

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-14-83-ES

Date: 23 June 2015

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THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 23 June 2015

PROSECUTOR

v.

STANISLAV GALIĆ

PUBLIC REDACTED

**REASONS FOR THE PRESIDENT'S DECISION TO DENY
THE EARLY RELEASE OF STANISLAV GALIĆ AND
DECISION ON PROSECUTION MOTION**

The Office of the Prosecutor

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1. I, Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals ("Mechanism"), was seised of the Embassy of the Federal Republic of Germany's notification of the eligibility for early release of Mr. Stanislav Galić ("Galić"), dated 10 October 2014, conveyed to me by the Registry of the Mechanism ("Registry") on 15 October 2014.¹ I considered the Notification pursuant to Article 26 of the Statute of the Mechanism ("Statute"), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism ("Rules"), and paragraph 2 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism ("Practice Direction").² On 5 December 2014, I denied Galić early release with reasons to follow.³

I. BACKGROUND

2. Galić was arrested in Bosnia and Herzegovina ("Bosnia") by the Multinational Stabilisation Force on 20 December 1999 and was transferred to the United Nations Detention Unit at The Hague on 21 December 1999.⁴ At a hearing on 29 December 1999 before Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia ("Trial Chamber" and "ICTY", respectively), Galić pleaded not guilty to the seven counts of the indictment with which he was charged.⁵ On 5 December 2003, the Trial Chamber, by a majority, found Galić guilty pursuant to Article 7(1) of the ICTY Statute of five counts of the Indictment, including charges of murder as a crime against humanity through sniping and shelling, inhumane acts other than murder as crimes against humanity through sniping and shelling, and acts of violence the primary purpose of which was to spread terror among the civilian population as violations of the laws and customs of war.⁶ He was sentenced to a single term of 20 years' imprisonment.⁷ On 30 November 2006, the Appeals Chamber of the ICTY ("Appeals Chamber") dismissed all 19 of Galić's grounds of appeal and increased his sentence to life imprisonment.⁸

¹ Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, to Judge Theodor Meron, President, dated 15 October 2014, transmitting a *Note Verbale* from the Embassy of the Federal Republic of Germany, The Hague, to the Registrar of the Mechanism ("Registrar"), dated 10 October 2014 ("Notification"), with Annexes.

² MICT/3, 5 July 2012.

³ Decision with Reasons to Follow on the Early Release of Stanislav Galić, 5 December 2014 ("Decision of 5 December 2014"), p. 2.

⁴ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003 ("Trial Judgement"), para. 774.

⁵ Trial Judgement, paras. 772, 777.

⁶ Trial Judgement, paras. 751, 769. The two other counts charged by the Indictment were dismissed, because the Trial Chamber concluded that they were "subsumed under count 1 [of the Indictment]". See Trial Judgement, para. 752.

⁷ Trial Judgement, para. 769.

⁸ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 ("Appeal Judgement"), p. 185, Annex A, para. 4.

3. Galić was transferred to the Federal Republic of Germany (“Germany”) to serve the remainder of his sentence on 15 January 2009.⁹

II. NOTICE OF ELIGIBILITY

4. On 10 October 2014, the Embassy of Germany to the Netherlands conveyed a letter from the German Ministry of Justice, dated 24 June 2014 (“Letter”), explaining that Galić will be eligible for early release under Germany’s national laws, in view of the fact that he will have served 15 years of his sentence as of 18 December 2014.¹⁰ The Notification also includes: (i) a report from the General Prison Service of Freiburg Prison on Galić’s behaviour and psychological, educational, and health status, dated 13 June 2014 (“Prison Report”); (ii) a summary of Galić’s time spent in prison; and (iii) a pending order of the Freiburg Regional Commissioner’s Office, dated 3 June 2014, ordering Galić’s expulsion from Germany should he be released from Freiburg Prison. On 3 November 2014, the Registry conveyed to me a memorandum from the Office of the Prosecutor (“Prosecution”) regarding Galić’s cooperation with the Prosecution of the ICTY.¹¹

5. On 3 November 2014, the Prosecution filed a motion opposing the early release of Galić,¹² submitting that: (i) it has standing to do so on the basis that “[t]he meaning of life imprisonment” is “a question of law under the MICT Statute and Rules rather than an issue concerning the enforcement of Galić’s sentence as such”;¹³ and (ii) life imprisonment should entail a sentence that is longer than the longest fixed-term sentence handed down by the international tribunals, including the Special Court for Sierra Leone (“SCSL”).¹⁴ Galić did not respond to the Prosecution Motion.

6. On 21 November 2014, the Registrar informed me that the documentation, including the Notification, was forwarded to Galić in the Bosnian/Croatian/Serbian language on 5 November 2014. In the same correspondence, and in accordance with paragraph 6 of the Practice Direction, the Registrar conveyed to me Galić’s response to the Notification,¹⁵ in which Galić

⁹ See Press Release, Stanislav Galić Transferred to Germany to Serve Sentence, dated 15 January 2009, available at <http://www.icty.org/sid/10037>.

¹⁰ Letter, p. 1. See also Notification, pp. 1-2.

¹¹ Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, to Judge Theodor Meron, President, dated 3 November 2014, transmitting an Internal Memorandum from Mr. Mathias Marcussen, Senior Legal Officer/Officer in Charge, Office of the Prosecutor, Hague Branch, to Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, dated 28 October 2014 (“Prosecution Memorandum”).

¹² Motion Opposing Early Release, 3 November 2014 (confidential) (“Prosecution Motion”).

¹³ Prosecution Motion, para. 2.

¹⁴ Prosecution Motion, paras. 3-9.

¹⁵ Internal Memorandum from Mr. Gus de Witt, Officer in Charge, Office of the Registrar, Hague Branch, to Judge Theodor Meron, President, dated 21 November 2014, transmitting *Requête en vue de libération anticipée*, 11 November 2014 (“Galić Response”). Although titled a request, the Galić Response was submitted following receipt of documentation sent to Galić by the Registry, pursuant to paragraph 6 of the Practice Direction, and is accordingly treated herein as a response. See also Decision of 5 December 2014, n. 3.

generally submits that he should be granted early release after having served 15 years of his sentence, as provided for by German law and in accordance with the Mechanism's jurisprudence.¹⁶

III. DISCUSSION

7. In coming to my decision on whether it is appropriate to grant early release for Galić, I have consulted the Judge of the sentencing Chamber who is a Judge of the Mechanism, pursuant to Rule 150 of the Rules.

A. Preliminary Matter

8. I note that pursuant to Rule 151 of the Rules, the Prosecution is consulted with respect to the substantial cooperation, if any, of the convicted person during the pre-trial, trial or appeal of his or her case.¹⁷ Neither the Rules nor the Practice Direction provides the Prosecution standing to make submissions on whether or not early release should be granted or on the calculation of life sentence for purposes of requests for early release. However, as set forth in paragraph 9 of the Practice Direction, in reaching a determination as to whether early release is to be granted, the President of the Mechanism ("President") may take into account any other information that he or she considers relevant. Given the particular issue presented in Galić's case, I am willing to consider the Prosecution Motion in this particular case.

B. Applicable Law

9. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the International Criminal Tribunal for Rwanda ("ICTR"), or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Pursuant to Article 26, 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.

10. Rule 149 of the Rules echoes Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President shall, upon such notice, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. Rule 151 of the Rules provides that, in making a determination on pardon,

¹⁶ See generally Galić Response, paras. 83-97, 139, 142-145.

¹⁷ See also Practice Direction, para. 4(c).

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.

11. Paragraph 2 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly. Paragraph 3 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible therefore.

12. At the time of receipt of the Notification, the conditions under which Galić's prison sentence were enforced were governed by an agreement between the ICTY and the Government of Germany, dated 16 December 2008 ("Enforcement Agreement"). Article 2(2) of the Enforcement Agreement provides that the conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the ICTY (and now, the Mechanism).¹⁸ Article 7(2) of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provides, *inter alia*, that the President shall determine whether pardon or commutation of sentence is appropriate.

C. Eligibility under German Law

13. Under section 57a of the German Criminal Code, a convicted person sentenced to life imprisonment may be released on parole at the completion of 15 years of the sentence.¹⁹ I note, however, that even if Galić is eligible for early release under the domestic law of Germany,²⁰ the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

¹⁸ Security Council Resolution 1966 (2010) provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 ("[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]"). According to Article 25(2) of the Statute, "[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States".

¹⁹ Notification, p. 1; Letter, pp. 1-2.

²⁰ See Galić Response, paras. 68-88.

D. Gravity of Crimes

14. The crimes for which Galić has been convicted are of very high gravity. In this regard, the Trial Chamber stated that Galić “was a professional soldier who not only made little effort to distinguish civilian from military objectives but willingly oversaw the targeting of civilians in Sarajevo”,²¹ and “repeatedly breached his public duty from [the] very senior position” of VRS Corps commander.²² The Trial Chamber found that the gravity of the crimes committed by Galić was “established by their scale, pattern and virtually continuous repetition, almost daily, over many months”, leaving the inhabitants of Sarajevo terrorized, hundreds of civilians killed, and thousands wounded.²³ The crimes to which Galić contributed inflicted both physical harm and psychological harm on the victims, who were subjected to difficult living conditions in an “anguishing environment”.²⁴ The Trial Chamber further noted that Galić voluntarily participated in all of the crimes, and considered that Galić was not merely a professional soldier, as he contended, but an experienced military officer of 49 years of age who was “well aware of the extent of his obligations laid out in the military codes of the former JNA and then of the VRS”.²⁵

15. In deciding to increase Galić’s sentence to life imprisonment, the Appeals Chamber noted that his “crimes were characterized by exceptional brutality and cruelty, his participation was systematic, prolonged and premeditated and he abused his senior position of VRS Corps commander”.²⁶

16. Galić submits that the gravity of the crime has never, as such, prevented early release.²⁷

17. In these circumstances, I am of the view that the high gravity of Galić’s offences weighs against his early release.

E. Eligibility and Treatment of Similarly-Situated Prisoners

18. This is the first case before the Mechanism involving the eligibility, pursuant to national law, for early release of a convicted person who is sentenced to life imprisonment. The ICTR and the ICTY have also not addressed this issue. The question of Galić’s eligibility is thus a matter of first impression under our case law. In order to assess this issue, two distinct questions must be answered: (i) if a person sentenced to life imprisonment and serving that sentence under the supervision of the Mechanism may be considered eligible for early release; and (ii) if so, whether

²¹ Trial Judgement, para. 767.

²² Trial Judgement, para. 765.

²³ Trial Judgement, para. 764.

²⁴ Trial Judgement, para. 764.

²⁵ Trial Judgement, para. 765.

²⁶ Appeal Judgement, para. 455.

any particular considerations beyond those already enunciated in the Mechanism's jurisprudence should impact decisions concerning early release with regard to those persons serving life sentences under the Mechanism's supervision. I will address these questions in turn.

19. Turning to the first question, I note that there is no explicit discussion in the Statute or Rules that regulates whether those sentenced to life imprisonment are eligible for early release.²⁸ However, a review of (i) the Mechanism's Statute and Rules, (ii) the jurisprudence of the Mechanism, the ICTR, and the ICTY, and (iii) relevant international legal standards strongly suggests that those sentenced to life imprisonment are not barred from being considered for early release.

20. The legal regime of the Mechanism, like that of the ICTR and the ICTY, allows for the imposition of both fixed-term and life sentences.²⁹ At the same time, the Statute of the Mechanism explicitly endows the President with the ability to grant early release "on the basis of the interests of justice and the general principles of law".³⁰ This broad grant of authority is not restricted to a particular type of sentence by the Statute or the Rules, or by the jurisprudence of the Mechanism, the ICTR, or the ICTY.³¹

21. Indeed, the jurisprudence of the ICTR and the ICTY implies that the possibility of early release applies to all convicted persons, including those sentenced to life imprisonment. I note in this regard that in imposing sentences of life imprisonment, Chambers of the ICTR and the ICTY have routinely made clear that the convicted person shall be given credit for time already spent in detention.³² This does not simply reflect routine application of a requirement of the relevant Rules of Procedure and Evidence.³³ As the ICTR Appeals Chamber had occasion to explain in the case of *Ferdinand Nahimana et al. v. The Prosecutor*, it is important that an individual sentenced to life imprisonment be credited for time spent in detention between his arrest and conviction, "as this could have an effect on the application of any provisions for early release".³⁴ I note that the

²⁷ Galić Response, para. 95. See also Galić Response, paras. 96-97.

²⁸ See generally Article 26 of the Statute; Rules 149-151 of the Rules.

²⁹ See Rule 125(A) of the Rules. See also Rule 101(A) of the Rules of Procedure and Evidence of the ICTR ("ICTR Rules"); Rule 101(A) of the Rules of Procedure and Evidence of the ICTY ("ICTY Rules").

³⁰ Article 26 of the Statute.

³¹ See Article 26 of the Statute. See also Rules 149-151 of the Rules. See generally Practice Direction.

³² See, e.g., Appeal Judgement, p. 185. See also, e.g., *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement, 4 December 2012, para. 672; *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-A, Judgement, 12 March 2008, p. 84; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement, 19 September 2005, para. 365.

³³ See Rule 125(C) of the Rules; Rule 101(C) of the ICTR Rules; Rule 101(C) of the ICTY Rules.

³⁴ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 1112.

Prosecution does not reject the principle that early release should be possible in cases of life sentences.³⁵

22. I also observe that the United Nations Standard Minimum Rules for the Treatment of Prisoners and the International Covenant on Civil and Political Rights, while not specifically referencing life imprisonment, emphasize the importance of ensuring that imprisonment be focused on the rehabilitation of the convicted person to enable him or her to return to society.³⁶ These general legal principles concerning rehabilitation with an aim of reintegration into society would be rendered meaningless if a prisoner is not afforded the possibility of having his or her sentence reviewed.³⁷ Indeed, as recently recognized by the European Court of Human Rights (“ECHR”), the rehabilitative principle and respect for human dignity, *inter alia*, require that all prisoners, including those serving life sentences, be afforded both a possibility of review of their sentences and a prospect of release.³⁸ As the ECHR has explained in this regard, “[i]t is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention”, and the balance between these justifications for detention “may shift in the course of the sentence”; it follows that “[i]t is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated”.³⁹

23. In these circumstances, I am satisfied that the interests of justice and the general principles of law support providing those sentenced to life imprisonment and serving their sentences under the Mechanism’s supervision the possibility of early release. One of the core principles underlying the Mechanism’s jurisprudence concerning early release is that all convicted persons whose sentence enforcement is supervised by the Mechanism should be treated equally, with each case assessed

³⁵ See Prosecution Motion, paras. 4-5.

³⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955 (“UN Standard Rules”), para. 58; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 16 December 1966, art. 10(3). See also UN Standard Rules, paras. 59-61, 65-66.

³⁷ Review of a sentence, as used in this context and elsewhere herein, refers to the process of assessing the purpose and justification for continued detention in light of the circumstances of a particular case and other relevant factors. See Article 26 of the Statute; Rule 151 of the Rules. See also, e.g., *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-ES, Order of the President for the Early Release of Zlatko Aleksovski, 15 November 2001, p. 4 (granting early release where, *inter alia*, under the circumstances presented, to keep the convicted person “in detention would serve no useful purpose”); Article 110(3)-(4) of the Rome Statute of the International Criminal Court (“ICC”) (referring to the ICC’s “review” of a sentence to determine whether it should be reduced). Review of a sentence is therefore distinguishable from review proceedings conducted pursuant to Article 24 of the Statute and Rules 146, 147, and 148 of the Rules.

³⁸ See *Case of Vinter and Others v. The United Kingdom*, Eur. Ct. H.R., Judgement, 9 July 2013 (“Vinter Judgement”), paras. 110-119. See also *Vinter Judgement*, para. 114 (“Indeed, there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”).

³⁹ *Vinter Judgement*, para. 111.

individually under the same legal framework.⁴⁰ This principle would be violated were those sentenced to life imprisonment denied, in a blanket fashion, the possibility of review of their sentences and the prospect of release available to those who received determinate sentences.

24. In view of the foregoing, I consider that a person convicted by the ICTR, the ICTY, or the Mechanism and sentenced to a term of life imprisonment may be considered eligible for early release.

25. Having determined that those serving life sentences are eligible for early release, I turn to whether any particular considerations may affect consideration of early release for those sentenced to life imprisonment.

26. I note that Galić maintains that his eligibility for early release is to be determined by German law and that insofar as there is a potential conflict between domestic law “and the Statute or the Rules of the ICTY”, the principle of *lex mitior* must be applied.⁴¹ The Prosecution submits that in order to apply the Mechanism’s existing jurisprudence concerning early release to a convicted person serving a sentence of life imprisonment, that sentence must be equated to a hypothetical fixed-term sentence.⁴² The Prosecution asserts that this hypothetical fixed-term sentence must be considerably longer than the longest fixed-term sentence that can be imposed so as not to undermine the nature of life imprisonment as the most serious sentence that can be imposed.⁴³ Accordingly, the Prosecution requests that a life sentence be interpreted to mean a sentence “meaningfully longer than” a sentence of 52 years of imprisonment, the highest determinate sentence imposed by an international criminal court or tribunal to date.⁴⁴

27. I first recall that early release of persons convicted by the ICTY, like Galić, falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules as well as Article 7(2) of the Enforcement Agreement.⁴⁵ I further consider that the need for equal treatment of all convicted persons supervised by the Mechanism requires that the existing practice of the Mechanism concerning early release be applied to those serving sentences of life

⁴⁰ See, e.g., *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) (“*Bisengimana Decision*”), paras. 17-20.

⁴¹ See Galić Response, para. 90. See also Galić Response, paras. 68-89, 91-92, 142-145.

⁴² Prosecution Motion, paras. 4-5.

⁴³ Prosecution Motion, paras. 6-9.

⁴⁴ See *Prosecution Motion*, paras. 7-9. The sentence of 52 years was handed down by the SCSL. See *Prosecution Motion*, para. 7.

⁴⁵ See *supra*, paras. 12-13. Contrary to Galić’s suggestion, the Mechanism is not precluded from reaching a decision on early release where doing so would lead to different treatment of a convicted person supervised by the Mechanism as compared with other prisoners in the same prison. In this regard, I consider Galić’s reliance on principles concerning the use of sentence remissions as a tool of prisoner management in domestic systems to be misplaced. See Galić

imprisonment under the Mechanism's supervision. In this respect, I recall that persons sentenced by the ICTY are "similarly-situated" to all other prisoners under the Mechanism's supervision and thus, are to be considered eligible for early release upon having served two-thirds of their sentences, irrespective of the tribunal that convicted them.⁴⁶ Although the two-thirds practice originates from the ICTY, it applies to all prisoners within the jurisdiction of the Mechanism, given the need for equal treatment of all convicted persons supervised by the Mechanism and the need for a uniform eligibility threshold applicable to both of the Mechanism's branches.⁴⁷ However, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.⁴⁸

28. In these circumstances, I am not convinced by Galić's contention that German law should govern his early release. His suggested approach both contradicts the Statute, Rules, and Enforcement Agreement,⁴⁹ and would violate the principle of equal treatment for all convicted persons, given that other sentences imposed by the Mechanism, the ICTR, or the ICTY would not be governed by national laws.

29. That leaves open a key issue: how to apply the existing two-thirds framework of the Mechanism to cases involving sentences of life imprisonment. In this regard, I agree with the Prosecution's suggestion that a sentence of life imprisonment, which is the highest sentence that the ICTR, the ICTY, or the Mechanism may impose,⁵⁰ is to be considered both qualitatively distinct from and greater than a sentence of a fixed term in years. This conclusion reflects the

Response, para. 90, citing *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision of the President on Sentence Remission of Milomir Stakić, 17 March 2014 (public redacted version), paras. 17-18.

⁴⁶ See *Prosecutor v. Dario Kordić*, Case No. MICT-14-68-ES, Public Redacted Version of the 21 May 2014 Decision of the President on the Early Release of Dario Kordić, 6 June 2014 ("Kordić Decision"), para. 17; *Bisengimana* Decision, paras. 17, 20.

⁴⁷ See *Kordić* Decision, para. 17; *Bisengimana* Decision, para. 20.

⁴⁸ See *Kordić* Decision, para. 17; *Bisengimana* Decision, paras. 21, 35. I note, for clarification purposes, that the two-thirds threshold does not prohibit enforcement States from notifying the Mechanism whenever convicted persons become eligible for pardon, commutation of sentence, or early release under national law, even before the completion of two-thirds of their sentence. See generally Practice Direction, para. 2. Paragraph 3 of the Practice Direction also allows a convicted person to directly petition the President for pardon, commutation of sentence, or early release, if the convicted person believes that he or she is eligible, even before the completion of the two-thirds of his or her sentence. According to the Practice Direction, in such circumstances, the President will still consider a convicted person's application or eligibility for pardon, commutation of sentence, or early release. See Practice Direction, para. 3. However, it is only in exceptional circumstances, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, that early release prior to the serving of two-thirds of the sentence may be granted, provided that other factors also weigh in favour of early release. See, e.g., *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 29 February 2012 (public redacted version), paras. 15, 25-28, 30 (granting early release in a case involving exceptional cooperation with the ICTY Prosecution); *Prosecutor v. Vladimir Šantić*, Case No. IT-95-16-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Vladimir Šantić, 16 February 2009 (public redacted version), paras. 8, 13-15 (granting early release because of substantial cooperation with the ICTY Prosecution and because the convicted person had effectively completed two-thirds of his sentence once sentence remissions under national law were recognized).

⁴⁹ See Article 26 of the Statute; Rules 150 and 151 of the Rules; Article 7(2) of the Enforcement Agreement.

well-established general principle of gradation in sentencing,⁵¹ finds support in the relevant case law,⁵² and is consistent with the need to ensure, in the context of the consideration of early release, individualized assessments of the totality of the circumstances in each case.⁵³

30. I am not persuaded, however, that the Mechanism must consider life imprisonment to amount to a sentence “meaningfully longer than a sentence of 52 years of imprisonment”, as the Prosecution contends.⁵⁴ The Prosecution has not demonstrated that prisoners sentenced by the SCSL, which imposed the 52-year sentence cited by the Prosecution, are similarly-situated to the prisoners under the supervision of the Mechanism.⁵⁵ In this regard, I note that the SCSL does not have the power to impose sentences of life imprisonment,⁵⁶ a fact that arguably impacts the length of the determinate sentences it has imposed, and makes comparisons between its sentences and those imposed by the ICTR, the ICTY, or the Mechanism inapt in the circumstances at stake here.

31. More broadly, I note that there is little precedent on the issue of life sentences and early release in the jurisprudence of other international criminal courts. Indeed, what legal frameworks or jurisprudence exist reflect different legal regimes, and thus offer only limited guidance to the Mechanism as to how it should treat convicted persons under its supervision. For example, Article 110(3) of the Rome Statute of the ICC provides that when a person has served 25 years of a life sentence, the ICC shall review the sentence to determine whether it should be reduced. That same provision, however, specifies that the ICC shall not review the sentence before that time. This differs from the practice of the Mechanism, whereby a sentence may be reviewed at any time following receipt of a notification of eligibility from the State in which the convicted person is serving his or her sentence or of a direct petition from the convicted person him- or herself if he or she believes that she is eligible.⁵⁷ Furthermore, the 25-year threshold applicable at the ICC amounts to five-sixths of the maximum fixed-term sentence that the ICC may impose, a higher ratio than that reflected in the practice of the Mechanism.⁵⁸ The Supreme Court Chamber of the Extraordinary

⁵⁰ Rule 125(A) of the Rules; Rule 101(A) of the ICTR Rules; Rule 101(A) of the ICTY Rules.

⁵¹ See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010, para. 236; *Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement, 16 November 2001, para. 382 (discussing ICTY jurisprudence).

⁵² See, e.g., *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 (“*Kajelijeli Appeal Judgement*”), paras. 324-325 (setting aside the appellant’s two life sentences and fifteen years’ sentence, running concurrently, and imposing instead a single, fixed term of imprisonment of 45 years in view of serious violations of the appellant’s fundamental rights and the appellant’s entitlement to an effective remedy).

⁵³ See, e.g., *Kordić* Decision, para. 17; *Bisengimana* Decision, paras. 21, 35.

⁵⁴ Prosecution Motion, para. 9. See Prosecution Motion, paras. 6-8.

⁵⁵ The Prosecution has not suggested that the Mechanism, the ICTR, or the ICTY have considered prisoners of other international criminal courts and tribunals to be among “similarly-situated” prisoners for purposes of early release. See generally Prosecution Motion.

⁵⁶ See Article 19(1) of the Statute of the SCSL.

⁵⁷ See Practice Direction, paras. 2-3.

⁵⁸ See also Article 77(1) of the Rome Statute of the ICC.

Chambers in the Courts of Cambodia, meanwhile, has disclaimed any competence to decide on eligibility for parole of an individual sentenced to life imprisonment.⁵⁹

32. Nor does there appear to be any broader international legal norm determining when a person convicted to life sentence shall be deemed eligible for early release. Although the ECHR has recognized that certain comparative and international law materials “show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter”,⁶⁰ it has declined to recognize a determinate requirement in this regard, instead emphasizing “the margin of appreciation” applicable to different criminal justice and sentencing regimes within its jurisdiction.⁶¹ Moreover, the ECHR’s review of national practice within Europe alone demonstrates the existence of a wide range of approaches concerning when a person sentenced to life imprisonment may have his or her sentence reviewed,⁶² suggesting that the practice of these and other States has yet to give rise to a customary legal norm in this regard.

33. Given the absence of any international legal norm or clear consensus in national practice governing when a person convicted to life sentence shall be deemed eligible for early release, I consider that the most relevant and principled basis for making such a decision as to those convicted persons supervised by the Mechanism is the sentences given to similarly-situated prisoners, namely, those individuals sentenced by the ICTR, the ICTY, or the Mechanism. Doing so ensures respect for the principle of treating similarly-situated prisoners equally, fairness to all such prisoners, and the coherence and consistency of the Mechanism’s legal regime.

34. In this regard, I consider that it would be unjust for an individual sentenced to life imprisonment to be considered as having served two-thirds of his or her sentence at a point earlier than the equivalent for a convicted person sentenced to a term of years. Otherwise, a person sentenced to life imprisonment could be placed in a more advantageous position than an individual sentenced to a fixed term of years. Such a discrepancy would not only create inequality among similarly-situated persons but would also not be an appropriate reflection of the nature of the criminal offence or offences that resulted in the imposition of life imprisonment.

⁵⁹ *Case of Kaing Guek Eav a/k/a Duch*, Case No. 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, paras. 384-388.

⁶⁰ *Vinter* Judgement, para. 120.

⁶¹ *Vinter* Judgement, para. 120. Notably, the ECHR has recently ruled that review of a sentence of life imprisonment 30 years after a convicted person was first detained and some 26 years after the sentence of life imprisonment was imposed was acceptable in light of this “margin of appreciation”. See *Affaire Bodein c. France*, Eur. Ct. H.R., *Arrêt*, 13 November 2014, para. 61.

⁶² See *Vinter* Judgement, para. 68.

35. I note that the highest sentence other than life imprisonment thus far imposed by the ICTR, the ICTY, or the Mechanism is 45 years, in the case of Mr. Juvénal Kajelijeli ("Kajelijeli").⁶³ Accordingly, for purposes of applying the two-thirds practice of the Mechanism to those sentenced to life imprisonment and serving their sentences under the supervision of the Mechanism, a sentence of life imprisonment is to be treated as equivalent to more than a sentence of 45 years. The extent to which the life sentence will be considered to exceed the fixed-term sentence of 45 years for purposes of consideration of early release must be considered on a case-by-case basis.

36. Given the foregoing, and in accordance with the principle of treating similarly-situated prisoners equally, I am of the view that Galić shall be considered eligible for early release by the Mechanism upon having served more than two-thirds of the highest fixed-term sentence imposed by the ICTR, the ICTY, or the Mechanism, which amounts to more than 30 years of Galić's sentence.⁶⁴ Galić has not yet served this time, having served, according to the Notification, 15 years of his sentence as of 18 December 2014.⁶⁵

37. There remains a question as to whether if, in the future, a higher fixed-term sentence than that of 45 years is handed down by the ICTR, the ICTY, or the Mechanism, this will have any impact on when Galić shall be considered eligible for early release by the Mechanism. The resolution of that question requires consideration of competing principles. On the one hand, there is the principle of legal certainty, a central tenet of the rule of law, as well as attendant concerns related to legitimate expectations, all of which tend to favour the establishment of a fixed and immutable threshold for eligibility for those convicted to life sentences. On the other hand, fixing the threshold for eligibility for early release as of a single point in time risks being arbitrary and undermining the distinction made between life sentences and fixed-term sentences if a fixed-term sentence greater than 45 years is imposed in the future. Consideration must also be given to the principle of treating similarly-situated prisoners equally and the need to ensure fundamental fairness to all prisoners under the supervision of the Mechanism.

38. On balance, and after due consideration of the issues thus raised and the delicate balance that must be set, I consider that if a fixed-term sentence higher than 45 years is handed down by the ICTR, the ICTY, or the Mechanism in the future, the interests of justice and the principle of legal certainty require that no change in the present calculation of the eligibility threshold for those

⁶³ *Kajelijeli* Appeal Judgement, para. 325. Fixed-term sentences of 45 and 46 years, respectively, have been handed down by ICTY trial chambers in the past but were set aside on appeal for reasons other than their length. See *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, paras. 726-729, p. 258; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, paras. 234, 266-275, p. 87.

⁶⁴ This calculation is based on taking two-thirds of the highest fixed-term sentence thus far imposed by the ICTR, the ICTY, or the Mechanism, namely Kajelijeli's 45-year sentence.

⁶⁵ Notification, p. 1.

sentenced to life imprisonment take place. Were it otherwise, then neither those sentenced to life imprisonment nor the States enforcing their sentences would be able to maintain legitimate expectations as to when the convicted person would be considered to have reached two-thirds of his or her sentence for purposes of the Mechanism's consideration of early release. The consequences of this decision for those on whom a fixed-term sentence of more than 45 years is imposed in the future, and who would therefore reach two-thirds of their sentences after Galić and others sentenced to the higher sentence of life imprisonment were eligible for early release, will be considered if and as necessary in light of the principle of treating similarly-situated persons equally.⁶⁶ I also note in this regard that I am guided by the fact that the threshold arising from applying the Mechanism's two-thirds practice as set forth above is broadly in line with thresholds approved by other international and regional courts, even those considering or applying different legal frameworks with respect to the review of life sentences.⁶⁷

39. I further underscore that whether or not an individual has served two-thirds of his or her sentence is not dispositive as to either the possibility of review or the prospect of early release. First, in accordance with Article 26 of the Statute, if, pursuant to the applicable law of the State in which a convicted person is serving his or her sentence that person is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly, and that notification will be considered pursuant to the Rules and the Practice Direction whether or not the convicted person has served two-thirds of his or her sentence.⁶⁸ There is likewise no time-based restriction on when a convicted person who is serving his or her sentence under the supervision of the Mechanism may seek review of his or her sentence, and in certain cases, early release may take place before two-thirds of a sentence have been served.⁶⁹ The eligibility threshold recognized by the Mechanism in this case thus in no way precludes review or possible release prior to Galić reaching the threshold for eligibility set forth above.

40. Second, I recall that Rule 151 of the Rules provides that, in making a determination on pardon, commutation of sentence, or early release, the President shall take into account not simply the treatment of similarly-situated prisoners but also, and importantly, the gravity of the crime or crimes for which the prisoner was convicted, the prisoner's demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.⁷⁰ In cases involving life sentences, as in all cases, each of these factors as well as the interests of justice, the general principles of law, the

⁶⁶ See also *supra*, para. 34.

⁶⁷ See *supra*, paras. 31-32, n. 61.

⁶⁸ See *supra*, paras. 9-11. See also *supra*, n. 48.

⁶⁹ See *supra*, n. 48. I note that the Practice Direction, which is modelled on the similar practice direction of the ICTY, sets forth what a convicted person must do to be considered for early release and under what conditions, including when a review of his or her sentence will take place or may be sought. See generally *Vinter* Judgement, para. 122.

views of any Judges of the sentencing Chamber who are Judges of the Mechanism, and any other information that the President considers relevant⁷¹ will be weighed carefully before any decision is reached as to early release.

F. Demonstration of Rehabilitation

41. The information supplied by the General Prison Service of Freiburg Prison provides a positive account of Galić's time in detention. According to the Prison Report, Galić has been "friendly and helpful".⁷² He has also been socially active, taking part in attending sports, evening chess, and recreational sessions offered by Freiburg Prison.⁷³ The Prison Report reflects that although Galić initially appeared to behave in a "slightly arrogant" way when he began his stay at Freiburg Prison, "there has been no trace of this" behaviour for quite some time.⁷⁴ Rather, he now exhibits "a completely balanced, relaxed impression and makes no special demands at all."⁷⁵

42. The Prison Report further states that Galić has made a concerted effort to learn German, and has already acquired a "very good knowledge of the language".⁷⁶ During his German courses, he "always paid attention" and behaved in a "helpful, calm and friendly" manner toward his teachers and co-pupils.⁷⁷ Upon release, Galić will return to his wife in Banja Luka, where he is financially secure.⁷⁸ According to the Prison Report, there are no indications that Galić will commit any sort of crime once he has been released.⁷⁹

43. Galić submits that his behaviour has been exemplary whilst detained at Freiburg Prison and that he integrated well with the prison population.⁸⁰ He further contends that he showed remorse *vis-à-vis* all victims on multiple occasions.⁸¹ Galić asserts that he has maintained close contact with his family while imprisoned, is not in danger of committing crimes, and does not pose a security risk to the public.⁸²

44. The description of Galić's behaviour while detained at Freiburg Prison suggests that Galić is capable of reintegrating into society if he is released. Having carefully reviewed the information

⁷⁰ See *supra*, para. 10.

⁷¹ See Article 26 of the Statute; Rule 150 of the Rules; Practice Direction, para. 9.

⁷² Prison Report, p. 1.

⁷³ Prison Report, p. 1.

⁷⁴ Prison Report, p. 3.

⁷⁵ Prison Report, p. 3.

⁷⁶ Prison Report, pp. 2-3.

⁷⁷ Prison Report, p. 2.

⁷⁸ Prison Report, p. 1. See also Galić Response, paras. 114-115.

⁷⁹ Prison Report, p. 3.

⁸⁰ Galić Response, paras. 15-23, 77, 100-108, 113, 146.

⁸¹ Galić Response, paras. 28-31, 116, 140.

⁸² Galić Response, paras. 32-34, 79, 109-110, 113-115.

before me, I am of the opinion that Galić has demonstrated signs of rehabilitation, and I am therefore inclined to count this factor as weighing in favour of his early release.

G. Substantial Cooperation with the Prosecution

45. The Prosecution Memorandum states that Galić did not cooperate with the ICTY Prosecution in the course of his trial, appeal or at any point while serving his sentence.⁸³ The Prosecution does not indicate whether the ICTY Prosecution sought Galić's cooperation at any point during his trial or after he was convicted.

46. Galić submits that he cooperated by serving as a witness in the case of *Prosecutor v. Radovan Karadžić* and that his situation is particularly complex.⁸⁴ Galić further contends that the Prosecution never sought his cooperation either before or after the proceedings against him.⁸⁵

47. I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.⁸⁶ I therefore consider that Galić's lack of cooperation with the ICTY Prosecution is a neutral factor in determining whether or not to grant him early release.

H. Humanitarian Grounds

48. Galić submits that other humanitarian reasons should be taken into consideration in evaluating his eligibility for early release.⁸⁷ [REDACTED].⁸⁸

49. [REDACTED].⁸⁹ [REDACTED].⁹⁰

50. [REDACTED].⁹¹ [REDACTED].

I. Conclusion

51. Having considered the factors delineated in Rule 151 of the Rules, I am not in favour of Galić's early release at this time. Specifically, while Galić has exhibited signs of rehabilitation, I am

⁸³ Prosecution Memorandum, para. 2.

⁸⁴ Galić Response, paras. 24-27, 116, 125, 127-128, 146.

⁸⁵ Galić Response, para. 124.

⁸⁶ *Kordić* Decision, para. 26.

⁸⁷ Galić Response, paras. 129, 138, 146.

⁸⁸ Galić Response, paras. 78, 130-135, 137.

⁸⁹ Prison Report, p. 2.

⁹⁰ Prison Report, p. 2.

⁹¹ See, e.g., *Prosecutor v. Dragoljub Ojdanić*, Case No. IT-05-87-ES.1, Public Redacted Version of the 10 July 2013 Decision of the President on Early Release of Dragoljub Ojdanić, 29 August 2013, para. 24; *Prosecutor v. Mladen*

of the view that there remain significant factors that weigh against granting him early release. Galić's crimes are grave and were committed against particularly vulnerable victims on a large scale for months on end. Further, as discussed above, I do not believe that his release at this point would accord with the practice relating to similarly-situated persons. The view that Galić should not be granted early release at this stage is shared by the Judge of the sentencing Chamber who is a Judge of the Mechanism.

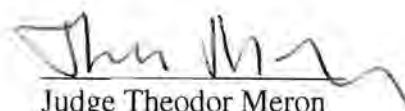
IV. DISPOSITION

52. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 7(2) of the Enforcement Agreement, Galić was therefore **DENIED** early release. For the foregoing reasons, the Prosecution Motion is also **DENIED**.

53. The Registrar is hereby **DIRECTED** to inform the authorities of Germany of the reasons for the decision to deny Galić's early release as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

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

Done this 23rd day of June 2015,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Mechanism]

Naletilić, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013, para. 31.