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UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-52-ES.1

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Date Filed: 27 January 2016

PROSECUTOR

v.

MILAN LUKIĆ

Public Redacted Version

**MOTION FOR RECONSIDERATION AND REVIEW OF SENTENCE OF MR.
LUKIC IN ESTONIA AND TRANSFER TO THE HAGUE**

The Office of the Prosecutor

Mr. Hassan Bubear Jallow

Mr. Mathias Marcussen

Counsel for Milan Lukić

Mr. Jason Alarid

Mr. Dragan Ivetić

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-52-ES.1

PROSECUTOR

v.

MILAN LUKIĆ

Public Redacted Version

MOTION FOR RECONSIDERATION AND REVIEW OF SENTENCE OF MR. LUKIC IN ESTONIA AND TRANSFER TO THE HAGUE

COMES NOW Milan Lukić, by and through his counsel¹ and respectfully requests The Mechanism to review/reconsider the designation of Estonia to serve his sentence, and to transfer him to The Hague to allow testimony at a Court hearing on the matter, permit meeting with counsel and examinations by physician/psychologist, and to alleviate humanitarian concerns whilst the matter is given due process and investigation by the parties and the Court; and in support states:

I. REQUEST TO EXTEND WORD COUNT

1. Movant seeks authorization pursuant to paragraph 17 of the relevant Practice Direction² that the word allowance for this Submission be enlarged from 3000 words to 3272 words. Exceptional circumstances support the sought extension and the additional number of words are not unduly onerous so as to create undue prejudice to the Prosecution or to overly burden the President of the MICT. The Exceptional circumstances that warrant the sought extension are as follows:

¹ Mr. Lukić has executed a Power of Attorney naming the aforesaid counsel, a copy of which has been attached to the Request for Hearing filed concurrently with the instant Motion.

² Practice Direction on Lengths of Briefs and Motions, 6 August 2013, (MICT/11)

- a. The serious nature of the psychological harm being occasioned upon Lukić's health requires a full and appropriate description and explanation, insofar as the potential for long lasting harm to his health is significant.
 - b. The applicable standards and regulations that have not been complied with in the selection of Estonia as the state of sentence are several, and each require precise and detailed identification and description so as to assist the President of the MICT in appraising the situation and the serious ramifications of failing to act on the request.
 - c. The discussion of European Court of Human Rights cases requires precise and detailed citations to these applicable authorities to assist the President of the MICT to fully appreciate and apprehend the circumstances which require immediate action.
2. For these foregoing reasons, the Movant has fulfilled the criteria for the sought extension of the word allowance, which is itself not a significant departure from the 3000 word limit that is provided under paragraph 15 of the same Practice Direction.

II. SUBSTANTIVE ARGUMENTS ON THE MERITS.

3. Milan Lukić, born September 6, 1967, in Foča, SR Bosnia and Herzegovina, SFR Yugoslavia is currently detained at the Tartu Vangla Prison, in Tartu, Estonia, following his conviction and sentencing to life imprisonment by the Appeals Chamber on 4 December 2012.³ Since his transfer to Tartu,

³ See: *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Appeals Chamber Judgment, in which Milan Lukić was sentenced to life imprisonment subject to credit being given under Rule 101(C)

Lukić has increasingly suffered from the conditions of his detention that neither comply with international standards nor fulfill his most basic human rights. On this ground, the Defence requests the review and reconsideration of Lukić's detention in Estonia and his transfer to The Hague ordered pending the consideration of a more suitable place of detention pursuant to established United Nations guidelines and in compliance with the European Conventions on Human Rights. This application is supported by a psychological review (Confidential annex D), and [REDACTED] (Confidential annex C) to be further elaborated at a required hearing via viva voc testimony of witnesses, including but not limited to the Accused.

A. THE MICT IS UNDER THE OBLIGATION TO ENSURE THE DETENTION OF LUKIĆ COMPLIES WITH INTERNATIONAL STANDARDS FOR DETENTION AND HUMAN RIGHTS

4. The MICT has responsibility under Article 25(1) and (2) of its Statute to supervise the detention of prisoners detained in the enforcing State. The MICT may terminate the detention "at any time" and its discretion is not predicated on any specific conditions.⁴ Thus, whereas the prime responsibility for enforcing an international sentence lies with the designated state, prisoners remain in custody of the Mechanism throughout the term of imprisonment.

5. The Appeals Chambers of the ICTY/ICTR have found that "the conditions of detention must accord with internationally recognized standards" for transferring a person to a State.⁵ Further, the MICT is under the obligation to

of the Rules of Procedure and Evidence of the ICTY for the period already spent in detention. *Also see: Prosecutor v. Milan Lukić*, Case No. MICT-13-52-ES.1, Order designating State in which Milan Lukić is to serve his sentence, pp. 1-2 (**Annex A**).

⁴ Art. 9(2) of the Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia (**Annex B**). *Also see: D. Abels, Prisoners of the International Community: The Legal Position of Persons Detained at International Criminal Tribunals*, 2012, T.M.C. Asser Press, p. 509.

⁵ *See for e.g. The Prosecutor v. Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on the Prosecution's Appeal Against Decision on Referral under Rule 11bis, 8 October 2008, para. 4; *The Prosecutor v. Rašević and Todović*, Case No. IT-97-25/1-AR11bis.1 & IT-97-25/1-AR11bis2, Decision on Savo Todović's Appeals Against Decisions on Referral under Rule 11bis, 4 September 2006, para. 99; *The Prosecutor v. Uwinkindi*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal Against the Referral of his

act in accordance with international human rights standards in exercising its mandate.⁶ The broad and continuing mandate conferred on the MICT means that any violations of human rights may be attributed to both the enforcing State pursuant to its treaty obligations, as well as to the Mechanism. It follows the MICT is under the free-standing and continuing obligation to ensure that Lukić's detention complies with both international standards for detention and human rights standards.

B. THE DETENTION OF LUKIĆ IN ESTONIA IS NOT IN ACCORD WITH INTERNATIONAL STANDARDS OF DETENTION AND ARGUABLY VIOLATES HUMAN RIGHTS LAW

6. Once a convicted person is transferred to a designated State's prison facility to serve his sentence, the conditions of detention are governed by the national law of that State. Enforcement States are inspected on a yearly basis to ensure compliance with the required standards. However, the situation of Lukić as a foreign prisoner in Estonia requires the taking into account of subjective factors, particular to his status, in assessing the suitability of his place of detention, notably the distance with his family and linguistic difficulties.
7. The hardships his family encounters when visiting him dramatically endanger Lukić's right to private and family life. In addition, his inability to

Case to Rwanda and Related Motions, 16 December 2011, para. 22. Further, the MICT defines 'international standards of detention' with reference to specific United Nations' standards, namely, The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, and approved by the Economic and Social Council by its resolutions 663 c (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, approved by the UN General Assembly resolution 43/172 of 9 December 198; and The Basic Principles for the Treatment of Prisoners, affirmed by the UN General Assembly resolution 45/111 of 14 December 1990. *Also see:* Art. 3(3)-(5) of the Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia.

⁶ *Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808* at para. 106, UN Doc. S/25704 (1993). Human rights are also applicable to the Tribunal as principles of the United Nations, pursuant to Articles 24 and 1 of the UN Charter. *Also see:* Principle 4 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (*supra*) requires "any form of detention or imprisonment and all measures affecting the human rights of a person shall be ordered or under the effective control of [...] an authority".

communicate with his co-inmates and prison staff inflicts on Lukić growing psychological harm, which arguably amounts to cruel and inhumane treatment. Such language barrier further prevents him from participating in social, working and rehabilitation programs.

1) The Detention of Lukić in Estonia Arguably Violates his Right to Private and Family Life

8. Established International and European minimum standards for detention require the prisoner is given the possibility to sustain the relationship with his family.⁷ With regards the specific needs of foreign prisoners, the United Nations Office of Drugs and Crime *Handbook on the International Transfer of Sentenced Persons* justifies considers family rapprochement goes to the very heart of humane treatment, and explains the detention of a family member abroad considerably aggravates the already harmful indirect consequences of detention.⁸ At the regional level, the Committee of Ministers of the Council of Europe recommends special attention is paid to the maintenance and development of their relationships with [...] family and friends.”⁹ The Committee further prescribes support and information shall be provided to the family and prescribes the taking of special measures to “encourage and enable foreign prisoners to maintain regular and meaningful contact with their children.”¹⁰
9. Further, the sustenance of family ties while in detention is acknowledged as a human right.¹¹ The European Court of Human Rights (ECtHR) notably observed that although any detention which is lawful of the European

⁷ See for e.g: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, *supra* 3, Principles 19 & 20; Standard Minimum Rules for the Treatment of Prisoners, *supra* 3, Principle 37, 61 & 79.

⁸ United Nations Office of Drugs and Crime *Handbook on the International Transfer of Sentenced Persons*, (New York: United Nations 2012), pp. 12-13; Also see: Council of Europe, *Explanatory Report on the Convention on the Transfer of Sentenced Persons*, Strasbourg 1983, para. 9.

⁹ Council of Europe, Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners, 10 October 2012, Principle 22.1.

¹⁰ *Ibid.*, Principles 22.6, 22.7, 22.8.

¹¹ Art. 12 UDHR, Art. 10 ICCPR, Art. 10 ICESCR, Art. 8 ECHR.

Convention (ECHR) entails by its nature a limitation on private and family life, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family as far as practicable. Meeting this obligation may in certain cases require the transfer of a prisoner.¹² The Court has consistently stated that the prison authorities have a positive obligation to assist the detainee in maintaining contact with family members.¹³ In the case of *Khodorkovskiy*, the Court further specified that a *de facto* interference can amount to a violation of the right to family life provided there existed reasonable alternatives available that would have facilitated access to the prisoner by his or her family.¹⁴

10. Lukić's wife and nineteen months' old infant [REDACTED]. Traveling to Tartu takes them more than twelve hours and requires many transits due to the impossibility to take a direct flight, which heavily impacts the infant's health. The family must further reside in Tartu for three to four days before the authorities allow any visit. Given most detainees in Tartu are serving drug-related sentences, Lukić's wife and child are subjected to body searches each visit. Each trip costs about a thousand euros, imposing on his wife to borrow the money. The efforts of Lukić's wife to ensure their young child builds and maintain a relationship with her father are dramatically compromised by the hardships and obstacles to each visit.¹⁵ Such hardships constitute *de facto* interferences to both the detainee's right to family life, and his family's rights.¹⁶

11. To the extent to which these obstacles are attributable to his place of detention, the MICT could mitigate such interference to both Lukić and his family's rights

¹² Eur. Commission HR, *Ouinis v. France*, Application no. 13756/88, Decision of 12 March 1990, Decisions and Reports 65, p. 265.

¹³ ECtHR, *Messina v. Italy (No.2)*, Application no. 25498/94, Judgment of 28 December 2000, para. 61. See also: *Kučera v. Slovakia*, Application no. 48666/99, Judgment of 17 October 2007, para. 127; *Hillgartner v. Poland*, Application No. 37976/06, Judgment of 3 March 2009, para. 40.

¹⁴ ECtHR, *Khodorkovskiy and Lebedev v. Russia*, Applications nos. 11082/06 and 13772/05, Judgment of 27 July 2013, paras. 846-850.

¹⁵ See: [REDACTED] (**Confidential Annex C**).

¹⁶ Such interference further infringes the rights of Mr. Lukić's child under the Convention on the Rights of the Child, Arts. 3(1) & 37(c).

by terminating his detention in Estonia and considering alternative places of detention of easier access to the detainee's family. Failure to do so may result in a violation of the MICT's obligations under its own Statute, the Agreement between the ICTY and Estonia, and human rights law.

2) The Detention of Lukić in Estonia Arguably Amounts to Cruel and Inhumane Treatment

12. To constitute cruel and inhumane treatment, the suffering involved must go beyond that inevitable element of suffering connected with a given form of lawful treatment or punishment. Measures involving a person's deprivation of liberty may involve such element. However, the State is under the obligation to ensure that a person is detained under conditions that are compatible with his human dignity, that the manner/method of the execution of the measure do not subject him to hardship or distress exceeding the unavoidable suffering caused by detention, and that, given the practical demands of detention, his health and well-being are adequately secure with the provision of medical or mental care.¹⁷ When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as the specific allegations made by the applicant.¹⁸ Lukić's conditions of detention as foreign prisoner arguably amount to cruel and inhumane treatment as heavily impacting the prisoner's overall mental health. At the very least, his transfer to Estonia without considering these factors is contrary to the UN guidelines referenced herein. From the Psychological Review attached hereto (Confidential Annex D) it is apparent that harm is actually being caused, and will only continue to increase in severity.

13. While opportunities for meaningful social interaction generally maintain the psychological balance of prisoners, Lukić' adaptation is significantly compromised by his linguistic isolation. As a result, Lukić is suffering from

¹⁷ *Kudla v. Poland* [GC], Application no. 30210/96, Judgment of 26 October 2000, paras. 92 – 94.

¹⁸ *Dougoz v. Greece*, Application no. 40907/98, Judgment of 6 June 2001, para. 46.

growing psychological harm. The inability of Lukić to communicate with his co-inmates and prison staff puts him in a *de facto* situation of isolation.¹⁹ Such isolation is further increased by the unavailability of readings in languages Lukić understands and impossibility to participate in social or psychological rehabilitation programmes.²⁰

14. Numerous studies have consistently concluded prisoners may suffer psychological distress to a level beyond what is generally expected because of language isolation. Such language limitations may result in, *inter alia*, loneliness, disorientation, deterioration of decision-making skills, as well as insomnia, confusion and hallucinations. Links have been established between language obstacles, mental health and self-harm putting foreign prisoners in a very vulnerable position.²¹ As assessed in a recent psychological review,²² Lukić is suffering from growing psychological harm as a result of the foregoing.

15. In the case of *Ramirez Sanchez v. France*, the ECtHR found that solitary confinement, even in cases involving relative isolation, could not be imposed indefinitely on a detainee. In that case, the applicant had books, reading papers, and had access to the exercise yard two hours a day and to a cardio-training room.²³ Although Lukić is not subject to *de jure* indefinite solitary confinement, the conditions of his detention arguably render it *de facto* confinement, resulting in growing psychological harm. Such confinement is likely to continue for indefinite time without any provision of Estonian language classes.²⁴

¹⁹ Noteworthy, there is no universally agreed upon definition of solitary confinement. See: UNGA, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, UN. Doc. A/66/268, 5 August 2011, para. 25.

²⁰ More information on Mr. Lukić's mental health and causes of growing psychological harm is available in his psychological evaluation, 24 & 25 October 2014, attached in Confidential **Annex D**.

²¹ See e.g. J. Cohen, 'Safe in our hands?: A study of suicide and self-harm in asylum seekers' *Journal of Forensic and Legal Medicine*, 235-244, 15 (2008); H.S. Bhui 'Foreign National Prisoners: Issues and Debates', in H. S. Bhui, *Race and Criminal Justice*, pp. 154-169, London: SAGE (2009). Also see the psychological evaluation of Mr. Lukić, p. 10.

²² Confidential **Annex D**

²³ ECtHR, *Ramirez Sanchez v. France* [GC], Application no. 59450/00, 4 July 2006, para. 128.

²⁴ At this date and since his transfer, Mr. Lukić has still not been provided language classes. Council of Europe, Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning

16. Linguistic isolation, as combined with the impossibility to follow language classes and impact on Lukić's mental health, conceivably constitutes ill-treatment. The absence of rehabilitation opportunities inflicts additional mental harm to Lukić and further diminishes hope of ever finding redemption and trust, to reach a sufficiently grave threshold to constitute cruel and inhumane treatment.²⁵

3) *Lukić is Discriminated Against in his Access to Rehabilitation Programmes and in the Exercise of His Most Basic Human Rights*

17. The detention of Lukić in Tartu infringes his right to be treated without discrimination. Unequal treatment on the basis of language contravenes international standards and is prohibited under *inter alia*, Article 2(1) of the ICCPR, Article 2(2) of the ICESCR, and Article 14 of the ECHR in conjunction with other rights of the Convention.²⁶ To the extent it may be remedied by his transfer to another State, the unfavourable treatment of Lukić neither is objective nor reasonable and as such constitutes indirect discrimination in the exercise of his rights.²⁷

18. Lukić is prevented from participating to social, work and rehabilitation programmes on the basis of language and citizenship.²⁸ Although rehabilitation constitutes an essential aim of detention,²⁹ language barriers prevent foreign prisoners from equitable participation in prison activities and programmes, as well as prevent them from issuing requests in writing to access services.³⁰

foreign prisoners, 10 October 2012, Principle 29(1) prescribes foreign prisoners shall be given the opportunity to follow language classes.

²⁵ See: UNGA, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, UN. Doc. A/66/268, 5 August 2011, para. 76.

²⁶ Also see: Basic Principles for the Treatment of Prisoners, supra 3, Principle 2; Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 5; Standard Minimum Rules for the Treatment of Prisoners, Principle 6(1).

²⁷ *Thlimmenos v. Greece* [GC], Application no. 34369/97, Judgment of 6 April 2000, para. 44.

²⁸ See the psychological evaluation of Mr. Lukić, pp. 8, 10-11 (Confidential **Annex D**).

²⁹ Art. 10(3) ICCPR.

³⁰ United Nations Office on Drugs and Crime *Handbook on Prisoners with Special Needs*, (New York: United Nations 2009), p. 85.

Language barriers place Lukić in a highly disadvantaged position in terms of access to prison programmes, vocational training and education and disfavour his reintegration into society.³¹ Such limitation of Lukić's opportunities with regards reinsertion and rehabilitation contravenes International and European standards for detention and dramatically infringes on his human rights while in detention.³²

III. CONCLUSION AND RELIEF SOUGHT

19. Although any lawful deprivation of liberty involves unavoidable limitations on one's human rights, the rights of prisoners "must be guaranteed under the same conditions as for that of free-persons [...] subject to the restrictions that are unavoidable in a closed environment."³³ Lukić is subjected to hardships and distress going beyond the expected and unavoidable suffering triggered by his detention. These hardships result from the place of his detention rather than detention in itself. Lukić's excessive suffering can be remedied by his transfer to another detention centre, meaning the limitations to his rights may only be regarded as currently unreasonable and unjustified. Thus, the conditions of his detention neither meet international standards nor fulfill his most basic human rights.

20. The vulnerability of foreign prisoners requires the MICT to exercise increased diligence when reviewing his conditions of detention. As such, the MICT should exercise its authority pursuant to Article 9(2) of the Agreement between the Tribunal and the Court and immediately **terminate** the enforcement of Lukić' sentence, and **order** his transfer to The Hague to allow for testimony at a

³¹ Ibid.

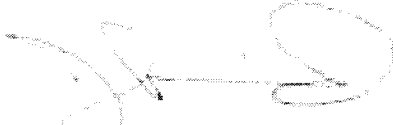
³² Council of Europe, Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners, 10 October 2012, Preamble, Principles 9 to 12; Revised European Prison Rules on Managing Detention, Rule 6; Basic Principles for the Treatment of Prisoners, Principle 6 & 10. Article 10(3) ICCPR.

³³ UN Human Rights Committee (HRC), *CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992, para. 3; The Basic Principles for the Treatment of Prisoners, *affirmed by the UN General Assembly resolution 45/111 of 14 December 1990, para. 5. Also see: ECtHR, Kučera v. Slovakia*, Application no. 48666/99, Judgment of 17 October 2007, para. 127; *Hillgartner v. Poland*, Application No. 37976/06, Judgment of 3 March 2009, para. 40.

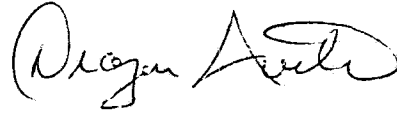
hearing on the matter, examination, and alleviate human rights concerns pending further deliberations and investigation by the Court.

Word count 3,272 (3,568 including the Request to Extend word count)

Respectfully submitted,



Jason Alarid, *Counsel for Milan Lukić*



Dragan Ivetić, *Counsel for Milan Lukić*

Dated This 9th Day of March 2015
The Hague, The Netherlands

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-52-ES.1

PROSECUTOR

v.

MILAN LUKIĆ

PUBLIC

ANNEX A

STATUS CHANGED TO PUBLIC PURSUANT
TO THE INSTRUCTIONS AS CONTAINED
WITHIN THIS ORDER.

MICT-13-52-ES.1
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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-52-ES.1

Date: 3 February 2014

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Order of: 3 February 2014

PROSECUTOR

v.

MILAN LUKIĆ

CONFIDENTIAL

**ORDER DESIGNATING STATE IN WHICH MILAN LUKIĆ
IS TO SERVE HIS SENTENCE**

The Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Milan Lukić

Mr. Tomislav Višnjić

Mr. Dragan Ivetić

STATUS CHANGED TO PUBLIC PURSUANT
TO THE INSTRUCTIONS AS CONTAINED
WITHIN THIS ORDER.

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

NOTING the Judgement rendered by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 4 December 2012, in the case of *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, in which Milan Lukić was sentenced to life imprisonment, subject to credit being given under Rule 101(C) of the Rules of Procedure and Evidence of the ICTY for the period already spent in detention;

CONSIDERING the confidential memorandum conveyed to me by the Registrar of the Mechanism (“Registrar”) on 29 November 2013 (“Memorandum”), in accordance with the terms of the Practice Direction on the Procedure for Designation of the State in Which a Convicted Person is to Serve his or her Sentence of Imprisonment (“Practice Direction”);¹

CONSIDERING the Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, entered into force on 11 February 2008, concerning the enforcement of sentences imposed by the ICTY, which continues in force, *mutatis mutandis*, in relation to the Mechanism;²

CONSIDERING that the Government of Estonia has indicated to the Registrar its willingness to enforce the sentence imposed upon Milan Lukić;³

HAVING CONSIDERED all the factors enumerated in the Practice Direction, including the views of the convicted person;

PURSUANT TO Article 25 of the Statute of the Mechanism, Rule 127 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), and paragraphs 5 through 7 of the Practice Direction;

HEREBY DECIDE that Milan Lukić shall serve his sentence in Estonia;

¹ MICT/2, 5 July 2012.

² See U.N. Security Council Resolution 1966, U.N. Doc. S/RES/1966 (2010), 22 December 2010, para. 4 (“[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism[.]”).

³ Memorandum, paras. 7-8.

STATUS CHANGED TO PUBLIC PURSUANT
TO THE INSTRUCTIONS AS CONTAINED
WITHIN THIS ORDER.

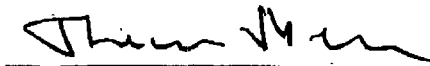
INVITE the Registrar to officially request the Government of Estonia to enforce the sentence of Milan Lukić and, should the Government of Estonia accede to this request, so inform and take all necessary measures to facilitate Milan Lukić's transfer to Estonia;

ORDER, pursuant to Rule 127(C) of the Rules, that Milan Lukić shall remain in the custody of the Mechanism while awaiting his transfer to Estonia; and

INSTRUCT the Registrar to lift the confidential status of the present order once Milan Lukić's transfer to Estonia has been completed and **ORDER** that the present order shall thereupon and henceforth be considered a public filing.

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

Done this 3rd day of February 2014,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Mechanism]

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-52-ES.1

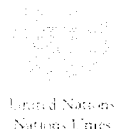
PROSECUTOR

v.

MILAN LUKIĆ

PUBLIC

ANNEX B



United Nations
Nations Unies



International
Criminal Tribunal
for the former Yugoslavia

Tribunal
Pénal International
pour l'ex-Yugoslavie

Agreement between the Government of the Republic of Estonia and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia

The Government of the Republic of Estonia, (for the purposes of this Agreement hereinafter called the “requested State”), and

The United Nations, acting through the International Criminal Tribunal for the former Yugoslavia, hereinafter called “the International Tribunal”,

RECALLING Article 27 of the Statute of the International Tribunal adopted by Security Council resolution 827 (1993) of 25 May 1993, according to which imprisonment of persons sentenced by the International Tribunal shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons;

NOTING the willingness of the requested State to enforce sentences imposed by the International Tribunal;

RECALLING the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

IN ORDER to give effect to the judgements and sentences of the International Tribunal;

HAVE AGREED as follows:

Article 1

Purpose and Scope of the Agreement

This Agreement shall regulate matters relating to or arising out of all requests to the requested State to enforce sentences imposed by the International Tribunal.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
Tribunal International chargé de Poursuivre les Personnes Présument Responsables de Violations Graves du Droit International Humanitaire Complies sur le Territoire de l'ex-Yugoslavie, depuis 1991

Article 2
Procedure

1. A request to the Government of the Republic of Estonia to enforce a sentence shall be made by the Registrar of the International Tribunal (hereinafter: “the Registrar”), with the approval of the President of the International Tribunal.
2. The Registrar shall provide the following documents to the requested State when making the request:
 - a) a certified copy of the judgement;
 - b) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention;
 - c) when appropriate, any medical or psychological reports on the convicted person, any recommendation for his or her further treatment in the requested State and any other factor relevant to the enforcement of the sentence.
3. The requested State shall submit the request to the competent national authorities, in accordance with the national law of the requested State.
4. The competent national authorities of the requested State shall promptly decide upon the request of the Registrar, in accordance with national law.

Article 3
Enforcement

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of the requested State shall be bound by the duration of the sentence.
2. The requested State shall only consider the enforcement of sentences pronounced by the International Tribunal, which duration does not exceed the highest maximum sentence for relevant crime under the law of the requested State.
3. The conditions of imprisonment shall be governed by the national law of the requested State, subject to the supervision of the International Tribunal, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9 below.
5. The conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.

Article 4*Transfer of the convicted person*

The Registrar shall make appropriate arrangements for the transfer of the convicted person from the International Tribunal to the competent authorities of the requested State. Prior to his or her transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 5*Non-bis-in-idem*

The convicted person shall not be tried before a court of the requested State for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he has already been tried by the International Tribunal.

Article 6*Inspection*

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the International Committee of the Red Cross (ICRC) at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. The ICRC will submit a confidential report based on the findings of these inspections to the requested State and to the President of the International Tribunal.

2. The requested State and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request the requested State to report to him or her any changes in the conditions of detention suggested by the ICRC.

Article 7*Information*

1. The requested State shall immediately notify the Registrar:
 - a) two months prior to the completion of the sentence;
 - b) if the convicted person has escaped from custody before the sentence has been completed;
 - c) if the convicted person has deceased.
2. Notwithstanding the previous paragraph, the Registrar and the requested State shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

Article 8*Early release, pardon and commutation of sentences*

1. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for early release, pardon or commutation of the sentence, the requested State shall notify the Registrar accordingly.
2. The President of the International Tribunal will give its views as to whether early release, pardon or commutation of the sentence is appropriate. The requested State will take these views into consideration and respond to the President of the International Tribunal prior to taking any decision in the matter.
3. Following receipt of the response, the President of the International Tribunal may request to transfer the convicted person to another State or to the International Tribunal.

Article 9*Termination of enforcement*

1. The enforcement of the sentence shall cease:
 - a) when the sentence has been completed;
 - b) upon the demise of the convicted;
 - c) upon the pardon of the convicted;
 - d) following a decision of the International Tribunal as referred to in paragraph 2.
2. The International Tribunal may at any time decide to request the termination of the enforcement in the requested State and transfer the convicted person to another State or to the International Tribunal.
3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10*Impossibility to enforce sentence*

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, the requested State shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

Costs

The International Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses incurred by the enforcement of the sentence.

Article 12

Entry into force

This Agreement shall enter into force upon the notification to the International Tribunal by the Government of the Republic of Estonia through diplomatic channels that the necessary internal formalities for the entry into force have been fulfilled.

Article 13

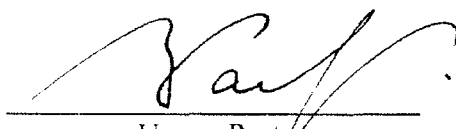
Duration of the Agreement

1. This Agreement shall remain in force as long as sentences of the International Tribunal are being enforced by the requested State under the terms and conditions of this Agreement.
2. Upon consultation, either party may terminate this Agreement, with two months prior notice. This Agreement shall not be terminated before the sentences to which this Agreement applies have been completed or terminated and, if applicable, before the transfer of the convicted as provided for in Article 10 has been effected.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

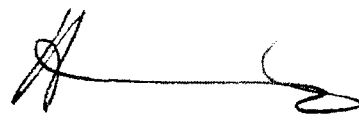
Done in Tallinn this eleventh day of February, 2008, in duplicate, in the Estonian and English languages, both texts being equally authentic. In case of any discrepancy, the English text shall prevail.

For the Government of the
Republic of Estonia:



Urmas Paet,
Minister of the Foreign Affairs of the
Republic of Estonia

For the United Nations:



Hans Holthuis,
Registrar of the International Criminal
Tribunal for the former Yugoslavia

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

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PROSECUTOR

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CONFIDENTIAL

ANNEX C

[REDACTED]

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

Case No. MICT-13-52-ES.1

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CONFIDENTIAL

ANNEX D

[REDACTED]