

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 24 June 2022

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambaou

Decision of: 24 June 2022

PROSECUTOR

v.

MILAN LUKIĆ

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION
FOR EARLY RELEASE OF MILAN LUKIĆ**

Counsel for Mr. Milan Lukić:

Mr. Zoran Živanović

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

BEING SEISED OF a direct petition for early release contained in a letter dated 20 January 2021¹ and a supplemental submission thereto dated 3 March 2022² from Mr. Milan Lukić (“Lukić”), which were filed on 3 June 2022 (“Application”);³

NOTING that on 8 August 2005, Lukić was arrested in the Argentine Republic,⁴ and on 21 February 2006, he was transferred to the custody of the ICTY;⁵

NOTING that on 20 July 2009, Trial Chamber III of the ICTY (“Trial Chamber”) found Lukić guilty, pursuant to Article 7(1) of the Statute of the ICTY, of persecutions, murder, inhumane acts, and extermination as crimes against humanity, and cruel treatment and murder as violations of the laws or customs of war, and sentenced him to life imprisonment;⁶

NOTING that on 4 December 2012, the Appeals Chamber of the ICTY, *inter alia*, replaced the Trial Chamber’s finding of fact regarding an incident at Pionirska Street in Višegrad town, dismissed the remainder of Lukić’s appeal, and affirmed Lukić’s sentence of life imprisonment;⁷

NOTING that on 10 February 2014, Lukić was transferred to the Republic of Estonia (“Estonia”) to serve the remainder of his sentence;⁸

NOTING that, in the Application, Lukić requests early release and pardon⁹ based mainly on the following contentions: (i) he has problems with [REDACTED];¹⁰ and (ii) his detention in Tartu

¹ Letter from Lukić to the President, dated 20 January 2021 (confidential).

² Letter from Lukić to Judge Theodor Meron (undated) (confidential), Letter from Lukić to Judge Theodor Meron, dated 3 March 2022 (confidential), and Letter from Lukić to the President, dated 3 March 2022 (confidential).

³ In line with paragraph 6 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”), on 31 May 2022, I requested the Registrar of the Mechanism (“Registrar”) to file the Application on the record. *See* Internal Memorandum from the President to the Registrar, dated 31 May 2022 (confidential), paras. 1-2. The Registrar filed the Application on 3 June 2022. *See* Registrar’s Submission of Mr. Milan Lukić’s Application for Pardon, Commutation of Sentence and/or Early Release, 3 June 2022 (confidential and *ex parte*), Annexes A-D. A public redacted version of the Application remains to be filed.

⁴ *See* International Criminal Tribunal for the former Yugoslavia (“ICTY”) Press Release, Milan Lukić Arrested in Argentina, 9 August 2005, <https://www.icty.org/en/press/milan-lukic-arrested-argentina>. *See Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Judgement, 20 July 2009 (“Trial Judgement”), para. 1102. *See also Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-I, Transcript of 24 February 2006, T. 24.

⁵ Trial Judgement, para. 1138.

⁶ Trial Judgement, paras. 1099-1101.

⁷ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement, 4 December 2012 (“Appeal Judgement”), para. 672. *See* Appeal Judgement, para. 3.

⁸ *See* Mechanism Press Release, Milan Lukić Transferred to Estonia to Serve Sentence, 11 February 2014, <http://www.unmict.org/en/news/milan-luki%C4%87-transferred-estonia-serve-sentence>. *See also* Order Designating State in Which Milan Lukić is to Serve His Sentence, 3 February 2014.

⁹ Application, Registry Pagination (“RP”) 476, 471.

Prison, Estonia, has prevented him from seeing his “children from Serbia” for eight years, and poses problems for his “small children from Europe” to visit, which he states is violating his human rights (“Family-Related Contentions”);¹¹

FINDING that I am unconvinced that Lukić’s mere references to “pardon”, without proper substantiation, change the nature of his Application, which I believe should be considered as seeking only early release;

NOTING that in the Application, Lukić also makes a number of submissions challenging the final judgement against him, arguing that he is innocent and was framed for crimes he did not commit;¹²

RECALLING that according to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda (“ICTR”), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

RECALLING that pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law;¹³

RECALLING that pursuant to Rule 150 of the Rules, upon a State notification or a direct petition, the President shall determine whether pardon, commutation of sentence, or early release is appropriate, in consultation with: (i) any Judges of the sentencing Chamber who are Judges of the Mechanism; or (ii) at least two other Judges, if none of the Judges who imposed the sentence are Judges of the Mechanism;

RECALLING that Article 3 of the enforcement agreement between the United Nations and Estonia provides that the conditions of imprisonment shall be governed by the national law of Estonia, subject to the supervision of the Mechanism;¹⁴

¹⁰ Application, RP 476.

¹¹ Application, RP 476-475, 471, 468, 463.

¹² Application, RP 476-475, 471, 468, 463. Lukić submits, *inter alia*, that: (i) he can prove that he was never the commander of the *Beli Orlovi* or any other paramilitary group; and (ii) most of the victims of the crimes for which he was convicted have been found alive. Application, RP 476-475.

¹³ While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Mechanism’s Rules of Procedure and Evidence (“Rules”) reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

¹⁴ 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, 11 February 2008. *See* Security Council Resolution 1966 (2010), 22 December 2010, para. 4 (deciding that all international agreements concluded by the United

RECALLING that all convicted persons serving a sentence under the Mechanism’s supervision are eligible to be considered for early release upon having served two-thirds of their sentence, irrespective of: (i) whether the person was convicted by the ICTR, the ICTY, or the Mechanism; (ii) where the sentence is being served; and (iii) whether the matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State;¹⁵

RECALLING further that serving two-thirds of a sentence has been described as being “in essence, an admissibility threshold”,¹⁶ and that if a convicted person applies for early release or commutation of sentence before having served two-thirds of his or her sentence, the application may be considered without necessarily triggering the multi-step and resource-intensive process of requesting, receiving, translating, sharing, and considering additional information before determining whether the application should be denied as premature;¹⁷

CONSIDERING that the early release of persons convicted by the ICTR, the ICTY, or the Mechanism falls exclusively within the President’s discretion, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules;¹⁸

CONSIDERING that my predecessor concluded that persons sentenced to life imprisonment may be considered eligible for early release¹⁹ and when deciding a previous application by Lukić, my predecessor determined that “Lukić shall be considered eligible for early release by the Mechanism upon having served more than two-thirds of 45 years, which amounts to more than 30 years of his sentence”;²⁰

Nations in relation to the ICTY and the ICTR still in force as of the relevant commencement date of the Mechanism shall continue *mutatis mutandis* in relation to the Mechanism).

¹⁵ *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 17 June 2022 (“*Galić Decision*”), p. 3; *Prosecutor v. Nebojša Pavković*, Case No. MICT-14-67-ES.2, Decision on the Application for Early Release of Nebojša Pavković, 18 May 2022 (public redacted) (“*Pavković Decision*”), para. 29; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 16, 18.

¹⁶ *Galić Decision*, p. 3; *Pavković Decision*, para. 29; *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), para. 19.

¹⁷ *See Galić Decision*, p. 3; *Prosecutor v. Milomir Stakić*, Case No. MICT-13-60-ES, Decision on Sentence Remission and Early Release of Milomir Stakić, 22 December 2021 (“*Stakić Decision*”), para. 30; *Prosecutor v. Jadranko Prlić*, Case No. MICT-17-112-ES.2, Decision on the Early Release of Jadranko Prlić, 23 March 2021, p. 4.

¹⁸ *Galić Decision*, p. 3; *Pavković Decision*, para. 32; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Laurent Semanza’s Application for Early Release, 17 September 2020 (public redacted), para. 29.

¹⁹ *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), para. 24.

²⁰ Decision of the President on [REDACTED] (confidential) (“*Lukić Decision of [REDACTED]*”), para. 28.

CONSIDERING that accordingly, Lukić's eligibility threshold has already been set by my predecessor as more than 30 years, and I do not intend to depart from this position;

CONSIDERING that, as Lukić has only served close to 17 years of his life sentence,²¹ he is not yet eligible to be considered for early release;

RECALLING that in compelling or exceptional circumstances, early release may be granted prior to the serving of two-thirds of the sentence;²²

FINDING that the submissions contained in the Application which challenge the final judgement against Lukić are irrelevant to showing that any exceptional or compelling circumstances exist warranting his early release before having served two-thirds of his sentence;

NOTING that in the Application Lukić raises his [REDACTED] as factors that should be taken into consideration, and that, with regard to the latter, he submits that his Family-Related Contentions [REDACTED];²³

RECALLING that 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 early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer;²⁴

NOTING that on 27 July 2021, I received information from Estonia on Lukić's mental and physical health;²⁵

NOTING that with regard to his mental health, the Estonian authorities report that Lukić [REDACTED]²⁶ and that: (i) [REDACTED];²⁷ (ii) [REDACTED];²⁸ and (iii) [REDACTED];²⁹

NOTING further that the Estonian authorities report that Lukić [REDACTED];³⁰

²¹ Email communication from the Office of the Registrar to the Office of the President, dated 15 February 2022 (confidential).

²² *Galić* Decision, p. 4; *Stakić* Decision, para. 32; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016 (public redacted), para. 18.

²³ Application, RP 476.

²⁴ *Pavković* Decision, para. 81; *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-ES.1, Decision on the Application for Early Release of Aloys Ntabakuze, 17 May 2022 (public redacted), para. 79; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, paras. 47-49.

²⁵ Registrar's Submission of Estonia's Response to [REDACTED] (confidential and *ex parte*) (Annex) ("Estonia's Response"), RP 439-438.

²⁶ Estonia's Response, RP 439.

²⁷ Estonia's Response, RP 439.

RECALLING that both my predecessor and I have thoroughly considered Lukić’s family circumstances when adjudicating other requests made by Lukić, concluding *inter alia*, that “[w]hile the journey may be expensive and inconvenient, this difficulty does not rise to the level of constituting a violation of the right to maintain family ties”;³¹

NOTING that, with regard to his physical health, the Estonian authorities report, *inter alia*, that: (i) [REDACTED];³² (ii) [REDACTED];³³ and (iii) [REDACTED];³⁴

NOTING further that in relation to his [REDACTED], the Estonian authorities report that: (i) [REDACTED];³⁵ (ii) [REDACTED];³⁶ (iii) [REDACTED];³⁷ and (iv) [REDACTED];³⁸

CONSIDERING that nothing indicates to me that Lukić’s state of mental or physical health is an impediment to his continued detention, or constitutes a compelling or exceptional circumstance warranting his early release before having served two-thirds of his sentence;

CONSIDERING that I have consulted with Judge Liu Daqun, a Judge of the sentencing Chamber in Lukić’s case, and, as no other Judge who imposed Lukić’s sentence is a Judge of the Mechanism, with Judge Seymour Panton;³⁹

CONSIDERING further that Judge Liu and Judge Panton share my position that Lukić is not eligible to be considered for early release at this stage, and that no compelling or exceptional circumstances have been demonstrated which would justify granting him early release prior to reaching his two-thirds eligibility threshold;

²⁸ Estonia’s Response, RP 439.

²⁹ Estonia’s Response, RP 439-438.

³⁰ Estonia’s Response, RP 438.

³¹ Public Redacted Version of the 22 May 2015 Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukić, 28 January 2016, para. 21. *See* Decision on [REDACTED] (confidential and *ex parte*), para. 23; Decision on [REDACTED] (confidential and *ex parte*), paras. 16-17; Decision on [REDACTED] (confidential and *ex parte*), paras. 19-20; *Lukić* Decision of [REDACTED], para. 43; Decision on [REDACTED] (confidential), p. 3.

³² Estonia’s Response, RP 438.

³³ Estonia’s Response, RP 438.

³⁴ Estonia’s Response, RP 438.

³⁵ Estonia’s Response, RP 438.

³⁶ Estonia’s Response, RP 438.

³⁷ Estonia’s Response, RP 438.

³⁸ Estonia’s Response, RP 438.

³⁹ *See* Rule 150 of the Rules; Practice Direction, para. 16.

FOR THE FOREGOING REASONS,

HEREBY DENY the Application; and

DIRECT the Registrar to provide the authorities of Estonia and the Prosecutor of the Mechanism with the public redacted version of this Decision as soon as practicable.

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

Done this 24th day of June 2022,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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