

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No: IT-05-87-A

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun (Presiding)  
Judge Fausto Pocar  
Judge Mehmet GÜney  
Judge Andréia Vaz  
Judge Theodor Meron

Registrar: Mr. John Hocking

DATE: 7 October 2009

**THE PROSECUTOR**

**V.**

NIKOLA SAINOVIC  
DRAGOLJUB OJDANIC  
NEBOJSA PAVKOVIC  
VLADIMIR LAZAREVIC  
**SRETEN LUKIC**

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**ANNEX D OF THE DEFENSE APPELLANT'S BRIEF**

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**The Office of the Prosecutor:**  
**Mr. Paul Rogers**

**Counsel for Accused Sreten Lukić:**  
Mr. Branko Lukić and Mr. Dragan Ivetić

**Counsel for Co-Accused:**  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Peter Robinson 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

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**a) Tr. 2090 ln. 1-2**

*JUDGE BONOMOY: Perry Mason probably once got somebody to break down and admit to that but let's move on.*

**b) Tr. 21925 ln. 11-13**

*JUDGE BONOMOY: I'd prefer just to hear from the puppet rather than the puppet master as well. One person speaking at a time will be sufficient for our purposes.*

**c) Tr. 27372 ln.1-7**

*JUDGE BONOMOY: Mr. Ivetic, I'm not prepared to sit back any longer and listen to allegations of lack of candour when there have been many instances in this trial when the Lukic briefs have been less than accurate without the allegation being made against you of lack of candour. Do you consider that what you're doing is an appropriate way to be addressing us in regard to matters which do not simply on the face of your assertion justify that claim?*

**d) Tr. 23630 ln. 23 – Tr. 23631 ln. 5**

JUDGE BONOMOY: Sit down. You're just interfering with the cross-examination now. MR.

IVETIC: I don't believe so, Your Honour. I think this is a very important point.

JUDGE BONOMOY: Sit down.

MR. IVETIC: And I want it on the record.

JUDGE BONOMOY: Sit down and deal with it in re-examination. Ms. Carter.

e) **Tr. 22393 ln. 6-7**

*JUDGE BONOMOY: Mr. Lukic, sit down, please. Mr. Mijatovic can answer questions*

f) **Tr. 23666/17 – Tr. 23668 ln. 10**

And that leaves just one other thing that I have noted, Mr. Ivetic, but I just want to be clear at this moment that I'm not misunderstanding anything about your position. You made a motion on the 11th of February objecting to the trial sitting schedule and asking us to amend it, and a decision on that was issued on the 20th of February. And in that decision on the 20th of February we drew attention to a remark that had been made in the motion itself, which depending perhaps on how you interpret it, others might say perhaps not, might have constituted a comment that wasn't exactly appropriate. And we did indicate that you ought to consider whether that comment should be withdrawn or remain. Now, there's been no response from you to that. Do we take it from that that you have made a deliberate decision to take no action?

MR. IVETIC: I know that Branko Lukic and I talked about this, and quite honestly, Your Honours, in every motion that we file we carefully think out everything that we say and that particular passage was meant to highlight the very strong feelings that we had and the strong desire to ensure that these proceedings stay within the bounds of justice. And it was not meant as a -- as a criticism or as a -- as an accusation. Given that regard, we have to stand up for the rights of our accused, and I think the particular section I believe cited to the Statute and the Rules and several principles that apply to at least several national jurisdictions that I am familiar with. So in all fair conscience I believe professionally I cannot withdraw that comment.

JUDGE BONOMOY: And for the avoidance of doubt the comment was: "Surely the trial proceedings themselves are of more substantial value than simply being a mere legal formality to be endured before a judgement is rendered particularly" --

MR. IVETIC: Along with one other section I believe, if I'm -- if I'm remembering correctly, there was a citation to Article 12 in the Celebici trial not being against the -- it's being called up. That is the -- that is -- that is the section and it does cite to Article 12 I believe of the -- in particularly in light of the requirement of the presumption of innocence. [Microphone not activated]

THE INTERPRETER: Microphone, please.

MR. IVETIC: -- as complaint about the Trial Chamber. You know, sometimes things get interpreted differently in the heat of the moment, and if I was taken that way I apologise for that misconstruction or misunderstanding. [Trial Chamber confers]

JUDGE BONAMY: Well, we take note of all that's been said on the various matters raised with us. As indicated last week, we are not in a position to take definite decisions without consulting with Judge Kamenova in the light of her review of the record of this hearing.