



THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

PROSECUTOR

v.

VALENTIN ČORIĆ

PUBLIC

**ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE
INTERNATIONAL COURTS AND TRIBUNALS (ADC-ICT)
MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Valentin Čorić:

Mr. Dražen Plavec

Association of Defence Counsel:

Mr. Dragan Ivetić, President

I. INTRODUCTION

1. The Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”) seeks the leave of the court to appear, pursuant to Rule 83, as *amicus curiae* in the case of *Prosecutor v. Valentin Ćorić*. The ADC-ICT seeks to file submissions solely on the conditions imposed upon Mr. Ćorić in the “Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions” (“Decision”).¹ The Decision identified no legal basis for imposing the conditions, which represent a significant departure from the established jurisprudence of this court.
2. The ADC-ICT annexes the proposed *amicus* brief to this motion, in the event leave to appear as *amicus curiae* is granted.

II. LEGAL BASIS TO APPEAR

3. Rule 83 of the Mechanism Rules of Procedure and Evidence provides that a “Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.” The ICTY/ICTR Appeals Chamber has held that the primary criterion for granting leave to file an *amicus* brief is whether the proposed submission would assist the Chamber in its consideration of the questions at issue.²
4. The proposed submission meets this criterion, for the reasons set forth below.

III. THE ADC-ICT IS WELL PLACED TO OFFER SUBMISSIONS

5. The ADC-ICT is well qualified to offer submissions of assistance in relation to the questions at issue. The ADC-ICT is the body officially recognised by the Registrar of the Mechanism as representing all Defence Counsel practising before the Mechanism, pursuant to Mechanism Rule 42(A)(iii). This recognition is in addition to the fact that the ADC-ICT (formerly ADC-ICTY) has been the body officially recognised by the

¹ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019.

Registrar of the ICTY as representing all Defence Counsel practising before the ICTY since 2002.³

6. In its Preamble, the ADC-ICT Constitution states that it “is a partner, along with the organs of the respective International Courts or Tribunals at which they are the recognised Association of Counsel.”⁴ A key objective of the ADC-ICT is to “offer advice to the President, the Chambers and the Registrar of the International Courts and Tribunals in relation to the rights of the accused to a fair trial and the Rules of Procedure and Evidence.”⁵
7. The ADC-ICT considers that part of its mission is to promote the rights of defendants and the fairness of proceedings in general. The ADC-ICT respectfully submits that it has a particular role in offering views on issues affecting the rights of individuals who were subject to trial proceedings before the *ad hoc* tribunals.
8. The ADC-ICT has also previously appeared as *amicus curiae* in international criminal cases (as the ADC-ICTY) including, for example, *Prosecutor v Brđanin* (on substantive law questions regarding the joint criminal enterprise doctrine);⁶ *Prosecutor v Prlić et al* (regarding whether conduct of counsel constituted contempt of court, violation of the Rules of Procedure and Evidence or misconduct),⁷ *Prosecutor v Hadžihasanović* (regarding the impact of the allocation of resources to the Accused on his right to a fair trial),⁸ and *Prosecutor v. Kamuhanda* (on the issue of Defence counsel contacting Prosecution witnesses).⁹

² *Prosecutor v. Šainović et al.*, Case No. IT-05-87-A, Decision on David J. Scheffer’s Application to File an *Amicus Curiae* Brief, 7 September 2010, p. 3.

³ The ADC-ICTY was founded in September 2002 and recognised by the ICTY Registry the following month. The ADC-ICTY was recognised pursuant to ICTY Rule 44(A)(iii).

⁴ Preamble, ADC-ICT Constitution.

⁵ Article 2(3), ADC-ICT Constitution.

⁶ *Prosecutor v Brđanin*, Case No. IT-99-36-A, Amicus Brief of Association of Defence Counsel—ICTY, 6 July 2005.

⁷ *Prosecutor v Prlić et al*, Case No. IT-04-74-T, Advisory Opinion of Amicus Curiae Disciplinary Council of the Association of Defence Counsel of the ICTY, 13 August 2009.

⁸ *Prosecutor v Hadžihasanović*, Case No. IT-01-47-PT, Amicus Brief of the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia in Support of Joint Defence Oral Motion for Reconsideration of Decision on Urgent Motion for Ex Parte Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial, 14 July 2003.

⁹ *Prosecutor v. Kamuhanda*, Case No. MICT-13-33, ADC-ICTY *Amicus Curiae* Observations, 10 September 2015.

9. The ADC-ICT respectfully submits that the expertise it has gathered as an organisation through its individual members could assist the President in the resolution of issues raised by Mr. Ćorić.

IV. THE ADC-ICT CAN ASSIST THE CHAMBER

10. The ADC-ICT notes that while the conditions imposed in the Decision pertain to Mr. Ćorić, the Decision represents a substantial shift in the jurisprudence of the Mechanism regarding the early release of individuals convicted by the ICTY, ICTR, or IRMCT. A significant number of individuals currently serving sentences may be requesting early release in the future.¹⁰ The ADC-ICT is in a position to speak generally as to the effect the Decision will have on those applications.
11. The ADC-ICT is also in a position to provide a more comprehensive view of early release applications and decisions to date to show the significant departure from years of settled jurisprudence this decision represents.
12. The ADC-ICT will not address the factual circumstances specific to Mr. Ćorić's motion,¹¹ nor will it address the arguments made by the Prosecution in its response,¹² except as they relate to the wider consequences of the Decision.
13. Finally, nothing in the ADC-ICT submissions can prejudice or hinder any future applications for early release made by individuals currently serving sentences imposed by the ICTY, ICTR, or IRMCT.

¹⁰ According to the IRMCT, 47 individuals from the ICTY, ICTR, and IRMCT are currently serving sentences in enforcement States (seventeen of which have life sentences), with an additional six still in the United Nations Detention Unit in The Hague (one of which has a life sentence), one individual awaiting appeal judgement (Ratko Mladić), two individuals currently on trial (Jovica Stanišić and Franko Simatović), and five individuals awaiting trial (*Turinabo et al*). See <http://www.irmct.org/en/about/functions/enforcement-of-sentences>, accessed 16 April 2019. Thus, the total number of people presently impacted by this Decision is potentially over 60 persons.

¹¹ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Urgent Motion Seeking Variation of Conditions of Early Release Decision of 15 January 2019 [sic] and Request for Legal Aid, 2 April 2019.

¹² *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Prosecution's Submissions Regarding Valentin Ćorić's Request for Variation of Conditions of Release, 9 April 2019.

V. RELIEF SOUGHT

14. For the foregoing reasons, the ADC-ICT respectfully requests that the President grant it leave to appear as *amicus curiae* in the case of *Prosecutor v. Valentin Ćorić*, and to receive and take into consideration the annexed submissions when determining Mr. Ćorić's "Urgent Motion Seeking Variation of Conditions of Early Release Decision of 15 January 2019 [sic] and Request for Legal Aid."

Word count: 1,170

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dragan Ivetić". The signature is fluid and cursive, with the first name "Dragan" being more prominent and the last name "Ivetić" following in a similar style.

Dragan Ivetić
President
ADC-ICT

ANNEX A



THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

PROSECUTOR

v.

VALENTIN ČORIĆ

PUBLIC

Annex A to:

**ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE
INTERNATIONAL COURTS AND TRIBUNALS (ADC-ICT)
MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Valentin Čorić:

Mr. Dražen Plavec

Association of Defence Counsel:

Mr. Dragan Ivetić, President

I. INTRODUCTION

1. The issue before the President is whether it is appropriate, under the current legal framework of the International Residual Mechanism for Criminal Tribunals (“IRMCT”), to depart from twenty years of settled jurisprudence and impose conditions on an individual granted early release from his sentence.
2. The Association of Defence Counsel practising before the International Courts and Tribunals (“ADC-ICT”) submits that there is no legal basis for the conditional early release, and submits the current document in support of this position.

II. PROCEDURAL BACKGROUND

3. On 25 July 2018, Valentin Ćorić filed a motion
4. ¹ requesting that then-President Theodor Meron immediately release Mr. Ćorić from the United Nations Detention Unit (“UNDU”), upon the completion of two-thirds of his sentence of 16 years.²
5. President Meron granted Mr. Ćorić’s request on 15 January 2019 (“Decision”),³ but imposed a series of conditions on Mr. Ćorić’s release that apply until revoked or modified, throughout the remainder of the 16-year sentence.⁴ The Decision stated that Mr. Ćorić’s “conditional release” shall be “revoked if he violates any of the conditions” of the Decision.⁵
6. On 2 April 2019, following Mr. Ćorić’s release UNDU, Mr. Ćorić moved current President Carmel Agius to clarify and/or vary the conditions of the Decision to allow

¹ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Valentin Ćorić’s Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 25 July 2018 (“Ćorić Request”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 29 May 2013, Vol. IV, p. 431. As affirmed by the Appeals Chamber. *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017, Vol. III, pp. 1406-1407.

³ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 (“Decision”).

⁴ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019, para.78h.

⁵ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019, para.78g.

Mr. Ćorić to participate in domestic court proceedings, or alternatively or cumulatively to clarify and/or vary the conditions, or to strike them entirely.⁶

7. The Prosecution objected to Mr. Ćorić's requested relief, and additionally submitted that Mr. Ćorić be ordered to provide additional information and documentation related to his pending lawsuit ongoing in Croatia.⁷

III. SCOPE OF THIS BRIEF

8. The ADC-ICT files this brief to assist the President in his deliberations when determining Mr. Ćorić's motion.
9. The ADC-ICT will first address the legal framework in which early release motions are considered, along with submissions on comments made in a United Nations Security Council debate that underlie the Security Council Resolution referred to in the Decision.⁸
10. This brief will then summarise the early release applications and decisions before the International Criminal Tribunal for the former Yugoslavia ("ICTY"), International Criminal Tribunal for Rwanda ("ICTR"), and IRMCT to show the significant departure from years of settled jurisprudence the Decision represents. This brief will also address the references to previous instances of conditions being imposed.⁹
11. Finally, the ADC-ICT will address the wider consequences of this departure from settled jurisprudence.

IV. LEGAL FRAMEWORK FOR PARDON, COMMUTATION OF SENTENCE, OR EARLY RELEASE

12. Pursuant to Article 26 of the IRMCT Statute, the State in which a person convicted by the ICTY, ICTR, or IRMCT is serving their sentence should notify the IRMCT when

⁶ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Urgent Motion Seeking Variation of Conditions of Early Release Decision of 15 January 2019 [sic] and Request for Legal Aid, 2 April 2019.

⁷ *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Prosecution's Submissions Regarding Valentin Ćorić's Request for Variation of Conditions of Release, 9 April 2019.

⁸ Decision, para. 73.

⁹ Decision, para. 73; *Prosecutor v. Valentin Ćorić*, MICT-17-112-ES.4, Prosecution's Submissions Regarding Valentin Ćorić's Request for Variation of Conditions of Release, 9 April 2019, para. 9.

the individual is eligible for pardon or commutation of the sentence. The President of the IRMCT can then decide whether it is in the interests of justice and general principles of law to grant the pardon or commutation of sentence.

13. Rule 149 of the IRMCT Rules of Procedure and Evidence echoes Article 26 of the Statute and requires the State of imprisonment to notify the IRMCT if the convicted person is eligible for pardon, commutation of sentence, or early release under the laws of that country.
14. According to Rule 150, either upon notice from the enforcement State or upon petition directly from the convicted person, the President shall determine in consultation with judges of the sentencing chamber or if none are available with at least two other judges, whether pardon, commutation of sentence, or early release is appropriate.
15. Rule 151 lists the factors to be considered when determining the appropriateness of pardon, commutation of sentence, or early release, including the gravity of the crime, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.
16. The IRMCT also promulgated a 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"). The Practice Direction explains in detail the process for applying for pardon, commutation of sentence, or early release, including four paragraphs concerning the "decision" taken by the President.¹⁰
17. Neither the Statute, nor the Rules of Procedure and Evidence, nor the Practice Direction make any mention of "conditional release" for individuals granted early release from their sentence.

¹⁰ Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.2, paras. 10-13.

18. The Prosecution previously sought to amend the Rules of Procedure and Evidence to include a conditional release program—a proposal that the plenary of judges rejected.¹¹
19. The judges of the IRMCT have updated the Rules of Procedure and Evidence on two occasions since the Security Council debate,¹² but have not amended Rules 149-151 concerning early release.¹³
20. Similarly, the IRMCT Practice Direction was updated on 20 February 2019, but without any reference to conditional early release.
21. Thus, nothing in the legal framework applicable to early release applicants allows for conditional early release. To the contrary, the plenary specifically rejected proposals regarding conditional release and have not otherwise amended the relevant rules, even after suggestions by the United Nations representatives to find “appropriate solutions.”
22. As the basis for imposing “conditional release” on Mr. Ćorić, the President referred to United Nations Security Council Resolution 2422,¹⁴ which noted the views and concerns expressed by some member states during a Security Council debate regarding the IRMCT on 6 June 2018.¹⁵ The ADC-ICT agrees with Mr. Ćorić that no legal basis for the imposition of conditional early release can be found in the Resolution.¹⁶
23. The ADC-ICT, however, wishes to add that it is worth examining the Security Council debate of 6 June 2018.¹⁷ During the debate, the Rwandan representative argued that the early release of individuals convicted by the ICTR was based on “non-transparent circumstances and using inconsistent procedures.”¹⁸ The Rwandan representative recommended the IRMCT utilise the “best practices” identified in the Practice

¹¹ Ćorić Request, paras. 18-19. *Referring to* UN Doc S/2018/471, Letter dated 17 May 2018 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council, Annex II, Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Serge Brammertz, for the period from 16 November 2017 to 15 May 2018, paras. 72-73.

¹² MICT/1/Rev.4 on 6 November 2018 and MICT/1/Rev.5 on 4 March 2019.

¹³ Article 13 of the IRMCT Statute and Rule 6 of the IRMCT Rules of Procedure Evidence provide in clear terms that a rule can only be amended through the formal process of adoption by the judges of the Mechanism during plenary. This has not happened.

¹⁴ United Nations Security Council Resolution 2422, U.N. Doc. S/RES/2422 (2018), 27 June 2018.

¹⁵ Decision, para. 73.

¹⁶ Ćorić Request, paras. 21-23.

¹⁷ United Nations Security Council, 8278th Meeting, 6 June 2018, U.N. Doc S/PV.8278.

¹⁸ *Id.*, p. 24.

Direction on the Conditional Early Release of Persons Convicted by the Special Court for Sierra Leone, specifically referring to the consideration of conditional early release as permitted by the Practice Direction.¹⁹ The IRMCT President amended IRMCT Practice Direction after the United Nations debate, but did not include any amendments regarding conditional early release.

24. The Rwandan representative concluded by suggesting two steps for the Mechanism: first, to enact clear rules of procedure to ensure early release applications are done transparently, and second, to enact rules of procedure to allow for conditions to be imposed on individuals granted early release.²⁰
25. The language used by the other representatives at the debate is telling: the French representative “encourage[d] the Mechanism to continue its discussions on the introduction of early release conditions;”²¹ the Kuwaiti representative recommended the IRMCT take “into account” the remarks of the Member States regarding conditional early release;²² the Bolivian representative called on the IRMCT to “take the measures necessary to resolve the situation”;²³ the Ethiopian representative noted that challenges faced required “proper consideration”;²⁴ and the representative of the United States of America encouraged the IRMCT to “consider proposals to address the concerns raised”.²⁵
26. Returning to the Resolution 2422, the language in paragraph 10 encouraging the IRMCT to consider an “appropriate solution” must be viewed in light of the comments made during the debate. Thus, the representatives at the debate recognised that the legal framework at the IRMCT does not allow for conditional early release. At the heart of these comments is the point that the IRMCT must continue discussions on how best to address the matter of early release and, as noted by the Rwandan representative, any changes made should be done by enacting clear rules of procedure.
27. Thus, the reference to the United Nations Security Council Resolution cannot create a legal basis through which conditional early release can be instituted. The Resolution—

¹⁹ *Id.*, at pp. 24-25. The current version of the Practice Direction is the revised version of 2 December 2016.

²⁰ *Id.*, at p. 25.

²¹ *Id.*, at p. 9.

²² *Id.*, at p. 11.

²³ *Id.*, at p. 14.

²⁴ *Id.*, at p. 15.

²⁵ *Id.*, at p. 16.

and the representatives at the debate to which the Resolution refers—note that such conditional early release programs can only be done through an “appropriate solution”. No such solution has been implemented.

V. SUMMARY OF PREVIOUSLY-FILED APPLICATIONS FOR EARLY RELEASE BEFORE THE ICTY, ICTR, AND IRMCT

28. A survey of the past practice of the ICTY, ICTR, and IRMCT regarding early release applications demonstrates that Mr. Ćorić’s conditional release represents a significant departure from previous jurisprudence.
29. The ICTY has rendered 58 decisions²⁶ on early release, granting 39 requests and rejecting nineteen. In none of the reviewed decisions were conditions imposed on those applicants granted early release. The ICTR granted three of the six early release applications, but similarly did not impose conditions on any of the applicants. Since its inception, the IRMCT has received 38 applications²⁷ for early release, including that of Mr. Ćorić. Twenty-five of the applications were granted, with conditions being imposed in four cases, three of which will be discussed below,²⁸ and the fourth being Mr. Ćorić.
30. The handful of cases in which conditions were imposed differ significantly from Mr. Ćorić’s case, demonstrating the novelty of the Decision.
31. Drago Nikolić sought early release²⁹ from his sentence based primarily on humanitarian considerations,³⁰ as he had not yet served two-thirds of his imposed

²⁶ One additional application was not decided on the merits as the case was not yet final. *Prosecutor v. Miroslav Kvočka*, Case No. IT-98-30/1-A, Order of the President in Response to Miroslav Kvočka's Request for Pardon, 7 August 2003.

²⁷ The IRMCT rejected one additional application for lacking jurisdiction. *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision on Sreten Lukić’s Request for Determination by the President of Time Served, 29 May 2015.

²⁸ Referred to in the Decision, para. 73. The ICTR case refers to *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Interim Order for Further Submissions, 23 October 2018. The ICTY cases are *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015 (“Nikolić Decision”); and *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 (“Beara Decision”).

²⁹ Or, in the alternative, that Nikolić be allowed to serve the remainder of his sentence in Serbia. Nikolić Decision, para. 1.

³⁰ Nikolić Decision, paras. 1, 30-33, 35.

sentence.³¹ The President rejected the request for early release, but *proprio motu* considered and granted “provisional release” for a period of six months.³²

32. Ljubiša Beara similarly had not served two-thirds of his sentence,³³ but the President received a request for early release from the German authorities because of Mr. Beara’s deteriorating health condition.³⁴ The judges of the IRMCT expressed concern with granting “early release”,³⁵ and instead granted “conditional release” based on humanitarian grounds.³⁶ The President imposed a series of conditions upon Mr. Beara during his conditional release, including the ability to order Mr. Beara to return to prison should his medical condition improve.³⁷
33. Thus, both of the ICTY-convicted persons were denied “early release”, but were granted provisional or conditional release based on humanitarian grounds. The imposition of conditions in these specific cases was unique to those cases since the cases involved conditional or provisional release, not early release after serving two-thirds of the imposed sentence. They have no bearing on Mr. Ćorić’s case or on those of future early release applicants.
34. The President also referred to the case of ICTR-convicted Aloys Simba, who sought early release after having served two-thirds of his sentence.³⁸ The President deemed it “necessary and appropriate, in the interests of justice” to ascertain whether Mr. Simba would sign an undertaking to abide by a series of conditions if granted early release.³⁹ Mr. Simba in response indicated a willingness to abide by the proposed conditions and to sign an undertaking in that regard.⁴⁰ The invitation to abide by conditions in order for early release to be granted, and the subsequent consent on behalf of the early release applicant thereto, was a first in the jurisprudence of the ICTY, ICTR, and IRMCT. Mr. Simba agreed to the proposed conditions, so the issue of the legality of

³¹ Nikolić Decision, para. 22.

³² Nikolić Decision, paras. 38-42, 44.

³³ Beara Decision, para. 26.

³⁴ Beara Decision, paras. 1, 7, 47.

³⁵ Beara Decision, para. 48.

³⁶ Beara Decision, para. 49.

³⁷ Beara Decision, paras. 49, 52.

³⁸ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Interim Order for Further Submissions, 23 October 2018, p. 1.

³⁹ *Id.* at p. 2.

⁴⁰ *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President’s 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019, para. 78.

the conditions was never raised and has no bearing on the same issue in Mr. Ćorić's case.

35. The Decision represents a significant departure from the established jurisprudence regarding early release. The Appeals Chamber has acknowledged that while it should follow its previous decisions, the court should be free to depart from them for cogent reasons in the interest of justice.⁴¹ The Decision in this case, however, considered no such cogent reasons beyond a passing reference to a Security Council Resolution and debate.
36. The three instances of conditional release from recent years cannot be reasonably said to have established precedence on the legality of imposing such conditions on early release applicants. The Decision fails to cite or establish any cogent reasons for the conditions imposed on Mr. Ćorić.

VI. WIDER CONSEQUENCES OF THE DECISION

37. Rule 151 requires the consideration of the “treatment of similarly-situated prisoners” when determining whether early release is appropriate. The wider impact of this Decision on future applications for early release is a significant concern for the ADC-ICT regarding the rights of convicted persons under the applicable IRMCT rules.
38. By the count of the ADC-ICT, in part based on the IRMCT website,⁴² 47 individuals are currently serving sentences in enforcement States, five more individuals remain at UNDU awaiting transfer (in addition to Mr. Ćorić),⁴³ one individual is awaiting appellate judgement,⁴⁴ two individuals are currently on trial,⁴⁵ and five individuals await the commencement of trial.⁴⁶ Thus, as many as 60 individuals may be directly impacted by the Decision in future early release applications.⁴⁷

⁴¹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Appeal Judgement, 24 March 2000, para. 107.

⁴² “Enforcement of Sentences”, <http://www.irmct.org/en/about/functions/enforcement-of-sentences>, accessed 17 April 2019.

⁴³ Radovan Karadžić, Mićo Stanišić, Stojan Župljanin, Jadranko Prlić, Milivoj Petković.

⁴⁴ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56.

⁴⁵ *Prosecutor v. Stanišić and Simatović*, Case No. MICT-15-96.

⁴⁶ *Prosecutor v. Turinabo et al.*, Case No. MICT-18-116.

⁴⁷ It should be noted that eighteen of the individuals currently serving their sentence in enforcement States or at UNDU received life sentences, plus Ratko Mladić, who received a life sentence at trial. This list also includes

39. The Decision results in unfairness to those individuals currently serving sentences, where their early release applications would be granted with conditions after some two decades of conditions not being imposed, particularly in the absence of any legal basis to impose such conditions. Those individuals convicted by the ICTY, ICTR, and IRMCT are entitled to a consistent, uniform approach to early release from their sentence. This Decision clouds the state of the law, after years of clarity and consistency in approach.

VII. CONCLUSION

40. The ADC-ICT expresses its concern over the Decision to impose conditions on Mr. Ćorić as part of his early release. The Decision to do so is not based on the legal framework currently in place regarding early release. To the contrary, it represents a departure from the established jurisprudence of the ICTY, ICTR, and IRMCT, without identifying any cogent reasons for such a departure.

41. Potential future applicants for early release are entitled to certainty and predictability on the state of the law when making such applications. For almost 25 years of practice at the ICTY/ICTR and now at the IRMCT, individuals granted early release were not subject to conditions of release, such as those imposed on Mr. Ćorić. The ADC-ICT asks the President clarify or modify the Decision to be consistent with the current legal framework on early release and to clarify the law for the benefit of present and future early release applicants.

Word count: 3,151

Respectfully submitted,



Dragan Ivetić
President
ADC-ICT

the accused in the *Stanišić and Simatović* and *Turinabo et al.* cases, who must remain presumed innocent until proven guilty.