

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-15-85-ES.4

Date: 22 October 2015

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Burton Hall  
Judge Vagn Joensen

**Registrar:** Mr. John Hocking

**Decision of:** 22 October 2015

**PROSECUTOR**

**v.**

**DRAGO NIKOLIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION APPEAL  
OF THE DECISION GRANTING PROVISIONAL RELEASE**

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**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Mathias Marcussen

**Counsel for Mr. Drago Nikolić:**

Mrs. Jelena Nikolić  
Mr. Stéphane Bourgon

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);

**NOTING** the “Judgement” rendered on 30 January 2015 by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case of *Prosecutor v. Vujadin Popović et al.*, in which the ICTY Appeals Chamber upheld Drago Nikolić’s convictions of genocide, extermination and persecution, as crimes against humanity, and murder, as a crime against humanity and as a violation of the laws or customs of war, with regard to his participation in the events in and around Srebrenica and Žepa in July 1995, reversed his convictions related to the killing of six Bosnian Muslim men near Trnovo, and affirmed his sentence of 35 years’ imprisonment;<sup>1</sup>

**NOTING** the “Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić”, issued by the President of the Mechanism on 20 July 2015 (“Impugned Decision”), in which the President denied Nikolić’s request for early release or commutation of sentence<sup>2</sup> but, given Nikolić’s medical condition, granted him *proprio motu* provisional release, provided that Nikolić remained confined at his residence in Serbia under 24-hour armed surveillance;<sup>3</sup>

**BEING SEISED** of the “Prosecution Appeal of the Decision Granting Provisional Release to Drago Nikolić” filed confidentially with an *ex parte* Annex by the Office of the Prosecutor of the Mechanism (“Prosecution”) on 27 July 2015 (“Appeal”);<sup>4</sup>

**NOTING** further the Prosecution’s request that the Appeals Chamber lift the confidential status of the Impugned Decision and the related parties’ submissions, with appropriate redactions;<sup>5</sup>

**NOTING** Nikolić’s response filed confidentially on 6 August 2015<sup>6</sup> and the Prosecution’s reply filed confidentially on 10 August 2015;<sup>7</sup>

**NOTING** that, while on provisional release, on 11 October 2015 Nikolić passed away at his residence in Serbia;<sup>8</sup>

<sup>1</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015, paras. 2112, 2117.

<sup>2</sup> *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 20 July 2015 (confidential), paras. 35-36.

<sup>3</sup> Impugned Decision, paras. 33, 38-39, 43-44.

<sup>4</sup> See Order Assigning Judges to a Case Before the Appeals Chamber, 19 August 2015 (confidential), pp. 1-2.

<sup>5</sup> Appeal, para. 24.

<sup>6</sup> Response to the ‘Prosecution Appeal of the Decision Granting Provisional Release to Drago Nikolić’, 6 August 2015 (confidential).

<sup>7</sup> Prosecution Reply to Response to the Prosecution Appeal of the Decision Granting Provisional Release to Drago Nikolić, 10 August 2015 (confidential).

**FINDING** that, following Nikolić's death, the Appeals Chamber lacks jurisdiction to continue the proceedings and consider the Appeal;<sup>9</sup>

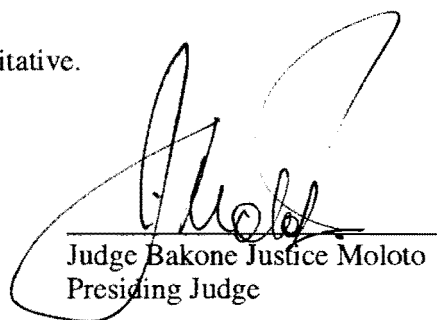
**FINDING** that the filing of a public redacted version of the Impugned Decision on 13 October 2015<sup>10</sup> renders the Prosecution's request for lifting the Impugned Decision's confidential status moot;

**FOR THE FOREGOING REASONS**

**DISMISSES** the Appeal.

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

Done this 22nd day of October 2015,  
At The Hague,  
The Netherlands.



Judge Bakone Justice Moloto  
Presiding Judge

[Seal of the Mechanism]

<sup>8</sup> Report [by] the [Serbian] Ministry of Interior on the actions undertaken pursuant to the decision of the President of the Mechanism for International Criminal Tribunals on the provisional release of the convicted person Drago Nikolić between 24 July 2015 and 25 January 2016 for 11 October 2015, 12 October 2015 (confidential).

<sup>9</sup> See *Prosecutor v. Rasim Delić*, Case No. IT-04-83-R.1, Decision on Defence Motion for Review, 17 December 2013, p. 1; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision Terminating Appellate Proceedings in Relation to Milan Gvero, 7 March 2013, para. 5; *Georges A. N. Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R68, Decision on Rutaganda's Pending Motions, 27 October 2010, p. 2; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision Relating to Registrar's Submission Notifying the Demise of Accused Joseph Nzirorera, 12 August 2010, para. 2; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on the Outcome of the Proceedings, 29 June 2010, para. 6.

<sup>10</sup> See Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release of Other Relief of Drago Nikolić, 13 October 2015.