

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-52-ES.2

Date: 17 October 2024

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Graciela Gatti Santana, President

**Registrar:** Mr. Abubacarr M. Tambadou

**Decision of:** 17 October 2024

**PROSECUTOR**

v.

**SREDOJE LUKIĆ**

*PUBLIC REDACTED VERSION*

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**DECISION ON THE APPLICATION  
FOR EARLY RELEASE OF SREDOJE LUKIĆ**

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**Mr. Sredoje Lukić**

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of a notification and supporting documents received from the Kingdom of Norway (“Norway”) in relation to the possible early release of Mr. Sredoje Lukić (“Lukić” and “Application”, respectively).<sup>1</sup>

## I. BACKGROUND

2. On 16 September 2005, after being at large for nearly seven years, Lukić was transferred from Republika Srpska, Bosnia and Herzegovina, to the detention unit of the International Criminal Tribunal for the former Yugoslavia (“ICTY”).<sup>2</sup> At his further initial appearance before the ICTY on 13 February 2006, Lukić pleaded not guilty to all charges against him.<sup>3</sup>

3. On 20 July 2009, Trial Chamber III of the ICTY (“Trial Chamber”) convicted Lukić, pursuant to Article 7(1) of the Statute of the ICTY, of murder, persecution, and other inhumane acts as crimes against humanity, and murder and cruel treatment as violations of the laws or customs of war.<sup>4</sup> Lukić was sentenced to 30 years of imprisonment.<sup>5</sup>

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<sup>1</sup> Internal Memorandum from the Registrar of the Mechanism (“Registrar”) to the President, dated 2 May 2023 (confidential) (“Registrar Memorandum of 2 May 2023”), *transmitting* a letter from the Royal Norwegian Ministry of Justice and Public Security to the Registrar, dated 27 March 2023 and received on 26 April 2023 (“Norwegian Ministry of Justice and Public Security Letter of 27 March 2023”), *conveying*: (i) a letter from the Norwegian Directorate of Correctional Service to the Registrar, dated 28 February 2023 (“Norwegian Directorate of Correctional Service Letter”); (ii) a letter from the Norwegian Correctional Service, Region South, to the Norwegian Directorate of Correctional Service, dated 23 January 2023 (“Norwegian Correctional Service Letter of 23 January 2023”); (iii) a letter from the Norwegian Correctional Service, [REDACTED], to the Norwegian Correctional Service, Region South, Regional Office, dated 24 November 2022, including an attestation from the doctor of the [REDACTED], concerning Lukić, dated 23 November 2022 (“Medical Attestation”); (iv) a letter from the Norwegian Correctional Service, [REDACTED], to the Norwegian Correctional Service, Region South, dated 17 November 2022, including a letter from Lukić to the [REDACTED], dated 16 November 2022 (“Lukić Letter of 16 November 2022”); (v) a letter from the Norwegian Correctional Service, [REDACTED], to the Norwegian Correctional Service, Region South, Regional Office, dated 1 November 2022 (“Norwegian Correctional Service Letter of 1 November 2022”); (vi) a statement in connection with Lukić’s application for release on probation, dated 25 October 2022 (“Statement”); (vii) Lukić’s application for release on probation, dated 17 October 2022; (viii) Norwegian Act Relating to the Execution of Sentences. I use the term “Application” in the present decision to refer to the notification and supporting documents received from Norway, 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.4, 1 July 2024 (“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, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020. The revisions in the latest Practice Direction have no impact on the consideration of this Application and, unless otherwise indicated, reference will be made to the current version.

<sup>2</sup> *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Judgement, 20 July 2009 (“Trial Judgement”), para. 1107; ICTY Press Release, Transfer of Sredoje Lukić, 16 September 2005, <https://www.icty.org/en/press/transfer-sredoje-lukic>.

<sup>3</sup> Trial Judgement, para. 1138; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, Transcript of 13 February 2006, pp. 20-21.

<sup>4</sup> Trial Judgement, paras. 1104-1105.

<sup>5</sup> Trial Judgement, para. 1106.

4. On 4 December 2012, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*: (i) reversed, in part, Lukić’s convictions with respect to certain incidents; (ii) affirmed the remainder of his convictions; and (iii) reduced his sentence to 27 years of imprisonment.<sup>6</sup>
5. On 21 August 2013, Lukić was transferred to Norway to serve the remainder of his sentence.<sup>7</sup>

## II. APPLICATION

6. On 2 May 2023, the Registrar transmitted to me the Application, in which Norway notifies the Mechanism that, under Norwegian law, Lukić will become eligible for release on probation on 15 September 2023 and that the Norwegian authorities support his release on probation.<sup>8</sup> The Application indicates that Lukić would reside in [REDACTED], Republic of Serbia (“Serbia”), if released early.<sup>9</sup>
7. On 26 May 2023, the Mechanism informed Norway that it intended to file the Application confidentially on the judicial record in this case and inquired whether the Norwegian authorities would have any objections to submitting a public redacted version of the Application.<sup>10</sup> On the

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<sup>6</sup> *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement, 4 December 2012 (“Appeal Judgement”), paras. 637, 672.

<sup>7</sup> ICTY Press Release, Sredoje Lukić transferred to Norway to serve sentence, 26 August 2013, <https://www.irmct.org/en/news/sredoje-luki%C4%87-transferred-norway-serve-sentence>; *Prosecutor v. Sredoje Lukić*, Case No. IT-98-32/1-ES.1, Order Designating State in Which Sredoje Lukić is to Serve his Sentence, 29 January 2013, p. 2.

<sup>8</sup> Registrar Memorandum of 2 May 2023, paras. 1-2. *See* Letter from the Royal Norwegian Ministry of Justice and Public Security to the Registrar, dated 19 December 2023 (“Norwegian Ministry of Justice and Public Security Letter of 19 December 2023”), p. 1; Norwegian Ministry of Justice and Public Security Letter of 27 March 2023, pp. 1-2; Norwegian Directorate of Correctional Service Letter, pp. 1, 3; Norwegian Correctional Service Letter of 23 January 2023, pp. 1-2; Norwegian Correctional Service Letter of 1 November 2022, pp. 1, 4; Statement, pp. 1, 7. *See also* Registrar Memorandum of 2 May 2023, paras. 1-2.

<sup>9</sup> Internal Memorandum from the Registrar to the President, dated 4 April 2024 (confidential), *transmitting* a Letter from the Royal Norwegian Ministry of Justice and Public Security, dated 2 April 2024 (“Norwegian Ministry of Justice and Public Security Letter of 2 April 2024”), *conveying* a forensic psychiatric statement/risk assessment, dated 14 February 2024 (“Psychiatric Report”), p. 6; Norwegian Ministry of Justice and Public Security Letter of 27 March 2023, p. 1; Norwegian Directorate of Correctional Service Letter, pp. 2-3; Norwegian Correctional Service Letter of 23 January 2023, pp. 1-2, 4; Norwegian Correctional Service Letter of 1 November 2022; Statement, pp. 1, 7. The Psychiatric Report notes, on one occasion, that Lukić’s stated intention was to reside in [REDACTED] in the Republic of Bosnia and Herzegovina (“Bosnia and Herzegovina”) if released early. *See* Psychiatric Report, p. 9. However, elsewhere the Psychiatric Report aligns with the information provided by the Norwegian authorities, confirming Lukić’s desire to reside in [REDACTED], Serbia, if released early. *See* Psychiatric Report, p. 6. As stated below, a convicted person who intends to return to the region where his or her crimes were committed before serving his or her full sentence will ordinarily have to demonstrate a greater degree of rehabilitation. *See infra* para. 50.

<sup>10</sup> *Note verbale* from the Mechanism to the Embassy of Norway to the Kingdom of the Netherlands (“Netherlands”), dated 26 May 2023 (confidential), p. 1. The Application was filed confidentially on the judicial record in this case on 22 September 2023. Unless otherwise indicated, reference will be made to the confidential version of the Application. *See* Registrar’s Submission of a Communication Received from the Kingdom of Norway, 22 September 2023 (confidential), Annex. *See also* Internal Memorandum from the President to the Registrar, dated 22 August 2023 (confidential), para. 3.

same day, I asked the Registry of the Mechanism (“Registry”) to take the steps foreseen in paragraphs 9(a) and (c) of the Practice Direction (MICT/3/Rev.3).<sup>11</sup>

8. On 6 July 2023, I requested the Registry to, *inter alia*, obtain, as soon as possible, the information enumerated in paragraph 10(b) – only with regard to any psychiatric or psychological evaluations prepared on Lukić’s mental condition – and paragraph 10(e) of the Practice Direction (MICT/3/Rev.3).<sup>12</sup> I also solicited, in accordance with paragraph 10(f) of the Practice Direction (MICT/3/Rev.3): (i) information on the victims of the crimes for which Lukić was convicted and who testified in his case;<sup>13</sup> (ii) information regarding the existence of any relevant victims’ associations or other groups in relation to the crimes for which Lukić was convicted;<sup>14</sup> and (iii) any media reports concerning Lukić that had been published in the region of the former Yugoslavia in the past two years.<sup>15</sup>

9. On 27 July 2023, the Registrar conveyed to me a memorandum from the Office of the Prosecutor of the Mechanism (“Prosecution”) dated the same day, providing its comments and information in relation to the Application.<sup>16</sup>

10. On 17 August 2023, Norway responded that it had no objections to the Mechanism’s proposal of submitting a public redacted version of the Application and that it would revert to the Mechanism regarding the request for a psychiatric or psychological evaluation prepared on Lukić’s mental condition.<sup>17</sup>

11. On 17 October 2023, the Registrar provided me with a compilation of media reports concerning Lukić that had been published in the region of the former Yugoslavia in the past two years.<sup>18</sup>

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<sup>11</sup> Internal Memorandum from the President to the Registrar, dated 26 May 2023 (confidential), para. 3.

<sup>12</sup> Internal Memorandum from the President to the Registrar, dated 6 July 2023 (confidential) (“President Memorandum of 6 July 2023”), para. 3.

<sup>13</sup> President Memorandum of 6 July 2023, para. 4.

<sup>14</sup> President Memorandum of 6 July 2023, para. 4.

<sup>15</sup> President Memorandum of 6 July 2023, para. 5.

<sup>16</sup> Internal Memorandum from the Registrar to the President, dated 27 July 2023 (confidential), *transmitting* an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Officer-in-Charge, Registry, Hague branch, dated 27 July 2023 (confidential redacted) (“Prosecution Memorandum”). I note that Annex A to the Prosecution Memorandum contains a list of victims’ associations.

<sup>17</sup> *Note verbale* from the Embassy of Norway to the Netherlands to the Mechanism, dated 17 August 2023 (confidential), p. 1. *See also Note verbale* from the Mechanism to the Embassy of Norway to the Netherlands, dated 28 July 2023 (confidential), p. 1; President Memorandum of 6 July 2023, para. 2.

<sup>18</sup> Internal Memorandum from the Registrar to the President, dated 17 October 2023 (confidential), *transmitting* an Internal Memorandum from the External Relations Officer, Hague branch, to the Registrar, dated 17 October 2023 (“External Relations Office Memorandum of 17 October 2023”).

12. On 24 November 2023, the Registrar forwarded to me a memorandum from the Witness Support and Protection Unit of the Mechanism (“WISP”) dated the same day, conveying strictly confidential information related to the witnesses who provided evidence against Lukić or testified in his case.<sup>19</sup>

13. On 29 November 2023, the Registrar communicated to me a memorandum from the External Relations Office, Hague branch, submitting a list of relevant victims’ associations in relation to the crimes for which Lukić was convicted.<sup>20</sup>

14. On 26 January 2024, the Registrar transmitted to me a public version of the Application.<sup>21</sup> After clarification and approval by the Norwegian authorities, this public version was filed on the judicial record in this case on 4 March 2024.<sup>22</sup>

15. On 20 March 2024, I invited the Serbian authorities to, *inter alia*: (i) provide any views that they may wish to offer with regard to the public version of the Application and Lukić’s indication that he would reside in [REDACTED], Serbia, if released early; and (ii) indicate whether they are willing and able to monitor any conditions imposed by the Mechanism in the event of an early release in this case and to provide guarantees to this effect.<sup>23</sup>

16. On the same day, I requested the Registry to contact the victims’ associations listed in the Prosecution Memorandum and the External Relations Office Memorandum of 29 November 2023, and invite them to share their views on the public version of the Application and Lukić’s indication that he would reside in [REDACTED], Serbia, if released early.<sup>24</sup>

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<sup>19</sup> Internal Memorandum from the Registrar to the President, dated 24 November 2023 (strictly confidential) (“Registrar Memorandum of 24 November 2023”), *transmitting* an Internal Memorandum from the Head of WISP to the Registrar, dated 24 November 2023 (strictly confidential) (“WISP Memorandum”), paras. 1, 3-5. The Registrar noted that this strictly confidential information should not be made available to Lukić or the Prosecution. *See* Registrar Memorandum of 24 November 2023, para. 2.

<sup>20</sup> Internal Memorandum from the Registrar to the President, dated 29 November 2023 (confidential), *transmitting* an Internal Memorandum from the External Relations Officer, Hague branch, to the Registrar, dated 29 November 2023 (“External Relations Office Memorandum of 29 November 2023”).

<sup>21</sup> Internal Memorandum from the Registrar to the President, dated 26 January 2024 (confidential), *transmitting* Norwegian Ministry of Justice and Public Security Letter of 19 December 2023. *See* Letter from the Registrar to the Ambassador of Norway to the Netherlands, dated 6 December 2023 (confidential). *See also* Internal Memorandum from the President to the Registrar, dated 9 November 2023 (confidential) (“President Memorandum of 9 November 2023”), para. 6; Internal Memorandum from the President to the Registrar, dated 10 October 2023 (confidential) (“President Memorandum of 10 October 2023”), para. 5.

<sup>22</sup> Registrar’s Submission of a Communication Received from the Kingdom of Norway, 4 March 2024, Annex. *See also* Internal Memorandum from the President to the Registrar, dated 1 March 2024 (confidential) (“President Memorandum of 1 March 2024”), para. 2.

<sup>23</sup> Invitation to the Republic of Serbia Related to the Application for Early Release of Sredoje Lukić, 20 March 2024 (confidential and *ex parte*), p. 2.

<sup>24</sup> Internal Memorandum from the President to the Registrar, dated 20 March 2024 (confidential) (“President Memorandum of 20 March 2024”), paras. 1-2.

17. On 3 April 2024, in response to my invitation, I received a *note verbale* from the Embassy of Serbia to the Netherlands dated the same day, conveying a letter addressed to me from the Minister of Justice of Serbia, dated 28 March 2024.<sup>25</sup>
18. On 4 April 2024, the Registrar provided me with a forensic psychiatric statement/risk assessment prepared on Lukić's mental condition.<sup>26</sup>
19. On 25 April 2024, the Registrar forwarded to me the responses received from three of the victims' associations that had been contacted ("Victims' Associations").<sup>27</sup>
20. On 17 May 2024, I asked the Registrar to provide all relevant materials received in relation to the Application, with the exception of Annex A to the Prosecution Memorandum and the WISP Memorandum, to Lukić for his comments in accordance with paragraph 12 of the Practice Direction (MICT/3/Rev.3).<sup>28</sup> On 28 June 2024, the Office of the Registrar informed my Office that the relevant materials received in relation to the Application had been provided to Lukić,<sup>29</sup> who had until 12 July 2024 to respond. To date, Lukić has not submitted any comments.
21. With regard to the Application, I have consulted with Judge Carmel Agius and Judge Liu Daqun in their capacity as Judges of the sentencing Chamber on appeal,<sup>30</sup> in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism ("Rules") and paragraph 16 of the Practice Direction.

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<sup>25</sup> *Note verbale* from the Embassy of Serbia to the Netherlands, dated 3 April 2024, conveying a Letter from the Minister of Justice of Serbia, dated 28 March 2024 ("Serbian Minister of Justice Letter"). The *note verbale* and the letter were filed on the judicial record in this case on 18 April 2024. See *Note verbale* from the Embassy of the Republic of Serbia to the Kingdom of the Netherlands, 18 April 2024 (confidential and *ex parte*), Annex. I note that, on 11 September 2024, I received a *note verbale* from the Embassy of Serbia to the Netherlands dated 4 September 2024, conveying the same Serbian Minister of Justice Letter.

<sup>26</sup> Internal Memorandum from the Registrar to the President, dated 4 April 2024 (confidential), transmitting a Letter from the Royal Norwegian Ministry of Justice and Public Security, dated 2 April 2024 ("Norwegian Ministry of Justice and Public Security Letter of 2 April 2024"), conveying a forensic psychiatric statement/risk assessment, dated 14 February 2024 ("Psychiatric Report"). See President Memorandum of 1 March 2024, para. 4; President Memorandum of 9 November 2023, para. 6; President Memorandum of 10 October 2023, para. 5.

<sup>27</sup> Internal Memorandum from the Registrar to the President, dated 25 April 2024 (confidential), transmitting: (i) a letter from the President of the Association of Camp Inmates of Bosnia and Herzegovina, dated 15 April 2024 ("President of the Association of Camp Inmates of Bosnia and Herzegovina Letter"); (ii) a letter from the President of the Association of Victims and Witnesses of Genocide, dated 16 April 2024 ("President of the Association of Victims and Witnesses of Genocide Letter"); (iii) a letter from the President of the Association of "Women Victims of War", dated 18 April 2024 ("President of the Association of "Women Victims of War" Letter of 18 April 2024"); and (iv) a letter from the President of the Association of "Women Victims of War", dated 23 April 2024 ("President of the Association of "Women Victims of War" Letter of 23 April 2024"). I note that the President of the Association of "Women Victims of War" Letter of 23 April 2024 was received after the two-week deadline specified in the President Memorandum of 20 March 2024, but consider it appropriate for this communication to be taken into account, particularly because this has not impacted the timeline for adjudicating the Application.

<sup>28</sup> Internal Memorandum from the President to the Registrar, dated 17 May 2024 (confidential), para. 2.

<sup>29</sup> Email communication from the Office of the Registrar to the Office of the President, dated 28 June 2024.

<sup>30</sup> See generally Appeal Judgement.

### III. APPLICABLE LAW

22. According to Article 25(2) of the Statute of the Mechanism (“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.

23. Pursuant to Article 26 of the 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.

24. 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.

25. Rule 150 of the Rules states, *inter alia*, that the President shall, upon such notice or receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate.

26. 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 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.

27. Paragraph 3 of the Practice Direction stipulates 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.

28. Paragraph 10 of the Practice Direction indicates that the President may collect information, directly or through the Registry, which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 12 of the Practice Direction provides that, once all information requested has been received, the President shall

communicate, directly or through the Registry, relevant information to the convicted person in a language that he or she understands. Paragraph 13 of the Practice Direction states that the convicted person shall then be given 14 days to examine the information, following which he or she may provide any written submissions in response.

29. Paragraph 19 of the Practice Direction states 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. Paragraph 20 of the Practice Direction outlines that, if early release is granted, it may be subject to conditions.

30. The enforcement agreement between Norway and the United Nations,<sup>31</sup> which applies *mutatis mutandis* to the Mechanism,<sup>32</sup> provides in Article 3(4) that the President shall determine whether early release is appropriate and if the President determines that this is not appropriate, Norway shall act accordingly.

## IV. ANALYSIS

### A. Eligibility

31. Previous decisions have determined that 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 notification from the relevant enforcement State or a direct petition by the convicted person.<sup>33</sup> Further, serving two-thirds of a sentence has been described by the Mechanism’s jurisprudence as being “in essence, an admissibility threshold”.<sup>34</sup>

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<sup>31</sup> Agreement between the Government of Norway and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, 24 April 1998.

<sup>32</sup> See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

<sup>33</sup> *Prosecutor v. Matthieu Ngirumpatse*, Case No. MICT-14-73-ES.2, Decision on the Application for Commutation of Sentence or Early Release of Matthieu Ngirumpatse, 9 October 2024 (public redacted), para. 22; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision on the Application for Early Release of Dragoljub Kunarac, 22 July 2024 (“*Kunarac Decision*”), para. 26; *Prosecutor v. Stojan Župljanin*, Case No. MICT-13-53-ES.1, Decision on the Application for Early Release of Stojan Župljanin, 18 January 2024 (public redacted) (“*Župljanin Decision*”), para. 26.

<sup>34</sup> *Kunarac Decision*, para. 26; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on the Application for Early Release of Dominique Ntawukulilyayo, 15 July 2024 (public redacted) (“*Ntawukulilyayo Decision*”), para. 26; *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) (“*Bisengimana Decision*”), para. 19.



32. Lukić served two-thirds of his sentence on 12 September 2023<sup>35</sup> and is therefore eligible to be considered for early release before the Mechanism.

## **B. General Standards for Granting Early Release**

33. According to the Mechanism’s jurisprudence, a convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered for early release and not entitled to such release.<sup>36</sup> Against this backdrop, it is therefore necessary for me, in determining whether early release is appropriate, to analyse and consider the convicted person’s current situation, taking into account the non-exhaustive list of factors set out in Rule 151 of the Rules.<sup>37</sup> In this regard, the mere passage of time cannot constitute sufficient grounds for early release.<sup>38</sup>

### 1. Gravity of Crimes

34. In my opinion, the early release of persons convicted by the ICTR, the ICTY, or the Mechanism for genocide, crimes against humanity, or war crimes should be exceptional.<sup>39</sup>

35. In relation to the gravity of crimes, past decisions have established that: (i) as a general rule, a sentence should be served in full given the gravity of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, unless it can be demonstrated that a convicted person should be granted early release; (ii) while 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; (iii) the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be; and (iv) while the gravity of the crimes cannot be seen as depriving a convicted person of an opportunity to argue his or her case, it may be said to determine the threshold that the arguments in favour of early release must reach.<sup>40</sup>

36. As established by the Trial Chamber and upheld on appeal, on 14 June 1992, Lukić was among a group of armed men present at the house of Jusuf Memić on Pionirska Street (“Memić House”) in Višegrad town, Bosnia and Herzegovina, where at least 66 Muslim civilians from the

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<sup>35</sup> Internal Memorandum from the Registrar to the President, dated 13 December 2023 (confidential), Annex, p. 5.

<sup>36</sup> *Kunarac* Decision, para. 30; *Župljanin* Decision, para. 28; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 24.

<sup>37</sup> *Kunarac* Decision, para. 30; *Župljanin* Decision, para. 28; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (public redacted) (“*Krstić* Decision”), para. 32.

<sup>38</sup> *Kunarac* Decision, para. 30; *Prosecutor v. Bruno Stojić*, Case No. MICT-17-112-ES.3, Decision on the Application for Early Release of Bruno Stojić, 17 January 2024 (public redacted) (“*Stojić* Decision”), para. 100.

<sup>39</sup> *Kunarac* Decision, para. 31; *Župljanin* Decision, para. 29; *Krstić* Decision, para. 33.

<sup>40</sup> *Kunarac* Decision, para. 32; *Župljanin* Decision, para. 30; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted), para. 39.

villages of Koritnik and Sase (“Koritnik Group”) were held, robbed at gunpoint, and subjected to other criminal acts.<sup>41</sup> It was determined that, subsequently, Lukić came back with a group of armed men and transferred the Koritnik Group from the Memić House to the nearby house of Adem Omeragić on Pionirska Street (“Transfer” and “Omeragić House”, respectively), which was later set on fire, killing 53 people (“Pionirska Street Incident”).<sup>42</sup>

37. Lukić was convicted of aiding and abetting the crimes of persecution and other inhumane acts as crimes against humanity, murder both as a crime against humanity and a violation of the laws or customs of war, as well as cruel treatment as a violation of the laws or customs of war.<sup>43</sup> However, he was not found to have participated in setting the Omeragić House on fire or shooting at its windows as the persons attempted to escape.<sup>44</sup>

38. As established by the Trial Chamber and affirmed on appeal, through his armed presence at the Memić House and his participation in the Transfer to the Omeragić House, Lukić provided practical assistance in respect of the crimes of other inhumane acts as a crime against humanity, and cruel treatment as a violation of the laws or customs of war.<sup>45</sup> With regard to the Omeragić House, it was concluded that Lukić knew that the survivors of the fire were subjected to serious mental and physical suffering, and that his acts and conduct facilitated the commission of the crimes of other inhumane acts as a crime against humanity, and cruel treatment as a violation of the laws or customs of war.<sup>46</sup>

39. As also found by the Trial Chamber and confirmed on appeal, by his armed presence at the Memić House and in particular by his participation in the Transfer to the Omeragić House, Lukić practically assisted the crime of murder as a crime against humanity and a violation of the laws or customs of war, and that the only reasonable inference was that he knew that the persons who had been locked into the Omeragić House would be killed as a result of the fire.<sup>47</sup> Regarding the crime of persecution, it was determined that Lukić knew that members of the Kortnik Group were Muslims and that the principal perpetrators locked members of the Kortnik Group in the Omeragić

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<sup>41</sup> Appeal Judgement, paras. 3, 252, 355, 380, 390, 398, 401-404, 418; Trial Judgement, paras. 555, 569, 593, 637, 930, 1028, 1030-1031.

<sup>42</sup> Appeal Judgement, paras. 3, 252, 353, 355, 410-412, 415-418; Trial Judgement, paras. 569, 607, 637, 916, 929-930, 984, 1032. The Trial Chamber’s determination that 59 people died in the Pionirska Street Incident was amended on appeal to reflect that 53 victims lost their lives. *See* Appeal Judgement, paras. 332, 352-353, 669, 672; Trial Judgement, paras. 567, 931, 934, 1033.

<sup>43</sup> Appeal Judgement, paras. 355, 419, 441, 467, 672; Trial Judgement, paras. 934, 986, 1026-1035, 1104-1105.

<sup>44</sup> Trial Judgement, paras. 613, 637, 930, 1034.

<sup>45</sup> Appeal Judgement, paras. 355, 419, 441, 467; Trial Judgement, paras. 593, 637, 984, 986, 1028, 1030.

<sup>46</sup> Appeal Judgement, paras. 447, 419; Trial Judgement, paras. 933, 985.

<sup>47</sup> Appeal Judgement, paras. 420, 449-451; Trial Judgement, paras. 932-933.

House and set the house on fire with the requisite discriminatory intent.<sup>48</sup> It was concluded that Lukić further knew that by his acts he was rendering practical assistance to the commission of the underlying persecutory acts.<sup>49</sup>

40. Lukić was found to have aided and abetted “a series of crimes that culminated in [a] barbaric killing”.<sup>50</sup> The Trial Chamber stated that the Pionirska Street Incident “exemplif[ies] the worst acts of inhumanity that one person may inflict upon others”.<sup>51</sup> Indeed, the Trial Chamber emphasised that: “[i]n the all too long, sad and wretched history of man’s inhumanity to man, the Pionirska [S]treet [Incident] [...] must rank high. At the close of the 20<sup>th</sup> century, a century marked by war and bloodshed on a colossal scale, th[is] horrific event[] remain[s] imprinted on the memory for the viciousness of the incendiary attack, for the obvious premeditation and calculation that defined it, for the sheer callousness, monstrosity and brutality of herding, trapping and locking the victims in the [...] house[], thereby rendering them helpless in the ensuing inferno and for the degree of pain and suffering inflicted on the victims as they were burnt alive”.<sup>52</sup>

41. The gravity of the crimes for which Lukić was convicted was further compounded by the fact that the victims’ families were unable to identify or bury their loved ones as it has never been established what became of the victims’ remains.<sup>53</sup> In this respect, the Trial Chamber considered that “[t]here is a unique cruelty in expunging all traces of the individual victims which must heighten the gravity ascribed to these crimes” and determined that “[b]y burning the victims and the houses in which they were trapped, [...] the [...] perpetrators intended to obliterate the identities of their victims and, in doing so, to strip them of their humanity”.<sup>54</sup>

42. Further, Lukić aided and abetted these crimes while serving as a police officer, which constituted an aggravating factor.<sup>55</sup> The Trial Chamber noted that many of the victims recognised him as such and found that he had abused his position as a police officer, as his participation “sanctioned the robbery, abuse and murder of his Muslim neighbours” and amounted to “a cruel inversion of the duty he had to the citizens of Višegrad”.<sup>56</sup> The Appeals Chamber affirmed this

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<sup>48</sup> Appeal Judgement, paras. 420, 459-461; Trial Judgement, para. 1035.

<sup>49</sup> Appeal Judgement, paras. 420, 461; Trial Judgement, para. 1035.

<sup>50</sup> Trial Judgement, para. 1097.

<sup>51</sup> Trial Judgement, paras. 1061, 1086.

<sup>52</sup> Trial Judgement, para. 740. *See also* Trial Judgement, para. 1061.

<sup>53</sup> Trial Judgement, para. 1062.

<sup>54</sup> Trial Judgement, para. 1062.

<sup>55</sup> Trial Judgement, para. 1090.

<sup>56</sup> Trial Judgement, para. 1090.

finding<sup>57</sup> and concluded that Lukić's status as a law enforcement official compounded "the betrayal of trust to the community he was intended to serve".<sup>58</sup>

43. In light of the above, there is no doubt as to the high gravity of Lukić's crimes. Accordingly, I am of the view that this factor weighs very strongly against Lukić's early release.

## 2. Treatment of Similarly-Situated Prisoners

44. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Lukić, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.<sup>59</sup> As noted above, the eligibility threshold of having served two-thirds of the sentence applies to all convicted persons serving a sentence under the Mechanism's supervision.<sup>60</sup> Having passed this two-thirds threshold on 12 September 2023,<sup>61</sup> Lukić is eligible to be considered for early release.

## 3. Demonstration of Rehabilitation

45. A decision on whether to grant an early release application is taken by the President on the basis of the interests of justice and the general principles of law, having regard, *inter alia*, to the criteria specified in Rule 151 of the Rules.<sup>62</sup> The prisoner's demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.<sup>63</sup>

46. Before turning to an individualised assessment of Lukić's demonstration of rehabilitation, I observe that the Mechanism's jurisprudence expands upon certain elements pertaining to whether a convicted person has demonstrated rehabilitation under Rule 151 of the Rules, and I find it appropriate to set this out here.<sup>64</sup>

47. A number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism have been recognised as such in the past or may be of persuasive relevance.<sup>65</sup> 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

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<sup>57</sup> Appeal Judgement, para. 663.

<sup>58</sup> Appeal Judgement, para. 664.

<sup>59</sup> *Kunarac* Decision, para. 41; *Župljanin* Decision, para. 39; *Bisengimana* Decision, paras. 16-17.

<sup>60</sup> *See supra* para. 31.

<sup>61</sup> *See supra* para. 32.

<sup>62</sup> *See supra* paras. 23, 26.

<sup>63</sup> *See supra* para. 26.

<sup>64</sup> *Kunarac* Decision, paras. 44-48; *Župljanin* Decision, paras. 43-47; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted) ("*Bralo* Decision"), paras. 37-41.

<sup>65</sup> *Kunarac* Decision, para. 45; *Župljanin* Decision, para. 44; *Bralo* Decision, para. 39.

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.<sup>66</sup> This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.<sup>67</sup>

48. It falls upon the convicted person to demonstrate 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 the President's discretion.<sup>68</sup> Given that genocide, crimes against humanity, and war crimes are among the gravest crimes known to humankind, it is not appropriate to view the rehabilitation of perpetrators of such crimes as one would view the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.<sup>69</sup>

49. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.<sup>70</sup> In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.<sup>71</sup>

50. Further, a convicted person who intends to return to the region where his or her crimes were committed before serving his or her full sentence will ordinarily have to demonstrate a greater degree of rehabilitation.<sup>72</sup>

51. Turning to the extent to which Lukić has demonstrated rehabilitation, I note that the most probative material before me is the information concerning: (a) his behaviour in prison; (b) his acceptance of responsibility, signs of critical reflection, and expressions of genuine remorse or regret; and (c) his mental state and prospects of successful reintegration into society, as discussed below.

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<sup>66</sup> *Kunarac* Decision, para. 45; *Župljanin* Decision, para. 44; *Bralo* Decision, para. 39 and references cited therein.

<sup>67</sup> *Kunarac* Decision, para. 45; *Župljanin* Decision, para. 44; *Bralo* Decision, para. 39.

<sup>68</sup> *Kunarac* Decision, para. 46; *Župljanin* Decision, para. 45; *Bralo* Decision, para. 39.

<sup>69</sup> *Kunarac* Decision, para. 46; *Župljanin* Decision, para. 45; *Bralo* Decision, para. 38.

<sup>70</sup> *Kunarac* Decision, para. 47; *Župljanin* Decision, para. 46; *Krstić* Decision, para. 49.

<sup>71</sup> *Župljanin* Decision, para. 46; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Application for Early Release of Radivoje Miletić, 18 January 2024, para. 50; *Bralo* Decision, para. 38.

<sup>72</sup> *Kunarac* Decision, para. 48; *Župljanin* Decision, para. 47; *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), para. 44.

(a) Behaviour in Prison

52. According to the Norwegian prison authorities, Lukić “receives excellent reports on his behaviour” from all the prison staff, who get to know the inmates very well.<sup>73</sup> They also state that “there is nothing negative to report about Lukić while he has been serving his sentence”.<sup>74</sup> They observe that Lukić “demonstrates a highly positive attitude and fosters good relationships with both fellow inmates and staff, regardless of religion or ethnicity”.<sup>75</sup> Prison staff describe him as “open and non-judgmental towards other inmates and staff” and he has no disciplinary reports.<sup>76</sup>

53. Lukić has been employed in the kitchen, with the exception of a brief period in the laundry, and consistently performs his duties well.<sup>77</sup> Additionally, he has attended classes in Norwegian and English, and received training on internet use.<sup>78</sup> He “remains well-liked, hardworking, and cooperative, showing compassion towards vulnerable inmates”.<sup>79</sup> Lukić frequently talks about his family and expresses gratitude for their support.<sup>80</sup> Although he has not had recent visits from his family, he maintains regular contact through phone and video calls.<sup>81</sup> While serving his sentence, he has also provided financial assistance to his family as needed.<sup>82</sup>

54. Lukić has been granted various types of leave, including escorted and unescorted, all without incident, and has had multiple leaves of varying duration and frequency over the years.<sup>83</sup> His transfer to a lower-security prison was justified by his potential for continued progress and his exemplary behaviour throughout his sentence.<sup>84</sup>

55. I acknowledge that the Norwegian authorities have assessed Lukić’s behaviour in prison positively. However, as set out above, good behaviour in prison cannot on its own demonstrate

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<sup>73</sup> Norwegian Directorate of Correctional Service Letter, p. 2.

<sup>74</sup> Norwegian Correctional Service Letter of 23 January 2023, p. 2.

<sup>75</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 2.

<sup>76</sup> Norwegian Directorate of Correctional Service Letter, p. 2; Norwegian Correctional Service Letter of 1 November 2022, p. 3; Statement, p. 3.

<sup>77</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 1; Norwegian Directorate of Correctional Service Letter, p. 2; Norwegian Correctional Service Letter of 23 January 2023, p. 2; Norwegian Correctional Service Letter of 1 November 2022, p. 4; Statement, p. 2.

<sup>78</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 1; Norwegian Correctional Service Letter of 1 November 2022, p. 2; Statement, p. 2.

<sup>79</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 2.

<sup>80</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 2; Norwegian Correctional Service Letter of 1 November 2022, p. 3; Statement, p. 7.

<sup>81</sup> Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 2; Statement, p. 4, 6.

<sup>82</sup> Norwegian Correctional Service Letter of 1 November 2022, p. 2; Statement, p. 2.

<sup>83</sup> Psychiatric Report, p. 6; Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 1; Norwegian Directorate of Correctional Service Letter, p. 3; Norwegian Correctional Service Letter of 23 January 2023, p. 2; Norwegian Correctional Service Letter of 1 November 2022, pp. 3-4; Statement, pp. 4, 6.

<sup>84</sup> Psychiatric Report, p. 7.

rehabilitation of a person convicted for some of the most heinous international crimes.<sup>85</sup> It is therefore necessary to consider other elements, to which I now turn.

(b) Acceptance of Responsibility, Signs of Critical Reflection, and Expressions of Genuine Remorse or Regret

56. The Mechanism’s jurisprudence has recognised that: (i) an important factor in assessing a convicted person’s progress towards rehabilitation is the acceptance of responsibility for his or her crimes, even if this does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release; and (ii) a convicted person’s partial acceptance of responsibility for his or her crimes will merit positive weight, however, any notable difference between the role a convicted person ascribes to himself or herself, and the role actually played, can suggest a lack of sufficient critical reflection upon his or her crimes.<sup>86</sup>

57. In my view, a statement made or referred to in support of an early release application should not be considered in isolation from its greater context.<sup>87</sup> The content of any such statement should be corroborated by positive actions taken by the convicted person, which indicate that he or she has critically reflected upon his or her crimes and is genuinely remorseful.<sup>88</sup> Evidencing the rehabilitation process is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse or regret from more opportunistic ones.<sup>89</sup>

58. I note that, in comments he made to the Norwegian authorities in relation to a domestic application for release on probation, Lukić recalls that the Trial Chamber found no reliable evidence of his involvement in setting the Omeragić House on fire or shooting at its windows as persons attempted to escape.<sup>90</sup> He further highlights that the Appeals Chamber described him as an “[a]ider and [a]bettor”, which, in his view, contradicts the claim that he played a “key role” in Memić House and the Transfer to the Omeragić House.<sup>91</sup>

59. Lukić shows very limited acceptance of responsibility in relation to the crimes for which he was convicted. In the recent interview with the psychiatrist and psychologist, he acknowledged that “[i]t is difficult to claim to be entirely innocent in war” and admits to some formal errors, such as

<sup>85</sup> See *supra* para. 49.

<sup>86</sup> *Kunarac* Decision, para. 53; *Župljanin* Decision, para. 52; *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on the Applications for Early Release of Vlastimir Đorđević, 30 November 2021 (public redacted), para. 70.

<sup>87</sup> *Župljanin* Decision, para. 53; *Stojić* Decision, para. 61; *Krstić* Decision, para. 61.

<sup>88</sup> *Župljanin* Decision, para. 53; *Stojić* Decision, para. 61; *Krstić* Decision, para. 61.

<sup>89</sup> *Župljanin* Decision, para. 53; *Stojić* Decision, para. 61; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Application for Early Release of Miroslav Bralo, 28 December 2023 (public redacted), para. 62.

<sup>90</sup> Lukić Letter of 16 November 2022, pp. 1, 4, referring to Trial Judgement, para. 613.

issuing incorrect permits.<sup>92</sup> Nonetheless, he maintains his innocence regarding the event in question, stating: “he has an alibi for the time of the incident and that he did not do what he has been sentenced for”.<sup>93</sup> Lukić also believes his sentence was excessively harsh, pointing out that others have evaded responsibility<sup>94</sup> and questioning the legal and judicial processes, asking: “[d]o you think they always manage to catch the right people?”<sup>95</sup>

60. Lukić’s reluctance to accept responsibility in relation to the crimes for which he was convicted is further highlighted by his dismissive response during the recent interview with the psychiatrist and psychologist, where he laughed and remarked: “this is starting to remind me of a court”.<sup>96</sup> I note that he appeared evasive and non-specific about the crimes for which he was convicted and considers that he has been incorrectly sentenced.<sup>97</sup> This dismissive attitude towards the seriousness of his actions, coupled with his focus on his own circumstances, reveals a significant deficiency in accepting full responsibility.

61. In addition, Lukić demonstrates only superficial critical reflection and does not engage deeply with the implications of his actions. His focus on his conditions of imprisonment, such as “he knows that other people who were sentenced in The Hague after the war have experienced much harsher conditions in other countries”,<sup>98</sup> and his expression of bitterness, as he feels he was “made to pay for this disaster” while others have escaped accountability,<sup>99</sup> diverts attention from a thorough self-examination of his role in the crimes. This approach suggests a reluctance to engage in meaningful self-reflection.

62. Moreover, genuine remorse is markedly absent in Lukić’s statements. He addresses his situation with a sense of detachment, as illustrated by the comment of the psychiatrist and psychologist: “[t]he subject smiles as he denies having had a criminal past”.<sup>100</sup> He also concentrates on his own experience of imprisonment, stating: “he was very lucky to be sent to Norway to serve his sentence”, rather than reflecting on the suffering caused to his victims.<sup>101</sup> Lukić comes across as “light-hearted” and unconcerned, shrugging as he says: “I cannot change who I am”.<sup>102</sup> Notably, I

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<sup>91</sup> Lukić Letter of 16 November 2022, pp. 1, 3, *referring to Appeal Judgement*, para. 450.

<sup>92</sup> Psychiatric Report, p. 10 (italics omitted).

<sup>93</sup> Psychiatric Report, p. 10.

<sup>94</sup> Norwegian Directorate of Correctional Service Letter, p. 2.

<sup>95</sup> Psychiatric Report, p. 10 (italics omitted).

<sup>96</sup> Psychiatric Report, p. 10 (italics omitted).

<sup>97</sup> Psychiatric Report, p. 11.

<sup>98</sup> Psychiatric Report, p. 10.

<sup>99</sup> Statement, p. 7.

<sup>100</sup> Psychiatric Report, p. 9.

<sup>101</sup> Psychiatric Report, p. 10.

<sup>102</sup> Psychiatric Report, p. 10 (italics omitted).



observe that the psychiatrist and the psychologist indicate that Lukić's "reference to himself as being innocent also comes across as mendacious, exculpatory and lacking in empathy".<sup>103</sup>

63. In my opinion, Lukić's attitude and reflections suggest a significant disconnect between his self-perception and the gravity of his crimes. While he acknowledges minor mistakes, his refusal to fully accept responsibility for the crimes he was convicted of, along with his superficial critical reflection and lack of genuine remorse, raises concerns about his demonstration of rehabilitation. His focus on the perceived injustices of his sentencing, rather than on the harm inflicted on his victims, reveals a troubling deficiency in empathy and accountability. These factors cast doubt on his readiness for reintegration into society and weigh very strongly against his early release.

(c) Mental State and Prospects of Successful Reintegration into Society

64. Lukić's mental state appears stable and positive.<sup>104</sup> Psychiatric evaluations confirm that he shows no signs of psychopathological symptoms or personality disorders.<sup>105</sup> His mood and cognitive abilities are described as normal, and he has no history of substance abuse or psychiatric illness.<sup>106</sup> Despite the seriousness of his crimes, his overall mental health is considered good, and he presents himself as mentally fit.<sup>107</sup>

65. Lukić has indicated that he intends to reside in [REDACTED], Serbia, if released early, where he has a family.<sup>108</sup> He has maintained regular contact with them throughout his incarceration and plans to live with them upon release.<sup>109</sup> However, his plans after release are not entirely clear, particularly with regard to his financial situation. Although Lukić claims to have no financial problems and it is assumed that his family and social networks will provide support, there is limited information on how he will make a living post-release.<sup>110</sup>

66. Lukić is considered by the Norwegian prison authorities, as well as the psychiatrist and psychologist, to be at a low risk of recidivism and has not expressed deviant political views while

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<sup>103</sup> Psychiatric Report, p. 11.

<sup>104</sup> Psychiatric Report, p. 7.

<sup>105</sup> Psychiatric Report, pp. 3, 11-12.

<sup>106</sup> Psychiatric Report, p. 11.

<sup>107</sup> Psychiatric Report, p. 6.

<sup>108</sup> Psychiatric Report, p. 6; Norwegian Ministry of Justice and Public Security Letter of 27 March 2023, p. 1; Norwegian Directorate of Correctional Service Letter, pp. 2-3; Norwegian Correctional Service Letter of 23 January 2023, pp. 1-2, 4; Norwegian Correctional Service Letter of 1 November 2022, p. 4; Statement, pp. 1, 7.

<sup>109</sup> Psychiatric Report, p. 8; Norwegian Ministry of Justice and Public Security Letter of 2 April 2024, p. 2; Norwegian Correctional Service Letter of 23 January 2023, p. 2.

<sup>110</sup> Norwegian Correctional Service Letter of 23 January 2023, p. 2.

serving his sentence.<sup>111</sup> In this regard, I observe that Lukić's lack of engagement with the media is corroborated by the information provided by the Registry.<sup>112</sup>

67. Further, Lukić has not made any commitments regarding his conduct in the event of an early release in this case, including how he will address his convictions, his compliance with any conditions imposed by the Mechanism, or his abstention from political activities, except for voting.

68. I consider that, while Lukić's mental state remains stable and he appears mentally fit for release, significant uncertainties in his post-release plans raise concerns about his reintegration. Although he intends to live with his family in [REDACTED], Serbia, and claims to have no financial problems, the extent of support he can expect is unclear. Despite the low risk of recidivism and absence of deviant political views, the lack of commitments given by Lukić regarding his future conduct weighs against his early release.

(d) Overall Assessment

69. I recall that the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.<sup>113</sup> While Lukić has shown positive behaviour in prison and maintains stable mental health, these factors alone do not suffice to establish true rehabilitation. His attitude suggests a troubling disconnect between his self-perception and the gravity of the crimes for which he was convicted. Further, the superficial nature of his critical reflections, coupled with a lack of genuine remorse and accountability, casts significant doubt on his rehabilitation. In addition, his focus on alleged injustices rather than the harm caused to his victims indicates a deficiency in empathy, which is essential for meaningful reintegration into society. Although Lukić has maintained family ties and intends to live with his family in [REDACTED], Serbia, and despite his low risk of recidivism, the uncertainty surrounding his post-release plans and the lack of clear commitments on his future conduct further weaken the case for his rehabilitation. After considering the totality of the information before me, I am of the view that Lukić is not sufficiently rehabilitated to merit early release.

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<sup>111</sup> Psychiatric Report, p. 13; Norwegian Correctional Service Letter of 23 January 2023, p. 2; Norwegian Correctional Service Letter of 1 November 2022, p. 4.

<sup>112</sup> External Relations Office Memorandum of 17 October 2023, pp. 1-6.

<sup>113</sup> *See supra* para. 35.

#### 4. Substantial Cooperation with the Prosecutor

70. The Prosecution confirmed that Lukić did not cooperate with it at any point.<sup>114</sup> Accordingly, this merits no weight in my consideration of the Application.

### C. Other Considerations

#### 1. Comments and Information Provided by the Prosecution

71. Decisions on early release have established that the President may receive and consider general comments and information from the Prosecution with regard to early release applications.<sup>115</sup> In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and 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.<sup>116</sup>

72. The Prosecution asserts that, although it should be recognised that Lukić has behaved well in prison and that the Norwegian authorities deem it unlikely that he will reoffend if released early, he has not demonstrated that early release is warranted in his case due to the high gravity of his crimes,<sup>117</sup> insufficient evidence of rehabilitation,<sup>118</sup> and lack of substantial cooperation with the Prosecution.<sup>119</sup> In the event that I would nevertheless grant the Application, the Prosecution requests that appropriate conditions be imposed upon Lukić's early release, as well as measures to ensure compliance with all ordered conditions.<sup>120</sup>

73. In particular, the Prosecution notes that the Application includes no evidence that Lukić has accepted responsibility for his crimes.<sup>121</sup> The Prosecution considers that, while Lukić does not deny that crimes were committed, he falls short of any sort of expression of remorse for the extremely grave crimes in which he participated.<sup>122</sup> Additionally, the Prosecution indicates that Lukić has provided no undertakings in relation to how he intends to conduct himself if released, including whether he will comment on his judgement and if so how.<sup>123</sup>

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<sup>114</sup> Prosecution Memorandum, para. 12.

<sup>115</sup> *Kunarac* Decision, para. 73; *Župljanin* Decision, para. 65; *Bralo* Decision, para. 69.

<sup>116</sup> *Kunarac* Decision, para. 73; *Župljanin* Decision, para. 65; *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), para. 83.

<sup>117</sup> Prosecution Memorandum, paras. 2, 4-7, 22.

<sup>118</sup> Prosecution Memorandum, paras. 2, 8-11, 22.

<sup>119</sup> Prosecution Memorandum, paras. 2, 12, 22.

<sup>120</sup> Prosecution Memorandum, paras. 2, 17-22.

<sup>121</sup> Prosecution Memorandum, para. 10.

<sup>122</sup> Prosecution Memorandum, para. 10.

<sup>123</sup> Prosecution Memorandum, para. 11.

74. The Prosecution submits that victims and communities affected by Lukić's crimes should be consulted so they can raise specific concerns regarding his early release.<sup>124</sup> According to the Prosecution, the possible impact of Lukić's early release on the affected parties must be taken into account and assessed in light of the current political situation in Serbia, where senior political officials continue to deny genocide and glorify convicted war criminals.<sup>125</sup>

75. I have given due regard to the Prosecution's comments and information in relation to the Application.

## 2. Views of Serbia

76. Serbia is of the opinion that, [REDACTED].<sup>126</sup> Indeed, [REDACTED].<sup>127</sup> [REDACTED].<sup>128</sup>

77. I have taken note of Serbia's [REDACTED].

## 3. Impact on Witnesses and Victims

78. WISP conveys information concerning witnesses who testified or provided evidence against Lukić, including those who were identified as "victim witnesses" and "sensitive witnesses".<sup>129</sup> The information provided relates to the location of these witnesses and victims, as well as any psychological trauma, psycho-social issues, and/or health issues they may suffer from, and whether they have previously reported security concerns.<sup>130</sup> Based on the available information, the vast majority of the witnesses and victims do not reside in [REDACTED], Serbia, or in other Serbian areas.<sup>131</sup> For those residing in [REDACTED], Serbia, they are not considered vulnerable and have not reported security concerns.<sup>132</sup>

79. WISP submits that "[t]he early release of a convicted person may impact victims and witnesses in different ways".<sup>133</sup> For example, "[l]earning of a convicted person's release through the media, other channels or through an unexpected encounter in public could increase the perception of risk by victims and witnesses, affect their psycho-social wellbeing, or re-traumatize them".<sup>134</sup> Additionally, "[o]ther victims and/or witnesses may potentially come under threat of

<sup>124</sup> Prosecution Memorandum, paras. 14, 22.

<sup>125</sup> Prosecution Memorandum, paras. 11, 14-16, Annex B.

<sup>126</sup> Serbian Minister of Justice Letter, Registry Pagination ("RP") 49.

<sup>127</sup> Serbian Minister of Justice Letter, RP 49.

<sup>128</sup> Serbian Minister of Justice Letter, RP 49.

<sup>129</sup> WISP Memorandum, paras. 3-4.

<sup>130</sup> WISP Memorandum, paras. 10-18.

<sup>131</sup> WISP Memorandum, paras. 15-18.

<sup>132</sup> WISP Memorandum, para. 15.

<sup>133</sup> WISP Memorandum, para. 8.

<sup>134</sup> WISP Memorandum, para. 8.

being physically harmed or intimidated by the convicted person or his supporters, as retribution for their involvement in the proceedings and for contributing to the conviction by the [ICTY]”.<sup>135</sup> WISP expresses its apprehension about the geopolitical situation in Republika Srpska in general.<sup>136</sup> According to WISP, “[w]itnesses, especially those of ethnic minority groups, continue to have a feeling of insecurity which is fuelled by historical and current events”, and witnesses generally “maintain a feeling of mistrust of local authorities”.<sup>137</sup>

80. WISP argues that “Lukić’s release would probably receive local media coverage and could thus impact witnesses”.<sup>138</sup> WISP adds however that it “cannot determine the extent of any risk to the witnesses by referring solely to its historical records” and that a fuller assessment would require a range of additional information, involving contacting each witness individually.<sup>139</sup> In light of the particular circumstances of this case, I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit information from them with respect to the Application.

81. The Victims’ Associations oppose Lukić’s early release and request that the Application be denied.<sup>140</sup> In particular, the Association of “Women Victims of War” expresses the view that persons convicted by the ICTY or the Mechanism, like Lukić, “should serve their sentences in full duration” and that “[t]his is the minimum that should not be lowered”.<sup>141</sup> It explains that any possible early release of persons convicted by the ICTY or the Mechanism “would cause additional traumatisation” and “represent an insult to the victims”.<sup>142</sup>

82. According to the Victims’ Associations, Lukić has shown no feelings of regret or remorse for the crimes he committed.<sup>143</sup> He has never demonstrated any sincere remorse or signs of possible rehabilitation,<sup>144</sup> nor has he apologised to the families of the victims or sought their forgiveness.<sup>145</sup> The Association “Women Victims of War” believes that Lukić’s continued silence, despite its belief that he knows the location of the remains of those burned alive, reveals a troubling disregard for their suffering.<sup>146</sup> This silence prevents them from providing a marked burial place for each

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<sup>135</sup> WISP Memorandum, para. 7.

<sup>136</sup> WISP Memorandum, para. 20.

<sup>137</sup> WISP Memorandum, para. 20.

<sup>138</sup> WISP Memorandum, para. 9.

<sup>139</sup> WISP Memorandum, para. 21.

<sup>140</sup> President of the Association of “Women Victims of War” Letter of 18 April 2024, p. 4; President of the Association of Victims and Witnesses of Genocide Letter, p. 3; President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, pp. 1, 3.

<sup>141</sup> President of the Association of “Women Victims of War” Letter of 18 April 2024, p. 3.

<sup>142</sup> President of the Association of “Women Victims of War” Letter of 18 April 2024, p. 3.

<sup>143</sup> President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, p. 1.

<sup>144</sup> President of the Association of Victims and Witnesses of Genocide Letter, pp. 1, 2.

<sup>145</sup> President of the Association of “Women Victims of War” Letter of 18 April 2024, p. 2.

<sup>146</sup> President of the Association of “Women Victims of War” Letter of 18 April 2024, p. 3.

victim, regardless of their nationality, ethnicity, or religion. It also denies the survivors the peace of mind of knowing where their loved ones are buried.<sup>147</sup>

83. The Association of Camp Inmates of Bosnia and Herzegovina considers that Lukić's early release would cause significant alarm not just in Višegrad but across Bosnia and Herzegovina, where many of his victims remain deeply traumatised.<sup>148</sup> Two of the Victims' Associations point to the case of Mr. Mitar Vasiljević, who was convicted by the ICTY to 15 years of imprisonment for crimes committed in Višegrad and granted early release after serving two-thirds of his sentence.<sup>149</sup> They submit that his return was met with a formal welcome featuring the same symbolism and iconography associated with the crimes committed in Višegrad and throughout Bosnia and Herzegovina during the 1992-1995 war.<sup>150</sup>

84. Further, for the Association of Camp Inmates of Bosnia and Herzegovina, the fact that Lukić has indicated that, if granted early release, he would reside in [REDACTED], Serbia, is of no particular significance, as it is likely that he would receive a warm reception there, similar to other individuals in comparable situations.<sup>151</sup>

85. I have carefully considered all of this information.

#### 4. Health of the Convicted Person

86. Previous decisions have taken into account the state of the convicted person's health in the context of an early release application.<sup>152</sup> In particular, I observe that a convicted person's health must be considered when the seriousness of his or her condition makes it inappropriate for the convicted person to remain in prison any longer.<sup>153</sup>

87. I note that Lukić [REDACTED].<sup>154</sup> [REDACTED].<sup>155</sup> [REDACTED].<sup>156</sup> There is no other information concerning Lukić's physical health.

<sup>147</sup> President of the Association of "Women Victims of War" Letter of 18 April 2024, p. 3.

<sup>148</sup> President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, p. 2.

<sup>149</sup> President of the Association of "Women Victims of War" Letter of 18 April 2024, p. 3; President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, pp. 2-3.

<sup>150</sup> President of the Association of "Women Victims of War" Letter of 18 April 2024, p. 3; President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, pp. 2-3.

<sup>151</sup> President of the Association of Camp Inmates of Bosnia and Herzegovina Letter, p. 3.

<sup>152</sup> *Kunarac* Decision, para. 85; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-ES, Decision on the Application for Release of Ratko Mladić (public redacted), 10 May 2024 ("*Mladić* Decision"), para. 28; *Bisengimana* Decision, para. 32.

<sup>153</sup> *Kunarac* Decision, para. 85; *Mladić* Decision, para. 28; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, paras. 47-49.

<sup>154</sup> Medical Attestation, p. 1.

<sup>155</sup> Medical Attestation, p. 1.

88. In light of the information before me concerning Lukić's health, I find no indication that his continued imprisonment is inappropriate and consider that it has not been demonstrated that there are compelling humanitarian grounds which would warrant his early release. I have nevertheless taken the information on Lukić's health into account in reaching my decision on the Application, as part of my overall assessment of the various factors.

#### 5. Consultation

89. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism.<sup>157</sup> Both Judges agree that the Application should be denied. Judge Agius acknowledges that, although Lukić has served two-thirds of his sentence and is therefore eligible to be considered for early release, the Application should be rejected due to the high gravity of his crimes and insufficient evidence of rehabilitation. Similarly, Judge Liu shares this view, noting that Lukić's convictions for very serious crimes and his failure to demonstrate any signs of rehabilitation warrant the denial of the Application. Further, both Judges point out that Lukić did not present any evidence of compelling humanitarian grounds which would justify his early release.

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

### V. CONCLUSION

91. Although Lukić has served two-thirds of his sentence and is therefore eligible to be considered for early release, I am of the view that the Application should be denied. Significant factors militate against his early release, including the high gravity of his crimes and his failure to demonstrate sufficient signs of rehabilitation. Further, there is no evidence before me that establishes the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

### VI. DISPOSITION

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

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<sup>156</sup> Medical Attestation, p. 1.

<sup>157</sup> *See supra* para. 21.

93. The Registrar is **DIRECTED** to provide the authorities of Norway and Serbia, as well as the Prosecutor of the Mechanism, with the public redacted version of this decision as soon as practicable.

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

Done this 17th day of October 2024,  
At The Hague,  
The Netherlands.



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Judge Graciela Gatti Santana  
President

[Seal of the Mechanism]





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<b>Date Created/ Daté du :</b>	17 October 2024	<b>Date transmitted/ Transmis le :</b>	17 October 2024	<b>Number of Pages/ Nombre de pages :</b>	24	
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