ES.3, 10 November 2021 ("*Nyiramasuhuko* Decision"), p. 3; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) ("*Miletić* Decision"), para. 29.

[34] *Ndayambaje* Decision, p. 3; *Nyiramasuhuko* Decision, p. 3; *Miletić* Decision, para. 29. *See Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted), para. 19.

[35] Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

[36] Notification, p. 1.

[37] Notification, p. 1.

[38] Enforcement Agreement, paras. 2(3)-2(4).

34. In this respect, I recall that even if Đorđević would be eligible for release under German law, the early release of persons convicted by the ICTY falls exclusively within the President's discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.[39]

B. General Standards for Granting

35. A convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.[40] I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

36. While I note that the gravity of the crimes is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is nevertheless a factor of fundamental importance.[41] It is precisely the gravity of the crimes, understood as an overall assessment of the severity of a convicted person's criminal conduct, which is the primary consideration in determining the length of a sentence imposed by the sentencing Chamber.[42] I emphasise in this respect that, as a general rule, a sentence should be served in full unless it can be demonstrated that a convicted person should be granted early release.[43] Moreover, the graver the criminal conduct in question, the more compelling such a demonstration should be.[44] In other words, while the gravity of the crimes by itself cannot be seen as depriving a convicted person of an opportunity to argue his or her case for early release, it may be said to determine the threshold that the arguments in favour of early release must reach.[45]

37. Đorđević acknowledges that the crimes for which he was convicted "are grave", but he submits that "they should be counted as a neutral factor given his acknowledgement of and remorse for such".[46]

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[39] *Ndayambaje* Decision, p. 4; *Nyiramasuhuko* Decision, p. 3; *Miletić* Decision, para. 31.
[40] *Miletić* Decision, para. 32; *Prosecutor v. Théoneste Bagosora*, Case No. MICT-12-26-ES.1, Decision on the Early Release of Théoneste Bagosora, 1 April 2021 (public redacted) ("*Bagosora* Decision"), para. 30; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 24 March 2021 (public redacted), para. 21.
[41] *Miletić* Decision, para. 39.
[42] *See e.g. Miletić* Decision, para. 39; Appeal Judgement, para. 969; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 683.
[43] *Miletić* Decision, para. 39.
[44] *Miletić* Decision, para. 39.
[45] *Miletić* Decision, para. 39.
[46] Direct Petition, para. 9.

38. I note that Đorđević committed his crimes through participation in a joint criminal enterprise ("JCE"),[47] the purpose of which included "the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province", which in turn was achieved through "a widespread systematic campaign of terror and violence that included extensive murders, deportations, forcible transfers and persecutions of the Kosovo Albanian population".[48] With the exception of only two other persons, no JCE member "made a more crucial contribution to the achievement of [this] objective" than Đorđević, who was the highest-ranking officer in the Serbian Ministry of the Interior ("MUP") at the time.[49] He exercised the highest responsibility over the principal perpetrators of the crimes, played a leading role in efforts to conceal the crimes for which the JCE was responsible, and failed to report and investigate crimes committed by forces under his control.[50]

39. With respect to these crimes, Đorđević was convicted for the killing of 712 persons, which constituted murder both as a crime against humanity and as a violation of the laws or customs of war.[51] He is also guilty of the deportation and other inhumane acts (forcible transfer) as crimes against humanity that were carried out by Serbian forces against Kosovo Albanian civilians "in relation to incidents in thirteen municipalities in Kosovo".[52] For each instance of murder, deportation, and forcible transfer, Đorđević also bears criminal responsibility for persecution as a crime against humanity.[53] In addition, he is guilty of persecution as a crime against humanity for the destruction of religious or culturally significant property in relation to the mosques in eight locations.[54] Finally, Đorđević is guilty of persecution through sexual assaults as a crime against humanity in relation to the sexual assaults of four young women and one girl.[55]

40. The Trial Chamber elaborated that:

> For the hundreds of victims who died as a result of these crimes, the consequences were absolute. The close family members of the victims were left to cope with the death of loved ones. Their

[47] Trial Judgement, para. 2213 (specifying that the murders, deportations, forced displacements, and destruction of property were the criminal means by which the JCE was affected); Appeal Judgement, paras. 833, 929, 981 (Đorđević's conviction for persecution through sexual assaults as a crime against humanity is pursuant to the third category of JCE liability).
[48] Trial Judgement, para. 2210. *See* Appeal Judgement, para. 970.
[49] Trial Judgement, paras. 2209-2211 (indicating that Đorđević's contributions were more crucial than all other JCE members except for Slobodan Milošević and Vlajko Stoljiljković, the President of the Federal Republic of Yugoslavia and the Serbian Minister of the Interior, respectively). *See* Trial Judgement, paras. 37, 145. *See also* Appeal Judgement, paras. 2, 972.
[50] Trial Judgement, para. 2211. *See* Appeal Judgement, para. 972.
[51] *See* Trial Judgement, paras. 1709-1753, 2193-2195; Appeal Judgement, paras. 650, 977, 981, fn. 2034. *See also* Trial Judgement, pp. 885-950 (listing for each victim the name, age, gender, and place and date of murder).
[52] Appeal Judgement, para. 579 and fn. 1916. *See* Trial Judgement, paras. 1701-1702; Appeal Judgement, paras. 977, 981.
[53] Trial Judgement, paras. 1701-1702, 1778, 1780, 1790; Appeal Judgement, paras. 823, 977, 981.
[54] Trial Judgement, paras. 1854, 1856; Appeal Judgement, paras. 791, 823.
[55] Appeal Judgement, paras. 844, 859, 869, 901, 929, 976, 981.

> anguish and the hurt were no doubt aggravated by the uncertainty, in very many cases, about the fate which befell their family members and by their own displacement or deportation. Many victims are still missing to this day. For the victims who survived, it is apparent that the physical and mental suffering has often been considerable and prolonged. In some cases it is still ongoing. For the people who were forced to abandon their homes and valuables, the financial loss and the broken livelihoods suffered are immense. Finally, the destruction of mosques and other religious and cultural sites caused entire communities to lose their place of worship and significant elements of their heritage.[56]

41. The high gravity of his crimes is amply demonstrated throughout the judgements in his case, and this factor weighs very heavily against releasing Đorđević early.

2. Treatment of Similarly-Situated Prisoners

42. Persons sentenced by the ICTY, like Đorđević, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.[57] As noted above, all convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.[58]

43. Đorđević submits that other convicted persons "with whom he was found to be participating in the crimes in Kosovo" were released early after having served two-thirds of their sentences, and that the amount of time he has served should therefore weigh in favour of his early release.[59]

44. In this respect, I consider that as Đorđević passed the two-thirds threshold on 14 June 2019, he is eligible to be considered for early release.[60] To the extent that Đorđević suggests that he should be similarly granted early release, I recall that each case presents unique circumstances that must be considered on their own merits by the President when determining whether pardon, commutation of sentence, or early release is to be granted, and that comparisons to other cases are therefore inconsequential in the context of an early release application.[61]

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[56] Trial Judgement, para. 2215. *See* Appeal Judgement, para. 971.
[57] *Miletić* Decision, para. 41; *Bagosora* Decision, para. 39; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on Dragoljub Kunarac's Application for Early Release, 31 December 2020 (public redacted) ("*Kunarac* Decision"), para. 39.
[58] *See supra*, para. 32.
[59] Direct Petition, para. 11.
[60] *See supra*, para. 32.
[61] *Miletić* Decision, para. 42; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza's Application for Early Release, 17 September 2020 (public redacted), para. 43; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted) ("*Brđanin* Decision"), para. 46.

3. Demonstration of Rehabilitation

45. Before turning to an individualised assessment of Đorđević's demonstration of rehabilitation, I recall that I have set forth some of the considerations that will guide my assessment of whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules.[62]

46. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as rehabilitation of perpetrators of ordinary domestic crimes.[63] For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.[64]

47. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past or may be of persuasive relevance.[65] Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; (ii) signs of critical reflection of the convicted person upon his or her crimes; (iii) public or private expressions of genuine remorse or regret; (iv) actions taken to foster reconciliation or seek forgiveness; (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes; (vi) participation in rehabilitation programmes in prison; (vii) a convicted person's mental health status; and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.[66] This is a non-exhaustive list and I do not expect convicted persons to fulfil all of these indicators in order to demonstrate rehabilitation.[67] It falls, however, upon the convicted person to convince me that sufficient progress has been made in his or her rehabilitation, and that granting release before the full sentence is served would be a responsible exercise of my discretion.[68]

48. Rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.[69] Consequently, I consider that rehabilitation involves indicators of

[62] *Miletić* Decision, paras. 43-47; *Bagosora* Decision, paras. 41-45; *Kunarac* Decision, paras. 41-45.
[63] *Miletić* Decision, para. 44; *Bagosora* Decision, para. 42; *Kunarac* Decision, para. 42.
[64] *Miletić* Decision, para. 44; *Bagosora* Decision, para. 42; *Kunarac* Decision, para. 42.
[65] *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.
[66] *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.
[67] *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.
[68] *Miletić* Decision, para. 45; *Bagosora* Decision, para. 43; *Kunarac* Decision, para. 43.
[69] *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.

readiness and preparedness to reintegrate into society.[70] I will, therefore, generally consider the convicted person's post-release plans, including the envisaged place of residence.[71] If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.[72] Bearing this in mind, as a general matter I do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a greater degree of rehabilitation.[73]

49. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on the early release of a convicted person who is eligible to be considered for such relief.[74] Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.[75]

50. Turning to the extent to which Đorđević has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the information provided by the German authorities, in particular the Prison Report and the *Note Verbale* of 13 January 2021; (ii) Đorđević's submissions in the Direct Petition as well as in the Final Submissions; and (iii) the Psychiatric Report.

(a) Behaviour in Prison

51. Đorđević submits that he has demonstrated rehabilitation through exemplary conduct in custody, first at the UNDU and later in Germany.[76] He adds that he has maintained a strong work ethic while in custody, conscientiously performing all jobs given to him while seeking out additional opportunities, and that he [REDACTED].[77]

52. The German prison authorities initially indicated that his conduct "gave no cause for complaint".[78] That assessment, however, changed quite radically earlier this year. In this regard, the German authorities reported that Đorđević had tried to contact another prisoner with a background in organised crime, leading to security concerns serious enough to warrant Germany transferring

[70] *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.
[71] *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.
[72] *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.
[73] *Miletić* Decision, para. 46; *Bagosora* Decision, para. 44; *Kunarac* Decision, para. 44.
[74] *Miletić* Decision, para. 47; *Bagosora* Decision, para. 45; *Kunarac* Decision, para. 45.
[75] *Miletić* Decision, para. 47; *Bagosora* Decision, para. 45; *Kunarac* Decision, para. 45.
[76] Direct Petition, para. 16; Final Submissions, para. 5.
[77] Final Submissions, paras. 6, 13, fn. 18.
[78] Prison Report, p. 3.

Đorđević permanently to another prison with a higher security classification.[79] Specifically, the German authorities expressed their suspicion that Đorđević [REDACTED].[80]

53. Đorđević explains that he [REDACTED].[81] He denies that he [REDACTED], and submits that having served 14 years of an 18-year sentence already, he has no wish to jeopardise any chance to be reunited with his family.[82] He further states that he never received "any written document relating [REDACTED].[83]

54. I observe that although Germany initially reported a generally positive assessment of Đorđević's behaviour in prison, this has since been obviated by his more recent conduct. While I have taken note of Đorđević's explanations, the fact remains that the German prison authorities deemed Đorđević's behaviour to be so alarming as to warrant his transfer to another prison, with a higher security classification, on a permanent basis. This is no mere reprimand for a minor infraction, and regardless of whether it is characterised as a "disciplinary" or a "security" issue, I consider that Đorđević's recent conduct in prison weighs against a conclusion that he has been rehabilitated.

55. Moreover, I recall that even before he was indicted, Đorđević went into hiding from 2001 until his arrest in Montenegro in 2007, during which time his whereabouts were unknown to both the ICTY as well as the Serbian authorities.[84] Not only did this mean that his trial had to be held separately from the trial of other persons charged in respect of the same matters, which resulted in delays and an unnecessary waste of resources, but it also caused "prolonged distress for victims or their families and for witnesses who were forced to testify more th[a]n once about traumatic events".[85] This background, coupled with the information now before me, gives me serious concerns as to whether Đorđević could be trusted to comply with the conditions of any early release, a matter to which I will return below.

(b) Public Expressions of Remorse or Regret

56. Đorđević submits that he has expressed remorse since the very start of his trial,[86] conveyed through his counsel sympathy for the victims who came to testify,[87] and continued apologising for

[79] *Note Verbale* of 13 January 2021, p. 1.
[80] *Note Verbale* of 13 January 2021, p. 1.
[81] Final Submissions, paras. 23-24.
[82] Final Submissions, para. 24.
[83] Final Submissions, para. 25.
[84] Trial Judgement, para. 2221. *See also* Psychiatric Report, p. 7.
[85] Trial Judgement, para. 2223.
[86] Direct Petition, para. 12, *referring to Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 27 January 2009, T. 242 where Đorđević stated: "I'm sorry for all the victims in Kosovo and Metohija. I feel sorry for

his actions until the end of his appeal hearing.[88] He observes that these expressions of remorse were widely covered in the press at the time, and thus "had great echo in the Serbian public".[89]

57. The Psychiatric Report also concludes that Đorđević [REDACTED].[90]

58. The Prosecution acknowledges that "Đorđević's public expressions of sympathy for the victims during his trial and appeal are commendable", but submits that these words should be considered alongside any "concrete actions" he has taken to demonstrate his rehabilitation.[91] In response, Đorđević submits that he has [REDACTED], but that he has not reached out to victims for fear it would be misconstrued and that he otherwise has not engaged with the media about his case.[92]

59. There is no information before me that calls into question Đorđević's expression of remorse. Taking this into account along with the consistency and content of his statements, the Prosecution's positive characterisation of them, and the Psychiatric Report, I accept Đorđević's public expressions of remorse as being sincere. As such, I view them as a positive indicator of his rehabilitation.

60. In this regard, I recall that remorse requires acceptance of some measure of moral blameworthiness for personal wrongdoing, even if it falls short of the admission of criminal

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the families. I deeply sympathise with their pain. I would really wish to see this war, the war in Kosovo and Metohija, to be the last war ever waged there; and I would like to see all the problems being resolved by political means, by talks, and agreements."

[87] Direct Petition, para. 13, *referring to Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 4 February 2009, T. 494; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 9 March 2009, T. 1901; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 12 May 2009, T. 4311; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 5 June 2009, T. 5630; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 24 June 2009, T. 6541; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 31 August 2009, T. 8659.

[88] Direct Petition, para. 14, *referring to Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Transcript of 13 May 2013, T. 206-208 where Đorđević stated that: "Crimes took place in Kosovo in 1999. I never wanted them, and if I had my time again, I would act very differently. I am deeply sorry for all the victims in Kosovo and the suffering of their families. I apologise unreservedly to the families of all Kosovo Albanian civilians who lost their lives and to those displaced. I truly sympathise with their pain. I hope that the future of the region will be one of peace. I say sorry again today as I apologised during my trial. I hoped to contribute to the process of truth and reconciliation by testifying in my trial for ten days. I wanted to give an open and honest account about my role and about what I knew. […] I did not oppose the cover-up. I did not take steps to find and prosecute the perpetrators as I should have. I deeply regret this and the fact that I didn't resign immediately. I did not have the strength and power to stand up to the minister. For that, I consider myself responsible. As I said during my trial, I accept that I must pay a price. […] Honourable Judges, I did play a role and for that I accept that I ought to be punished. […] When I learned that bodies had surfaced in Serbia, I didn't take any measures to find those responsible. I should not have acted like that. I realise that it added to the pain of those who had lost their loves ones. For that, I am truly sorry.".

[89] Final Submissions, para. 7.

[90] Psychiatric Report, p. 10.

[91] Prosecution Memorandum, para. 10. *See infra*, para. 83.

[92] Final Submissions, paras. 11-12, 18. *See infra*, para. 84.

responsibility or guilt.[93] While a genuine and public expression of remorse will always be a positive and useful indicator of rehabilitation, I consider that the weight to be placed on such remorsefulness will necessarily be linked to the degree to which the convicted person has accepted responsibility for his or her wrongdoing. Genuine, public expressions of remorse for the full scope of a convicted person's responsibility will necessarily serve as a weightier consideration than remorse for only a portion of that responsibility. Đorđević's remorsefulness will therefore be considered alongside his acceptance of responsibility, to which I now turn.

(c) Acceptance of Responsibility

61. Đorđević argues that both during trial and on appeal, he accepted responsibility for certain actions as well as their impropriety.[94] Furthermore, he states that the Psychiatric Report details his acceptance of responsibility and specifically notes his feeling that "[REDACTED]".[95]

62. The German prison authorities indicated that it was "impossible to ascertain the extent to which Mr Đorđević has changed his attitudes toward the crimes and the underlying ideologies" because of the need to use an interpreter for any psychotherapeutic analysis.[96]

63. In light of the lack of available information on this issue, I requested the Registrar to identify a psychologist who speaks BCS who could travel to Đorđević's location and conduct a psychological evaluation and risk assessment.[97] The examiner was a psychiatrist who interviewed Đorđević for three hours, before conducting interviews with the prison psychologist and the acting head of the prison.[98] The examiner also reviewed Đorđević's medical file and referred to publicly available information concerning the trial proceedings against Đorđević and the context in which his crimes were committed.[99]

[93] *Aloys Ntabakuze v. Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012. fn. 665; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, para. 365.
[94] Direct Petition, paras. 12, 14, *referring to Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 11 December 2009, T. 10006 where Đorđević stated that "I'm aware that this was a big mistake I made, but what happened cannot be made undone. I am ashamed of my deeds, and I believe that the Court's decision will be adequate, and I will be held responsible for what I did.", and at T. 10010 where he stated: "I knew then, as I know now, that it wasn't right, and I'm willing to – to assume responsibility for a rash action."; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Transcript of 13 May 2013, T. 206-208 (*see supra*, fn. 88).
[95] Final Submissions, para. 8, *referring to* Psychiatric Report, p. 8. Đorđević adds that the respect he demonstrated for the proceedings should weigh in favour of his early release. Direct Petition, para. 17.
[96] Prison Report, p. 3.
[97] Memorandum of 2 March 2020, para. 3. *See* Memorandum of 15 June 2020, para. 3. *See supra*, paras. 10-11, 14-15.
[98] Psychiatric Report, p. 5.
[99] Psychiatric Report, p. 5.

64. The Psychiatric Report details the interview with Đorđević before assessing that "[REDACTED]".[100] According to the Psychiatric Report, Đorđević:

> [REDACTED].[101]

He therefore "[REDACTED]".[102]

65. Notwithstanding these broad conclusions, the Psychiatric Report as well as Đorđević's past and present statements suggest that although he has accepted some responsibility for his crimes, he has not come to terms with the full scope of his role. In particular, he appears to characterise his responsibility as arising out of a failure to act,[103] rather than being among the JCE members who made the most crucial contributions to achieving the objective that they jointly intended to further.[104] In this regard, I observe that Đorđević appears to accept the same level of responsibility today as he did throughout his proceedings before the ICTY.

66. During his trial, for instance, Đorđević contended that "I didn't have any legal or factual possibility to do anything without [the Serbian Minister of the Interior's] decision and the organs at his disposal", "I couldn't do anything" to take action to stop criminal conduct, and "at that time when people were getting killed in Serbia I didn't take any other measures".[105] His statement to the Appeals Chamber, near the close of the proceedings against him, likewise portrayed a passive participant who failed to act: "I did not oppose the cover-up", "I did not take steps to find and prosecute the perpetrators as I should have", "I became marginalised as regards Kosovo […] [which] made me feel that I could turn away", and "I didn't take any measures to find those responsible".[106]

67. Đorđević's minimisation of his own role does not appear to have improved substantially in the intervening years. His statements, as reported in the Psychiatric Report, reflect his view that: "[REDACTED]", "[REDACTED]", and "[REDACTED]".[107]

68. Đorđević's role, however, was not limited to failing to oppose the actions of others, investigate the crimes, or discipline the perpetrators. Rather, the judgements in his case paint a picture of someone who actively pursued the common plan and did so from the front seat. In

[100] Psychiatric Report, p. 9.
[101] Psychiatric Report, p. 9.
[102] Psychiatric Report, p. 10.
[103] *See* Psychiatric Report, pp. 7-9.
[104] *See* Trial Judgement, paras. 2210-2211. *See also* Appeal Judgement, paras. 2, 972.
[105] *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Transcript of 11 December 2009, T. 10009-10010.
[106] *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Transcript of 13 May 2013, T. 207-208.
[107] Psychiatric Report, pp. 7-9.

rejecting Đorđević's contention that he played a relatively minor part, the Trial Chamber relied on evidence that:

> (i) Đorđević was often on the ground in 1998 and 1999 and played a direct role in the engagement of MUP forces in Kosovo; (ii) he actively participated in the Collegium meetings at which anti-terrorist operations were discussed and planned; (iii) he actively participated at the Joint Command meetings dealing with the coordination of the [Yugoslav Army] and MUP forces in Kosovo; (iv) the majority of the operations in Kosovo continued to be carried out by the [Public Security Department of the MUP], including [detachments from the Special Police and Special Anti-Terrorist Units], for which Đorđević remained responsible; [and] (v) Đorđević made decisions regulating the rights of the MUP members assigned to the Ministerial staff […].[108]

69. The Appeals Chamber, in turn, noted that in addition "Đorđević continued to issue dispatches deploying [Special Police Units] to Kosovo throughout the Indictment period"[109] and the MUP forces under his command "were the principal perpetrators of the crimes".[110] In discussing his specific contributions to the JCE, the Appeals Chamber observed that these findings were based, *inter alia*, on "the fact that he had effective control over the MUP forces deployed in Kosovo, that he was personally and directly involved in the deployment of the Scorpions to Kosovo, and that he took active steps to prevent investigations into and conceal the crimes committed by the forces under his effective control".[111]

70. I recall that acceptance of responsibility does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release.[112] Nevertheless, it is an important factor in assessing the progress of a convicted person's rehabilitation. Đorđević appears to have only partially accepted responsibility for his crimes. While his acceptance of some responsibility merits positive weight, there remains a notable difference between the role he ascribes to himself and the role he actually played, and the lack of progress in this area suggests that he has not sufficiently engaged in critical reflection upon his crimes.

(d) Prospects of Successful Reintegration into Society, Mental State, and Risk of Reoffending

71. Đorđević states that if released early, he would dedicate himself exclusively to his family and would lead a peaceful life.[113] In this respect, he observes that he has maintained close contact with his wife and children whenever possible, and avers that he would be willing to obey all

[108] Appeal Judgement, para. 226 and referenced cited therein. *See* Appeal Judgement, paras. 2, 167, 458, 461.
[109] Appeal Judgement, fn. 703.
[110] Appeal Judgement, para. 972.
[111] Appeal Judgement, para. 264. *See also* Appeal Judgement, para. 460.
[112] *Miletić* Decision, para. 56; *Brđanin* Decision, para. 95.
[113] Direct Petition, paras. 21, 24; Final Submissions, paras. 15-16.

conditions of any early release.[114] He also submits that he has never spoken negatively, in the press or otherwise, about his verdict or sentence.[115]

72. The Prison Report indicates that Đorđević intends to return to [REDACTED] Serbia, and it confirms that he has kept in contact with family members, including through visits at regular intervals.[116] The Prison Report further states that although Đorđević initially declined any psychological therapy, over time "there was a change in his attitude" towards it, and he is now interested in pursuing such an opportunity.[117]

73. The Psychiatric Report also refers to Đorđević's stated intention to [REDACTED] and describes Đorđević's mental state as [REDACTED].[118] The Psychiatric Report also states that a risk assessment was performed using "[t]he HKT-R instrument for risk assessment in forensic psychiatry", and that Đorđević's final score was 0, indicating "a low risk" that he would repeat the criminal offences with which he was charged.[119] Based on this instrument as well as the clinical interview, the psychiatrist concluded that the risk that Đorđević would repeat his crimes is "very low".[120]

74. Serbia has indicated that if Đorđević is released, there would be no obstacles for him to reside there.[121] In addition, Serbian authorities are ready to monitor the fulfilment of any conditions and to provide guarantees to this effect.[122]

75. I consider that Đorđević's maintenance of family connections may certainly facilitate his attempts to reintegrate into society should he be released early, and that the Psychiatric Report supports the conclusion that his reintegration is likely to be peaceful. I have also taken into account Serbia's willingness to monitor conditions. Finally, I consider it a positive sign that Đorđević has expressed a desire to participate in a therapeutic programme in prison should one become available,[123] as well as that he has appeared to avoid public comment concerning the Applications or his case more generally but indicates a willingness to do so if it "will assist in reconciliation".[124]

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[114] Final Submissions, paras. 16, 20. *See* Final Submissions, para. 19.
[115] Final Submissions, para. 7.
[116] Prison Report, pp. 2-3.
[117] Prison Report, p. 3. *See also* Final Submissions, paras. 9, 14. The Prison Report notes that efforts were made to locate a "Serbian-speaking therapist", but that unfortunately one had not been identified that could provide the underlying therapy to Đorđević. Prison Report, p. 3.
[118] *See* Psychiatric Report, pp. 8-9.
[119] Psychiatric Report, p. 9.
[120] Psychiatric Report, p. 10.
[121] *See* Letter of 26 November 2020, p. 1.
[122] Letter of 26 November 2020, p. 1.
[123] Prison Report, p. 3. *See* Final Submissions, paras. 9, 14.
[124] Final Submissions, para. 18. *See* Registrar Memorandum of 8 April 2020, Annex.

76. At the same time, however, I observe that Đorđević previously evaded the Serbian authorities for a number of years, during which time he successfully disguised himself from even his own family members.[125] Notably, the impetus for this was Đorđević's subjective expectation that he might be indicted and tried for alleged crimes.[126] I am particularly concerned that Đorđević has a similar expectation at present, given the statement by the President of Serbia before the Security Council concerning efforts to extradite Đorđević to face a new trial.[127] This calls into question whether, if released early, Đorđević would attempt to reintegrate into society at all or could be trusted to comply with the conditions of any early release.

(e) Overall Assessment

77. I have some reservations as to whether Đorđević is sufficiently rehabilitated. His public expressions of remorse are a positive indicator of his rehabilitation, as is the conclusion that upon his release he would pose only a minimal risk of reoffending. In this respect, I remain mindful that rehabilitation is a process rather than a definite result, and after considering the information before me in a holistic manner, including the gravity of Đorđević's crimes and the fact that he has only partially accepted responsibility for them, I am of the view that Đorđević has demonstrated some level of rehabilitation.

78. Notwithstanding this, I am disturbed by the fact that in light of Đorđević's behaviour in prison, the enforcement State felt compelled to transfer Đorđević to a higher-security prison due to concerns that he [REDACTED]. This information is even more alarming in light of Đorđević's previous, successful efforts to abscond from justice and hide from national authorities and his own family for a number of years. Moreover, efforts to have Đorđević face a new trial have been openly raised in public fora. Taken together, I simply cannot conclude that, faced with the possibility of new proceedings against him, Đorđević has been rehabilitated such that if released early, he could be trusted to comply with the conditions of any early release.

4. Substantial Cooperation with the Prosecutor

79. Đorđević submits that he cooperated in his case by testifying before the Trial Chamber and thereby subjecting himself to cross-examination by the Prosecution, while also "assisting the trial

[125] Trial Judgement, para. 2221. *See* Psychiatric Report, p. 7 ("[REDACTED]").
[126] Trial Judgement, paras. 2221-2222; Psychiatric Report, p. 7.
[127] Security Council 8790th meeting, 8 June 2021, p. 18 ("A particular problem that we are facing is disturbances created by the judicial institutions established in the territory of Kosovo and Metohija, which is within Serbia and which is under the interim administration of the United Nations. We have been witness to attempts to retry two citizens who are serving prison sentences for which they had already been tried before the ICTY. More concretely, in the recent past there was an attempt to hear the case of Nebojša Pavković and to obtain the extradition of Vlastimir Đorđević.").

process" by "establishing agreed facts and exhibits to facilitate an expeditious trial".[128] In addition, he states that he answered the summons of the Serbian War Crimes Prosecutor and participated in interviews,[129] and that he also testified in a case before the Serbian War Crimes Chamber.[130]

80. According to the Prosecution, Đorđević has not cooperated with it at any point and testifying in his own defence does not qualify as such.[131] The Prosecution also indicates that the Serbian War Crimes Prosecutor's Office had previously shared that it had interviewed Đorđević [REDACTED].[132]

81. Contrary to Đorđević's submission, testifying in one's own defence and otherwise participating in one's own proceedings do not constitute cooperation with the Prosecution.[133] It is thus evident that Đorđević has not cooperated with the Prosecution, substantially or otherwise. Accordingly, this merits no weight in my consideration of the Application. At the same time, while there has not been any showing that Đorđević's cooperation with Serbian prosecutorial authorities was substantial in nature, I nevertheless consider that this merits some consideration as part of the overall assessment of the Application.

C. Other Considerations

1. Views of the Prosecutor

82. I have previously explained that I will use my discretion to receive and consider general comments from the Prosecution with regard to early release applications.[134] In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and will carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.[135]

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[128] Direct Petition, para. 18. *See* Direct Petition, para. 20.
[129] Direct Petition, para. 19.
[130] Direct Petition, para. 19; Final Submissions, para. 11, *referring to Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Prosecution Exhibit 01508 (Đorđević's Testimony at the Belgrade District Court – Chamber for War Crimes, dated 26 June 2009). *See also* Direct Petition, para. 20.
[131] Prosecution Memorandum, para. 12, *referring to Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of President on Early Release of Momčilo Krajišnik, 11 July 2011 ("*Krajišnik* Decision"), para. 32.
[132] Prosecution Memorandum, para. 13.
[133] *See Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 40; *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January Decision of the President on the Early Release of Aloys Simba, 7 January 2019, paras. 48-49; *Krajišnik* Decision, para. 32.
[134] *Miletić* Decision, para. 62; *Bagosora* Decision, para. 54; *Kunarac* Decision, para. 76.
[135] *Miletić* Decision, para. 62; *Bagosora* Decision, para. 54; *Kunarac* Decision, para. 76.

83. The Prosecution submits that Đorđević's early release is not warranted due to the high gravity of his crimes and insufficient evidence of his rehabilitation.[136] In particular, the Prosecution emphasises that Đorđević had a leading role in efforts to cover up the crimes for which the JCE was responsible, and that rather than investigate the atrocities, Đorđević concealed the bodies of hundreds of victims through clandestine burials, further compounding the anguish of surviving family members of the missing and those killed in uncertain circumstances.[137] While Đorđević's public expressions of sympathy for the victims are commendable, his rehabilitation should be demonstrated through concrete actions such as those proposed by victims of his crimes.[138] The Prosecution argues that Đorđević claims to have accepted responsibility for his crimes when, in reality, he had attempted to deny or otherwise minimise his responsibility throughout the proceedings against him.[139]

84. Đorđević responds that he has taken concrete measures where available, namely [REDACTED] as well as testimony in [REDACTED] case.[140] He states that he has not taken further actions to reach out to victims for fear it would be misconstrued, but that he stands ready to undertake additional steps to foster reconciliation, accept responsibility, and convey his remorse to a larger audience.[141]

2. Views of Serbia

85. Serbia observes that Đorđević has served two-thirds of his sentence and expresses concerns about his health and advanced age.[142] Should Đorđević be released early, Serbia provides assurances that the relevant authorities would be prepared to monitor the fulfilment of any conditions determined by the Mechanism.[143]

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[136] Prosecution Memorandum, paras. 2, 18. In the event that I would nevertheless grant early release to Đorđević, the Prosecution requests that I consider imposing appropriate conditions and measures to ensure compliance therewith. Prosecution Memorandum, paras. 2, 14-18.
[137] Prosecution Memorandum, para. 4.
[138] Prosecution Memorandum, para. 10. I observe that the Prosecution also refers to communications addressed to me concerning the Application. Prosecution Memorandum, fn. 18. *See e.g.* Registrar Memorandum of 8 April 2020, Annex, pp. 7-8. In this regard, I have not considered it necessary to rely on unsolicited submissions from third parties with respect to the Application, and consequently have not taken them into account in reaching the present decision. *See* Practice Direction, para. 14.
[139] Prosecution Memorandum, paras. 7-9.
[140] Final Submissions, para. 11. *See supra*, para. 79.
[141] Final Submissions, para. 12.
[142] Letter of 26 November 2020, pp. 1-2.
[143] Letter of 26 November 2020, p. 1.

3. Impact on Witnesses and Victims

86. WISP conveyed information concerning 115 witnesses, 60 of whom were identified as victim witnesses and another 55 who were selected based on other factors.[144] This information related to the places of residence of these witnesses and victims, according to WISP's records, as well as any psycho-social reasons or previously reported security concerns.[145]

87. WISP observed that it was not in a position to assess whether Đorđević would be capable of, or would intend to, harm any witnesses.[146] Even with this *caveat*, however, WISP considered that certain witnesses would not only experience a heightened perception of risk were Đorđević to be released early, but that his release may also increase their level of actual risk.[147]

88. WISP added that it could not determine the extent of such risk solely by referring to its records, and that a fuller assessment would require a range of additional information, involving contact with each witness.[148] In this respect, I am cognisant that contacting witnesses too frequently has the potential to negatively impact upon them, particularly if they are trying to move on in their lives and especially if some years have passed since they have heard from the Mechanism or its predecessor Tribunals.[149] I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit further information from them with respect to the Application.

89. In light of the information received from WISP, I have some concern that releasing Đorđević prematurely may endanger the health and safety of witnesses. While my overall conclusion does not turn solely on this consideration, I have nevertheless taken it into account as an additional factor in assessing the Application.

4. Health of the Convicted Person

90. Previous decisions on early release have determined that the state of the convicted person's health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.[150]

[144] WISP Memorandum, paras. 3-4, 9.
[145] WISP Memorandum, paras. 5-7, 13.
[146] WISP Memorandum, para. 16.
[147] WISP Memorandum, para. 15.
[148] WISP Memorandum, para. 16.
[149] *Brđanin* Decision, para. 90.
[150] *Miletić* Decision, para. 67; *Bagosora* Decision, para. 60; *Kunarac* Decision, para. 79.

91. Đorđević submits that he is an aging man, and that he has suffered certain medical issues.[151] [REDACTED].[152] He adds that [REDACTED].[153]

92. The German prison authorities indicated that they could not provide details on Đorđević's medical condition as he had not provided the necessary consent.[154] In response, Đorđević provides consent for the release of his medical records and indicates that, in the intervening period, he has asked the German authorities to submit these records to the Mechanism.[155]

93. I observe that Đorđević has been able to provide supplementary medical information when warranted, which reflects that [REDACTED],[156] and that Germany has informed the Mechanism of more recent developments concerning Đorđević's health as appropriate. He is 73 years old,[157] and his mental state is described as [REDACTED].[158] The information before me does not demonstrate that there are compelling humanitarian grounds which would warrant granting early release notwithstanding the overall negative assessment above.

94. Finally, I observe that Đorđević refers to the difficulties that he faces, along with those of [REDACTED] family members, on account of him being imprisoned in Germany.[159] He also submits that a spate of health problems has befallen several of his family members, creating additional stress on him and [REDACTED],[160] and asks that these factors be taken into account in favour of his early release.[161] In this respect, although I am not generally inclined to place any weight on challenges experienced by family members that are inherent in a convicted person serving a sentence in an enforcement State, I am of the view that the circumstances described by Đorđević merit some limited consideration in my assessment of the interests of justice, even if they are outweighed by other important factors when adjudicating the Applications.

[151] Direct Petition, paras. 23-24; Direct Petition Addendum, paras. 2-3, Annex.
[152] Direct Petition Addendum, Annex, Registry Pagination ("RP") 52-50.
[153] Final Submissions, paras. 21, 24, fn. 26.
[154] Prison Report, p. 3.
[155] Final Submissions, para. 21.
[156] Direct Petition Addendum, Annex RP 50.
[157] *See* Appeal Judgement, para. 2. *See also* Final Submissions, para. 24.
[158] *See* Psychiatric Report, p. 9.
[159] Direct Petition, para. 21.
[160] Direct Petition, para. 22, Annex.
[161] Direct Petition, paras. 21, 24.

5. Consultation

95. In coming to my decision on whether to grant the Applications I have consulted with two other Judges of the Mechanism.[162] Judge Masanche and Judge Park have both indicated that they agree that the Applications should be denied.

96. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Applications.

V. CONCLUSION

97. I consider that the Applications should be denied. While Đorđević has demonstrated some level of rehabilitation and has offered some cooperation to war crimes prosecution entities in Serbia, the high gravity of crimes militates very strongly against his early release. Moreover, there are serious concerns as to whether Đorđević has been sufficiently rehabilitated such that, if released early, he could be trusted to comply with any necessary conditions. The importance of this consideration becomes particularly acute in light of the heightened risk to witnesses should Đorđević be released early.

VI. DISPOSITION

98. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **DENY** the Applications.

99. The Registrar is hereby **DIRECTED** to provide the authorities of Germany and Serbia with the public redacted version of this decision as soon as practicable.

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

Done this 30th day of November 2021,
At The Hague,
The Netherlands.

Judge Carmel Agius
President

[Seal of the Mechanism]

[162] *See* *supra*, para. 23.

UNITED NATIONS
International Residual Mechanism
for Criminal Tribunals

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Case Name/ *Affaire* :	**PROSECUTOR v. VLASTIMIR ĐORĐEVIĆ**		**Case Number/ *Affaire n°* :**	**MICT-14-76-ES**
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