



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

Case No. IT-98-32/1-PT

Date: 20 July 2007

Original: English

BEFORE THE REFERRAL BENCH

Before: Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 20 July 2007

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON PROSECUTOR'S REQUEST
PURSUANT TO RULE 11 *BIS* (F) WITH REGARD TO
SREDOJE LUKIĆ AND INCORPORATED DECISION
VACATING SCHEDULING ORDER**

The Office of the Prosecutor

Mr. Mark B. Harmon
Ms. Susan Somers

Counsel for Milan Lukić

Mr. Alan L. Yatvin
Ms. Jelena Lopičić-Jancic

Counsel for Sredoje Lukić

Mr. Đuro Čepić
Mr. Jens Dieckmann

The Government of Bosnia and Herzegovina

per The Embassy of Bosnia and Herzegovina
to the Netherlands, The Hague

THE REFERRAL BENCH 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”);

BEING SEISED OF the “Prosecutor’s request pursuant to Rule 11 *bis* (F) with regard to Sredoje Lukić”, filed on 19 July 2007 (“Request”), by which the Prosecution requests that the Referral Bench revoke the “Decision on referral of case pursuant to Rule 11 *bis* with confidential Annex A and Annex B”, filed on 5 April 2007 (“Referral Decision”) with regard to Sredoje Lukić;

NOTING the Prosecution’s arguments for a revocation: that the cases against Milan Lukić and Sredoje Lukić are factually very closely related,¹ that both Accused share important counts in the joint indictment,² that a large number of witnesses are identical for both cases,³ that the majority of the witnesses are subject to various protective measures,⁴ that therefore separate trials before the Tribunal and in Bosnia and Herzegovina risk increasing the trauma for the witnesses, who would have to testify twice,⁵ that separate trials would risk judicial inconsistency, *i.e.* that “two judicial bodies reach different and inconsistent conclusions regarding the same events, even when based on largely the same evidence”,⁶ and finally that “[r]easons of judicial economy strongly support revocation of the Referral Decision” because “[t]wo trials in different courts for cases involving largely the same events would needlessly waste judicial resources”;⁷

NOTING the “Response of Defence Counsel for Sredoje Lukić to ‘Prosecutor’s request pursuant to Rule 11bis (F) with regard to Sredoje Lukić’ from 19 July 2007”, filed on 19 July 2007 (“Response”), whereby the Defence of Sredoje Lukić submits that:

[o]n the basis of the Accused’s right to be tried without undue delay set out in Article 21(4)(c) of the Statute and Article 6(1) of the European Convention of Human Rights, [...] the Accused should be tried at the same judicial body as his Co-Accused Milan Lukić [and that] it would be in the interest of judicial economy to try the Accused and his Co-Accused Milan Lukić jointly at the ICTY;⁸

NOTING the “Submission of the Government of Bosnia and Herzegovina (BIH) in respect to the order by the Referral Bench dated 17 July 2007”, filed on 20 July 2007, whereby the Government of Bosnia and Herzegovina submits that:

¹ Request, para. 2.

² Request, paras 2 and 13, noting in particular Counts 8 to 17 relating to the alleged burning of two houses that resulted in the deaths of approximately 140 people.

³ Request, para. 2.

⁴ Request, para. 14.

⁵ Request, paras 2 and 14.

⁶ Request, paras 2 and 15.

⁷ Request, para. 16.

⁸ Response, paras 8 and 9.

[h]aving in mind the Decision of the Appeals Chamber dated 11 July 2007 granting the appeal of Milan Lukić, and in light of the fact that the Prosecutor's Office, in its Request dated 18 July 2007, requested that the Referral Bench Decision referring the case of Sredoje Lukić to the authorities of Bosnia and Herzegovina be revoked, the Government of BiH believes that separating the cases of Sredoje Lukić and Milan Lukić would be contrary to the interest of justice and economy of proceedings. The Government expresses its consent that the Referral Bench Decision dated 5 April 2007 be revoked and the case of Sredoje Lukić tried before the International Criminal Tribunal for the former Yugoslavia;⁹

NOTING the Appeals Chamber's "Decision on Milan Lukić's appeal regarding referral", filed on 11 July 2007 ("Appeals Chamber Decision"), whereby the Appeals Chamber reversed the Referral Decision with regard to Milan Lukić and instructed the Trial Chamber to proceed with the trial in that case, and wherein the Appeals Chamber held that:

it would be open to the Referral Bench to reconsider its decision relating to Sredoje Lukić, after giving him and the Prosecution an opportunity to be heard, on the ground that it would be judicially more appropriate for both cases to be heard by the same judicial body;¹⁰

NOTING the Scheduling Order, filed on 17 July 2007 ("Scheduling Order"), which ordered that, in the wake of the Appeals Chamber Decision, it would be in the interest of justice that a hearing be held on Friday 20 July 2007, and that in addition to the Prosecution and the Defence of Sredoje Lukić the Government of Bosnia and Herzegovina as the state authority concerned would be heard if it chose to attend;

CONSIDERING Rule 11 *bis* (F) of the Rules of Procedure and Evidence;

CONSIDERING that the Prosecution, the Defence and the Government of Bosnia and Herzegovina are in agreement that the Referral Decision be revoked in relation to Sredoje Lukić and that the cases of Sredoje Lukić and Milan Lukić be tried jointly before the Tribunal;

CONSIDERING that it is in the interest of justice that the cases of Milan Lukić and Sredoje Lukić, which are factually very closely related, be tried jointly at the Tribunal;

CONSIDERING that effect has not yet been given to the Referral Decision, Sredoje Lukić not having been transferred to the authorities of Bosnia and Herzegovina, and no proceedings having been initiated against him before a court of that nation;

⁹ The Submission also provides that "[t]he opinion expressed in this submission is a joint opinion of the Ministry of Justice of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina."

¹⁰ Decision on Milan Lukić's appeal regarding referral, Case No. IT-98-32/1-AR11*bis*.1, 11 July 2007, para. 27.

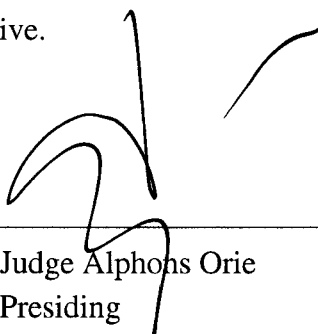
PURSUANT TO Rule 11 *bis* (F);

GRANTS the Request;

REVOKES the Referral Decision in relation to Sredoje Lukić; and

VACATES the Scheduling Order.

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



Judge Alphons Orié
Presiding

Dated this twentieth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]