

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

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

Date: 12 January 2021

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Carmel Agius, President

**Registrar:** Mr. Abubacarr Tambaou

**Order of:** 12 January 2021

**PROSECUTOR**

v.

**SRETEN LUKIĆ**

***CONFIDENTIAL***

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**ORDER FOR THE TRANSFER OF SRETEN LUKIĆ TO THE  
UNITED NATIONS DETENTION UNIT ON A TEMPORARY BASIS**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Counsel for Mr. Sreten Lukić:**

Mr. Dragan Ivetić

**Republic of Poland**

**I, CARMEL AGIUS**, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

**NOTING** that, on 4 April 2005, Mr. Sreten Lukić (“Lukić”) surrendered to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and was transferred to the United Nations Detention Unit (“UNDU”) in The Hague, Kingdom of the Netherlands (“Netherlands”);<sup>1</sup>

**NOTING** that, on 23 January 2014, the Appeals Chamber of the ICTY, *inter alia*: (i) affirmed Lukić’s convictions for murder, persecution, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, and murder as a violation of the laws or customs of war; (ii) reversed, in part, Lukić’s convictions for these crimes insofar as they concerned specific incidents; (iii) granted, in part, the appeals of Lukić and the Office of the Prosecutor of the ICTY concerning sentencing; and (iv) reduced Lukić’s sentence from 22 to 20 years of imprisonment;<sup>2</sup>

**NOTING** that, on 27 October 2015, Lukić was transferred to the Republic of Poland (“Poland”) to serve his sentence;<sup>3</sup>

**NOTING** the confidential memorandum conveyed to me by the Registrar of the Mechanism (“Registrar”) on 11 January 2021, in which the Registrar, *inter alia*: (i) refers to previous communications from Poland informing the Mechanism that, pursuant to Article 3(3) of the Enforcement Agreement, Poland cannot enforce Lukić’s sentence as of a certain day in January 2021; (ii) indicates that no other enforcement State for Lukić has yet been identified; and (iii) therefore recommends, under the circumstances and in view of there being no practical alternative, that Lukić be returned to the UNDU;<sup>4</sup>

**RECALLING** that, pursuant to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism shall have the power to supervise, *inter alia*, the enforcement of sentences pronounced by the ICTY as well as the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

**RECALLING** that Article 3(3) of the Enforcement Agreement provides that “[i]n the event that the sentence pronounced by the [ICTY] exceeds the upper limit of the statutory penalty stipulated in the

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<sup>1</sup> Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“Decision of 17 September 2018”), para. 3.

<sup>2</sup> See *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014, paras. 1845, 1847.

<sup>3</sup> Decision of 17 September 2018, para. 5. See also 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”). The Enforcement Agreement applies *mutatis mutandis* to the Mechanism. See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

Polish law for the same kind of offence, the part of the sentence amounting to the upper limit of penalty envisaged for a given offence in the Polish domestic law shall be enforceable in Poland”, and that the Minister of Justice is to notify the Registrar six months in advance of “the date of the completion of the part of the sentence enforceable in Poland”, in which case Article 10 of the Enforcement Agreement shall be applied accordingly;

**RECALLING** that Article 10 of the Enforcement Agreement states, *inter alia*, that if further enforcement of the sentence becomes impossible “for any legal or practical reasons”, the Registrar “shall make the appropriate arrangements for the transfer of the convicted person”;

**CONSIDERING** that Poland has fulfilled the requisite steps set out in Article 3(3) of the Enforcement Agreement by informing the Registrar that, as the maximum enforceable sentence for Lukić under Polish law is 15 years, the sentence would cease being enforceable in Poland as of a certain day in January 2021;<sup>5</sup>

**CONSIDERING**, therefore, that the Registrar is to make the appropriate arrangements for the transfer of Lukić in accordance with Article 10 of the Enforcement Agreement;

**CONSIDERING FURTHER** the Registrar’s recommendation that Lukić be returned to the UNDU;

**PURSUANT TO** Article 25(2) of the Statute and Rules 23(A), 127(C), and 128 of the Rules of Procedure and Evidence of the Mechanism;

**HEREBY INSTRUCT** the Registrar to take all necessary measures and make the appropriate arrangements for Lukić to be returned to the UNDU on a temporary basis;

**ORDER** that, following his transfer to the UNDU, Lukić shall remain in the custody of the Mechanism pending the finalisation of arrangements for his transfer to the State where the remainder of his sentence will be served;

**INSTRUCT** the Registrar to transmit a copy of the present order to the Government of the Netherlands; and

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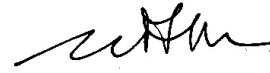
<sup>4</sup> Internal Memorandum from the Registrar to the President, dated 11 January 2021 (confidential), paras. 1-3.

<sup>5</sup> See *Note verbale* from the Embassy of Poland to the Mechanism, dated 23 June 2020, conveying a letter from the Polish Under-Secretary of State by authority of the Polish Minister of Justice to the Registrar, dated 2 June 2020.

**INSTRUCT** the Registrar to lift the confidential status of the present order once Lukić's transfer to the UNDU has been completed.

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

Done this 12th day of January 2021,  
At The Hague,  
The Netherlands.



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Judge Carmel Agius  
President



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<b>Date Created/ Daté du :</b>	<b>12 January 2021</b>	<b>Date transmitted/ Transmis le :</b>	<b>12 January 2021</b>
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