

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-14-67-ES.4

Date: 14 August 2020

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambadou

Decision of: 14 August 2020

PROSECUTOR

v.

SRETEN LUKIĆ

PUBLIC REDACTED VERSION

**PUBLIC REDACTED VERSION OF THE “DECISION ON MOTION
FOR IMMEDIATE PROVISIONAL RELEASE OR EARLY
RELEASE” OF 1 MAY 2020**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen

Counsel for Mr. Sreten Lukić:

Mr. Dragan Ivetić

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

BEING SEISED of a motion filed confidentially by Mr. Sreten Lukić (“Lukić”) on 27 March 2020, wherein he requests that I grant him immediate provisional release or early release;¹

NOTING that, on 30 March 2020, the Office of the Prosecutor filed confidentially a response opposing the Motion;²

NOTING that, on 4 April 2005, Lukić surrendered to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and was transferred to the United Nations Detention Unit;³

NOTING that, on 23 January 2014, the Appeals Chamber of the ICTY, *inter alia*,: (i) affirmed Lukić’s convictions for murder, persecution, deportation, and other inhumane acts (forcible transfer) as crimes against humanity and murder as a violation of the laws or customs of war; (ii) reversed, in part, Lukić’s convictions for these crimes insofar as they concerned specific incidents; (iii) granted, in part, the appeals of Lukić and the Office of the Prosecutor of the ICTY concerning sentencing; and (iv) reduced Lukić’s sentence from 22 to 20 years of imprisonment;⁴

NOTING that, on 27 October 2015, Lukić was transferred to the Republic of Poland (“Poland”) to serve the remainder of his sentence;⁵

NOTING that, on 30 May 2017 and again on 17 September 2018, my predecessor, Judge Theodor Meron, denied Lukić’s applications for early release;⁶

¹ Notice of Filing: Sreten Lukić’s Personal Plea to the President in Light of COVID-19 Situation, 27 March 2020 (confidential) (“Motion”), Annex B, Registry Pagination (“RP”) 5198. I note that Lukić dictated his request by telephone directly to his Counsel, who transcribed, translated, and filed it, and that Lukić’s direct statement constitutes his prayer for relief and the arguments in support thereof. *See* Motion, paras. 1-3, Annex B, RP 5198. I observe that there is some inconsistency as to whether Lukić requests that he be granted “immediate release on provisional release” or whether instead this constitutes “a new plea for early release”. Motion, Annex B, RP 5198. Under the present circumstances and taking into account that Lukić formulated his motion directly to, rather than through, his Counsel, I consider it appropriate to interpret his Motion broadly to seek both immediate provisional release as well as early release.

² Prosecution Response to Sreten Lukić’s Request for Release in Light of COVID-19 Situation, 30 March 2020 (confidential), paras. 1-2.

³ Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“Early Release Decision of 17 September 2018”), para. 3; Public Redacted Version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukić, 11 August 2017 (“Early Release Decision of 30 May 2017”), para. 2.

⁴ *See Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014, paras. 11, 1845, 1847.

⁵ *See* Early Release Decision of 17 September 2018, para. 5; Early Release Decision of 30 May 2017, para. 4; Order Designating State in which Sreten Lukić is to Serve his Sentence, 6 August 2015 (confidential; made public on 28 October 2015), pp. 1-2.

⁶ Early Release Decision of 30 May 2017, para. 57; Early Release Decision of 17 September 2018, para. 38.

NOTING the application for early release filed confidentially by Lukić before my predecessor on 19 November 2018, as well as the supplemental submissions filed confidentially by Lukić on 12 April 2019, 24 May 2019, and 31 May 2019;⁷

NOTING that, in the Motion, Lukić submits that: (i) since the filing of his Early Release Application, COVID-19 has created new circumstances worldwide, including in Poland;⁸ (ii) it is “very certain” that he will become infected with COVID-19, as close physical contact with other persons is inevitable in the prison where he is located;⁹ (iii) he is a 65-year-old [REDACTED], so if he becomes infected, no medical care will help him and he will surely die;¹⁰ and (iv) the only chance for him to survive is to avoid getting infected with this virus, which is only possible if he is completely isolated in a home in Belgrade, Republic of Serbia (“Serbia”);¹¹

RECALLING that pursuant to Article 25 of the Statute of the Mechanism (“Statute”), imprisonment in an enforcement State shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism;¹²

RECALLING that Article 3(4) of the relevant Enforcement Agreement between the United Nations and the Government of Poland,¹³ which applies *mutatis mutandis* to the Mechanism,¹⁴ also provides that the conditions of imprisonment shall be governed by the law of Poland, subject to the supervision of the Mechanism;

RECALLING Rule 68(I) of the Rules, which stipulates that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period;

⁷ Sreten Lukić’s Submissions Pursuant to the Practice Direction on the Procedure for the Determination of Applications of Pardon, Commutation of Sentence, and Early Release, 19 November 2018 (confidential) (“Early Release Application”); Notice of Completion of Rehabilitation Course, 12 April 2019 (confidential) (“Notice”); Sreten Lukić’s Submissions in Accord with Article 6 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release, 24 May 2019 (confidential) (“Submissions”); Notice as to Sreten Lukić’s Submissions in Accord with Article 6 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release, 31 May 2019 (confidential) (“Second Notice”). I note that Lukić filed public redacted versions of his Early Release Application, Notice, and Submissions on 19 August 2019, in accordance with my Decision of 13 August 2019. *See* Decision on Prosecution Request for Public Redacted Versions of Early Release Application and Related Documents, 13 August 2019, p. 2.

⁸ Motion, Annex B, RP 5198.

⁹ Motion, Annex B, RP 5197.

¹⁰ Motion, Annex B, RP 5197-5196. In this regard, I observe that Lukić relies on [REDACTED]. *See* Motion, Annex B, RP 5197. [REDACTED].

¹¹ Motion, Annex B, RP 5196.

¹² *See also* Rule 128 of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

¹³ Agreement between the Government of the Republic of Poland and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 18 September 2008 (“Enforcement Agreement”).

¹⁴ *See* Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

CONSIDERING that neither the Statute nor the Rules explicitly provide for the provisional release of a person serving his or her sentence following a final conviction;¹⁵

CONSIDERING that, in certain limited circumstances, the Appeals Chamber and the President have applied Rule 68(I) of the Rules *mutatis mutandis* to convicted persons who remained in the custody of the Mechanism pending transfer to an enforcement State;¹⁶

CONSIDERING, however, that Lukić is not in the custody of the Mechanism but is serving his sentence in an enforcement State;¹⁷

CONSIDERING, therefore, that there is no basis in law for Lukić's request for provisional release;

RECALLING Article 26 of the Statute, Rules 150 and 151 of the Rules, and 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,¹⁸ which together set out the legal framework and procedure for applications for pardon, commutation of sentence, or early release;

RECALLING that a decision on an application for early release requires, *inter alia*, consultation with other Mechanism Judges pursuant to Rule 150 of the Rules and consideration of a number of factors in accordance with Rule 151 of the Rules;

CONSIDERING that Lukić's pending Early Release Application is currently being considered in accordance with these provisions;

CONSIDERING that, in requesting provisional release, Lukić appears to seek to circumvent the existing proceedings related to his Early Release Application;

CONSIDERING further that, as the Early Release Application has been pending since 19 November 2018, and as Lukić reached two-thirds of his sentence on 12 May 2019,¹⁹ I intend to issue a decision on the Early Release Application as soon as possible, once the relevant information-gathering and consultation processes are concluded;

¹⁵ See *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Motion for Provisional Release, 21 April 2020 ("*Semanza* Decision"), p. 4.

¹⁶ *Semanza* Decision, p. 4 and references cited therein.

¹⁷ See Early Release Decision of 17 September 2018, para. 5; Early Release Decision of 30 May 2017, para. 4.

¹⁸ MICT/3/Rev.2, 20 February 2019.

¹⁹ Early Release Decision of 17 September 2018, para. 18; Early Release Decision of 30 May 2017, para. 33.

CONSIDERING that [REDACTED], on which Lukić relies, [REDACTED];²⁰

CONSIDERING further that Lukić's submissions are speculative insofar as he submits that he will certainly become infected with COVID-19 if he remains in prison in Poland and that his only chance to survive would be to avoid infection by self-isolating in Serbia;²¹

CONSIDERING that, being alert to the unfolding situation regarding the COVID-19 pandemic, I directed the Registrar on 19 March 2020 to immediately request information from enforcement States, including Poland, on the measures taken thus far in their detention facilities in response;²²

NOTING that Poland responded to this request in a *note verbale* dated 2 April 2020, which was subsequently filed confidentially by the Registrar and provided to Lukić through his Counsel;²³

CONSIDERING that, in light of the information received to date, I am assured that the Polish prison authorities have [REDACTED];²⁴

CONSIDERING, therefore, that in these circumstances, Lukić fails to demonstrate why a decision on his Early Release Application must be issued immediately;

EMPHASISING, moreover, that I have directed the Registrar to liaise regularly with enforcement States so that I am informed promptly of developments concerning COVID-19 in any of the prisons where convicted persons are serving their sentences under the supervision of the Mechanism;²⁵

FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion; and

DIRECT the Registrar to provide a copy of the present Decision to the authorities of Poland.

²⁰ [REDACTED].

²¹ See Motion, Annex B, RP 5197-5196.

²² See Order for COVID-19 Updates from Enforcement States, 24 April 2020 (public redacted) ("Order of 24 April 2020"), p. 1.

²³ Registrar's Submission of Information Transmitted by the Republic of Poland, 24 April 2020 (confidential), Annex (*note verbale* from the Embassy of Poland to the Netherlands to the Mechanism, dated 2 April 2020) ("*Note Verbale* from Poland"). On 24 April 2020, the Registry confirmed by email communication that the *Note Verbale* from Poland had been conveyed to Lukić in accordance with my instructions. See Internal Memorandum from the President to the Registrar, dated 21 April 2020 (confidential), para. 2.

²⁴ See *Note Verbale* from Poland, RP 5212-5211. In this regard, I refer also to the interim guidance issued by the World Health Organization. See "Preparedness, prevention and control of COVID-19 in prisons and other places of detention", 15 March 2020, available at: <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020>. I further recall Article 3(8) of the Enforcement Agreement, pursuant to which the conditions of imprisonment in Poland shall be equivalent to the conditions of imprisonment applicable to prisoners serving sentences pursuant to judgments of Polish courts and shall be compatible with the relevant international human rights standards.

²⁵ See Order of 24 April 2020, pp. 2-3.

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

Done this 14th day of August 2020,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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