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Mechanism for International Criminal Tribunals

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**REPORT TO THE PRESIDENT  
ON THE DEATH OF ZDRAVKO TOLIMIR**

JUDGE VAGN JOENSEN  
7 SEPTEMBER 2016

To H.E. Judge Theodor Meron  
President of the International Residual Mechanism for Criminal Tribunals

On Monday, 8 February 2016, Zdravko Tolimir died while in custody at the United Nations Detention Unit in the Scheveningen Penitentiary Facility (“UNDU”), in The Hague, the Netherlands. By an order of 9 February 2016, pursuant to Rules 23(A) and 31(A) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Rule 33(C) of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“UNDU Rules of Detention”), which applies *mutatis mutandis* to the Mechanism, you assigned me to conduct a full inquiry into the circumstances surrounding Zdravko Tolimir’s death and to report my findings to you.

I received excellent assistance from Roman Boed, Senior Legal Officer, and Leto Cariolou, Legal Officer.

I submit my report.

Judge Vagn Joensen  
The Hague, The Netherlands  
7 September 2016

## I. INTRODUCTION

1. Zdravko Tolimir died while in custody at the United Nations Detention Unit (“UNDU”) in the Scheveningen Penitentiary Facility in the Netherlands on Monday evening, 8 February 2016.

2. On 9 February 2016, the President of the Mechanism assigned me “to conduct an inquiry into the circumstances surrounding the death of Mr. Tolimir while in custody of the UNDU and to report the findings of that inquiry to [him] directly as soon as is reasonably possible”. The President requested the Registry of the Mechanism and the Commanding Officer of the UNDU to provide me with any assistance required for completing the Inquiry. On 10 February 2016, the President of the ICTY expressed the full support of the ICTY for this Inquiry and pledged complete cooperation of all ICTY staff including those serving in the UNDU.

3. Coronial and police investigations were undertaken by the authorities of the Netherlands. An autopsy, including pathological and toxicological investigations, was conducted by the Netherlands Forensic Institute. The results of these investigations (“Autopsy Report”) were disclosed to the Mechanism on 15 August 2016. On 26 August 2016, the Registry provided me with a translation of the Autopsy Report in English. The Dutch authorities concluded that the death of Mr. Tolimir can be satisfactorily explained by heart disease.

4. This Inquiry relies on the Autopsy Report as well as my own investigations. I have received all necessary cooperation from officials of the Mechanism, the ICTY, and the UNDU. I was able to conduct the Inquiry with full independence.

## II. BACKGROUND

5. Mr. Tolimir was born on 27 November 1948 in Bosnia and Herzegovina. On 31 May 2007, Mr. Tolimir was arrested and was transferred to the UNDU the following day. He was prosecuted before the ICTY in connection with events in Eastern Bosnia between 1992 and 1995, during which time he was Assistant Commander and Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the Army of Republika Srpska. A trial chamber of the ICTY found Mr. Tolimir guilty of crimes related to the afore-mentioned events and sentenced him to life imprisonment. The Appeals Chamber of the ICTY affirmed Mr. Tolimir’s sentence on 8 April 2015. Mr. Tolimir remained in custody at the UNDU awaiting designation of a State of enforcement. His request for provisional release for the purposes of “rehabilitation and further medical treatment” in the Republic of Serbia was dismissed by the Appeals Chamber of the Mechanism on 28 January 2016.

### III. THE INQUIRY

6. Following my assignment, on 9 February 2016, I was informed by the Registry of the Mechanism that the Metropolitan Police of The Hague started an investigation under the direction of the Office of the Public Prosecutor and that, on 10 February 2016, a forensic autopsy would be performed on the remains of Mr. Tolimir with the aim of determining the cause of death. The Registry was advised that the preliminary results of the forensic autopsy would be available by 12 February 2016 but the results of the toxicological investigation would require additional time.

7. On 9 February 2016, I was also informed by the Registry that Ms. Nada Tolimir, the wife of Mr. Tolimir, and Mr. Alexandar Gajić, counsel of Mr. Tolimir, had indicated that they fully support the investigation into the circumstances surrounding the death of Mr. Tolimir. I invited Ms. Tolimir and Mr. Gajić to provide me with any information they found appropriate for the purposes of my Inquiry.

8. On 10 February 2016, I met with the Registrar of the Mechanism, Mr. John Hocking, who assured me that the Registry would fully support my Inquiry and provide me with all necessary assistance. On the same date, I was informed by the Registry that the preliminary finding of the autopsy conducted by the Dutch authorities was that Mr. Tolimir died of natural causes, in particular of a heart attack.

9. On 11 February 2016, I conducted a site visit at the UNDU. I was received by the UNDU Commanding Officer, Mr. Mikko Sarvela. Mr. Sarvela and the managing staff provided me with preliminary information about the relevant sequence of events on 8 February 2016. Mr. Sarvela also gave me access to the relevant UNDU incident report and other material and escorted me to the part of the UNDU where the incident occurred. I inspected Mr. Tolimir's cell and the cell he used as his study. Following my meeting with the UNDU management, I interviewed eight UNDU officers and one detainee who witnessed the death of Mr. Tolimir. I also interviewed two UNDU officers who had information regarding the circumstances surrounding Mr. Tolimir's death. In addition, I was given a CCTV recording from two cameras situated in the relevant area of the UNDU.

10. On 15 February 2016, the remains of Mr. Tolimir were transferred to Belgrade, Serbia.

11. On the same date, I received a written statement from Ms. Tolimir and, on 22 February 2016, I received a written statement from Mr. Gajić.

12. On 16 February 2016, the Registry was informed by the focal point in the Public Prosecutor's Office assigned to communicate with the Mechanism that definitive results of the forensic autopsy would be available by 8 March 2016.

13. On 7 March 2016, I had a meeting with the Deputy Registrar of the ICTY and the UNDU Commander and obtained further information related to the Inquiry.
14. Between 8 and 31 March 2016 the Registry made a number of attempts to obtain the autopsy report from the Dutch authorities or to ascertain when the report would be available.
15. On 31 March 2016, the Public Prosecutor's Office informed the Registry that the autopsy report was forthcoming.
16. On 6 April 2016, the Public Prosecutor's Office informed the Registry that the autopsy report had not been finalised and that the new deadline for producing it was set for 9 May 2016.
17. On 8 April 2016, I interviewed Dr. Falke, the UNDU Medical Officer.
18. On 13 May 2016, the Dutch authorities informed the Registry that the autopsy report had not yet been finalised by the Netherlands Forensic Institute.
19. On 18 May 2016, the President of the Mechanism requested the urgent attention of the Ambassador for International Organisations of the Ministry of Foreign Affairs of the Kingdom of the Netherlands ("MFA") as to the progress of the finalisation of the autopsy report by the Dutch authorities.
20. On 2 June 2016, the MFA informed the Mechanism that the final report on the autopsy was not available due to the fact that Mr. Tolimir suffered from several medical conditions before his demise. In order to determine the most likely cause of death and exclude inadequate or improper medical care more detailed laboratory tests were deemed necessary. The Netherlands Forensic Institute estimated that the final report would be issued by 24 June 2016.
21. On 27 June 2016, the MFA disclosed a summary of the report in Dutch and, on 28 June 2016, in English.
22. When further informal contact between the Registry and the MFA did not result in the disclosure of the full autopsy report to the Mechanism, on 12 July 2016, the President of the Mechanism inquired about the disclosure of the full autopsy report to the Mechanism by a very urgent *note verbale* addressed to the Ambassador for International Organisations of the MFA.
23. On 4 August 2016, the MFA acting on behalf of the Ministry of Security and Justice of the Kingdom of the Netherlands requested certain assurances as to how the Mechanism would handle the full autopsy report if disclosed.

24. On 11 August 2016, the Registrar provided the MFA with further information and subsequently, on 15 August 2016, the MFA disclosed to the Mechanism the full Autopsy Report in Dutch. On 26 August 2016, the Registry provided me with a translation of the report in English.

25. On 2 September 2016, I interviewed the UNDU Medical Officer, Dr. Falke, on issues arising out of the Autopsy Report.

26. With the consent of Ms. Tolimir, I was given full access on a confidential basis to all available medical information concerning Mr. Tolimir's health and treatment. I was provided with medical records covering the period of 8 September 2015 to 22 October 2015. The reports contain information on prior medical history of Mr. Tolimir.

27. My Inquiry was focused on the circumstances of Mr. Tolimir's death, his medical treatment, and other circumstances related to the cause of death.

28. As this Report is issued publicly, in order to protect Mr. Tolimir's right to privacy I have limited references to medical particulars to a minimum and did not refer to aspects of Mr. Tolimir's medical condition that were not relevant to the cause of his death or related to the issues raised by Ms. Tolimir and Mr. Gajić.

29. In addition, my report refers to judicial decisions and certain matters falling outside the scope of this Inquiry only where relevant to address concerns expressed by Ms. Tolimir and Mr. Gajić in their respective statements.

#### **IV. CAUSE OF DEATH**

30. The Autopsy Report is composed of the following sections:

(i) neuropathological examination – preliminary report, dated 4 May 2016;

(ii) toxicology analysis, dated 8 June 2016; and

(iii) report on the pathological investigation, dated 20 June 2016, containing the overall conclusion that:

“The death can be explained by pathological changes to the heart based on irreversible heart muscle damage / loss of heart function.[...] It is unlikely that the pathological changes to the brain contributed to the death. A toxicological contribution to the death has not been demonstrated during the examination.”

31. The post-mortem investigation used rapid diagnostic methods and found no recent heart muscle damage. The report on the pathological investigation explains:

“In order to be able to demonstrate recent heart muscle damage (infarction) using rapid diagnostic methods, usually a few hours of survival is required.”

As shown below, Mr. Tolimir was declared dead approximately 50 minutes after the onset of the fatal incident.

32. The report on the pathological investigation notes that during the post-mortem examination “a properly implanted ICD (Implantable Cardioverter Defibrillator)” was found and indicates that the ICD “was removed and handed over to the police”. An ICD is activated in the event of irregular heart rhythm and gives a shock to correct the heart rhythm. It appears that the information on Mr. Tolimir’s ICD was not retrieved and used in the coronial investigation.

33. As indicated below, the CCTV recording of the resuscitation efforts carried out after Mr. Tolimir’s fall shows that the automated external defibrillator used to resuscitate Mr. Tolimir was activated, which, according to Dr. Falke, suggests that there was fibrillation (rapid and irregular heart rhythm).

34. The post-mortem pathological investigation explains Mr. Tolimir’s death as a result of irreversible heart muscle damage / loss of heart function, but does not explain the immediate cause of the loss of heart function. It seems likely that the immediate cause was fibrillation.

## V. INCIDENT OF 8 FEBRUARY 2016

35. The incident of 8 February 2016 is well documented by the CCTV recording, an incident report based on the log-book kept by UNDU officers, and statements taken during my interviews with UNDU officers and a detainee who were eye-witnesses to all or part of the incident. The statements of the witnesses and the incident report are consistent with the CCTV recording except for the timing shown on the recording. The UNDU Commander informed me that a comparison of the clock of the CCTV system with the telephone log had shown that the CCTV clock was approximately 12 minutes ahead of the actual time and that he had taken steps to have the system adjusted. With this clarification, the material indicates the following sequence of events.

36. In the evening of 8 February 2016 at 8.15 pm Mr. Tolimir walked down the UNDU wing corridor from his cell to the telephone booth using his walking frame. Upon reaching the telephone, Mr. Tolimir turned his walking frame around, sat on it, and applied the brakes. He appeared to pray, put his glasses on, reached for the telephone and subsequently appeared to be praying again. Shortly afterwards, at 8.18 pm, Mr. Tolimir appeared to suffer a spasm. He slipped off the walking frame and fell to the floor. The UNDU telephone log suggests that Mr. Tolimir did not get a connection during his attempted telephone call.

37. At the time, two UNDU officers were in the glass booth at the entrance of the wing across from the telephone booths and two other officers were in the officers' room near the telephone booths. An officer saw Mr. Tolimir falling and the other three officers heard the noise resulting from his fall. They all ran towards him. Another detainee who was using the telephone next to Mr. Tolimir terminated his call and stepped closer to Mr. Tolimir, checked his pulse and then remained in the area temporarily. One of the officers called Mr. Tolimir's name and when there was no response he lifted Mr. Tolimir's shirt and started giving him chest compressions (cardiopulmonary resuscitation) in an effort to resuscitate him. Another of the officers exhaled air into Mr. Tolimir's mouth. An officer called for the automated external defibrillator ("AED") to be brought and one of his colleagues went to the hallway to fetch it. When the AED was brought, one of the officers applied the AED's pads to Mr. Tolimir's chest, following the AED's instructions, while another officer continued with the chest compressions. Two officers were monitoring their colleagues' efforts and helped as needed. Shortly thereafter, another officer from the night shift as well as the UNDU Principal Officer arrived at the scene. Mr. Tolimir was unresponsive.

38. In the meantime, at approximately 8.21 pm, the UNDU officer who was observing the UNDU monitor from the officers' booth downstairs and saw Mr. Tolimir's fall called an ambulance and informed Dr. Falke, the UNDU Medical Officer, who was on call, that they were facing an emergency situation.

39. Two UNDU officers escorted the detainee who was present at the scene as well as two other detainees who were further down the corridor to their cells. The resuscitation efforts continued. At some stage the officer from the night shift replaced his colleague who was applying chest compressions on Mr. Tolimir.

40. Dr. Falke arrived at approximately 8.30 pm and supervised the UNDU officers who were trying to resuscitate Mr. Tolimir. He asked another officer to replace the one giving the chest compressions. Subsequently extra oxygen was brought. At 8.37 pm the first ambulance paramedic staff arrived. They asked the UNDU officers to continue their efforts to resuscitate Mr. Tolimir while they proceeded to set up their equipment. At 8.39 pm the UNDU Principal Officer called the transport police. At approximately 8.40 pm, when the ambulance paramedic staff were ready, they took over the reanimation efforts from the UNDU officers, using their own equipment. A UNDU officer helped by holding an insulin bag.

41. An ambulance paramedic inserted a tube into Mr. Tolimir's mouth and gave him oxygen. At approximately 8.44 pm the crew of the second ambulance arrived at the UNDU wing while the reanimation efforts continued.



42. At 9.09 pm Dr. Falke determined that Mr. Tolimir had passed away and asked the UNDU officers to take the body of Mr. Tolimir to his cell.

43. During my Inquiry, the UNDU officers explained that, as part of their general training, they had received first-aid training, including on chest compressions and on the operation of the AED. They all considered their training adequate. They had been duly informed about Mr. Tolimir's heart condition and his previous heart attacks. When Mr. Tolimir suffered a spasm and fell to the floor, the UNDU officers reacted as they had been trained to do and considered that their intervention was well co-ordinated and performed although they did not succeed in resuscitating Mr. Tolimir.

44. The detainee who used the telephone booth next to Mr. Tolimir at the time of the incident explained that he was well aware of Mr. Tolimir's precarious health situation since Mr. Tolimir had from time to time asked him for medical advice. The detainee, who had medical training, considered that the UNDU officers did everything that could be done in the circumstances.

45. The Autopsy Report, which describes the findings from the external and internal post-mortem examination, notes that injuries were found that were not related to the cause of death in the form of fractured ribs and sternum accompanied by haematoma, and states that "this was due to resuscitation measures". Dr. Falke explained that resuscitation, in particular when carried out with the Lucas automated resuscitation device, which was used by the ambulance paramedic staff during Mr. Tolimir's resuscitation, can cause rib injuries, and that, in Mr. Tolimir's case, it is also possible that the rib fractures he had suffered on 23 August 2015 had not yet fully healed.

46. It is my conclusion that the UNDU officers on duty were well-prepared and trained and adequately equipped for the medical emergency when Mr. Tolimir collapsed, and that their response was prompt, efficient, and well-coordinated. Within seconds following Mr. Tolimir's fall, UNDU officers attended to him and commenced resuscitation and within a few minutes other UNDU officers alerted the UNDU Medical Officer who was on call, the ambulance crews, and the Dutch transport police. Furthermore, the coordination between the UNDU and other services functioned expeditiously and smoothly. The UNDU Medical Officer was at the scene within 12 minutes, the ambulance crews, including a team of paramedics, within 16 and 23 minutes, respectively, and a fire department crew, required in the event that Mr. Tolimir would have to be evacuated from the UNDU on a stretcher, within 45 minutes. The resuscitation by the UNDU officers was continued under Dr. Falke's supervision and after the arrival of the ambulance paramedic staff, until the ambulance paramedics were ready to take over from the UNDU officers, which suggests that the UNDU officers' resuscitation efforts were adequately carried out.

## VI. MEDICAL TREATMENT OF MR. TOLIMIR

### (i) Cerebral Condition

47. It appears from the medical history information made available to me as well as from my interview of Dr. Falke that Mr. Tolimir had suffered several cerebrovascular incidents prior his transfer to the UNDU. Following his transfer to the UNDU he was diagnosed with brain aneurysm.

48. In the first years of his detention at the UNDU, Mr. Tolimir declined any medication but had a relatively healthy lifestyle and was in a good condition until his heart problems became acute in 2015. When he, eventually, agreed to see a neurologist from the Medical Centre Haaglander ("MCH") Bronovo he was informed that there was no treatment for his aneurysm.

49. On 23 August 2015, Mr. Tolimir fell in his cell as a result of a cardiac incident and suffered fractured ribs and internal bleeding in his head.

50. Mr. Tolimir was last seen by a neurologist and a specialist in geriatric medicine on 11 September 2015 at the Neurology Department of MCH Bronovo.

51. The post-mortem neuropathological examination showed pathological changes to his brain, including a long-standing giant aneurysm, which was unruptured. The overall conclusion of the report on pathological investigation was that "[i]t is unlikely that the pathological changes to the brain contributed to the death."

52. The detainee with medical training who witnessed the incident suggested that Mr. Tolimir's movements during the early part of the resuscitation were signs of a cerebral problem. Dr. Falke explained that the movements might indicate shortage of oxygen supply to the brain likely caused by heart failure and agreed with the conclusion of the Autopsy Report that it was unlikely that cerebral issues contributed to Mr. Tolimir's death.

### (ii) Cardiac Condition

53. According to the medical reports made available to me, in 2007 Mr. Tolimir was diagnosed with cardiac abnormalities by a specialist at the Cardiology Department at MCH Bronovo. It was however reported that "[t]he patient decline[d] additional diagnostics and medication."

54. On 28 January 2015, Mr. Tolimir was admitted to the Cardiology Department with atypical complaints. It seemed that he had suffered a cardiac arrest. On 30 January 2015, while still hospitalised, stents (artificial tubes) were implanted inside his coronary arteries to free the passage of blood to the heart.

55. On 1 July 2015, Mr. Tolimir was examined during an MCH policlinical visit to the UNDU and an echocardiogram was performed. It was reported that although previously Mr. Tolimir “did not want any treatment” the possibility to implant an ICD was discussed. An ICD is activated in the event of irregular heart rhythm, giving an electric shock to restore regular heart rhythm.

56. On 15 July 2015, Mr. Tolimir suffered another cardiac arrest while in physiotherapy at the UNDU. He was resuscitated successfully with the assistance of an automated external defibrillator, which restored normal heart rhythm. Mr. Tolimir was transferred for treatment to the Cardiology Department where, on 22 July 2015, he had an ICD implanted.

57. On 23 August 2015, Mr. Tolimir, while alone in his cell, suffered heart rhythm disorder, lost conscience and fell against a radiator and onto the floor. The ICD was activated and stabilised his heart rhythm. He was transferred to a hospital in Leiden for medical examination and treatment, which revealed that the ICD had also been activated two days earlier.

58. On 23 September 2015, at the UNDU, Mr. Tolimir suffered again a heart rhythm disorder followed by a cardiac arrest. He collapsed and was successfully resuscitated by UNDU officers and was transferred to MCH Westeinde for examination. He remained hospitalised until 29 September 2015.

59. According to Dr. Falke, in November 2015, Mr. Tolimir again suffered abnormal heart rhythm, the ICD was activated and normalised his heart rhythm. Mr. Tolimir called UNDU officers and was transferred to a hospital for examination. He was discharged the same day.

60. On 17 January 2016, Mr. Tolimir became unwell and was transferred to a hospital. The problems diagnosed were unrelated to his heart and cerebral conditions. He was discharged on the same day.

61. According to the relevant UNDU weekly reports, on the evening of 4 February 2016 Mr. Tolimir reported feeling dizzy. The UNDU Medical Officer instructed that Mr. Tolimir be checked every two hours.

62. On 8 February 2016, Mr. Tolimir collapsed at the UNDU and died.

(iii) Medication

63. It appears that since 2012 Mr. Tolimir accepted medication prescribed by UNDU medical staff or specialists. The post-mortem toxicology analysis (“Analysis”) only found substances in Mr. Tolimir’s blood consistent with the medication prescribed to him, including amiodarone which is a medication used to treat irregular heart rhythm.

64. The Analysis expresses concern with respect to the concentration of amiodarone found in Mr. Tolimir's blood, 9,3 mg/l in a sample of femoral blood and 8,2 mg/l in a sample of heart blood.

65. The Analysis states that "[t]he target therapeutic concentration of [a]miodarone in the blood is 0.5 to 2 mg/l. Toxic effects can occur when the concentration in the blood reaches approximately 2 mg/l and more. However, with (oral) administration of doses around 1,600 mg, maximum blood concentration in the blood around 5 mg/l were reported. Also shortly after intravenous administration, high or very high concentrations of amiodarone were reported (up to 18 mg/l) [...]. It is possible that in this case a higher dose of amiodarone was administered (recently) for medical reasons, as can happen in the context of resuscitation following cardiopulmonary shock. I cannot judge whether this medical decision was correct."

66. The medication log of the UNDU shows that from 31 July 2015 Mr. Tolimir received a 200 mg tablet of amiodarone once daily, and from 7 October 2015 a 200 mg tablet twice daily. On 8 February 2016, he received a 200 mg tablet of amiodarone at 8 am and another at 6 pm, about 2 hours 18 minutes before his collapse.

67. The CCTV recording of the resuscitation efforts shows that during the resuscitation of Mr. Tolimir one of the ambulance paramedics gave Mr. Tolimir an injection.

68. Dr. Falke explained that the ambulance paramedics receive extensive training in resuscitation and are very experienced in resuscitation efforts. It is common practice to administer amiodarone during resuscitation efforts. He also confirmed that during the effort to resuscitate Mr. Tolimir additional amiodarone was administered. The high concentration of amiodarone found in Mr. Tolimir's blood post-mortem is consistent with Dr. Falke's statement and my observation from the CCTV recording and allows me to conclude that during the resuscitation effort amiodarone was administered.

(iv) Concluding Remarks

69. It appears from the medical records that Mr. Tolimir's health since his transfer to the UNDU in June 2007 had been closely monitored by the UNDU Medical Officer, that Mr. Tolimir had been attended by external specialists when required, that, following acute serious incidents he was promptly transferred to hospitals for investigation and that he received adequate treatment.

70. I consider that a satisfactory explanation has been given for the high concentration of amiodarone found in Mr. Tolimir's blood post-mortem, and that there is no indication of error as to the medications he received.

71. I also note that Ms. Tolimir and Mr. Gajić, in their comments make no criticism of Mr. Tolimir's treatment by the specialists and hospitals in The Netherlands, and that Mr. Tolimir in his request for provisional early release did not argue that he could get better medical treatment in Serbia, but rather that he could get adequate treatment in Serbia.

72. Mr. Gajić complains in his statement that, on one occasion, Mr. Tolimir was not allowed to meet with Serbian doctors who visited the UNDU. In this respect, the Deputy Registrar and the UNDU commander explained that, pursuant to Rule 31 of the UNDU Rules of Detention, detainees have a right to be examined by a doctor of their choice at their own expense and that all such consultations must be made by prior arrangement with the Commanding Officer as to the time and duration of the consultation and shall be subject to security controls as necessary to ensure the security and good order of the UNDU. Furthermore, the notice given must allow the UNDU time to produce the medical records and the visiting doctor time to familiarize him - or herself with the records before the consultation. From 29 to 31 October 2014 a team of Serbian doctors visited the UNDU and the ICTY in order to examine two detainees. These examinations took place on 29 and 30 October 2014. On 31 October 2014 at 1.15 pm., when the team of doctors attended a meeting with the ICTY Registry at the premises of the ICTY, Mr. Tolimir requested to see one of the doctors. However, Mr. Tolimir's request could not be accommodated on such short notice as the medical team was no longer at the UNDU and was about to depart from the Netherlands.

73. Based on the foregoing, it is my conclusion that, during his detention at the UNDU, Mr. Tolimir was able to enjoy the same standards of health care that are available in the community of the host State.

(v) Somatic Care and Monitoring

74. It appears that, following Mr. Tolimir's transfer to the UNDU, the UNDU Medical Officer put Mr. Tolimir on a regime of night monitoring with half-hour checks to ensure a prompt response in the event that Mr. Tolimir would suffer a cerebral stroke. Mr. Tolimir complained about this monitoring regime to the ICTY Pre-Trial Judge and subsequently to the ICTY Trial Chamber. The regime was continued until the ICTY Trial Chamber ordered on 1 September 2010 that the monitoring be discontinued after Mr. Tolimir had signed a waiver in which he confirmed his refusal to be monitored through nightly checks.

75. In July 2015, after Mr. Tolimir's second cardiac arrest, Dr. Falke ordered that Mr. Tolimir be checked every two hours.

76. In September 2015, after his fall, Mr. Tolimir was provided with a walking frame and a shower chair.

77. In October 2015, the UNDU officers were instructed to be watchful as to specific behaviour and symptoms that could suggest that Mr. Tolimir might require medical attention.

78. In November 2015, Mr. Tolimir received a hospital bed equipped with a bed raiser and grab rails and a panic button was installed next to his bed.

79. In the same month, considering that cardiac incidents appeared to coincide with family visits, Dr. Falke ordered that Mr. Tolimir be monitored during family visits.

80. When Mr. Tolimir was discharged from the hospitals after examination and, where necessary, treatment, he was taken for rehabilitation at the Judicial Centre for Somatic Care ("JCSC") located within the host prison compound before being returned to the UNDU.

81. In a status report of 9 December 2015, the Reporting Medical Officer concluded:

"Although Mr. Tolimir's physical and mental condition has been stable over the last month, we can expect more cardiac and/or cerebral events to occur over time. Each new incident will require immediate extra medical and nursing care. The overall effect of each event on his medical condition is likely to be deleterious. In particular, his current level of ability to perform the daily activities of life is likely to be adversely affected."

82. As Mr. Tolimir's condition worsened and considering that he had been provided with all facilities that could be made available to a detainee in fragile condition within a detention unit and that regular hospitals discharge patients as soon as the required examination and treatment have been completed, it was discussed at meetings between the Registry, the UNDU Commander and Dr. Falke whether to transfer Mr. Tolimir permanently to a private room at the JCSC pending his transfer to a State of enforcement.

83. Dr. Falke advised against such a transfer, considering that at the JCSC Mr. Tolimir would be isolated from other detainees, that he was well monitored at the UNDU, and that it would be more comforting for him to stay at the UNDU in the company of his fellow detainees. Dr. Falke discussed the matter with Mr. Tolimir who categorically opposed a permanent transfer to the JCSC. Mr. Tolimir, therefore, remained at the UNDU.

(vi) Concluding Remarks

a. Night Monitoring

84. In their statements, Ms. Tolimir and Mr. Gajić are very critical of the night monitoring which was in place from 2007 to September 2010, which they find medically unjustified. They suggest that it could have caused a deterioration of Mr. Tolimir's condition.

85. I note that the monitoring was based on a clinical decision made by the UNDU Medical Officer and, thus, could not be overruled or disregarded by the non-medical detention authorities. As the night monitoring was subject to judicial review, it falls outside the scope of this Inquiry. In addition, I note that Mr. Tolimir's subsequent medical history does not support the suggestion that the monitoring caused a deterioration of his health.

b. Cardiac Arrest During Physiotherapy

86. Ms. Tolimir submits that Mr. Tolimir's cardiac arrest in July 2015, which took place during a physiotherapy session at the UNDU, was caused by the physiotherapist increasing the speed of the treadmill on which Mr. Tolimir was exercising.

87. Dr. Falke explained that the UNDU offers physiotherapy to rehabilitate detainees with cardiac problems. Mr. Tolimir's cardiac condition had been stable since the intervention in January 2015 without any signs of dysfunction and that, therefore, it was considered safe to offer physiotherapy.

88. I have no basis to conclude that the cardiac incident in July 2015 was attributable to negligence.

c. Monitoring During Family Visits

89. Ms. Tolimir and Mr. Gajić criticise Dr. Falke's decision that Mr. Tolimir be monitored during family visits. They suggest that it was unjustified and that it could have impacted negatively on Mr. Tolimir's health.

90. It appears from the Mechanism's records that Mr. Tolimir complained to the Registrar and to the President of the Mechanism. The monitoring was then adjusted so as to minimise any inconvenience to Mr. Tolimir and his guests, but was otherwise upheld.

91. Whereas I understand the concern of Mr. and Ms. Tolimir for their privacy, I note that the monitoring was based on a clinical decision taken by the UNDU Medical Officer and I have no basis to conclude that it had an adverse effect on Mr. Tolimir's health.

92. Based on the foregoing, I am satisfied that Mr. Tolimir received adequate somatic care within the confines of the UNDU. I reiterate that the possibility of a transfer to the JCSC was discussed with Mr. Tolimir who indicated that he preferred to stay at the UNDU pending his removal to an enforcement state.

(vii) Other Issues

93. Ms. Tolimir and Mr. Gajić claim that Mr. Tolimir did not complain about the issues raised because of fear of losing privileges at the UNDU.

94. In this respect, the ICTY Deputy Registrar and the UNDU Commander confirmed that detainees have a right to complain about the conditions of their detention at the UNDU without fear of repercussions and that Mr. Tolimir had exercised this right on a number of occasions. All complaints were duly recorded and processed and Mr. Tolimir suffered no adverse consequence related to his complaints.

95. In addition, it appears that Mr. Tolimir complained about the night monitoring but Ms. Tolimir and Mr. Gajić have not pointed to any privilege that Mr. Tolimir did not receive or lose as a result. At my site visit to the UNDU, I noted that he had an extra cell at his disposal where he could keep his case records and work on his case. I have found no basis to support the suggestions that Mr. Tolimir feared or had reason to fear losing privileges if he complained.

(viii) Transfer of Mr. Tolimir to a State of Enforcement

96. Mr. Gajić criticises the Registry's handling of Mr. Tolimir's transfer to a State of enforcement, including that Dr. Falke in July 2015 would have given incorrect information to the contemplated State of enforcement, indicating that Mr. Tolimir's condition was stable, that a detention facility in the proximity of an adequate peripheral hospital was sufficient, and underestimating the cost related to his future medical care.

97. Dr. Falke explained that Mr. Tolimir's condition had been stable for a long period when the referenced information was given. When his condition worsened, updated information on his health was forwarded to the contemplated State of enforcement.

98. The ICTY Deputy Registrar explained that the process involved in the transfer of a convicted person to a State of enforcement is very time consuming. In recent years, the Registry has succeeded in shortening the time from final judgement to transfer by initiating the process, subject to the outcome of the appeal, from the time of the trial judgement. In Mr. Tolimir's case, one of the complications was to identify a State with detention facilities that could accommodate Mr. Tolimir's health needs. Another complication was that the State contemplated for enforcement in Mr. Tolimir's case is a federal State, requiring negotiations both at the federal and local levels.

99. I have found no basis to support the suggestion that the Registry has not handled the preparation for Mr. Tolimir's transfer to a State of enforcement in a correct and expeditious manner.



(ix) Provisional Release

100. Mr. Gajić, in his statement, details the basis for the request he filed on behalf of Mr. Tolimir for provisional release to the care of his wife in Serbia.

101. I note that the matter was decided by the Appeals Chamber of the Mechanism and, therefore, it is outside the scope of this Inquiry.

(x) The Health Care System at the UNDU

102. The UNDU Medical Officer reported that health care at the UNDU is provided by the UNDU Medical Service, which consists of the Medical Officer, the Deputy Medical Officer, two reporting medical officers, a psychologist, and two nurses. The Medical Service provides detainees with basic healthcare, psychological support, and emergency services. Detainees benefit from regular consultations with specialists in Dutch hospitals as required. In addition, they have the right to consult a specialist of their own choice.

103. With regard to the provision of emergency services, all UNDU officers are regularly trained on cardiopulmonary resuscitation and using the AED.

104. A detainee with medical training whom I interviewed in relation to Mr. Tolimir's death criticised the medical care available at the UNDU. He suggested that there should be a nurse on duty 24-hours a day.

105. I discussed this matter and the general health care system with the ICTY Deputy Registrar, the UNDU Commander, and Dr. Falke. I was informed that they are alert to the challenges that the ageing detainee population at the UNDU presents.

106. At present, there are two nurses working for the UNDU. They work from nine to five o'clock each day and no nurse is present at the UNDU in the evening. However, the detention officers have been trained in first aid. There are emergency procedures in place, including a medical officer on call. The JCSE is situated in the same compound as the UNDU.

107. The UNDU is subject to the general supervision of the health authorities of the Netherlands who check the physical conditions of detention as well as the systems and facilities at the UNDU.

108. The International Committee of the Red Cross ("ICRC") conducts a general inspection of the UNDU once a year and, with longer intervals, conducts an inspection by medical specialists. The ICRC inspectors interview all detainees who agree to meet with them. Following these

inspections, the ICRC submits confidential reports to the Presidents of the Mechanism and the ICTY with their observations and recommendations.

109. As explained above, the detainees have a right to be seen by doctors of their own choice.

110. In 2015, external internationally recognized experts were appointed to conduct an independent evaluation of the medical treatment available to UNDU detainees. Their reports concluded that the medical care available to UNDU detainees was “of excellent quality”, “probably optimal”, and “entirely in accordance with national and international guidelines”.

111. Based on the foregoing, I am satisfied that the health care system at the UNDU is adequate.

## VII. FINDINGS

112. As noted above, Mr. Tolimir died as a consequence of heart disease.

113. No reason for concern was identified in the efforts to resuscitate Mr. Tolimir. In fact, the conduct of the UNDU staff involved in the incident of 8 February 2016 was commendable.

114. In addition, I am satisfied that the provision of healthcare to Mr. Tolimir, particularly as to his heart disease that ultimately led to his death, has been adequate. It is my conclusion that during his detention at the UNDU, Mr. Tolimir was able to enjoy the same standard of healthcare as that available in the community of the host State.

115. I am further satisfied that the Registry’s efforts to relocate Mr. Tolimir to a suitable State where he could serve the remainder of his sentence were irreproachable.

  
Judge Vagn Joensen  
The Hague, The Netherlands  
7 September 2016