

IT-98-32/1-T
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**UNITED
NATIONS**



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: 29 April 2009

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Christine Van den Wyngaert
Judge Pedro David

Acting Registrar: Mr. John Hocking

Decision of: 29 April 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON MILAN LUKIĆ'S SECOND AND THIRD
BAR TABLE MOTIONS**

The Office of the Prosecutor

Mr. Dermot Groome
Mr. Frédéric Ossogo
Ms. Laurie Sartorio
Mr. Stevan Cole
Ms. Francesca Mazzocco

Counsel for the Accused

Mr. Jason Alarid and Mr. Dragan Ivetić for Milan Lukić
Mr. Đuro Čepić and Mr. Jens Dieckmann for Sredoje Lukić

TRIAL CHAMBER III (“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”);

BEING SEISED of “Milan Lukić’s second motion admit [*sic*] documents from the bar table” (“Second Motion”), and of “Milan Lukić’s third motion to admit documents from the bar table” (“Third Motion”), both filed publicly on 17 April 2009, in which the Defence of Milan Lukić (“Defence”) requests admission of the following nine documents:

- 1) Response of Višegrad MUP to RFA, ERN number 1D22-0821 (“document no. 1”);
- 2) Response of Bosnian Presidency to RFA, ERN number 1D22-0829 (“document no. 2”);
- 3) RFA response as to MUP convictions, ERN number 1D21-0474 (“document no. 3”);
- 4) RFA response as to background of Milan Lukić, ERN number 1D22-0489 (“document no.4”);
- 5) RFA response as to number of registered Milan Lukićs in Bosnia-Herzegovina, ERN number 1D22-0516 (“document no. 5”);
- 6) Response from Bosnian authorities as to persons who have filed requests for return of property, ERN number 1D22-0903 (“document no. 6”);
- 7) Military service booklet of Milan Lukić, ERN number 1D22-0911 (“document no. 7”);
- 8) Military service booklet of Mr. Mitrašinović, ERN number 1D22-0915 (“document no. 8”);
- 9) Military service booklet of Mr. Đerić, ERN number 1D22-0919 (“document no. 9”);

CONSIDERING that while the ERN numbers provided by the Defence relate only to the first page of multi-page documents, the Trial Chamber considers that the Defence is requesting admission of the full documents;

NOTING the Defence submission that the nine documents are presented “in lieu of leading additional witnesses”, that the documents are relevant, have probative value and are sufficiently reliable to be admitted from the bar table;¹

RECALLING the order of the Trial Chamber for expedited responses of 22 April 2009;²

NOTING that the Prosecution responded to the Second Motion on 20 April 2009, and that it responded to the Third Motion on 23 April 2009;³

NOTING that the Prosecution submits that the Second Motion is moot with regard to documents no. 1 and no. 6 as they are already in evidence, that it opposes the admission of documents nos. 2, 5, 7, 8 and 9, but does not oppose the admission of documents no. 3 and no. 4;⁴

CONSIDERING that evidence need not be introduced through a witness in every circumstance and that the admission of evidence from the bar table is generally permitted⁵ pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”), which provides “[a] Chamber may admit any relevant evidence which it deems to have probative value”;

CONSIDERING that in order to have probative value a tendered piece of evidence must display sufficient indicia of reliability;⁶

CONSIDERING that, at the admissibility stage of a piece of evidence, a *prima facie* showing of relevance and reliability is sufficient and that the final assessment of the relevance and reliability of the piece of evidence is made at a later stage in the course of determining the weight to be attached to the evidence in view of the trial record as a whole;⁷

CONSIDERING that document no. 1 was admitted into evidence on 2 April 2009⁸ and that document no. 6 was admitted into evidence on 7 April 2009;⁹

¹ Second Motion, paras 2-3; Third Motion, paras 2-3.

² Decision on the Defence of Milan Lukić request for additional time for final brief and closing argument and notice of non-availability, and on the Defence of Sredoje Lukić request for variation of word limit, filed publicly on 22 April 2009.

³ Prosecution response to Milan Lukić’s second bar table motion, filed publicly on 20 April 2009 (“Response to Second Motion”); Prosecution response to “Milan Lukić’s third motion to admit documents from the bar table”, filed publicly on 23 April 2009 (“Response to Third Motion”).

⁴ Response to Second Motion, paras 1, 4, 6-10; Response to Third Motion, para. 1.

⁵ Decision on Milan Lukić’s motion for the admission of documents from the bar table, filed publicly on 9 April 2009 (“Decision on first bar table motion”), p. 6 with further references.

⁶ Decision on first bar table motion, p. 5 with further references.

⁷ Decision on first bar table motion, pp 5-6 with further references.

⁸ Exhibit 1D220 (under seal) and 1D221, Hearing, 2 April 2009, T. 6609.

⁹ Hearing, 7 April 2009, T. 6904.

CONSIDERING that the Second Motion is, therefore, moot with regard to documents no. 1 and no. 6;

NOTING the Defence submission that document no. 2 is “relevant, probative and critical” as it “provide[s] information of an identifying nature as to alleged victims and also the inability of the authorities to verify the existence of other named victims”;¹⁰

NOTING the Prosecution submission that the Defence has not shown good cause for the admission of document no. 2, which is not on the Defence Rule 65 *ter* exhibit list, at this late stage, and that the document is “redundant” to document no. 1, which was prepared by Zoran Ušćumlić, as it “simply reflects the information provided to the Office of Cooperation by Zoran Ušćumlić”;¹¹

NOTING that the Prosecution further submits that the document “may be used for a misleading purpose without live testimony” and that it may be incorrectly “inferred” that other sources were checked in preparation of document no. 2, despite the testimony of Zoran Ušćumlić indicating that no additional sources were used and that the information he provided to the Bosnian authorities “has nothing to do with whether or not people are alive or dead”;¹²

CONSIDERING that the issue of possible survivors came up at a late stage in the proceedings and that document no. 2 was previously attached to “Milan Lukić’s notice of verification of alleged victim survivors and application for stay of proceedings with exhibits A through H”, which was filed on 3 and 9 March 2009;¹³

CONSIDERING that the biographical information about persons bearing the same name as persons listed as victims in the indictment provided by the Office for Cooperation with the ICTY of Bosnia and Herzegovina in document no. 2 is relevant and has probative value;

CONSIDERING that while the biographical information about a number of persons contained in document no. 2 is also contained in document no. 1, the former includes additional information about persons not listed in document no. 1;

CONSIDERING that the Prosecution argument that document no. 2 may be used for a “misleading purpose”, in particular when disregarding the evidence given by Zoran Ušćumlić, is without merit,

¹⁰ Second Motion, para. 8.

¹¹ Response to Second Motion, paras 15-16.

¹² Response to Second Motion, paras 16-20.

¹³ Annex E of Milan Lukić’s notice of withdrawal of recent filing regarding Milan Lukić’s notice of verification of alleged victim survivors and application for stay of proceedings with exhibits A through H, filed confidentially on 6 March 2009, withdrawn on 6 March 2009 and re-filed publicly with public and confidential Annexes on 9 March 2009;

as the Trial Chamber will determine the weight to be attached to every piece of evidence in view of the trial record as a whole;

CONSIDERING that document no. 2 is, therefore, admissible pursuant to Rule 89(C);

NOTING the Defence submission that documents no. 3 and no. 4 are “relevant, probative and critical” as they provide information about the character of Milan Lukić and are potentially mitigating;¹⁴

NOTING that the Prosecution does not oppose the admission of documents no. 3 and no. 4, but it argues that, while the documents show that Milan Lukić was not convicted or charged with a crime in Republika Srpska, it would be “inaccurate for the Defence to rely” on the reports insofar as they claim the non-existence of criminal reports regarding crimes committed by Milan Lukić, because such criminal reports are listed in the Defence Rule 65 *ter* exhibit list;¹⁵

REITERATING that the Trial Chamber will determine the weight to be attached to every piece of evidence in view of the trial records as a whole;

CONSIDERING that as documents no. 3 and no. 4 are relevant and have probative value, they are admissible pursuant to Rule 89 (C);

NOTING the Defence submission that document no. 5, a response by the Bosnian authorities indicating that there are 43 persons with the name Milan Lukić in Bosnia and Herzegovina, is relevant and has probative value as Prosecution witnesses testified that there were not any other Milan Lukićs save for the Accused, and that the document not only goes to the credibility of those witnesses, but also “demonstrates the possibility of mis-identification”;¹⁶

NOTING the Prosecution submission that there is no English translation of the second page of document no. 5 and that the document itself is incomplete;¹⁷

NOTING the Prosecution submission that the Defence had the opportunity to lead evidence on the number of persons bearing the name Milan Lukić with Ewa Tabeau and Zoran Uščumlić, but did

Milan Lukić’s notice of verification of alleged victim survivors and application for stay of proceedings with exhibits A through H, filed publicly with public and confidential annexes on 9 March 2009.

¹⁴ Second Motion, para. 11.

¹⁵ Response to Second Motion, paras 1, 13, 14.

¹⁶ Second Motion, para. 14.

¹⁷ Response to Second Motion, paras 22-23

not do so, and that it is now “highly misleading” to state that document no. 5 “demonstrates the possibility of mis-identification”;¹⁸

NOTING that the Prosecution further submits that the probative value of document no. 5 is “extraordinarily limited” as the relevant question is whether there was more than one Milan Lukić who resided in Višegrad;¹⁹

CONSIDERING that the first page of document no. 5 states that “this report is an attachment to Decision number: 15/04-30-4-4049/09 dated 9 October 2008”, and that the second page of the B/C/S original (ERN number 1D22-0238) appears to be a copy of that decision;

CONSIDERING that document no. 5, a response by the Agency of Identification, Documents, Records and Information Exchange, Banja Luka, Bosnia and Herzegovina, states that “an examination of the central records revealed that there are 43 persons with the first and last names Milan LUKIĆ, who were born between 1 January 1955 and 31 December 1974”, but does not give further information, such as the places of residence of those persons;

CONSIDERING that while the *prima facie* probative value of the document is low, the document is not without relevance, document no. 5 is admissible pursuant to Rule 89 (C), provided that a complete translation into a working language of the Tribunal is submitted;

RECALLING that the Defence previously requested admission into evidence of document no. 7, which is the military booklet of Milan Lukić, and that on 9 April 2009 the Trial Chamber dismissed the request without prejudice to the Defence filing a translation of the booklet;²⁰

NOTING the Prosecution submission that the English translation of document no. 7 is incomplete and that document no. 7 is not reliable, as military booklets may only be authenticated by the persons to whom they belong and the authorities of Republika Srpska are “not in a position to authenticate the booklet”;²¹

NOTING that the Prosecution further submits that “the format and layout of the purported original” of document no. 7 is different from document no. 8, the military booklet of Miodrag Mitrašinović,

¹⁸ Response to Second Motion, paras 27-28.

¹⁹ Response to Second Motion, para. 24.

²⁰ Decision on Milan Lukić’s motion for the admission of documents from the bar table, filed publicly on 9 April 2009, p. 9.

²¹ Response to Third Motion, paras 16-18.

although it is alleged that Miodrag Mitrašinović was in the same brigade as Milan Lukić, and that the Defence provides no explanation for the discrepancies;²²

CONSIDERING that the English translation of document no. 7 appears to be incomplete, as pages 4-11, 14-15 of the booklet have not been translated;

CONSIDERING that the military booklet of Milan Lukić is relevant, has probative value, and that, in the view of the Trial Chamber, it bears sufficient *prima facie* indicia of reliability, irrespective of whether or not and by whom it has been authenticated;

CONSIDERING therefore, that document no. 7 is admissible pursuant to Rule 89 (C), provided that a complete translation into a working language of the Tribunal is submitted;

NOTING the Defence submission that documents no. 8 and no. 9 are “relevant, probative and critical” as they provide information about the membership of the named Defence witnesses in the armed forces during the relevant time period, a matter which was the subject of cross-examination of the witnesses by the Prosecution;²³

NOTING the Prosecution submission that documents no. 8 and no. 9 are not on the Defence Rule 65 *ter* exhibit list and have never been disclosed to the Prosecution, and that the documents are not reliable as military booklets may only be authenticated by the individuals to whom they belong;²⁴

NOTING that the Prosecution further submits that the Defence did not lead that evidence during the testimony of Miodrag Mitrašinović and Goran Đerić, and that admission of the documents at this late stage would deprive the Prosecution of the opportunity to cross-examine the witnesses on the information contained in their military booklets;²⁵

CONSIDERING that while documents no. 8 and no. 9 are relevant and have probative value, they appear to be only single pages of the military booklets of Miodrag Mitrašinović and Goran Đerić and are therefore incomplete;

PURSUANT TO Rule 89(C) of the Rules;

GRANTS the Second Motion **IN PART**;

²² Response to Third Motion, para. 17.

²³ Third Motion, paras 4-6, 13-15.

²⁴ Response to Third Motion, paras 1, 4, 13, 15, 16, 19.

²⁵ Response to Third Motion, paras 13, 14.

ORDERS that the following documents be admitted into evidence:

Name of document	ERN number of BCS original	ERN number of English translation
Response of Bosnian Presidency to RFA, ("document no. 2")	1D22-0824-1D22-0828	1D22-0829-1D22-0832
RFA response as to MUP convictions, ("document no. 3");	1D22-0058	1D21-0474-1D21-0475
RFA response as to background of Milan Lukić, ("document no. 4")	1D22-0488	1D22-0489

DISMISSES the Second Motion and the Third Motion in so far as they request the admission into evidence of the following documents, without prejudice to the Defence submitting the complete original documents and a complete translation into a working language of the Tribunal by 8 May 2009:

RFA response as to number of registered Milan Lukićs in Bosnia-Herzegovina (document no. 5)	1D22-0237-1D22-0238	1D22-0516-1D22-0517
Military service booklet of Milan Lukić (document no. 7)	1D22-0505-1D22-0512	1D22-0911-1D22-0912
Military service booklet of Miodrag Mitrašinović (document no. 8)	1D22-0913-1D22-0914	1D22-0915-1D22-0917
Military service booklet of Goran Đerić (document no. 9)	1D22-0918	1D22-0919-1D22-0920

and **DENIES** the Second Motion as moot in relation to documents no. 1 and no. 6.

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



Judge Patrick Robinson
Presiding

Dated this twenty-ninth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]