



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-05-87-T

Date: 14 November 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 14 November 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**ORDER ON TIMING OF MOTIONS PRIOR TO WINTER RECESS AND
PRESENTATION OF LUKIĆ DEFENCE CASE**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), *ex proprio motu*, issues this Order to ensure the fair and expeditious conduct of the trial pursuant to Article 20 of the Statute of the Tribunal, by establishing a schedule for the filing of motions in connection with the witnesses to be called by the Lukić Defence after the winter recess and in relation to the translation of documents to be tendered by the Lukić Defence.

Motions

1. The Chamber recalls its “Order on Timing of Motions and Responses Prior to Winter Recess,” issued 24 November 2006, shortly prior to the winter recess last year in these proceedings, wherein the Chamber set deadlines for the Prosecution to file all applications in relation to the testimony of witnesses to be called after the winter recess. The Chamber so ordered because of its concern with the practice of the Prosecution of filing motions upon which action had to be taken by the Chamber prior to the fourteen-day response time allowed to the Defence pursuant to Rule 126 *bis* and in order to ensure that pending motions were decided in sufficient time for their effect not to be rendered moot.¹

2. The Chamber notes that the winter recess is scheduled to take place from 17 December 2007 to 15 January 2008 and that the Lukić Defence case is likely to commence in January. The Chamber therefore considers that it is appropriate and in the interests of justice to give some direction to the Lukić Defence regarding when any potential motions relating to the testimony of witnesses it intends to call in January and February 2008—such as safe conduct orders, protective measures, video-links, and additions to the Rule 65 *ter* witness list (*e.g.*, un-named PJP commanders²)—should be filed.

¹ See, *e.g.*, T. 5843 (3 November 2006); Order Varying Time Limit for Defence Response to Partly Confidential Prosecution Motion for Testimony of Witness K58 to Be Heard Via Video-Link Conference, 25 October 2006; Order Varying Time Limit for Defence Response to Partly Confidential Prosecution Motion for Further Additional Trial Related Protective Measure for Witness K56, 25 October 2006.

² See T. 12817–12818 (22 June 2007) (discussion during pre-defence conference).

Translations

3. The Chamber notes that the Lukić Defence intends to tender 403 documents as evidence during its defence case, as indicated on its Rule 65 *ter* exhibit list.³ Many of these documents are in B/C/S and therefore will have to be translated in order to be properly tendered and admitted into evidence. The parties in this case have encountered the situation of having to tender a document as evidence that has not yet been translated on account of that document not having been submitted to the Conference and Language Services Section (“CLSS”) sufficiently in advance.⁴ The Chamber, in the case of the Lukić Defence, has attempted to facilitate the translation process by mediating between the Lukić Defence and the relevant sections of the Registry. The Chamber notes with approval the recent attempts by the Lukić Defence and the Registry to translate a number of documents. However, it remains concerned that it appears as though the Lukić Defence has still not submitted for translation many documents that it intends to tender as evidence during its case.

4. In the Trial Chamber’s “Order on Procedure and Evidence,” issued 11 July 2006,⁵ the Chamber stated as follows:

8. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Chamber or denied admission into evidence. Documents, regardless of translation, that have not been dealt with during the testimony of the witness through whom they are sought to be admitted shall, in general, be denied admission into evidence, unless they are admissible without being spoken to by a witness.

It is of the utmost importance that documents to be tendered as evidence are translated into an official language of the Tribunal. The Chamber currently deals with the failure of documents to be translated in a timeous manner on an on-going and case-by-case basis, a process that consumes precious resources of the parties, Registry, and Chamber.⁶ In addition, pursuant to the terms of the order quoted above, the Chamber may consider denying admission into evidence of any documents

³ Confidential Sreten Lukić Defence 65 *ter* Submission – Annex B “Exhibit List”, 15 June 2007.

⁴ *See, e.g.*, Order for Submission on Joint Prosecution and Defence Notice Regarding Translation of Exhibits Admitted into Evidence by Agreement, 31 July 2007, para. 3 (noting that parties represented to Chamber that documents were translated, when in fact they were not); Order re Disclosure of Expert Reports, 3 August 2007 (ordering Defence to file explanation as to why translations of expert reports were not submitted to CLSS in sufficient time for them to be translated by extended deadline for their disclosure); Order re 2D384, 7 September 2007 (admitting into evidence document tendered by Šainović Defence that had been marked for identification pending submission of its translation); Decision on Ojdanić Motion for Admission of Documents from Bar Table, 25 October 2007 (denying admission of documents tendered by Ojdanić Defence without translations); T. 17736–17740 (6 November 2007) (discussion of failure of Lazarević Defence to tender documents along with their translations); T. 18196–18199 (13 November 2007) (discussion of difficulties posed by untranslated documents).

⁵ The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007.

⁶ The Chamber notes that it has been vigilant to ensure that issues of translation do not cause any undue prejudice to any of the Accused.

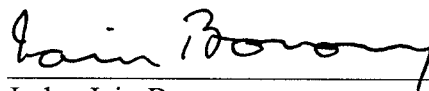
tendered by the Lukić Defence during its case that have not been translated, where the lack of translation has been the result of a failure to submit documents for translation in an appropriate manner.

5. The Chamber notes that there are practical limitations upon the resources of the Tribunal and that these limitations extend to the work of CLSS.⁷ The Chamber has a duty to ensure that a fair trial is accorded to all six Accused and that the Prosecution's interests are treated fairly. It is imperative that the Lukić Defence take a practical approach to these issues and engage CLSS in its efforts to assist it in translating documents to be tendered as evidence during its case.

6. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 3, 54, 89, 126 *bis*, and 127 of the Rules of Procedure and Evidence of the Tribunal, hereby ORDERS as follows:

- a. The Lukić Defence shall file all applications in relation to the testimony of witnesses it intends to call to give evidence in January and February 2008 by no later than Monday, 10 December 2007.
- b. The Lukić Defence shall submit all of the documents upon its Rule 65 *ter* exhibit list, which are still untranslated, to CLSS by Friday, 30 November 2007. This shall be done in accordance with the required procedures of CLSS, along with an indication of the order in which the Lukić Defence would like them to be translated.

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



Judge Iain Bonomy
Presiding

Dated this fourteenth day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ CLSS has undertaken to translate approximately 200 pages per month for the Lukić Defence.