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BEFORE THE UNITED NATIONS MECHANISM FOR INTERNATIONAL CRIMINAL  
TRIBUNALS

CASE NO. *MICT-14-67-R.1*

Before the Appeal Chamber of the MICT

Before: The Honorable Judge Theodor Meron, Presiding  
Judge William Hussein Sekule  
Judge Bakone Justice Moloto  
Judge Burton Hall  
Judge Liu Daqun

Registrar: Mr. John Hocking

Date Filed: 23 July 2015

THE PROSECUTOR

v.

**SRETEN LUKIC**

- Public Redacted Version -

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Sreten Lukic's Request for Review Pursuant to Rule 146

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**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**Counsel for Sreten Lukic:**

Mr. Dragan Ivetic

BEFORE THE UNITED NATIONS MECHANISM FOR INTERNATIONAL CRIMINAL  
TRIBUNALS

CASE NO. *MICT-14-67-R.1*

- Public Redacted Version -

Sreten Lukic's Request for Review Pursuant to Rule 146

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NOW COMES Mr. Sreten Lukic (hereafter also referred to as "Applicant"), by and through his attorney, Dragan Ivetic, and presents this instant *Request for Review Pursuant to Rule 146 of the Rules of Procedure and Evidence of the Mechanism*. In support thereof, Applicant states as follows:

**I. Introduction**

1. On 23 January 2014 the Appeals Chamber rendered its appeal judgment directed towards the appeals of Mr. Sreten Lukic and the Prosecution. (hereinafter "Appeal Judgment")

2. This Request for Review is made pursuant to Rule 146 of the Rules of Procedure and Evidence of the MICT. Insofar as it relates to medical information it is filed confidentially.

3. This Request is filed on behalf of Mr. Sreten Lukic, by counsel who represented him during the ICTY proceedings, and who has applied for admission to the MICT list of counsel.

4. This Review application is based on the following grounds which, if viewed cumulatively or individually, require a review and modification of the Appeal Judgment:

- a. New facts and evidence as to the health of the applicant, Mr. Sreten Lukic;

- b. New facts and evidence as to the findings of the Appeal Judgment on the role of applicant, Mr. Sreten Lukic; and
- c. New jurisprudence that has arisen subsequent to pronouncement of the Appeal Judgment which directly affects the same.

5. The arguments for each of these grounds is set forth herein below, and it is respectfully submitted that the same constitute sufficient cause and grounds for a Review to be initiated of the Appeal Judgment. The new facts, evidence, and jurisprudence discussed herein was not known to Applicant or his defence counsel, and could not be known at the time of the appeal proceedings, and thus could not be known by the Appeals Chamber at the time it rendered the Appeal Judgment, though they directly impact on the same.

6. In accord with the Rules of the MICT, and specifically Rule 146, it is requested that an appeals bench be appointed to consider these new facts and arguments, and review the Appeal Judgment accordingly.

7. It is respectfully submitted that the new facts and evidence herein directly impinge on the Appeal Judgment, such that both the conviction for mode of responsibility and the length of sentence imposed are affected and thus review and correction of the same is necessary.

8. It is respectfully submitted that the new jurisprudence is directly effecting the findings of the Appeal Judgment, rendering those findings incorrect and thus requiring the attention and review of the appeal bench to harmonize the findings with the new jurisprudence.

9. It is respectfully sought that, at the very least, the sentence imposed by the Appeal Judgment be significantly reduced, although the new facts and new evidence drastically affect the finding upholding the conviction as well.

## II. Legal Standards

10. The jurisprudence states that Petitions for review from a final judgment would be decided by Appeals Chamber of the Mechanism where the final judgment at the ICTY was issued by the Appeals Chamber.<sup>1</sup>

11. While the jurisprudence as to Review Proceedings at the MICT is scant, the Mechanism is bound to interpret its Statute and Rules in a manner consistent with the ICTY and ICTR jurisprudence.<sup>2</sup>

12. Pursuant to ICTY Rule 119, a party seeking review must satisfy four criteria; (1) there must be a new fact; (2) this new fact must not have been known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber; (3) the lack of discovery of the new fact must not have been through the lack of due diligence on the part of the moving party; and (4) the new fact, if proved, could have been a decisive factor in reaching the original decision;<sup>3</sup>

13. What is relevant in evaluating an application for review is not whether the new fact existed but whether the deciding body and the moving party knew about the fact or not in arriving at its decision.<sup>4</sup>

14. Review is only available with respect to final judgment. If the Appeals Chamber rendered the final judgment in the instant case, then only the Appeal Judgment can be reviewed.<sup>5</sup>

15. It is respectfully submitted that each of the three new facts identified herein meets the aforementioned criteria, and could have been a decisive factor in

<sup>1</sup> *Prosecutor v Lukic*, No. MICT-13-52-R.1, *Order Assigning Judges to a case before the Appeals Chamber* (24 February 2014)

<sup>2</sup> *Munyarugarama v Prosecutor*, No. MICT-12-09-AR14, *Decision on Appeal Against the Referral of Phineas Munyarugarama's Case to Rwanda* (5 October 2012) at para. 6

<sup>3</sup> *Prosecutor v Josipovic*, No. IT-95-16-R3, *Decision on Motion for Review* (2 April 2004); *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 12; *Prosecutor v Tadic*, No. IT-94-1-R, *Decision on Motion for Review* (30 July 2002) at para. 20; *Prosecutor v Slijivancanin*, No. IT-95-13/1-R.1, *Decision with Respect to Veselin Slijivancanin's Request for Review* (14 July 2010) at p. 3

<sup>4</sup> *Prosecutor v Slijivancanin*, No. IT-95-13/1-R.1, *Decision with Respect to Veselin Slijivancanin's Request for Review* (14 July 2010) at p. 3

<sup>5</sup> *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 15

the Appeal Judgment. They render the Appeal Judgment unsound, in terms of both the conviction and the sentence imposed.

**III. Submission of Arguments**

**A. The New Facts Relating to the Health and Life Expectancy Estimates of Applicant Demonstrate that it is in the Interests of Justice to Reduce the Sentence and Release Sreten Lukic from Custody.**

16. The Appeal Judgment imposed a sentence of 20 years in prison for Mr. Sreten Lukic. This constituted a reduction from the 22 years sentence imposed by the Trial Chamber. Several errors were identified by the Appeal Judgment which formed the basis for the reduction in sentence

17. In regards to Applicant's Appeal arguments relating to his health as a mitigating factor, the Appeal Judgment upheld the Trial Chamber's determination that the health of the accused did not rise to a factor in mitigation. Per the Appeal Judgment, the Trial Chamber acted within its discretion, based on its review of "contemporary information documenting the state of Lukic's health" found in motions for provisional release.<sup>6</sup> In upholding the Trial Chamber's finding and denying any mitigation arising out of Lukic's health circumstances, the Appeal Chamber recalled that "poor health is mitigating in exceptional cases."<sup>7</sup>

[REDACTED]

[REDACTED]

<sup>6</sup> Appeal Judgment, para. 1827  
<sup>7</sup> Appeal Judgment, para. 1827

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. It is respectfully submitted that the foregoing condition of Lukic's health, and the [REDACTED], constitute new facts, in that they arose from medical records and opinions rendered after the Appeal Judgment, and do not relate to the contemporary records that would have been reviewed by the Trial Chamber.

23. The [REDACTED] [REDACTED] could not be known by the Appeal Chamber or by the Defence at the time of appellate arguments nor the rendering of the Appeals Judgment.

24. It is further submitted that the new fact of [REDACTED] [REDACTED] would have been a decisive factor in the decision of the Appeal Chamber in upholding the Trial Chamber’s dismissal of a ground of mitigation, in that it brings the poor health of Applicant to the “exceptional” level required under the jurisprudence. Indeed, given this new medical fact and evidence, the sentence of the Applicant should be significantly reduced.

**B. The New Facts and Evidence Evidencing the Role of Applicant**

25. Another new fact that has arisen since the pronouncement of the Appeal judgment is a document which has only just recently been obtained from [REDACTED] [REDACTED], which casts a new light on the convictions entered in the Appeal Judgment.

26. Although the document itself is dated 5 January 1999 it was only made available to the Lukic Defence team on 7 December 2014, after a long process of requesting the same and waiting for the necessary approvals from the [REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

28. The Applicant was made aware of the existence of the document by other accused, who had apparently been granted access to the document, but with Rule 70 restrictions preventing it to be spread further. The Defense of Sreten Lukic initially sought the document in 2007 but did not receive a response as to it and received informal word that the document existed, it had not been previously given to the Lukic [REDACTED]

[REDACTED] After repeated inquiries to try and obtain the document, [REDACTED] kept delaying, and the same was thus only received recently.

29. [REDACTED]

[REDACTED] The Trial Chamber has found and the Appeal Judgment has confirmed Lukic's role as the "Bridge"<sup>8</sup> from the political leaders in Serbia down to Kosovo-Metohija as part of the JCE. This document demonstrates that before NATO bombardment, does not mention any word of deportations of Albanians or any other crimes. This is one of only 2 meetings that Lukic attended in Belgrade in 1999, and is the only one BEFORE the crimes are alleged to have occurred. Indeed, the second such meeting was 4 May 1999, at a time when already 715,000 Albanians have left Kosovo, according to the Judgment.<sup>9</sup>

30. From here it is obvious that the role attributed to Lukic by the Appeal Judgment is not correct. It was after this meeting that the Directive issued by General Ojdanic for combating terrorism<sup>10</sup> was issued, and the orders by both General Pavkovic<sup>11</sup> and General Lazarevic<sup>12</sup> implementing the same on the territory of Kosovo-Metohija. Thus, surely for there to have been some criminal knowledge and criminal intent discussed by the political leadership in Belgrade that was to be bridged down to Kosovo-Metohia, it would have to be evident from this meeting, and it is not.

<sup>8</sup> Appeal Judgment, para. 1367, 1407-1412

<sup>9</sup> Trial Judgment, vol. 4 para. 1094-1095

<sup>10</sup> P1491/P1495

<sup>11</sup> P1459

<sup>12</sup> P1458

31. The significance of this error is manifest in para. 1411 of the Appeal Judgment, where the appeal is summarily dismissed based on the Trial Chamber's finding that he was present for meetings where the Plan was implemented. These are the minutes of the meeting that could be said to be the genesis for this conclusion, and there is not any basis in fact for that conclusion, making it unsound.

32. Pursuant to the aforesaid, the conviction of Lukic should be vacated, or in the alternative, his sentence should be significantly reduced upon review.

**C. New Jurisprudence from the Djordjevic case Subsequent to the Appeal Judgment requires a Review to Harmonize the Same with that Jurisprudence.**

33. The Appeal Chamber in the case of *Prosecutor vs. Vlastimir Djordjevic* rendered their Appeal Judgment on 27 January 2014, reducing the sentence imposed against Vlastimir Djordjevic significantly. It should be recalled that Djordjevic was named in the same indictment as the Applicant, with the proceedings severed because Djordjevic was a fugitive from justice at the time of the Trial against Applicant and 5 other accused. The indictments are almost identical, save for some additional counts that apply to Djordjevic's indictment.

34. In its judgment in the *Djordjevic* case, the Appeals Chamber held that expulsion of persons from Kosovo to Montenegro did not constitute deportation.<sup>13</sup> It concluded that since Djordjevic was charged only with deportation and not forcible transfer for these events, his convictions for deportation and persecution by deportation must be reversed and no conviction for forcible transfer as to these events could be entered.<sup>14</sup>

35. The events that were the subject of this ruling were the expulsions of people from Pec on 27-28 March 1999 and from Kosovska Mitrovica on 4 April 1999.<sup>15</sup>

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<sup>13</sup> *Djordjevic* Appeals Chamber Judgment, para. 537

<sup>14</sup> *Djordjevic* Appeals Chamber Judgment, para. 539

<sup>15</sup> *Djordjevic* Appeals Chamber Judgment, para. 528

36. Djordjevic's sentence was reduced by 9 years for this error as well as three other errors concerning some other deportations and the murder of 11 Kosovo Albanians.<sup>16</sup>

37. Applicant also is charged in Count One of his indictment with deportation for these same events. The indictment in Count Two, like that of Djordjevic, limited the forcible transfer allegations to "those' Kosovo Albanians who were internally displaced within the territory of Kosovo"

38. The Trial Chamber in the Sainovic case case found:

*As to the events in Pec municipality on 27-28 March 1999, the Trial Chamber found that "a significant number of Kosovo Albanians in Peć/Peja town were directly expelled from their homes on 27 and 28 March 1999. Many of these people were forced to go either to Albania or to Montenegro."*<sup>17</sup>

39. As to the events in Kosovska Mitrovica on 4 April 1999, the Trial Chamber found that "MUP forces then expelled thousands of Kosovo Albanians from parts of the town, some of whom were taken to Montenegro."<sup>18</sup>

40. In its section on legal findings, the Trial Chamber found that "all of the elements of deportation as a crime against humanity punishable under Article 5(d) of the Statute, are satisfied. Similarly, and in light of the various witness accounts of the violence, fear, and intimidation that the forces of the FRY and Serbia systematically effected..., the Chamber is convinced that the elements of the crime of other inhumane acts (forcible transfer), punishable under Article 5(i) are also satisfied."<sup>19</sup>

41. The Trial Chamber found the accused guilty of the deportations and

<sup>16</sup> Djordjevic Appeals Chamber Judgment, para. 977

<sup>17</sup> Milutinovic et al Trial Judgment at para. 48, vol. 2

<sup>18</sup> Milutinovic et al Trial Judgment at para. 727 vol. 2

<sup>19</sup> Milutinovic et al Trial Judgment at paras. 1183, 1228 vol. 2

forcible transfers from Pec and Kosovska Mitrovica municipalities.<sup>20</sup>

42. Therefore, it appears that the accused have been convicted of deportations to Montenegro. This conviction by the Trial Chamber has been upheld by the Appeal Judgment.

43. Now that the Appeals Chamber in *Djordjevic* has held that expulsions to Montenegro do not constitute deportation, those convictions are not valid.

44. The fact that a transfer from Kosovo to Montenegro did not constitute deportation was a new “fact” and that it was not known or could not have been discovered, since it dates from a subsequent Appeal Judgment rendered in a separate proceeding. The Appeal Chamber in the instant case did not address this new fact.

45. Irrespective of that, even if not a new fact, the Appeals Chamber has held that “in wholly exceptional circumstances, where the impact of a new fact on the decision would be such that to ignore it would lead to a miscarriage of justice, the Chambers may review their decision even though the new fact was known to the moving party, or was discoverable by it through the exercise of due diligence.”<sup>21</sup>

46. Accordingly, under either criteria, the aforementioned new fact arising out of new jurisprudence, Therefore, it appears that it might be worth bringing a petition for review of the deportation conviction on the grounds that the fact that the transfers from Kosovo to Montenegro does not constitute deportation is a new fact which was not known or discoverable, or presents an exceptional circumstance resulting in conviction for crimes which were not in fact committed.

47. Given that Djordjevic received a 9-year reduction in sentence based upon the same error, among several others, it is appropriate to reduce the sentence against Applicant.

<sup>20</sup> *Milutinovic et al* Trial Judgment at para. 475 vol.3

<sup>21</sup> *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 13; *Prosecutor v Blagojevic*, No. IT-02-60-R, *Decision on Vidoje Blagojevic's Request for Review* (15 July 2008) at para. 4; *Prosecutor v Sijivancanin*, No. IT-95-13/1-R.1, *Decision with Respect to Veselin Sijivancanin's Request for Review* (14 July 2010) at p. 3

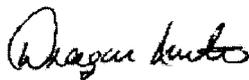
48. This is particularly true since the same jurisprudence applies to additional convictions in the Applicant's case. Indeed, in regards to the conviction for crimes of deportation as to Zegra municipality, the Trial Chamber made a finding under the evidence that soldiers and para-militaries ordered the civilians to go towards Presevo.<sup>22</sup> Insofar as Presevo is a city in the south of Serbia (outside Kosovo-Metohija), likewise the analysis from *Djordjevic* would apply the same to this circumstance. Similarly, in relation to the conviction for crimes in relation to Vladovo Municipality the Trial Chamber found deportation to have occurred, despite the evidence and its findings that the key witness it relies on, K-81, reported going to Presevo first and then Macedonia<sup>23</sup> and that these civilians left Kosovo-Metohija and entered Serbia upon orders of the police and army, before eventually leaving for Macedonia without orders to do so.<sup>24</sup>

#### IV. Relief Sought

Wherefore, for the foregoing reasons, Sreten Lukic hereby respectfully requests this Appeals Chamber perform a Review of the Appeal Judgment, and vacate the convictions against him, or in the alternative substantially reduce the sentence entered against him.

WORD COUNT: 3379

RESPECTFULLY SUBMITTED



Dragan Ivetic

Counsel for Mr. Sreten Lukic

<sup>22</sup> *Milutinovic et al* Trial Judgment at para.928 vol.2

<sup>23</sup> *Milutinovic et al* Trial Judgment at para.935-936 vol. 2

<sup>24</sup> *Milutinovic et al* Trial Judgment at para. 892 vol. 2



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