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Mécanisme pour les  
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<b>CASE/AFFAIRE NO.</b>	MICT-14-67-ES.4 Streten Lukic (Enforcement)	<b>DATE</b>	29/05/2015
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<b>Decision on Streten Lukic's request for determination by the President of time served, submitted by President on 29 May 2015</b>			

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**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

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

Date: 29 May 2015

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**Decision of:** 29 May 2015

**PROSECUTOR**

**v.**

**SRETEN LUKIĆ**

***PUBLIC***

**DECISION ON SRETEN LUKIĆ'S REQUEST FOR  
DETERMINATION BY THE PRESIDENT OF TIME SERVED**

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Matthias Marcussen

**Counsel for Milan Lukić:**

Mr. Dragan Ivetić

**I, THEODOR MERON**, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

**NOTING** the Judgement rendered by Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) on 26 February 2009 in the case of *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T (“Trial Judgement”), in which Mr. Sreten Lukić (“Lukić”) was sentenced to 22 years of imprisonment with credit granted for the period spent in detention;<sup>1</sup>

**NOTING** the Judgement rendered by the ICTY Appeals Chamber on 23 January 2014 in the case of *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A (“Appeal Judgement”), in which Lukić’s sentence was reduced to 20 years of imprisonment;<sup>2</sup>

**BEING SEISED OF** “Sreten Lukić’s Request for Determination by the President of Time Served” filed confidentially with a confidential annex by Lukić on 27 January 2015 (“Request”);

**NOTING** the “Prosecution’s Response to Sreten Lukić’s Request for Determination by the President of Time Served” filed confidentially with a confidential and *ex parte* annex by the Office of the Prosecutor (“Prosecution”) on 6 February 2015 (“Response”);

**NOTING** “Sreten Lukić’s Reply in Support of [the] Request for Determination by the President of Time Remaining to Be Served”, filed confidentially by Lukić on 16 February 2015 (“Reply”);

**NOTING** Lukić’s request that: (i) the President confirm that the Trial Judgement and Appeal Judgement granted him credit for the whole period spent in ICTY custody including periods spent on provisional release;<sup>3</sup> and (ii) credit be granted for the time spent in Serbia pending his transfer to the ICTY, namely from 30 September 2004 to 4 April 2005, as the conditions imposed by the Serbian Investigative Judge at the time amounted to deprivation of his liberty;<sup>4</sup>

**RECALLING** Article 25 of the Statute of the Mechanism (“Statute”), which provides in relevant part that the Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY;

<sup>1</sup> Trial Judgement, para. 1212.

<sup>2</sup> Appeal Judgement, paras. 1845, 1847.

<sup>3</sup> Request, paras. 4, 11, 18.

<sup>4</sup> Request, paras. 3, 10, 17. *See also* Request, Annex.

**CONSIDERING** that, in principle, the Prosecution has no standing to make submissions on sentence enforcement matters under the Statute and the Mechanism's Rules of Procedure and Evidence ("Rules") other than when consulted in the context of early release applications;<sup>5</sup>

**CONSIDERING** that there is no compelling reason, special circumstance, or possible prejudice requiring consideration of the Prosecution's submissions in the present matter;

**CONSIDERING FURTHER** that, in light of the above, there is no reason to consider the Reply in so far as it addresses the Response;

**NOTING** Lukić's submission that his request for clarification as to the period spent in ICTY custody is made "so that [he] may have certainty in the sentence he must serve, before seeking any early release";<sup>6</sup>

**CONSIDERING** that no motion for early release has been filed to date and that, therefore, Lukić's relevant request is unripe;

**NOTING** that, in sentencing Lukić, the Trial Chamber observed that "[Lukić] has been in custody since 4 April 2005; and, pursuant to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention thus far";<sup>7</sup>

**CONSIDERING** that Lukić's request for credit for time spent in Serbia *before* his transfer to the ICTY, which took place on 4 April 2005, amounts to a request that I reconsider aspects of a judgement, which have not been challenged on appeal;

**CONSIDERING FURTHER** that the President of the Mechanism has no jurisdiction to reconsider a final judgement;<sup>8</sup>

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<sup>5</sup> See *Prosecutor v. Zoran Žigić*, Case No. MICT-14-81-ES.1, Decision on Zoran Žigić's Request to Withhold Consent for the Execution of the Republic of Austria's Extradition Decision, 12 December 2014, para. 10, citing Rule 151 of the Rules, and Paragraph 4(c) of the Practice Direction on the Procedure for the Determination for Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY or the Mechanism.

<sup>6</sup> Request, para. 4.

<sup>7</sup> Trial Judgement, para. 1212 (emphasis added).


<sup>8</sup> See *Prosecutor v. Zoran Žigić a/k/a "Ziga"*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, paras. 8-9 ("there is no power to reconsider a final judgement"). See also *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber's Decision of 8 December 2009, 22 January 2010, p. 3.

**HEREBY**

**DENY** the Request in its entirety.

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

Done this 29th day of May 2015,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
President

[Seal of the Mechanism]