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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 -

SRETEN LUKIC'S REPLY IN SUPPORT OF SRETEN LUKIC'S REQUEST FOR REVIEW
PURSUANT TO RULE 146

The Office of the Prosecutor:

Mr. Hassan B. Jallow
Mr. Mathias Marcussen

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 REPLY IN SUPPORT OF SRETEN LUKIC'S REQUEST FOR REVIEW
PURSUANT TO RULE 146**

NOW COMES Mr. Sreten Lukic (hereafter also referred to as "Movant"), by and through his attorney, Dragan Ivetic, and presents this instant Reply:

I. Introduction and Brief Background

1. On 27 January 2015 Sreten Lukic filed his Request or Review Pursuant to Rule 146. (hereinafter "Review") The Review sought relief based on three separate grounds.
2. The Prosecution filed their Response to the aforesaid on 9 March 2015, although the same was not served upon the counsel for Sreten Lukic until 10 March 2015. (hereafter "Prosecution Response")
3. The instant Reply is filed to just briefly address some matters from the Prosecution Response. It is timely filed and is limited to matters raised in the Prosecution Response, and it attempts to assist the Appeal Chamber in assessing the Review and will assist in the adjudication of the same.
4. As a preliminary matter, the Prosecution Response seeks for the Chamber to order a public redacted version of the Review to be filed, redacting only

Movant's medical information.¹ The Movant opposes/addresses the same as follows. In addition to the personal and confidential medical information contained in the Review pertaining to the health of Movant, the second ground for review relates to a document² [REDACTED]
[REDACTED]³ In the event that the Chamber would be inclined to grant the Prosecution's request in this regard, the provider of information pursuant to Rule 70 should have the opportunity to be heard.⁴ It is submitted that all discussion of the first 2 Grounds of Review should be treated confidentially.

5. The Prosecution Response essentially raises the following arguments against the Request for Review:
 - a. That the Movant's ill health [REDACTED] is not a new fact
 - b. That the Minutes are not a new fact, and support the finding of the Judgment
 - d. That the conflicting findings in Djordjevic are not subject to Review
6. The Defence herein responds to each of the same.

II. Arguments and Submission

A. The Deterioration in Health of the Accused is a New Fact, which renders the Sentence Unsound.

7. The Prosecution on the one hand claims that the medical information is not a new fact but rather was known and at issue in trial and during the appeal,⁵

¹ Prosecution Response, footnote 1

² referred to in the Prosecution Response and hereinafter as the "Minutes"

³ The confidential Rule 70 nature of the document is clearly contained in para. 29 of the Review.

⁴ *Prosecutor v Milosevic*, No. IT-02-54-AR108 bis, *Public Version of the Confidential Decision on the Interpretation and Application of Rule 70* (23 October 2002) at para. 31

⁵ Prosecution Response, para. 2, 5, and 6.

but on the other hand concede that the same is supplementing that known at Appeal⁶ and that the Appeal Chamber upheld the conclusion that the medical condition did not amount to a mitigating factor, based on the Trial Chamber's consideration of "contemporary information documenting Lukic's health."⁷ It is precisely the fact that this medical information was NOT contemporaneously known to the Trial Chamber, nor the Appeals Chamber at the time of their decisions that renders this "supplementary" information a "new fact."

- 8. That the health of the Movant has deteriorated since the pronouncement of both judgments is best demonstrated by the fact that, [REDACTED]

[REDACTED]

⁶ Prosecution Response, para. 5
⁷ Prosecution Response, para. 7

9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Movant is not attempting to "re-litigate"⁸ old issues, he is attempting to present to the Chamber frightening and drastic medical developments which impact upon his life and well being, and which are negatively affected by the conditions of detention. The Prosecution Response also mistakenly refers to the standards for Provisional release,⁹ which are a different standard than that for post-conviction relief. This Review is precisely the type of scenario that the MICT is in place to deal with and precisely the type of situation that post-conviction relief is appropriate for.

10. The Prosecution has not presented any Medical Expert evidence to negate or take issue with the medical information contained in the Review. Thus there has been no rebuttal of the same. The Movant would merely ask that the Chamber fairly and fully review the same and consider the sentence imposed in light of these new health issues, and based on the medical facts and opinions involved, not on the empty arguments of the Prosecution that ignore the medical implications. One has to ask if the Prosecutors charging others with crimes against humanity understand humanity or have a sense of humane treatment in its application to the law, especially as to post-conviction relief.

⁸ Prosecution Response, para. 7

⁹ Prosecution Response, para. 9

B. The Minutes are a New Fact, which Renders the Conviction Unsound.

11. The Prosecution Response presents several arguments why the Minutes are not "new facts" capable of Review. The first is that the Movant has failed to discover the facts during trial due to lack of due diligence. In this regard the Prosecution alleges that the Minutes were known of to Movant in 1999 as a participant and were disclosed to another Accused in 2006, and that there is no evidence that the same was requested by Movant in 2007.¹⁰ [REDACTED]

[REDACTED]

[REDACTED]¹¹ The Prosecution Arguments are erroneous.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰ Prosecution Response, para. 13
¹¹ Prosecution Response, para. 14
¹² The Ministry of Internal Affairs
¹³ Rp. 30

13. What is clear from the foregoing is that the Defence team was being misled in 2007 that such documentation was not in possession of [REDACTED]

[REDACTED]

[REDACTED] It is in the interests of justice to permit the Movant to present this documentation, which has been received only after a long and drawn out process of endurance and persistence.

14. As is clear from the foregoing, the disclosure of the Minutes to another Accused in 2006 is irrelevant and immaterial. The Defence of Movant did not have the document, or it would not have sought the same in 2007. The possession of the same by someone else in 2006 cannot be attributed to the Accused, especially if the same is claimed to not exist in the possession of [REDACTED] in 2007.

15. The foregoing demonstrate that Movant was diligent and exhausted all legally available means, but did not obtain the document in question until AFTER the Appeal Judgment, through no fault of his own but rather

through the deception and obstruction of the Rule 70 provider. Accordingly the Minutes are a "new fact" capable of Review. To deny Movant the opportunity to present the Minutes would be a miscarriage of justice, under the circumstances.

16. The Prosecution claims that the Minutes support the findings in the Judgment as to the Role of Lukic in the JCE.¹⁴ The Prosecution claims that the fact Lukic reported "what members of the police forces were doing in [in Kosovo]." confirmed that Lukic was the bridge between the policy-planners in Belgrade and those on the ground committing crimes in Kosovo.¹⁵
17. However, the Minutes demonstrate that Lukic was only reporting on law enforcement activities aimed at preventing crimes, and was reporting to those in Belgrade about the same. Thus there is no proof in the minutes that demonstrates that Lukic was sending information in the other direction (from Belgrade to Kosovo) so as to act as a "bridge" between the policy-makers in Belgrade and those in Kosovo. It has to be stressed that 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 1999¹⁶, at a time when already 715,000 Albanians have left Kosovo, according to the Judgment.¹⁷ The fact there is not mention of crimes, and no instruction given to Lukic to transmit instructions for commission of crimes down to Kosovo, means that the conviction is unsound and unsupported by the evidence.
18. Further, the position taken by the Prosecution is worrisome in the respect that it deems to equate reporting on crime prevention and law

¹⁴ Prosecution Response, para. 17

¹⁵ Prosecution Response, para. 17

¹⁶ P1358/P1696; Appeal Judgment para. 1474-1477

¹⁷ Trial Judgment, vol. 4 para. 1094-1095

enforcement as being a criminal activity in itself. It must be stressed again the Movant, during 78days of Bombings, reported on 785 criminal reports filed by the police for crimes against Albanians, including 443 where perpetrators were arrested, 95% of whom were Serbians. This is evident from P948¹⁸, which is oft cited in the Appeal and Trial Judgments. In conjunction with the Minutes that are now available it is clear Lukic's role was in reporting on such activities, and cannot in any way be connected with criminal activity. Indeed, the Defence has just recently learned of a witness in Belgrade that has just revealed that local Serbs in Kosovo planned to assassinate Lukic for his role in arresting Serbs for crimes against Albanians.

19. The Prosecution also argues that the Minutes do not rebut the "wealth evidence" of a "joint command."¹⁹ However this ignores that the "wealth of evidence" is based on conjecture, and that no evidence of an explicit nature exists for the evidence of a joint command in 1999. Pursuant to the principle of *indubio pro reo*, this lack of direct evidence, with the Minutes and other evidence demonstrating that no formal entity named the Joint Command had a role in the governing of events, renders the Appeal Chamber's findings of a Joint Command unsound. Relief as sought in the Review should be granted.

C. The Subsequent Appeal Judgment in Djordjevic is a new fact rendering the Conviction Unsound.

20. The Prosecution Response attempts to downplay the divergent findings in the Djordjevic Appeal Judgment, and their impact of the Movant. The Response completely ignores that, in relation to the crimes/sites alleged for deportation, the two indictment are identical in the factual basis of the

¹⁸ pg. 202

¹⁹ Prosecution Response, para. 19.

same. Likewise the Prosecution Response ignores the fact that 2 members of both Appeal Panels were the same and that the Appeal Judgments came out not years apart, but only 2 days apart. The integrity of the Tribunal and the consistency of its application of law as well as its adherence to Article 21 and treating all accused equally before the Tribunal are called into question by the discrepancy in the treatment of deportation between the two cases.

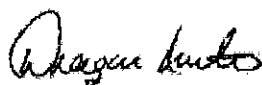
22. Under the circumstances, it is appropriate to ask the Chamber to harmonize the findings on deportation between the two cases and thus strengthen the standing and reputation of the Tribunal's jurisprudence, rather than allowing it to be fragmented, disparate and thus called into question.

III. Relief Sought

WHEREFORE, Sreten Lukic, asks the Chamber to consider and grant his Review.

Word Count: 2457

RESPECTFULLY SUBMITTED



Dragan Ivetic

Counsel for Mr. Sreten Lukic



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