

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-46-ES.1

Date: 27 October 2023

Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Graciela Gatti Santana, President

**Registrar:** Mr. Abubacarr M. Tambaou

**Order of:** 27 October 2023

**PROSECUTOR**

v.

**RADISLAV KRSTIĆ**

*CONFIDENTIAL*

---

**ORDER FOR THE TRANSFER OF RADISLAV KRSTIĆ  
TO THE UNITED NATIONS DETENTION UNIT  
ON A TEMPORARY BASIS**

---

**Counsel for Mr. Radislav Krstić:**

Mr. Tomislav Višnjić  
Mr. Vladimir Petrović

**Republic of Poland**

**Kingdom of the Netherlands**

**I, GRACIELA GATTI SANTANA**, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

**NOTING** that, on 2 December 1998, Mr. Radislav Krstić (“Krstić”) was arrested and, on 3 December 1998, was transferred to the seat of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in The Hague, Kingdom of the Netherlands (“Netherlands”);<sup>1</sup>

**NOTING** that, on 2 August 2001, Trial Chamber I of the ICTY convicted Krstić for committing genocide, persecution as a crime against humanity, and murder as a violation of the laws or customs of war, and sentenced him to 46 years of imprisonment;<sup>2</sup>

**NOTING** that, on 19 April 2004, the Appeals Chamber of the ICTY, *inter alia*: (i) set aside Krstić’s conviction for committing genocide, and partially set aside his conviction for committing murder as a violation of the laws or customs of war, and instead found him guilty of aiding and abetting these crimes; (ii) affirmed the remaining convictions for committing persecution as a crime against humanity and murder as a violation of the laws or customs of war; and (iii) reduced Krstić’s sentence to 35 years of imprisonment;<sup>3</sup>

**NOTING** that, on 20 December 2004, Krstić was transferred to the United Kingdom of Great Britain and Northern Ireland,<sup>4</sup> and, on 19 July 2013, to the Republic of Poland (“Poland”) to serve the remainder of his sentence;<sup>5</sup>

**NOTING** that Krstić’s sentence will expire on 23 November 2033;<sup>6</sup>

**NOTING** that, on 20 October 2023, I received from the Registrar of the Mechanism (“Registrar”) a confidential memorandum, in which he, *inter alia*: (i) refers to the maximum enforcement date of Krstić’s sentence in Poland, being 27 November 2023; (ii) indicates that the Registry of the Mechanism has been working to identify a new enforcement State for Krstić but has not yet been

---

<sup>1</sup> See *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“Trial Judgement”), Annex I, para. 2; Press Release, Initial Appearance of Radislav Krstić on Monday 7 December at 11.00 a.m., 4 December 1998, <http://www.icty.org/en/press/initial-appearance-radislav-krstic-monday-7-december-1100-am>.

<sup>2</sup> Trial Judgement, para. 727, Annex I, para. 8.

<sup>3</sup> *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, p. 87.

<sup>4</sup> Press Release, Radislav Krstić Transferred to the United Kingdom to Serve his Prison Sentence, 20 December 2004, <http://www.icty.org/en/press/radislav-krstic-transferred-united-kingdom-serve-his-prison-sentence>; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-ES, Order Designating the State in Which Radislav Krstić is to Serve his Prison Sentence, 11 November 2004, pp. 2-3.

<sup>5</sup> Order Designating the State in which Radislav Krstić is to Serve the Remainder of his Sentence, 19 July 2013, pp. 1-2.

<sup>6</sup> Internal Memorandum from the Registrar to the President, dated 20 October 2022 (confidential), Annex, p. 4.

successful; and (iii) recommends that Krstić be returned to the United Nations Detention Unit (“UNDU”) temporarily;<sup>7</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, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

**RECALLING** that Article 3(1) of the enforcement agreement between the United Nations and Poland<sup>8</sup> provides that “[i]n enforcing the sentence pronounced by the [ICTY], the competent national authorities of the requested State shall be bound by the duration of the sentence”;

**RECALLING** that, pursuant to Article 3(3) of the Enforcement Agreement, “[i]n the event that the sentence pronounced by the [ICTY] exceeds the upper limit of the statutory penalty stipulated in the 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 “in that 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 has become impossible “for any legal or practical reasons”, Poland shall promptly inform the Registrar, who “shall make the appropriate arrangements for the transfer of the convicted person”;

**CONSIDERING** that Poland has indicated to the Registrar, pursuant to Article 3(3) of the Enforcement Agreement, that “the execution in Poland of the sentence of imprisonment imposed by the [ICTY] on [...] Krstić will be completed on 27 November 2023”;<sup>9</sup>

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

**NOTING** with concern that, although the Host State Agreement<sup>10</sup> foresees the UNDU to be used for remand purposes,<sup>11</sup> the UNDU has in recent years increasingly been used to temporarily house persons convicted by the ICTY or the Mechanism;

---

<sup>7</sup> Internal Memorandum from the Registrar to the President, dated 20 October 2023 (confidential), paras. 1-3.

<sup>8</sup> 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.

**CONSIDERING** the Registrar's recommendation that Krstić be returned to the UNDU temporarily;

**CONSIDERING** that, as the Registrar has been unable to secure a new enforcement State for Krstić, there is regrettably no other option at this time but to return Krstić 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 Krstić to be returned to the UNDU on a temporary basis;

**URGE** the Registrar to intensify his efforts to expeditiously identify a new enforcement State for Krstić;

**ORDER** that, following his transfer to the UNDU, Krstić shall remain in the custody of the Mechanism pending the finalisation of arrangements for his transfer to a State where he will serve the remainder of his sentence; and

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

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

Done this 27th day of October 2023,  
At The Hague,  
The Netherlands.



Judge Graciela Gatti Santana  
President

**[Seal of the Mechanism]**

---

<sup>9</sup> Internal Memorandum from the Registrar to the President, dated 20 July 2023 (confidential), *conveying, inter alia*, a letter from the Polish Minister of Justice to the Registrar, dated 23 May 2023.

<sup>10</sup> Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, dated 23 February 2015 ("Host State Agreement").

<sup>11</sup> Host State Agreement, Article 37 ("The host State shall cooperate with the Mechanism to facilitate the detention of persons and to allow the Mechanism to perform its functions within its detention centre"). *See also* Host State Agreement, Article 40 ("Imprisonment shall be served in a State designated by the Mechanism from among those States with which the United Nations has agreements for this purpose [...]. The Mechanism shall begin the process of designating a State of enforcement as soon as possible").



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

<b>To/ À :</b>	IRMCT Registry/ Greffe du MIFRTP	<input type="checkbox"/> Arusha/ Arusha	<input checked="" type="checkbox"/> The Hague/ La Haye
<b>From/ De :</b>	<input checked="" type="checkbox"/> President/ Président	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur
		<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Registrar/ Greffier
		<input type="checkbox"/> Other/ Autre	
<b>Case Name/ Affaire :</b>	Prosecutor v. Radislav Krstić		<b>Case Number/ Affaire n° :</b> MICT-13-46-ES.1
<b>Date Created/ Daté du :</b>	27 October 2023	<b>Date transmitted/ Transmis le :</b>	27 October 2023
		<b>Number of Pages/ Nombre de pages :</b>	4
<b>Original Language/ Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
		<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/ préciser):
<b>Title of Document/ Titre du document :</b>	Order for the transfer of Radislav Krstić to the United Nations Detention Unit on a temporary basis		
<b>Classification Level/ Catégories de classification :</b>	<input type="checkbox"/> Public/ Document public	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Ex Parte Prosecution excluded/ Bureau du Procureur exclu
	<input checked="" type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte Rule 86 applicant excluded/ Article 86 requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
		<input type="checkbox"/> Ex Parte other exclusion/ autre(s) partie(s) exclue(s) (specify/ préciser) :	
<b>Document type/ Type de document :</b>	<input type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Judgement/ Jugement/Arrêt	<input type="checkbox"/> Book of Authorities/ Recueil de sources
	<input type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Warrant/ Mandat
	<input checked="" type="checkbox"/> Order/ Ordonnance	<input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers	<input type="checkbox"/> Affidavit/ Déclaration sous serment
		<input type="checkbox"/> Indictment/ Acte d'accusation	<input type="checkbox"/> Notice of Appeal/ Acte d'appel

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

<input type="checkbox"/> Translation not required/ La traduction n'est pas requise					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word du document est jointe)					
<input type="checkbox"/> English/ Anglais	<input checked="" type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input checked="" type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser):	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :					
<b>Original/ Original en :</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/ préciser):
<b>Traduction/ Traduction en :</b>	<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/ préciser):
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s):					
<input type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser):	