

UNITED
NATIONS

IT-98-32/1-T
D8152-D8149
11 February 2009

8152
MC



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-98-32/1-T

Date: 11 February 2009

Original: English

THE VICE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: **Judge O-Gon Kwon, Vice-President**

Acting Registrar: **Mr. John Hocking**

Decision of: **11 February 2009**

PROSECUTOR

v.

MILAN LUKIĆ
SREDOJE LUKIĆ

PUBLIC

DECISION ON MILAN LUKIĆ'S REQUEST FOR INTERROGATORIES

Counsel for Milan Lukic

Mr. Jason Alarid

Mr. Dragan Ivetić

The Office of the Prosecutor

Mr. Dermot Groome

1. On 12 December 2008, Milan Lukić (“Applicant”) filed before me an “Application for Relief Regarding Procedural Irregularities Affecting Defence Preparations in the Matter of Case No. IT-98-32/1-T” (“Application”), in which the Applicant requests (a) an order compelling certain individuals to respond to interrogatories in order to aid his understanding of how certain events transpired, and (b) relief arising from “any hardship to the defence preparations in light of *prima facie* informalities in a breach of the Tribunal’s fiduciary duty” to the Applicant.¹

2. On 23 December 2008, the Prosecution filed its “Response to Milan Lukić’s Application for Relief Regarding Irregularities Affecting Defence Preparations with Confidential Annexes A, B and C” (“Response”).

I. BACKGROUND

3. On 18 November 2008, pursuant to a request from the Prosecutor, the Registrar of the Tribunal issued a decision to suspend the Applicant’s non-privileged communications for a period of two weeks. The decision was made in accordance with Rule 64 of the Rules of Detention and the Registrar acted on suspicion that the Applicant was placing intimidating telephone calls to a certain witness and this witness’ family (“Registrar’s Decision of 18 November 2008”).² The Applicant appealed this decision to the President of the Tribunal, who referred the matter to me.

4. On 28 November 2008, I issued the “Decision on Milan Lukić’s Appeal Against the Registrar’s Decision of 18 November 2008” (“Decision of 28 November 2008”), in which I held that the Registrar acted properly when arriving at his decision of 18 November 2008, however the length of the restriction was somewhat excessive. I noted that the ban might restrict the Applicant from personally participating in the preparation of his case, that there was no evidence of intent to intimidate the witness in question and that the Registrar had not put the Applicant on notice that his conduct was inappropriate. I consequentially reduced the length of the ban from two weeks to ten days.³ The interrogatories sought by the Applicant relate in part to events which are the subject of the Decision of 28 November 2008.

5. The Applicant chose to file the Application directly before me because the President of the Tribunal presides over the Applicant’s case.⁴ The President previously referred consideration of the Decision of 28 November 2008 to me, owing to an evident conflict of interest on his part.⁵ As the

¹ Application, p. 11.

² See also Registry Submission on Milan Lukić’s Appeal Against the Registrar’s Decision of 18 November 2008 (confidential), dated 26 November 2008, paras. 1, 5.

³ Decision of 28 November 2008, paras. 10, 12–14.

current Application relates directly to the events which were the subject of the Decision of 28 November 2008, I do not consider it necessary to seek the President's assignment on this particular Application.

II. SUBMISSIONS OF THE PARTIES

A. Application

6. The procedural irregularities alleged by the Applicant are as follows: (a) irregularities and inequality of treatment concerning requests for information and materials from various organs of the Tribunal,⁶ (b) irregularities in the carrying out of the Registrar's Decision of 18 November 2008, whereby the Applicant was briefly denied telephone calls to his defence team,⁷ and (c) obstruction of communication between the Applicant and his co-counsel by a certain organ of the Tribunal.⁸

7. The Applicant also argues that Registrar's Decision of 18 November 2008 adversely affected preparation of the Applicant's case at a critical stage of the trial.⁹

B. Response

8. In the Response, the Prosecution declines to voluntarily accede to the demands made by the Applicant in the Application, and argues that the Application has no legal basis under the Rules of Procedure and Evidence of the Tribunal ("Rules"). According to the Prosecution, the Applicant's reliance on the interests of justice and an accused's right to a fair trial as the basis for the Application is too "unspecified and unsubstantiated", given that the Rules provide several mechanisms for the Applicant to obtain information relevant to his case. The Prosecution also notes that the Applicant has requested material falling within the scope of Rule 70(A), which states that such material is specifically not subject to disclosure or notification under the Rules.¹⁰

III. DISCUSSION

9. I note that the Applicant incorrectly interprets the Decision of 28 November 2008 when he states that the Applicant's behaviour which gave rise to the Registrar's Decision of 18 November

⁴ Application, para. 11.

⁵ See Order to Consider Application on Conditions of Detention (confidential) 25 November 2008.

⁶ Application, paras. 14–16.

⁷ Application, para. 23.

⁸ Application, para. 24–25.

⁹ Application, paras. 13, 19–20, 22–23.

¹⁰ Response, paras. 12–13.

2008 was found to be "not intentionally intimidating [in] nature".¹¹ Rather, the absence of any evidence of intent to intimidate was a factor relevant to assessment of the restriction imposed by the Registrar.¹²

10. The Registrar acted in accordance with the Rules when arriving at his Decision of 18 November 2008. The length of the ban was adjusted so as to take into account certain mitigating factors relevant to the Applicant, including the effect that the ban would have on his involvement in the preparation of his defence case.¹³ I therefore find the Applicant's argument that the Registrar's Decision of 18 November 2008 adversely affected the preparation of his defence case unpersuasive. In light of this conclusion, the request for interrogatories pertaining to the Decision of 18 November 2008 is unfounded and there is no need to consider this part of the Request further.

11. In relation to those interrogatories which do not relate to the Decision of 18 November 2008, I note that the Rules do not permit requests for interrogatories, and the Applicant has failed to cite any jurisprudence in support of his Application. For these reasons, I consider this part of the Request to have no legal basis before the Tribunal and should be denied.

12. In light of these factors, I am of the opinion that the Application is without merit and should be denied.

IV. DISPOSITION

For these reasons, pursuant to Rule 21 of the Rules, I hereby **DENY** the Application.

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



O-Gon Kwon
Vice President

Dated this eleventh day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Application, para. 9.

¹² See Decision of 28 November 2008, para. 14.

¹³ Decision of 28 November 2008, paras. 10, 12–14.