

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-53-ES.1

Date: 18 January 2024

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THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President
Registrar: Mr. Abubacarr M. Tambadou
Decision of: 18 January 2024

PROSECUTOR

v.

STOJAN ŽUPLJANIN

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF STOJAN ŽUPLJANIN**

Counsel for Mr. Stojan Župljanin:

Mr. Dragan Krgović

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of an application for early release filed by Mr. Stojan Župljanin on 7 December 2022 (“Župljanin” and “Application”, respectively).¹

I. BACKGROUND

2. On 11 June 2008, Župljanin was arrested in the Republic of Serbia and, on 21 June 2008, he was transferred to the International Criminal Tribunal for the former Yugoslavia (“ICTY”).²

3. On 27 March 2013, Trial Chamber II of the ICTY (“Trial Chamber”) convicted Župljanin of murder and torture as violations of the laws or customs of war, and extermination and persecutions as crimes against humanity.³ The Trial Chamber sentenced Župljanin to 22 years of imprisonment.⁴

4. On 30 June 2016, the Appeals Chamber of the ICTY (“Appeals Chamber”), *inter alia*, affirmed Župljanin’s convictions and sentence.⁵

5. On 7 August 2019, Župljanin was transferred to the Republic of Poland (“Poland”) to serve his sentence.⁶ Following Poland’s determination that it could no longer continue enforcing this sentence, on 6 June 2023, Župljanin was transferred to the United Nations Detention Unit in The Hague, Kingdom of the Netherlands (“Netherlands”) on a temporary basis.⁷

¹ Stojan Župljanin’s Request for Early Release, 7 December 2022 (confidential). On 28 December 2022, a public redacted version of the Application was filed on the record following my order to do so. See Stojan Župljanin’s Request for Early Release, 28 December 2022 (public redacted). See also Order for a Public Redacted Version of Stojan Župljanin’s Application for Early Release, 21 December 2022, p. 1.

² *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-PT, Decision on Stojan Župljanin’s Motion for Provisional Release, 30 June 2009, para. 9; *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Judgement, 27 March 2013 (“Trial Judgement”), vol. 3, para. 4.

³ Trial Judgement, vol. 2, para. 956.

⁴ Trial Judgement, vol. 2, para. 956.

⁵ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016 (“Appeal Judgement”), para. 1193. The Appeals Chamber also found that the Trial Chamber erred by failing to convict Župljanin of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, but declined to enter new convictions against him on appeal. See Appeal Judgement, paras. 1097, 1193.

⁶ Order for the Transfer of Stojan Župljanin to the United Nations Detention Unit on a Temporary Basis, 12 May 2023 (“Order of 12 May 2023”), p. 1. See also Order Designating the State in which Stojan Župljanin is to Serve His Sentence, 6 June 2019, p. 2.

⁷ Internal Memorandum from the Registrar to the President, dated 6 June 2023 (confidential), para. 1. See also Order of 12 May 2023, p. 2.

II. APPLICATION

6. On 7 December 2022, Župljanin filed the Application, in which he requests that he be granted early release and indicates that, if released early, he would reside in [REDACTED], Bosnia and Herzegovina.⁸

7. On 20 December 2022, I requested that the Registry of the Mechanism (“Registry”) take the steps foreseen in paragraphs 9(b) and 9(c) of the applicable Practice Direction.⁹ I also asked that the Registry collect the information enumerated in paragraphs 10(a) through 10(c) and 10(e) of the Practice Direction.¹⁰ I further requested, in line with paragraph 10(f) of the Practice Direction, that the Registry provide me with further relevant material, namely: (i) information from the Witness Support and Protection Unit of the Mechanism (“WISP”) concerning the victims of the crimes for which Župljanin was convicted and who testified in his case, including whether they are currently residing in the vicinity of [REDACTED], Bosnia and Herzegovina, given Župljanin’s indication that he would reside there if released early; (ii) any media reports concerning Župljanin that had been published in Bosnia and Herzegovina in the previous two years; and (iii) information regarding any relevant victims’ associations or other groups in relation to the crimes for which Župljanin was convicted.¹¹

8. On 2 February 2023, the Registrar of the Mechanism (“Registrar”) transmitted to me the comments and information provided by the Office of the Prosecutor of the Mechanism (“Prosecution”) with respect to the Application.¹²

9. On 29 March 2023, the Registrar provided me with a compilation of media reports concerning Župljanin that had been published in Bosnia and Herzegovina in the previous two years, as well as information concerning relevant victims’ associations.¹³

10. On 12 April 2023, the Registrar conveyed to me the material received from the Polish authorities concerning Župljanin, namely a report on his behaviour during his period of

⁸ Application, paras. 1, 19, p. 7.

⁹ Internal Memorandum from the President to the Registrar, dated 20 December 2022 (confidential) (“Memorandum of 20 December 2022”), para. 3 referring to Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”).

¹⁰ Memorandum of 20 December 2022, para. 3.

¹¹ Memorandum of 20 December 2022, paras. 4-5.

¹² Internal Memorandum from the Registrar to the President, dated 2 February 2023 (confidential) transmitting Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Officer-in-Charge, Registry, Hague branch, dated 30 January 2023 (confidential) (“Prosecution Memorandum”).

¹³ Internal Memorandum from the Registrar to the President, dated 29 March 2023 (strictly confidential) transmitting Internal Memorandum from the External Relations Officer, Hague branch, to the Registrar, dated 29 March 2023 (“External Relations Office Memorandum”).

incarceration and the general conditions under which he was imprisoned, a psychological evaluation, and a medical report.¹⁴

11. On 24 May 2023, the Registrar transmitted to me strictly confidential information from WISP concerning the victims of the crimes for which Župljanin was convicted and who testified in his case.¹⁵

12. On 28 June 2023, I requested that the Registry take steps to obtain information from the ten victims' associations identified by the Registry and the Prosecution, by inviting them to provide any relevant views they may wish to offer with regard to the Application and Župljanin's indication that, if released early, he would reside in Bosnia and Herzegovina.¹⁶

13. On 17 July 2023, I invited the authorities of Bosnia and Herzegovina, no later than 7 August 2023, to, *inter alia*: (i) provide any views that they wished to offer with regard to the Application and Župljanin's indication that, if released early, he would reside in [REDACTED], Bosnia and Herzegovina; and (ii) indicate whether they would be willing and able to monitor any conditions imposed by the Mechanism in case of an early release and to provide guarantees to this effect.¹⁷

14. On 22 August 2023, the Registrar communicated to me the responses received from five of the ten victims' associations that had been contacted ("Victims' Associations").¹⁸

¹⁴ Internal Memorandum from the Registrar to the President, dated 12 April 2023 (confidential) *transmitting Note verbale* from the Embassy of Poland to the Netherlands, dated 3 April 2023 ("Poland Note Verbale") conveying Opinion on Prisoner from the Deputy Director of the Remand Prison, dated 20 February 2023 ("Prison Report"); Psychologist Opinion on Prisoner from the Junior Psychologist of the Penitentiary Ward of the Remand Prison, dated 21 February 2023 ("Psychological Report"); Opinion on Prisoner's Health from the Specialist in Internal Medicine of the Remand Prison, dated 20 February 2023 ("Medical Report"). Throughout this decision, all references to documentation are to the English versions thereof.

¹⁵ Internal Memorandum from the Registrar to the President, dated 24 May 2023 (strictly confidential) ("Registrar Memorandum of 24 May 2023") *transmitting* Internal Memorandum from the Head, Witness Support and Protection Unit, to the Registrar, dated 24 May 2023 (strictly confidential) ("WISP Memorandum"). The Registrar observed that this strictly confidential information should not be made available to Župljanin or the Prosecution. See Registrar Memorandum of 24 May 2023, para. 2.

¹⁶ Internal Memorandum from the President to the Registrar, dated 28 June 2023 (confidential) ("Memorandum of 28 June 2023"), paras. 2-3. I asked that the victims' associations be given a deadline of two weeks to respond from the date on which they were contacted. See Memorandum of 28 June 2023, para. 4.

¹⁷ Invitation to Bosnia and Herzegovina Related to Stojan Župljanin's Application for Early Release, 17 July 2023 (confidential and *ex parte*) ("Invitation to Bosnia and Herzegovina"), p. 2.

¹⁸ Internal Memorandum from the Registrar to the President, dated 22 August 2023 (confidential), paras. 2-3, *transmitting* Letter from the President, Association of the Victims and Witnesses of Genocide, dated 31 July 2023 (confidential); Letter from the President, The Association «Women Victims of War» Sarajevo, dated 7 August 2023; Letter from the President, Association of Families of Martyrs and Fallen Soldiers of the Municipality of Ključ, dated 9 August 2023; Letter from the President, Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons "Vrbanja" Kotor Varoš, dated 9 August 2023; Letter from the President, Association of Camp Inmates of Bosnia and Herzegovina, dated 15 August 2023 ("Letter from Association of the Victims and Witnesses of Genocide", "Letter from Association «Women Victims of War» Sarajevo", "Letter from Association of Families of Martyrs and Fallen Soldiers of the Municipality of Ključ", "Letter from Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons

15. On 23 August 2023, the Mechanism sent a *note verbale* to the authorities of Bosnia and Herzegovina, drawing their attention to the outstanding invitation to provide their views and related information with respect to the Application, and indicating that any response should be received no later than 6 September 2023.¹⁹

16. On 25 September 2023, I requested that the Registry communicate the collected information, except for the WISP Memorandum and one of the annexes of the Prosecution Memorandum, to Župljanin for his comments in accordance with paragraph 12 of the Practice Direction, and additionally that the Registry inform him that the authorities of Bosnia and Herzegovina had not responded to an invitation to provide their views and related information with respect to the Application.²⁰

17. On 19 October 2023, the collected information was provided to Župljanin and his counsel.²¹ On 2 November 2023, Župljanin filed his response and comments in relation to this material.²²

18. With regard to the Application, I have consulted with Judge Carmel Agius, Judge Burton Hall, and Judge Liu Daqun in their capacity as Judges of the sentencing Chambers,²³ in accordance with Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

III. APPLICABLE LAW

19. 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.

20. 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

‘Vrbanja’ Kotor Varoš”, and “Letter from Association of Camp Inmates of Bosnia and Herzegovina”, respectively). I note that the Letter from Association of Camp Inmates of Bosnia and Herzegovina was received five days after the two-week deadline, and consider that it is appropriate for this communication to be taken into account, particularly because this has not impacted the timeline for adjudicating the Application.

¹⁹ *Note verbale* to the Embassy of Bosnia and Herzegovina to the Kingdom of the Netherlands, dated 23 August 2023 (confidential) (“*Note verbale to Bosnia and Herzegovina*”), p. 1.

²⁰ Internal Memorandum from the President to the Registrar, dated 25 September 2023 (confidential), paras. 2-4.

²¹ Email communication from the Office of the Registrar to the Office of the President, dated 19 October 2023.

²² Stojan Župljanin’s Response and Comments to Prosecution’s, Registry’s and Victims Associations’ Submissions regarding His Request for Early Release, 2 November 2023 (confidential) (“Final Submission”).

²³ See generally Trial Judgement; Appeal Judgement.

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.

21. Rule 150 of the Rules provides that the President shall, upon 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. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

22. 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.

23. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible.

24. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry to collect information 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 instruct the Registry to communicate 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.

25. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. Paragraph 20 of the Practice Direction states that if early release is granted, it may be subject to conditions.

IV. ANALYSIS

A. Eligibility

26. 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 direct petition by the convicted person or a notification from the relevant enforcement State.²⁴ Further, serving two-thirds of a sentence has been described by the Mechanism's jurisprudence as being "in essence, an admissibility threshold".²⁵

27. Župljanin served two-thirds of his sentence on 7 February 2023,²⁶ and is therefore eligible to be considered for early release.

B. General Standards for Granting

28. 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.²⁷ 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.²⁸

1. Gravity of Crimes

29. 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.²⁹

²⁴ *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) ("Bralo Decision of 28 December 2023"), para. 29; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 6 November 2023 ("Galić Decision of 6 November 2023"), p. 3; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

²⁵ *Bralo* Decision of 28 December 2023, para. 29; *Galić* Decision of 6 November 2023, p. 3; *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.

²⁶ Internal Memorandum from the Registrar to the President, dated 13 December 2023 (confidential), Annex, p. 6.

²⁷ *Bralo* Decision of 28 December 2023, para. 33; *Galić* Decision of 6 November 2023, p. 3; *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.

²⁸ *Bralo* Decision of 28 December 2023, para. 33; *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 of 15 November 2022"), para. 32.

²⁹ *Bralo* Decision of 28 December 2023, para. 34; *Krstić* Decision of 15 November 2022, para. 33.

30. 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.³⁰

31. Župljanin was convicted of committing, through participation in a joint criminal enterprise (“JCE”), murder and torture as violations of the laws or customs of war, and extermination and persecutions as crimes against humanity.³¹ With regard to persecutions, Župljanin was convicted through the underlying acts of: (i) killings; (ii) torture, cruel treatment, and inhumane acts; (iii) unlawful detention; (iv) establishment and perpetuation of inhumane living conditions; (v) forcible transfer and deportation; (vi) wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings; (vii) imposition and maintenance of restrictive and discriminatory measures; and (viii) plunder of property.³² He was also convicted of ordering persecutions as a crime against humanity through plunder of property.³³

32. Župljanin was a member of the JCE that was formed in order “to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state” through the commission of deportation, other inhumane acts (forcible transfer), and persecutions (through underlying acts of forcible transfer and deportation) as crimes against humanity.³⁴ His “active and direct participation in the JCE was undertaken in his official capacity as Chief of the [Regional Security Services Centre of] Banja Luka”.³⁵ Župljanin was the highest police authority in the Autonomous Region of Krajina (“ARK”) in Bosnia and Herzegovina, and his responsibility as a

³⁰ *Bralo* Decision of 28 December 2023, para. 35; *Krstić* Decision of 15 November 2022, para. 34; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Early Release of Radivoje Miletić, 5 May 2021 (public redacted) (“Miletić Decision of 5 May 2021”), para. 39.

³¹ Trial Judgement, vol. 2, para. 956; Appeal Judgement, paras. 6, 1192-1193.

³² Trial Judgement, vol. 2, para. 956; Appeal Judgement, paras. 6, 1192-1193.

³³ Trial Judgement, vol. 2, para. 956; Appeal Judgement, paras. 6, 1192-1193.

³⁴ Trial Judgement, vol. 2, paras. 313, 494, 948; Appeal Judgement, para. 5.

³⁵ Trial Judgement, vol. 2, para. 948. See Trial Judgement, vol. 1, para. 3.

JCE member extended to crimes committed in all eight municipalities of the ARK: Banja Luka, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Skender Vakuf, and Teslić.³⁶

33. In describing his significant contribution to the JCE, the Trial Chamber found that:³⁷

[S]tarting on 1 April 1992 and continuing throughout the rest of the year, Stojan Župljanin ordered and coordinated the disarming of the non-Serb population in the ARK Municipalities. He created a unit, the Banja Luka CSB Special Police Detachment, which he used to assist other Serb Forces in the takeovers of the ARK Municipalities. He was fully aware of and took part in the unlawful arrest of non-Serbs and their forcible removal. He failed to launch criminal investigations and discipline his subordinates who had committed crimes against non-Serbs. He failed to protect the non-Serb population even when they pleaded with him for protection, thereby exacerbating their feeling of insecurity and strongly contributing to their flight out of the ARK Municipalities.

34. Moreover, in relation to the gravity of the crimes, the Trial Chamber found:

Župljanin to be responsible for massive crimes throughout the ARK, including murder, extermination, torture, forcible displacement, and persecution. The victims number in the thousands. The effect of the crimes upon these victims and the fact that many of them were particularly vulnerable persons—such as children, women, the elderly, and persons who had been deprived of their liberty in detention centres—has also been taken into account. These crimes were not isolated instances, but rather part of a widespread and systematic campaign of terror and violence. Župljanin was a high-level police official at the time of the commission of the crimes. The Trial Chamber therefore finds that the crimes for which Župljanin has been found to incur criminal liability are of a high level of gravity.³⁸

35. There were also a number of circumstances aggravating Župljanin's culpability, namely that: (i) his “active and direct participation in the JCE was undertaken in his official capacity”, constituting an abuse of his superior position;³⁹ (ii) the crimes were committed over a duration of nine months;⁴⁰ and (iii) Župljanin “was a well-educated individual, with a university degree in law and with a long career in the police force”, which gave him “full insight into the context in which the crimes were committed under his jurisdiction and a legal understanding of the nature of the crimes”.⁴¹ In mitigation, two factors were identified that were accorded only minimal weight: (i) witness testimony to the effect that “Župljanin never differentiated between people on the basis of their ethnicity, nationality, or religion and that he always tried to help people in trouble regardless of their backgrounds, especially Muslims and Croats”, which the Trial Chamber accepted “may have been the case in specific and isolated instances”;⁴² and (ii) Župljanin’s expression, during closing arguments at trial, of regret and sympathy for the victims and their suffering, which the Trial Chamber contrasted with the “crucial role” he played in the commission of the crimes.⁴³

³⁶ Trial Judgement, vol. 1, para. 9, vol. 2, paras. 493, 805, 832, 845, 850, 859, 864, 869, 946; Appeal Judgement, paras. 5-6, 1142, 1172.

³⁷ Trial Judgement, vol. 2, para. 518. See Appeal Judgement, paras. 713, 870, 886, 900, 904-905.

³⁸ Trial Judgement, vol. 2, para. 946. See Appeal Judgement, paras. 1145-1150, 1172, 1176, 1180-1182, 1190.

³⁹ Trial Judgement, vol. 2, para. 948. See Appeal Judgement, paras. 1154-1156, 1172, 1180-1182, 1190.

⁴⁰ Trial Judgement, vol. 2, para. 949. See Appeal Judgement, paras. 1172, 1190.

⁴¹ Trial Judgement, vol. 2, para. 950. See Appeal Judgement, paras. 1172, 1190.

⁴² Trial Judgement, vol. 2, para. 952. See Appeal Judgement, paras. 1157, 1162-1163, 1171-1172.

⁴³ Trial Judgement, vol. 2, para. 953. See Appeal Judgement, paras. 1157, 1171-1172.

36. Župljanin acknowledges that the gravity of the crimes of which he was convicted “is substantial”.⁴⁴ He reiterates that, in determining his sentence, his positive actions should have been given greater weight,⁴⁵ a position which I note was rejected by the Appeals Chamber.⁴⁶ At the same time, Župljanin submits that his sentence “fully reflects the gravity of the crimes and, as such, should not weigh against his early release” and that “the gravity of crimes, although significant, cannot and must not be the pivotal factor in deciding whether the early release should be granted”.⁴⁷

37. In this respect, I recall that while gravity is not the only factor in assessing an early release application pursuant to Rule 151 of the Rules, it is a factor of fundamental importance,⁴⁸ and that Article 26 of the Statute reflects that early release could be granted “if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law”.⁴⁹

38. The high gravity of Župljanin’s crimes has been well-established, and I am of the view that this factor strongly weighs against his early release.

2. Treatment of Similarly-Situated Prisoners

39. When considering the treatment of similarly-situated prisoners, decisions on early release have emphasised that persons sentenced by the ICTY, like Župljanin, are considered “similarly-situated” to all other prisoners under the Mechanism’s supervision.⁵⁰ 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.⁵¹ Having passed this two-thirds threshold on 7 February 2023,⁵² Župljanin is eligible to be considered for early release.

40. Župljanin submits that the “[v]ast majority” of persons convicted by the ICTY have been released early without conditions, including in cases where the gravity of the crimes for which they were found guilty was similar or more serious than those for which he was convicted.⁵³ He

⁴⁴ Application, para. 7.

⁴⁵ Application, paras. 8-9. See Appeal Judgement, paras. 1157-1159.

⁴⁶ Appeal Judgement, paras. 1162-1163, 1171-1172.

⁴⁷ Application, para. 9.

⁴⁸ See *supra*, para. 30. See also *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Application for Early Release of Radivoje Miletić, 24 June 2022 (“Miletić Decision of 24 June 2022”), para. 32.

⁴⁹ See *supra*, para. 20. See also Miletić Decision of 24 June 2022, para. 32.

⁵⁰ *Bralo* Decision of 28 December 2023, para. 46; *Krstić* Decision of 15 November 2022, para. 42; *Bisengimana* Decision, paras. 16-17.

⁵¹ See *supra*, para. 26.

⁵² See *supra*, para. 27.

⁵³ Application, para. 10.

emphasises that it is “clearly important that similarly situated convicted persons be treated equally” in light of such earlier precedents before the ICTY and the Mechanism.⁵⁴

41. While noting Župljanin’s arguments in this regard, I am of the view that each case presents unique circumstances that must be considered on their own merits by the President in determining whether early release is to be granted.⁵⁵ Therefore, any comparison to other cases in the context of an early release application is inconsequential to the President’s decision.⁵⁶

3. Demonstration of Rehabilitation

42. 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.⁵⁷ The prisoner’s demonstration of rehabilitation is just one factor to be considered when deciding upon such an application.⁵⁸

43. Before turning to an individualised assessment of Župljanin’s demonstration of rehabilitation, I note 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.⁵⁹

44. 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.⁶⁰ Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; (ii) signs of critical reflection of the convicted person upon his or her crimes; (iii) public or private expressions of genuine remorse or regret; (iv) actions taken to foster reconciliation or seek forgiveness; (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes; (vi) participation in rehabilitation programmes in prison; (vii) a convicted person’s mental health status; and (viii) a positive

⁵⁴ Application, para. 11. *See* Final Submission, para. 12.

⁵⁵ *Krstić* Decision of 15 November 2022, para. 44; *Miletić* Decision of 24 June 2022, para. 35; *Miletić* Decision of 5 May 2021, para. 42.

⁵⁶ *Krstić* Decision of 15 November 2022, para. 44; *Miletić* Decision of 24 June 2022, para. 35; *Miletić* Decision of 5 May 2021, para. 42.

⁵⁷ *See supra*, paras. 20, 22.

⁵⁸ *See supra*, paras. 20, 22.

⁵⁹ *Bralo* Decision of 28 December 2023, paras. 49-53; *Krstić* Decision of 15 November 2022, paras. 46-50; *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 of 31 December 2019”), paras. 37-41.

⁶⁰ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

assessment of a convicted person's prospects to successfully reintegrate into society.⁶¹ This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.⁶²

45. 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.⁶³ 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.⁶⁴

46. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.⁶⁵ In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁶⁶

47. 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.⁶⁷

48. Turning to the extent to which Župljanin has demonstrated rehabilitation, I note that the most probative materials before me are: (i) the Application; (ii) the Prison Report; (iii) the Psychological Report; and (iv) the Final Submission.

(a) Behaviour in Prison

49. Župljanin submits that he has maintained a cordial relationship with other prisoners regardless of their nationality, as well as with prison officials in the Netherlands and Poland.⁶⁸ He also notes, in the Final Submission, that he has been commended for good behaviour, treats others

⁶¹ *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39 and references cited therein.

⁶² *Bralo* Decision of 28 December 2023, para. 50; *Krstić* Decision of 15 November 2022, para. 47; *Bralo* Decision of 31 December 2019, para. 39.

⁶³ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 39.

⁶⁴ *Bralo* Decision of 28 December 2023, para. 51; *Krstić* Decision of 15 November 2022, para. 48; *Bralo* Decision of 31 December 2019, para. 38.

⁶⁵ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49.

⁶⁶ *Bralo* Decision of 28 December 2023, para. 52; *Krstić* Decision of 15 November 2022, para. 49; *Bralo* Decision of 31 December 2019, para. 38.

⁶⁷ *Bralo* Decision of 28 December 2023, para. 53; *Krstić* Decision of 15 November 2022, para. 50; *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.

⁶⁸ Application, paras. 2, 14.

with respect, and successfully completed an aggression prevention training, while serving as an interpreter for other prisoners.⁶⁹

50. The Prison Report indicates that Župljanin “is a well-subordinated and disciplined person” for whom “[n]o breaches of order or discipline” and “[n]o aggressive behaviour or proclivity to auto-aggression have been noted”.⁷⁰ The Polish prison authorities had given Župljanin 11 awards, “primarily for outstanding behaviour and proper performance of employment duties”.⁷¹ Župljanin also actively participated in an aggression prevention training over 10 days in 2021, with the trainer evaluating his participation positively.⁷²

51. I acknowledge that, based on the information before me, Župljanin’s behaviour in prison has been very good. While this merits positive weight in my consideration of his rehabilitation, good behaviour in prison cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁷³ It is therefore necessary to consider other indicators, to which I now turn.

(b) Acceptance of Responsibility, Signs of Critical Reflection, Expressions of Genuine Remorse or Regret, and Participation in a Rehabilitation Programme in Prison

52. The jurisprudence of the Mechanism 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 he or she was found to have actually played in the crimes, can suggest a lack of sufficient critical reflection upon his or her crimes.⁷⁴

53. 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.⁷⁵ The content of any such statement should be corroborated by positive actions taken by the convicted person, which indicate that he or she has

⁶⁹ Final Submission, paras. 16-17, 19. See Final Submission, para. 18.

⁷⁰ Prison Report, p. 3. See Psychological Report, p. 2.

⁷¹ Prison Report, p. 3.

⁷² Prison Report, pp. 3-4.

⁷³ See *supra*, para. 46.

⁷⁴ *Bralo* Decision of 28 December 2023, para. 59; *Krstić* Decision of 15 November 2022, para. 56; *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.

⁷⁵ *Bralo* Decision of 28 December 2023, para. 62; *Krstić* Decision of 15 November 2022, para. 61.

critically reflected upon his or her crimes and is genuinely remorseful.⁷⁶ Evidencing the rehabilitation process is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse or regret from more opportunistic ones.⁷⁷

54. Župljanin submits that he expressed his remorse and regret at the end of both his trial and appeal proceedings, and that his respective statements are clear indicators of his rehabilitation and preparedness to reintegrate into society:⁷⁸

[O]n this occasion, just as I did at the beginning of the trial, I wish to express my sincere regret and sympathy for the victims and their sufferings, as I have not had the occasion to tell them that in person during the trial.⁷⁹

I come from a mixed family encompassing the members of all three ethnicities. They lived together before the war, they lived together during the war, and they do so now. [...] I am sorry for the omissions I may be responsible for. I'm sorry for all the victims from that period.⁸⁰

55. I observe that the Trial Chamber gave “little weight” to Župljanin’s expressions of remorse and regret as a mitigating factor,⁸¹ and that the Appeals Chamber affirmed this approach while maintaining the sentence imposed on Župljanin.⁸² I also note that Župljanin offers no further expression of remorse or regret in the Application, nor is there any indication – through positive actions or otherwise – that he accepts or has reflected critically upon his criminal responsibility. To the contrary, I find it concerning that Župljanin still relies on his purported “tremendous efforts to prevent and report crimes” during the conflict,⁸³ even though the Trial Chamber found that he “did not do anything to reassure and protect the non-Serb population, aside from issuing ineffective and general orders, which were not genuinely meant to be effectuated”.⁸⁴ In my view, Župljanin’s continued insistence on his purported “tremendous efforts” reflects a lack of acceptance of his own criminal responsibility. The Final Submission, in turn, merely asserts that he “reiterates his regret and remorse to all the victims for their suffering”.⁸⁵

56. Additionally, I note that although it is not mentioned in the Application, the Prison Report indicates that Župljanin willingly participated in the “Aggression Replacement Training” programme over 10 days in 2021.⁸⁶ The programme was conducted by a certified trainer who is also an “interpreter of the Serbian language”, which eliminated the language barrier, according to

⁷⁶ *Bralo* Decision of 28 December 2023, para. 62; *Krstić* Decision of 15 November 2022, para. 61.

⁷⁷ *Bralo* Decision of 28 December 2023, para. 62.

⁷⁸ Application, paras. 15-16.

⁷⁹ Application, para. 15 quoting Transcript of 1 June 2012, T. 27667.

⁸⁰ Application, para. 16 quoting Transcript of 16 December 2015, T. 242, 244.

⁸¹ Trial Judgement, vol. 2, para. 953.

⁸² Appeal Judgement, paras. 1157, 1171, 1189.

⁸³ Application, para. 8.

⁸⁴ Trial Judgement, vol. 2, para. 953. See Appeal Judgement, para. 1163.

⁸⁵ Final Submission, para. 11. See Final Submission, para. 19.

the prison officials.⁸⁷ As part of the training, Župljanin learned how to control anger and behave appropriately in aggression-provoking situations, while working to replace destructive behaviours with positive ones.⁸⁸ He is reported to have listened attentively, contributed in group discussions, and demonstrated his engagement, for which his participation was evaluated positively.⁸⁹

57. Župljanin's active participation in aggression replacement training is a positive factor in my assessment of his rehabilitation. Notwithstanding this initial step, his mere assertions in the Application and the Final Submission are insufficient to demonstrate that he has accepted responsibility, critically reflected upon his crimes, or genuinely expressed remorse or regret.

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

58. Župljanin states that he is “of good mental health” and has maintained close connections with his family members.⁹⁰ He submits that he is ready to be reintegrated into society and indicates that, if released early, he would live in [REDACTED], Bosnia and Herzegovina.⁹¹ He adds that through his monthly pension he will be able to support himself financially and can rely on his family to assist in his resocialisation.⁹² Finally, Župljanin affirms that he has refused to speak with the media while in prison, and that he is willing to accept and would abide by all conditions placed upon him for his early release.⁹³

59. The Psychological Report indicates that Župljanin’s mental state “does not give rise to any concerns” as he is “communicative, emotionally stable, [and] does not verbalise any symptoms of resignation”.⁹⁴ Moreover, he “comes across as a person of cheerful disposition with [a] positive attitude to the world around him”.⁹⁵ He reportedly interacts appropriately with other prisoners, maintains regular contact with his family through visits as well as communication by telephone and Skype, and does not give media interviews as he “decidedly cuts [himself] off from his past”.⁹⁶

60. The information before me reflects that Župljanin has a healthy mental state and has maintained close contact with members of his family. I also note that Župljanin’s lack of media

⁸⁶ Prison Report, p. 2. *See* Psychological Report, p. 2; Final Submission, para. 17.

⁸⁷ Prison Report, p. 2. *See* Psychological Report, p. 2.

⁸⁸ Prison Report, p. 2.

⁸⁹ Prison Report, pp. 2-3.

⁹⁰ Application, para. 13.

⁹¹ Application, para. 13; Final Submission, para. 12. *See* Application, para. 19.

⁹² *See* Application, para. 17.

⁹³ Application, p. 7; Final Submission, para. 17, Registry Pagination 106.

⁹⁴ Psychological Report, p. 2.

⁹⁵ Psychological Report, p. 2.

⁹⁶ Psychological Report, pp. 1-2.

engagement is corroborated by the information provided by the Registry.⁹⁷ Although these elements do not in and of themselves demonstrate rehabilitation, I consider that they merit positive weight in my consideration of the extent to which Župljanin could successfully reintegrate into society.

61. Further, I recall that I invited the views of the authorities of Bosnia and Herzegovina with respect to Župljanin's indication that, if released early, he would reside in [REDACTED], Bosnia and Herzegovina, and their ability and willingness to monitor any conditions imposed by the Mechanism in case of an early release.⁹⁸ Notwithstanding a follow-up communication and additional time,⁹⁹ no views were received from the authorities of Bosnia and Herzegovina. This not only negatively impacts the Mechanism's ability to impose and monitor any conditions in case of an early release, but it further calls into question Župljanin's ability to successfully reintegrate into society as he had intended, which of is heightened importance given his desire to return to the region where his crimes were committed.

(d) Overall Assessment

62. Župljanin has not demonstrated that he has been sufficiently rehabilitated. While his good behaviour in prison and participation in a rehabilitation course are positive indicators, I recall that the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.¹⁰⁰ Regrettably, Župljanin provides no indication that he has engaged in critical reflection or accepted responsibility for his crimes, and his expressions of remorse or regret date from his proceedings before the ICTY. Other than the short rehabilitation course, there is no positive action to substantiate the claims advanced in the Application. Župljanin's mere assertions are far from demonstrating the degree of rehabilitation that would be expected to satisfy this component of an early release application, especially for a convicted person who intends to return to the region where his crimes were committed.

4. Substantial Cooperation with the Prosecutor

63. Župljanin submits that the Prosecution never approached him to seek his cooperation, and he exercised his right not to volunteer it.¹⁰¹ The Prosecution also states that Župljanin did not substantially cooperate with it at any point.¹⁰²

⁹⁷ See External Relations Office Memorandum, p. 1. See also Final Submission, paras. 13, 15.

⁹⁸ Invitation to Bosnia and Herzegovina, p. 2.

⁹⁹ Note verbale to Bosnia and Herzegovina, p. 1.

¹⁰⁰ See *supra*, para. 30.

¹⁰¹ Application, para. 12.

¹⁰² Prosecution Memorandum, para. 18.

64. It is evident that Župljanin has not cooperated with the Prosecution, substantially or otherwise. Accordingly, this merits no weight in my consideration of the Application.

C. Other Considerations

1. Comments and Information Provided by the Prosecution

65. 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.¹⁰³ 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.¹⁰⁴

66. The Prosecution submits that Župljanin has not demonstrated that early release is warranted in his case due to the high gravity of his crimes,¹⁰⁵ the insufficient evidence of his rehabilitation,¹⁰⁶ and the lack of substantial cooperation with the Prosecution.¹⁰⁷ The Prosecution emphasises that the inherent gravity of the crimes is intensified in Župljanin's case because of their scale over a protracted nine-month period, as well as Župljanin's participation in them as the highest police authority in the ARK.¹⁰⁸ It further states that Župljanin does not provide any evidence that he has expressed remorse or regret since his proceedings before the ICTY, that he now has a positive attitude towards persons of other backgrounds, or that he has critically reflected upon, or accepted responsibility, for his crimes.¹⁰⁹

67. Župljanin responds that the Application already details the reasons justifying his early release,¹¹⁰ that the substantial gravity of the crimes "serve [to him] as an ongoing reminder of the atrocious and unfortunate events that took place during the pertinent time period",¹¹¹ and that the Prosecution gives little or no merit to his continued expression of regret, and clear signs of

¹⁰³ *Bralo* Decision of 28 December 2023, para. 82; *Krstić* Decision of 15 November 2022, para. 72; *Bralo* Decision of 31 December 2019, para. 69.

¹⁰⁴ *Bralo* Decision of 28 December 2023, para. 82; *Krstić* Decision of 15 November 2022, para. 72; *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.

¹⁰⁵ Prosecution Memorandum, paras. 2, 4-12, 28.

¹⁰⁶ Prosecution Memorandum, paras. 2, 13-17, 28.

¹⁰⁷ Prosecution Memorandum, paras. 2, 18, 28. The Prosecution also submits that if, after consulting with victims and affected communities, I decide to grant the Application, then appropriate conditions should be imposed on Župljanin's early release. See Prosecution Memorandum, paras. 2, 19-28.

¹⁰⁸ Prosecution Memorandum, paras. 6-8 referring to Trial Judgement, vol. 2, paras. 493, 946-947, 949; Appeal Judgement, paras. 6, 1147-1149, 1192.

¹⁰⁹ Prosecution Memorandum, paras. 14-15.

¹¹⁰ Final Submission, para. 5.

¹¹¹ Final Submission, para. 6.

rehabilitation.¹¹² He submits that, in considering the Prosecution's input, I should ensure a balance is achieved "between such input, the interest of justice, the convicted person's rights and [the] unique circumstances of his case".¹¹³

68. I have given due regard to the Prosecution's comments and information on the Application, as well as to Župljanin's response thereto.

2. Impact on Witnesses and Victims

69. WISP conveyed information concerning 177 surviving witnesses from Župljanin's case.¹¹⁴ According to information at WISP's disposal, a number of witnesses are residing near the location where Župljanin intends to return if released early, including some witnesses who played a significant role in his conviction and are deemed by WISP to be "vulnerable".¹¹⁵ WISP stated that it was not in a position to specifically assess whether Župljanin would be capable of harming, or intends to harm, any witnesses.¹¹⁶ Yet, WISP also expressed its concern about the geopolitical situation in the immediate and surrounding area where Župljanin intends to reside if released early, and noted that some witnesses, especially those of ethnic minority groups at issue in Župljanin's case, continue to have a feeling of insecurity fuelled by historical and current events.¹¹⁷ WISP also indicated that witness security concerns have been an ongoing occurrence since the late 1990s and into the 2020s.¹¹⁸

70. The Victims' Associations all oppose Župljanin's early release.¹¹⁹ The Association of the Victims and Witnesses of Genocide emphasises Župljanin's numerous attempts to evade criminal responsibility and submits that the Application demonstrates his lack of remorse for his crimes.¹²⁰ The Association «Women Victims of War» Sarajevo expresses its view that an early release "would be a defeat of international justice", "an insult and humiliation of the victims", and "a great risk" to the reconciliation efforts in Bosnia and Herzegovina that are still ongoing.¹²¹ While the Association of Families of Martyrs and Fallen Soldiers of the Municipality of Ključ does not explain why it

¹¹² Final Submission, para. 7.

¹¹³ Final Submission, para. 8.

¹¹⁴ WISP Memorandum, paras. 3-5.

¹¹⁵ WISP Memorandum, paras. 6, 8-18.

¹¹⁶ WISP Memorandum, para. 20.

¹¹⁷ WISP Memorandum, para. 19.

¹¹⁸ WISP Memorandum, para. 19.

¹¹⁹ Letter from Association of the Victims and Witnesses of Genocide, p. 3; Letter from Association «Women Victims of War» Sarajevo, p. 1; Letter from Association of Families of Martyrs and Fallen Soldiers of the Municipality of Ključ, p. 1; Letter from Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons 'Vrbanja' Kotor Varoš, pp. 1-2; Letter from Association of Camp Inmates of Bosnia and Herzegovina, p. 1.

¹²⁰ Letter from Association of the Victims and Witnesses of Genocide, pp. 1-2.

¹²¹ Letter from Association «Women Victims of War» Sarajevo, p. 1.

opposes the Application,¹²² the Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons ‘Vrbanja’ Kotor Varoš submits that Župljanin’s crimes warrant his imprisonment until the sentence is fully served, and that he has never shown remorse for these crimes.¹²³ The Association of Camp Inmates of Bosnia and Herzegovina observes that Župljanin did not submit a handwritten request along with his typed application, which “speaks to the fact that this is merely a formality” for him, and further states that his early release “would certainly cause unease throughout the Republika Srpska entity” in Bosnia and Herzegovina.¹²⁴ Additionally, two of the Victims’ Associations stress that Župljanin has never offered his assistance in locating the graves of their loved ones, so that their bodies could be exhumed, identified, and be given a proper burial, thereby easing the pain of the surviving victims.¹²⁵

71. Župljanin states that he has no intention whatsoever of contacting or otherwise interfering with any victims or witnesses, and that there is no evidence that his early release would impact on the safety or security of victims or witnesses.¹²⁶ With respect to the Victims’ Associations, Župljanin notes that he “will not address their submissions other than to state that he fully understands their position and reiterates his regret and remorse to all the victims for their suffering”.¹²⁷

72. I have remained mindful of all of this information in considering the Application.

3. Health of the Convicted Person

73. Previous decisions have taken into account the state of the convicted person’s health in the context of an early release application.¹²⁸ In particular, I observe that a convicted person’s health

¹²² See Letter from Association of Families of Martyrs and Fallen Soldiers of the Municipality of Ključ, p. 1.

¹²³ Letter from Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons ‘Vrbanja’ Kotor Varoš, p. 1.

¹²⁴ Letter from Association of Camp Inmates of Bosnia and Herzegovina, p. 1.

¹²⁵ Letter from Association of the Victims and Witnesses of Genocide, p. 1 (“without having the slightest intention of making it easier for us, the victims, to find those who were killed or identify the other participants in and direct perpetrators of the crimes”); Letter from Organisation of Families of Martyrs, Fallen Soldiers and Missing Persons ‘Vrbanja’ Kotor Varoš, p. 1 (“He never showed readiness [...] to provide anyone – families or institutions of Bosnia and Herzegovina – with information about the locations of the graves of the murdered Bosniaks and Croats in the territory of Kotor Varoš, so that their bodies could be exhumed, identified and properly buried. We are certain that, as a high-ranking official in the Army of Republika Srpska, he was informed during the war of all the developments and the war crimes committed in the territory of Kotor Varoš. [...] We who have lost our nearest and dearest and are searching for their remains [...] cannot accept that sentences imposed on war criminals convicted of the most serious war crimes be reduced when they have not contributed in any way to diminishing and easing the pain of victims in [Bosnia and Herzegovina] or showed any such intention in their actions and behaviour.”).

¹²⁶ Final Submission, para. 10.

¹²⁷ Final Submission, para. 11.

¹²⁸ *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Reasons for the 29 August 2023 Decision on the Application for Early Release of Franko Simatović, 11 September 2013 (public redacted) (“Reasons for Simatović Decision”), para. 37; *Krstić* Decision of 15 November 2022, para. 87; *Bisengimana* Decision, para. 32.

must be considered when the seriousness of his or her condition makes it inappropriate for the convicted person to remain in prison any longer.¹²⁹

74. Župljanin refers to his age and precarious health situation as significant factors that reinforce his request to be released early.¹³⁰ In particular, he submits that he is over 70 years old, [REDACTED], and needs “close medical monitoring and attention” which would be best administered by medical specialists in the place where he would live if released early.¹³¹

75. The Medical Report indicates, *inter alia*, that Župljanin [REDACTED].¹³² It further indicates that Župljanin [REDACTED].¹³³ The Medical Report concludes that Župljanin has been “[REDACTED]” and that he “[REDACTED]”.¹³⁴

76. I have taken the information on Župljanin’s health into account as part of my overall assessment in reaching my decision on the Application. At the same time, I find no indication that Župljanin’s continued imprisonment is inappropriate and consider that he has not demonstrated any compelling humanitarian grounds that would warrant his early release.

4. Consultation

77. In coming to my decision on whether to grant the Application, I have consulted with three other Judges of the Mechanism.¹³⁵ Judge Agius, Judge Hall, and Judge Liu all share the view that the Application should be denied in light of the high gravity of the crimes for which Župljanin was convicted, as well as his insufficient demonstration of rehabilitation.

78. 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

79. Although Župljanin has served two-thirds of his sentence and is therefore eligible to be considered for early release, the high gravity of his crimes is a factor that militates strongly against granting him early release, as is his insufficient demonstration of rehabilitation. Župljanin has also

¹²⁹ Reasons for Simatović Decision, para. 37; Krstić Decision of 15 November 2022, para. 87; *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.

¹³⁰ Application, paras. 2, 18.

¹³¹ Application, para. 19.

¹³² Medical Report, p. 1.

¹³³ Medical Report, pp. 1-3.

¹³⁴ Medical Report, p. 3.

¹³⁵ See *supra*, para. 18.

failed to substantiate the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

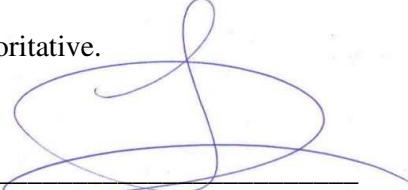
VI. DISPOSITION

80. 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.

81. The Registrar is **DIRECTED** to provide 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 18th day of January 2024,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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