

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

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

Date: 11 August 2017

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Decision of: 11 August 2017

PROSECUTOR

v.

SRETEN LUKIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF 30 MAY 2017
DECISION OF THE PRESIDENT ON THE
EARLY RELEASE OF SRETEN LUKIĆ**

The Office of the Prosecutor

Mr. Serge Brammertz

Counsel for Mr. Sreten Lukić

Mr. Dragan Ivetic

The Republic of Poland

1. **I, THEODOR MERON**, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), am seised of an application for early release from Mr. Sreten Lukić (“Lukić”), dated 16 January 2017 and filed on 17 January 2017.¹ I consider the Application pursuant to Article 26 of the Statute of the Mechanism (“Statute”), Rules 150 and 151 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), and paragraph 3 of 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 (“Practice Direction”).²

I. BACKGROUND

2. Lukić surrendered to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 4 April 2005 and was transferred to the United Nations Detention Unit (“UNDU”) on the same day.³ At his initial appearance on 4 May 2005 before Trial Chamber III of the ICTY (“ICTY Trial Chamber”), Lukić pleaded not guilty to all counts of the Indictment for which he was charged.⁴ On 26 February 2009, the ICTY Trial Chamber found Lukić guilty of counts 1 to 5 of the Indictment, pursuant to Article 7(1) of the Statute, and sentenced him to a single sentence of 22 years of imprisonment.⁵

3. On 23 January 2014, the Appeals Chamber of the ICTY (“ICTY Appeals Chamber”) reversed, in part, Lukić’s convictions, however, affirmed his convictions, pursuant to Article 7(1) of the Statute, for deportation, other inhumane acts (forcible transfer), murder, and persecution as crimes against humanity, and murder as a violation of the laws or customs of war. The ICTY Appeals Chamber amended Lukić’s sentence to 20 years.⁶

¹ *The Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Sreten Lukić’s Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence (confidential with confidential annexes), 17 January 2017 (“Application”). All references herein are to the English translation.

² MICT/3, 5 July 2012.

³ *Prosecutor v. Milan Milutinović et al.* Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”), vol. I, para. 2; *Prosecutor v. Nikola Šainović et al.* Case No. IT-05-87-A, 23 January 2014 (“Appeal Judgement”), paras. 79, 1828. See *Prosecutor v. Nebojša Pavković et al.*, Case No. IT-03-70-I, Decision of the Registrar, 6 April 2005 (assigning Mr. Victor Koppe as a duty counsel to represent Lukić at his initial appearance, and in such other matters as might be necessary until a permanent counsel was assigned).

⁴ See *The Prosecutor v. Nebojša Pavković et al.*, Case No. IT-03-70-I, Hearing, T, 4 May 2005, pp. 42, 43; Indictment issued on 22 September 2003, paras. 29-34 (deportation as a crime against humanity (Count 1), other inhumane acts (forcible transfer) as a crime against humanity (Count 2), murder as a crime against humanity (Count 3), murder as a violation of the laws or customs of war (Count 4), persecutions as a crime against humanity (Count 5)).

⁵ Trial Judgement, vol. III, para. 1212.

⁶ Appeal Judgement, para. 1845; p. 742.

4. Lukić was transferred to the Republic of Poland (“Poland”) on 27 October 2015 to serve the remainder of his sentence.⁷

II. THE APPLICATION

5. On 17 January 2017, Lukić filed his Application, which includes, *inter alia*: (i) Annex A, [REDACTED] dated 13 June 2014;⁸ (ii) Annex B, comprising of, first, documents from Lukić’s provisional release application in 2005,⁹ second, [REDACTED],¹⁰ and third, correspondence from the Republic of Serbia’s (“Serbia”) Office of the National Council for Cooperation with the ICTY, transmitting a report [REDACTED], dated 21 January 2013;¹¹ (iii) Annex C, including correspondence from the War Crimes Prosecutor’s Office in Belgrade, Serbia, dated 6 June 2016, transmitting a report [REDACTED], dated 21 December 2015;¹² and (iv) Annex D, attaching Lukić’s Personal Statement made during his appeal proceedings before the ICTY Appeals Chamber.¹³

6. On 20 January 2017, the Registry of the Mechanism (“Registry”) conveyed to me a memorandum that includes, *inter alia*, notification from the Embassy of Poland, dated 11 January 2017, in which the Ambassador of Poland to the Netherlands stated that Lukić would be eligible for early release under Polish national law as of 20 April 2017.¹⁴

7. The Notification included, *inter alia*: (i) a Letter from the Undersecretary of State in the Ministry of Justice in Poland, dated 23 December 2015; (ii) a report prepared by [REDACTED] Prison (“Prison”), prepared on 6 December 2016¹⁵ [REDACTED];¹⁶ (iii) a report prepared by [REDACTED] at the Prison, dated 8 December 2016 (“Psychologist Report”);¹⁷ and (iv) a report

⁷ See, e.g., Order Designating State in which Sreten Lukić is to Serve his Sentence, 6 August 2015, p. 1 (made public on 28 October 2015). See also, para. 7.

⁸ See Application, Annex A (confidential).

⁹ See Application, Annex B (confidential), pp. 66-111 (Registry Pagination). I note that all the submitted documents are dated between April 2004 and November 2005.

¹⁰ See Application, Annex B (confidential), pp. 60-65 (Registry Pagination). I note the document herein is dated 10 February 2012.

¹¹ See Application, Annex B (confidential), pp. 51-59 (Registry Pagination). I note that the correspondence from Serbia is dated 6 February 2013.

¹² See Application, Annex C (confidential).

¹³ See Application, Annex D (confidential).

¹⁴ Internal Memorandum from Ms. Åsa Rydberg van der Sluis, Legal Officer, Officer in Charge *ad interim*, Office of the Registrar, The Hague Branch, to Judge Theodor Meron, President, dated 20 January 2017, attaching a communication from the Embassy of Poland, The Hague, dated 11 January 2017 (“Memorandum” and “Notification”, respectively). See Memorandum, para. 1; Notification.

¹⁵ [REDACTED]. See Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, 8 March 2017; Internal Memorandum from Ms. Esther Halm, Legal Officer, Office of the Registrar, The Hague Branch, to Judge Theodor Meron, President, 20 March 2017.

¹⁶ The English translation is dated 22 December 2016.

¹⁷ The English translation is dated 22 December 2016.

signed by the Director of the Prison, dated 7 December 2016, regarding Lukić's behaviour, rehabilitation, and motions and appeals ("Prison Report").¹⁸

8. On 24 January 2017, I requested the Registrar of the Mechanism ("Registrar") to undertake the steps prescribed in paragraphs 4 and 5 of the Practice Direction.¹⁹

9. On 3 February 2017, Lukić filed a corrigendum to his Application clarifying that his Application was a request for early release, and seeking, *inter alia*, that the title of his Application be amended accordingly.²⁰

10. On 28 February 2017, Lukić filed his response to the documentation received from the Registry on 20 February 2017.²¹

11. On 6 March 2017, the Office of the Prosecutor of the Mechanism ("Prosecution") filed its reply to the Response.²²

12. On 7 March 2017, the Registrar conveyed to me a memorandum from the Prosecution, dated 1 February 2017, regarding the cooperation provided by Lukić to the Prosecution of the ICTY ("Prosecution Memorandum").²³

13. On 3 April 2017, Lukić filed a corrigendum to his Response, providing a corrected version of the attached Annex B to replace the Annex B originally attached to the Response.²⁴

14. On 19 April 2017, Lukić filed a second corrigendum to his Response, providing a corrected version of sections of Annex B and the First Amended Annex B to partially replace the Annex B attached to the Response.²⁵

¹⁸ The English translation is dated 22 December 2016.

¹⁹ Internal Memorandum from Judge Theodor Meron, President, to Mr. Olufemi Elias, Registrar, *Prosecutor v. Sreten Lukić* – Notification of Eligibility for early release, 24 January 2017 (confidential).

²⁰ Corrigendum to Sreten Lukić's Request for Early Release or in the Alternative, Pardon, or Commutation of Sentence, 3 February 2017 (confidential) ("Corrigendum"), para. 1. Lukić also requests amendments to the language in paragraphs 2, 11, and 13 of the Application, Corrigendum, paras. 2-3.

²¹ Sreten Lukić's Submission *via* Counsel, in Response to the Materials sent on 20 February 2017, 28 February 2017 (confidential with confidential annexes A and B) ("Response").

²² Prosecution Reply to Lukić Response to Materials Collected by the Registry, 6 March 2017 (confidential) ("Prosecution Reply").

²³ Internal Memorandum from Ms. Esther Halm, Legal Officer, Office of the Registrar, to Judge Theodor Meron, President, Eligibility for early release – Mr. Sreten Lukić, dated 7 March 2017.

²⁴ Corrigendum to Sreten Lukić's Submission *via* Counsel, in Response to the Materials Sent on 20 February 2017, 3 April 2017 (confidential with confidential annex B) ("First Amended Annex B"). The operative sub-annexes from the First Amended Annex B are sub-annexes 1, 4, 6-15 (pp. 3406-3424, 3389-3395, and 2104-2437 (Registry Pagination), respectively).

²⁵ Second Corrigendum to Sreten Lukić's Submission *via* Counsel, in Response to the Materials Sent on 20 February 2017, 19 April 2017 (confidential with confidential annex B (partial)) ("Second Amended Annex B"). The operative sub-annexes from the Second Amended Annex B are sub-annexes 2, 3, 5 (pp. 5014-5018, 5009-5013, and 3430-5008 (Registry Pagination), respectively).

III. DISCUSSION

15. In coming to my decision on whether it is appropriate to grant Lukić early release, I have consulted the Judge of the sentencing Chamber who is a Judge of the Mechanism, pursuant to Rule 150 of the Rules.

A. Preliminary Matter

16. I note that, pursuant to Rule 151 of the Rules, the Prosecution is consulted with respect to the substantial cooperation, if any, of the convicted person during the pre-trial, trial or appeal of his or her case. Accordingly, I have considered the Prosecution Memorandum and the Prosecution Reply, in which information is provided as to Lukić's cooperation with the Prosecution and the significance thereof will be considered.²⁶

17. The Prosecution further states that "Lukić's cooperation overall is not so exceptional that it justifies early release before Lukić is even eligible to apply for such release".²⁷ Neither the Rules nor the Practice Direction provides the Prosecution standing to make submissions on whether or not early release should be granted for purposes of requests for early release.²⁸ As such, these further submissions of the Prosecution will not be considered in my determination of the Application.

B. Applicable Law

18. Under Article 26 of the Statute, if, pursuant to the applicable law of the State in which the person convicted by the ICTY, the International Criminal Tribunal for Rwanda ("ICTR"), or the Mechanism, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. Pursuant to Article 26, there shall only be pardon or commutation of sentence if the President of the Mechanism ("President") so decides on the basis of the interests of justice and the general principles of law.

19. Rule 149 of the Rules reflects Article 26 of the Statute and provides that the enforcing State shall notify the Mechanism of a convicted person's eligibility for pardon, commutation of sentence, or early release under the enforcing State's laws. Rule 150 of the Rules provides that the President shall, upon such notice, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. Pursuant to Rule 151 of the Rules, in making a determination on pardon, commutation

²⁶ Prosecution Memorandum, paras. 2, 3; Prosecution Reply, paras. 2, 3.

²⁷ Prosecution Reply, para. 3. *See also* Prosecution Memorandum, para. 3.

²⁸ *See Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Reasons for the President's Decision to Deny the Early Release of Stanislav Galić and Decision on Prosecution Motion, 23 June 2015 (public redacted version), para. 8.

of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.

20. Paragraph 2 of the Practice Direction provides that, upon a convicted person becoming eligible for pardon, commutation of sentence, or early release under the law of the enforcing State, the enforcing State shall, in accordance with its agreement with the United Nations on the enforcement of sentences and, where practicable, at least 45 days prior to the date of eligibility, notify the Mechanism accordingly. Paragraph 3 of the Practice Direction provides that a convicted person may directly petition the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible therefor.

21. Article 3(4) of the 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"), provides that the conditions of imprisonment shall be governed by the law of Poland, subject to the supervision of the ICTY (and now, the Mechanism).²⁹ Articles 3(5) and (6), and 8 of the Enforcement Agreement, applied *mutatis mutandis* to the Mechanism, provide, *inter alia*, that the President shall determine whether early release, pardon or commutation of sentence is appropriate and that, where the President determines that early release, pardon or commutation of sentence is not appropriate, Poland shall act accordingly.

C. Eligibility under Polish Law

22. Under Article 65(1) of the Polish Penal Code, a convicted person is eligible for conditional early release having served two-thirds of the imprisonment sentence.³⁰

23. I note that, according to the Prison Report, the Regional Court in Warsaw, by way of a decision rendered on 8 December 2015, pursuant to the Enforcement Agreement, "specified the legal qualification of the offences and the length of the penalty to be served" by Lukić is 15 years

²⁹ Security Council Resolution 1966 (2010) provides that all existing agreements still in force as of the commencement date of the Mechanism shall apply *mutatis mutandis* to the Mechanism. Accordingly, the Enforcement Agreement applies to the Mechanism. 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 [...]"). According to Article 25(2) of the Statute, "[t]he Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States [...]"

— as such, Lukić will have served two-thirds of the 15 years sentence, according to Polish law, as of 20 April 2017.³¹

24. However, I recall that even if Lukić is eligible for early release under the domestic law of Poland, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.

D. Gravity of Crimes

25. Rule 151 of the Rules provides that, in making a determination on early release, the President shall take into account the gravity of the crime or crimes for which the prisoner was convicted.

26. Lukić was found guilty and convicted of crimes against humanity and violations of the laws or customs of war. The specific crimes for which Lukić has been convicted are of high gravity. In this regard, the ICTY Trial Chamber found that Lukić was directly involved in the planning process and in ensuring that day-to-day operations were conducted by the various Ministry of Internal Affairs (“MUP”) forces in accordance with those plans, and that as such, he was an important member of the joint criminal enterprise.³² The ICTY Trial Chamber found that Lukić was aware that there were serious allegations of criminal activity by MUP forces in Kosovo in mid-to-late 1998, directed against the Kosovo Albanian civilian population.³³ Moreover, the Trial Chamber found that some of the incidents were examples of excessive force used by the forces of the Federal Republic of Yugoslavia (“FRY”) and Serbia in 1998.³⁴ It concluded that the only reasonable inference was that Lukić had the intent to forcibly displace the Kosovo Albanian population, “both within and without Kosovo, and thereby ensure continued control by the FRY and Serbian authorities over the province”.³⁵ The ICTY Trial Chamber further found that, “[d]espite Lukić’s knowledge of the wide-spread crimes being committed in the territory of Kosovo by the members of the MUP and the [Yugoslav Army] VJ, he continued to instruct the MUP to engage in additional joint operations with the VJ in Kosovo”.³⁶ He was sentenced to 22 years of imprisonment by the ICTY Trial Chamber.³⁷

³⁰ See Prison Report, para. 3.

³¹ Prison Report, paras. 1, 3.

³² Trial Judgement, vol. III, para. 1131.

³³ Trial Judgement, vol. III, para. 1086.

³⁴ Trial Judgement, vol. III, para. 1086.

³⁵ Trial Judgement, vol. III, para. 1130.

³⁶ Trial Judgement, vol. III, para. 1128. See also Trial Judgement, vol. III, paras. 1086, 1097.

³⁷ Trial Judgement, vol. III, para. 1212.

27. On Appeal, Lukić's convictions were broadly affirmed, save for limited convictions related to deportation and forcible transfer, and final convictions were entered for deportation, other inhumane acts (forcible transfer), murder and persecutions, as crimes against humanity pursuant to Article 5 of the Statute, and murder, as a violation of the laws or customs of war pursuant to Article 3 of the Statute. Lukić's sentence of 22 years of imprisonment was set aside and a sentence of 20 years of imprisonment was imposed by the ICTY Appeals Chamber.³⁸

28. In these circumstances, I am of the view that the high gravity of Lukić's offences weighs against his early release.

E. Eligibility and Treatment of Similarly-Situated Prisoners

29. Rule 151 of the Rules requires the President to consider, as a separate factor, the need for equal treatment of similarly-situated prisoners when deciding early release applications.

30. In this respect, I recall that ICTY convicts, like Lukić, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision and that all convicted persons supervised by the Mechanism are to be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them.³⁹ Nevertheless, I do note that a convicted person may apply for early release even before the completion of the two-thirds of his or her sentence. In such circumstances, the President would consider a convicted person's application or eligibility for early release, in exceptional cases, such as cases involving extraordinary cooperation with the Prosecution or humanitarian emergencies, and where other factors have also weighed in favour of early release.⁴⁰

31. Moreover, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case.⁴¹

³⁸ Appeal Judgement, p. 742.

³⁹ See *Prosecutor v. Stanislav Galić*, MICT-14-83-ES, Decision of the President on the Early Release of Stanislav Galić, 18 January 2017 (public redacted version) ("*Galić Decision*"), para. 20; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted version) ("*Bisengimana Decision*"), paras. 17, 20.

⁴⁰ See e.g., *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or other Relief of Drago Nikolić, 13 October 2015, para. 21; *Prosecutor v. Mladen Naletilić*, Case No. IT-98-34-ES, Public Redacted Version of the 29 November 2012 Decision of the President on Early Release of Mladen Naletilić, 26 March 2013 ("*Naletilić Decision*"), paras. 32-35; *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-ES, Decision of President on Early Release of Dragan Obrenović, 21 September 2011 (filed publicly on 29 February 2012), paras. 25-28.

⁴¹ *Galić Decision*, para. 22. *Naletilić Decision*, para. 20. *Bisengimana Decision*, para. 21.

32. I recall the Notification from the Polish authorities stating that Lukić will be eligible for early release under Polish national law as of 20 April 2017.⁴² While the Polish authorities have specified that the length of the penalty to be served by Lukić is 15 years, pursuant to Article 3(1) of the Enforcement Agreement, the competent National authorities of Poland are bound by the duration of sentence pronounced by the ICTY, which is 20 years of imprisonment. Accordingly, Lukić's sentence, for the purpose of considering his present Application, shall therefore be construed as 20 years of imprisonment.

33. As of the date of this decision, and based on my own calculations, Lukić will have served two-thirds of his 20-year sentence on 12 May 2019. I am therefore of the view that the amount of time that Lukić has served for his crimes weighs against his early release at this stage.

F. Demonstration of Rehabilitation

34. Rule 151 of the Rules provides that the President shall take into account a "prisoner's demonstration of rehabilitation" in determining whether early release is appropriate. In addressing the convicted person's rehabilitation, paragraph 4(b) of the Practice Direction states that the Registrar shall

[r]equest reports and observations from the relevant authorities in the enforcing State as to the behavior of the convicted person during his or her period of incarceration and the general conditions under which he or she was imprisoned, and request from such authorities any psychiatric or psychological evaluations prepared on the mental condition of the convicted person during the period of incarceration [.]

35. Lukić contends that several factors demonstrate his rehabilitation.⁴³ Specifically, Lukić submits that, during his detention at the UNDU from 2006 to 2015, he "complied with all rules of detention and did not have a single disciplinary infraction or complaint against him" and, while on provisional release on a total of four occasions, "complied with the terms of the provisional release" and "dutifully and without resistance was returned to the UNDU".⁴⁴ Since his transfer to Poland, Lukić states that he "has abided by the rules and exhibited respect and proper observance of his obligations", "has not been the subject to any disciplinary infractions or complaints against him", actively participated in educational activities, including Polish and English languages classes, and currently works in the Prison library.⁴⁵ Lukić further submits that, while at the UNDU and now in Poland, he has complied with medical officials' orders, instructions and recommendations and, in Prison, has had his health monitored while undergoing specific treatment regimes.⁴⁶

⁴² See Memorandum, para. 1; Notification.

⁴³ See Application, paras. 49-54.

⁴⁴ Application, paras. 49-50.

⁴⁵ Application, paras. 49, 51.

⁴⁶ Application, paras. 49, 52.

36. The Prison Report provides a positive account of Lukić's time in detention and states that, "[w]hile serving his sentence, he follows the imposed order and rules, he has showed himself to be disciplined and subordinated" and "duly respectful towards his superiors", no conflicts with other inmates have been observed nor direct coercive measures imposed, and he is not part of criminal subculture.⁴⁷ According to the Prison Report, there were no reported cases of Lukić breaching order or rules, nor was he subjected to disciplinary penalties.⁴⁸

37. During his time in Prison, it was reported that, following the motion of Lukić's superior, he "received 14 awards, mostly for fulfilling his duties due to employment".⁴⁹ Lukić maintains ties to his family, through visitation with his wife, and, on rare occasions, his children, and his extended family—he also remains in contact with his family through phone calls and online communications.⁵⁰

38. While it was reported that Lukić was "unwilling to talk about the committed offences",⁵¹ Lukić responded that his unwillingness to discuss his offences demonstrates the "full acceptance of his responsibility and final ICTY verdict".⁵² In his Application, Lukić submitted that he had demonstrated rehabilitation when he had exhibited "remorse and expressed sincerest sympathies for every innocent victim especially when it comes to children and women that suffered during the Kosovo War", during his personal statement to the ICTY Appeals Chamber.⁵³

39. [REDACTED].⁵⁴ [REDACTED].⁵⁵

40. Moreover, Lukić contends that his stated lifetime pursuit and respect for the rule of law should be considered by the President in determining his request for early release.⁵⁶

41. The reports of Lukić's behaviour while detained at the UNDU and the Prison, stating, notably, [REDACTED], suggest that he is capable of reintegrating into society should he be released. I have taken note specifically that Lukić's behaviour in detention has been proper and has not given rise to any disciplinary complaints.

⁴⁷ Prison Report, para. 2.

⁴⁸ Prison Report, para. 2.

⁴⁹ See Prison Report, para. 2; Response, para. 12.

⁵⁰ Prison Report, para. 2.

⁵¹ Prison Report, para. 2.

⁵² Response, para. 12. See Response, para. 13.

⁵³ Application, para. 54; Application, Annex D, transcript page 686.

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ Application, paras. 38-48.

42. Having carefully reviewed the information before me, I acknowledge the indicia of Lukić's acceptance of his responsibility, notwithstanding his separate assertion of lifetime respect for the rule of law, which is incompatible with the convictions entered against him, and, taken together with the demonstration by Lukić of signs of rehabilitation, I am therefore inclined to count this factor as weighing in favour of his early release.

G. Substantial Cooperation with the Prosecution

43. Rule 151 of the Rules states that the President shall take into account any "substantial cooperation" of the prisoner with the Prosecution. Paragraph 4(c) of the Practice Direction states that the Registrar shall request the Prosecution "to submit a detailed report of any co-operation that the convicted person has provided to the Office of the Prosecutor and the significance thereof".

44. Lukić submits that his cooperation with the Prosecution, as well as his contributions towards law, order, and justice are exceptional factors that weigh in favour of his early release.⁵⁷ Specifically, Lukić submits that he freely agreed to be interviewed by the investigators of the ICTY on the events of 1998 and 1999 for three days in 2002, before he was even indicted.⁵⁸ Lukić states that, subsequent to his indictment, during the trial, and following the Trial Judgement and the Appeal Judgement, the Prosecution never sought interviews with him.⁵⁹ [REDACTED].⁶⁰ [REDACTED].⁶¹ [REDACTED].⁶²

45. The Prosecution interviewed Lukić on 21, 22, and 23 May 2002, and submits that the ICTY Trial Chamber took this interview into account in mitigation of his sentence.⁶³ Other than the interviews conducted in May 2002, the Prosecution states that Lukić has not further cooperated.⁶⁴ [REDACTED].⁶⁵

46. Lukić submits that the Prosecution Memorandum does not recognise the significant evidence of his cooperation and assistance with the Prosecution, including, *inter alia*, through the use of several of his defence exhibits and his interview with the Prosecution during another trial, and that his cooperation in being interviewed by the Prosecution in 2002 was not taken into account because fellow co-accused in his case received the same sentence without having provided similar

⁵⁷ Application, para. 23.

⁵⁸ Application, paras. 24-25, 29.

⁵⁹ Application, para. 25.

⁶⁰ Application, paras. 26, 27, 29.

⁶¹ Application, para. 26.

⁶² Application, para. 30. *See* Application, paras. 31-35.

⁶³ Prosecution Memorandum, para. 2, *referring to*, Trial Judgement, Vol. III, paras. 1201-1204; Appeal Judgement, paras. 1824-1828.

⁶⁴ Prosecution Memorandum, para. 2.

⁶⁵ Prosecution Memorandum, para. 2.

contributions.⁶⁶ He reiterates his submissions that he provided significant assistance and cooperation to the Prosecution, [REDACTED].⁶⁷

47. Further, Lukić contends that, [REDACTED].⁶⁸ [REDACTED].⁶⁹

48. In its reply, the Prosecution posits, contrary to Lukić's assertions, that the Prosecution did not undertake to consider cooperation with [REDACTED] as cooperation with the Prosecution, nor did it undertake to support any request made for early release. The Prosecution states that it only committed to informing the President that Lukić had cooperated [REDACTED], as was done in its Prosecution Memorandum.⁷⁰

49. I note that an accused person is under no obligation to plead guilty or, in the absence of a plea agreement, to cooperate with the Prosecution.⁷¹ In light of Lukić's submissions, as well as the Prosecution's submissions, I have taken note that Lukić has provided some assistance and cooperation to the Prosecution, [REDACTED]. While acknowledging that Lukić's cooperation with the Prosecution was a mitigating factor taken into account by the ICTY Trial Chamber during sentencing, I place some weight upon it in favour of Lukić's release due to the impact that such cooperation has on the efficient administration of justice.⁷² Moreover, the subsequent cooperation with the [REDACTED] is to me another factor advancing relevant interests of justice and weighing somewhat in favour of his early release.

H. Other Factors: Humanitarian Concerns

50. Paragraph 9 of the Practice Direction provides that the President of the Mechanism may consider "any other information" that the President considers "relevant" to supplement the criteria specified in Rule 151 of the Rules. Previous decisions on early release have determined that the state of the convicted person's health may be taken into account in the context of an application for

⁶⁶ Response, para. 17.

⁶⁷ See Response, paras. 17-25; See also, First Amended Annex B; Second Amended Annex B.

⁶⁸ Response, para. 19.

⁶⁹ Response, paras. 20-25. See also, Application, Annex C.

⁷⁰ Prosecution Reply, para. 2.

⁷¹ See *Galić* Decision, para. 34; *Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision of the President on the Early Release of Dominique Ntawukulilyayo, 8 July 2016 (public redacted version), para. 31; *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014 ("*Ntakirutimana* Decision"), para. 20.

⁷² Trial Judgement, vol. III, para. 1202.

early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.⁷³

51. Lukić states that, if he was to be released, he would return to Belgrade for the remaining time he has to live, which he argues, [REDACTED].⁷⁴ [REDACTED].⁷⁵ [REDACTED].⁷⁶ [REDACTED],⁷⁷ Lukić submits that, despite the fact that medical care was provided to him while he was at the UNDU, and continues to be provided to him in Poland, such care “cannot stop the fact that [the] prison environment and conditions contribute to the worsening of the disease at issue and to a shortening of the quality and expectancy of [his] life”.⁷⁸

52. [REDACTED].⁷⁹ [REDACTED].⁸⁰

53. [REDACTED].⁸¹

54. The previous medical reports and documentation provided in Lukić’s Application, dated between 2004 and 2005, confirm that Lukić [REDACTED].⁸² I am therefore satisfied that these reports, together with the Prison Report, are sufficient to establish that Lukić suffers from various medical issues, [REDACTED]. However, I note that Lukić’s medical condition has been persisting since his transfer to the UNDU in 2004, and that it has been appropriately managed with the help of the various health care providers ever since. I also note that no recent medical report has been submitted which would demonstrate that Lukić’s health has deteriorated to an extent that it cannot be managed at the Prison any longer.

55. Accordingly, I am not convinced, based on the information before me, that Lukić’s health condition is so serious as to be a factor supporting his early release. I therefore consider this factor to be neutral in considering Lukić’s request for early release.

⁷³ See, e.g., *Prosecutor v. Ferdinand Nahimana*, Case No. MICT-13-37-ES.1, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana, 5 December 2016, para. 31; *Ntakirutimana* Decision, para. 21; *Prosecutor v. Obed Ruzindana*, Case No. MICT-12-10-ES, Decision of the President on the Early Release of Obed Ruzindana, 13 March 2014 (public redacted version), para. 22.

⁷⁴ Application, para. 53 (internal citation omitted); Application, Annexes A and B.

⁷⁵ Application, para. 17.

⁷⁶ Application, para. 19.

⁷⁷ Application, para. 21. See Application, Annex B, pp. 60-65 (Registry Pagination).

⁷⁸ Application, para. 21. See Application, Annex B, pp. 60-65 (Registry Pagination).

⁷⁹ See [REDACTED].

⁸⁰ See [REDACTED].

⁸¹ See [REDACTED].

⁸² See Application, paras. 17, 21; Application, Annexes A and B.

I. Conclusion

56. In light of the above, and having carefully considered the factors identified in Rule 151 of the Rules, as well as all the relevant information on record, I am inclined to deny Lukić's Application. Although Lukić's eligibility for early release pursuant to Polish law, certain indicia of rehabilitation and his measure of cooperation with the Prosecution weigh in favour of his early release, the crimes for which Lukić was convicted are of high gravity, and the fact that he has not yet completed two-thirds of his sentence to date, tilt the balance against his early release. The view that Lukić should not be granted early release at this stage is shared by the Judge of the sentencing Chamber who is a Judge of the Mechanism.

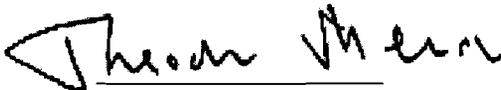
IV. DISPOSITION

57. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, paragraph 9 of the Practice Direction, and Article 8 of the Enforcement Agreement, I hereby **DENY** the Application.

58. The Registrar is hereby **DIRECTED** to inform the authorities of Poland of this decision as soon as practicable, as prescribed in paragraph 13 of the Practice Direction.

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

Done this 11th day of August 2017,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

Seal of the Mechanism



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS A LA
MECHANISME POUR LES TRIBUNAUX PENNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GENERALES

To/ A:	<input type="checkbox"/> MICT Registry/ <i>Greffe du MPTI</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>la Haye</i>
From/ De:	<input checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i> <input type="checkbox"/> Other/ <i>Autre</i> :
Case Name/ Affaire:	Prosecutor v. Sreten Lukic		Case Number/ Affaire No: MICT-14-67-ES.4
Date Created/ Daté du:	11 August 2017	Date transmitted/ 2017	11 August 2017
Original Language / Langue de	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Albanian/ <i>Albanais</i>
Title of Document/ Titre du document:	Public redacted version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukic		
Classification Level/ Catégories de classement:	<input checked="" type="checkbox"/> Unclassified/ <i>Non classé</i>	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte (specify/ <i>préciser</i>):	
	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclu</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>	<input type="checkbox"/> Other Ex Parte/ <i>Ex Parte Autre</i> (specify/ <i>préciser</i>):
Document type/ Type de document:	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	<input type="checkbox"/> Order/ <i>Ordre</i>	<input type="checkbox"/> Appeal Book/ <i>Livre d'appel</i>
	<input type="checkbox"/> Warrant/ <i>Mandat</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Submission from non-parties/ <i>Ecritures déposés par des tiers</i>
	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from parties/ <i>Ecritures déposés par des parties</i>
	<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Judgement/ <i>Jugement</i>	<input type="checkbox"/> Book of Authorities/ <i>Livre de sources juridiques</i>

II - TRANSLATION STATUS ON THE FILING DATE/ ETAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La Partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction</i> (Word version of the document is attached/ <i>La version en Word se trouve en annexe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Albanian/ <i>Albanais</i>
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La Partie déposante soumet ci-joint l'original et la version traduite pour dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Albanian/ <i>Albanais</i>
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Albanian/ <i>Albanais</i>
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La Partie déposante soumettra la (les) version(s) traduite(e) sous peu, dans la (les) langue(s) suivante(s):</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Albanian/ <i>Albanais</i>

Send completed transmission sheet to/ *Veuillez soumettre cette fiche pour le dépôt des documents à:*
JudicialFilingsArusha@un.org
 OR
JudicialFilingsHague@un.org