



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: 2 June 2008
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

Decision of: 2 June 2008

PROSECUTOR

v.

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

PUBLIC

**SECOND DECISION ON LUKIĆ REQUEST FOR RECONSIDERATION OF
THE TRIAL CHAMBER'S ADMISSION INTO EVIDENCE OF HIS INTERVIEW
WITH THE PROSECUTION (EXHIBIT P948)**

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”) is seized of an “Objection to Translation of Revised Exhibit P948”, filed by the Lukić Defence on 23 May 2008 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Lukić Defence points out four purported mistakes in the translation of his interview in the merged English–BCS transcript and “requests that [it] be denied admission until it has been retranslated or all errors in translation be rectified”.

2. The Prosecution responds that the Lukić Defence appears to be suggesting that its own translations of particular words or phrases be substituted in place of the official translation of the Registry’s Conference and Language Services Section (“CLSS”) and that it be given an unlimited number of opportunities to review an unspecified number of further CLSS translations of this document until it is satisfied with the translation of the interview. The Prosecution also argues that pointing to three or four examples of contested terminology does not warrant further submissions of repeated translations and re-translations of the interview and, if the Lukić Defence had any other particular objections, it should have specifically identified them by this stage of the proceedings.¹

3. The interview of the Accused Sreten Lukić took place on 21, 22, and 23 May 2002. At the beginning of the interview, the Accused was warned that he was under suspicion of committing crimes in Kosovo, for which he might be tried later by the Tribunal.² On 2 October 2003, an indictment against the Accused (Case No. IT-03-70-I), charging him with responsibility for crimes allegedly committed in Kosovo, was confirmed. The Accused was therefore a suspect at the time of his interview with the Prosecution. The audiovisual recording of the interview was disclosed over three years ago. The English transcript of the interview was disclosed almost three years ago. Both were disclosed again to the Accused during the pre-trial phase of the proceedings.³ When tendered as evidence by the Prosecution, the Lukić Defence formally opposed the admission of the interview, but stated no specific objection, in particular no objection based upon the lack of a merged transcript.⁴ The Chamber admitted the interview into evidence on 10 October 2006.⁵ The

¹ Prosecution Response to Sreten Lukić’s Objection to Translation of Revised Exhibit P948, 2 June 2008.

² P948, p. 1.

³ Prosecution’s Submissions Pursuant to Rule 65ter(E) with *Confidential* Annex A and Annexes B and C, 10 May 2006, Annex B, p. 103 (Rule 65 ter number 4.564).

⁴ During the litigation over the admission of the interview into evidence, the Lukić Defence’s opposition to the document consisted of the following general objection: “Exhibits objected to because they contain statements of [sic] potential witnesses that essentially constitute improper testimony under Rule 92 bis”. Sreten Lukić’s Response

combined English–B/C/S transcript was available on 7 February 2008. Finally, there has been *extensive* litigation in this trial over the manner in which interviews of the Accused are to be used evidentially by the Chamber.⁶

4. In its “Decision on Lukić Request for Reconsideration of the Trial Chamber’s Admission into Evidence of his Interview with the Prosecution (Exhibit P948),” issued 22 May 2008, the Chamber denied the Lukić Defence’s motion to remove P948 from the official record of the proceedings. In this Decision, the Chamber remarked that corrections to the interview had been identified and were being attended to. At the hearing on 21 May 2008, the Prosecution informed the Chamber and the parties that it had received the revised version of P948 from CLSS and was in the process of uploading it to eCourt. The Prosecution also emailed the revised version to the Chamber and parties shortly thereafter. The Lukić Defence was given 24 hours to review the revisions and make any submissions it wanted regarding translation issues in relation to the exhibit. No such submissions were received. As a result, on 22 May 2008, in its “Order on Admission into Evidence of Revised Version of Lukić Interview with the Prosecution (Exhibit P948),” the Chamber ordered that the revised version of P948 shall replace the old one and shall be admitted into evidence.

5. There is no suggestion that P948 is not an accurate record of what was said in the BCS and English languages respectively during the interview; rather, the Lukić Defence’s contention is that the live interpretation into English or BCS during the interview was not entirely accurate. As can be readily discerned from the recitation above, the Lukić Defence has had ample opportunity to attend to these matters. Moreover, the examples of purported mistakes in translation and/or interpretation are matters that are best addressed in the final trial brief and closing arguments of the Lukić Defence, which is also at liberty to address in its closing submissions any other issues in relation to the interview that it identifies. Finally, the Chamber will take into account all the circumstances surrounding the interview when it assesses what weight to attribute to it in its final deliberations in the above-captioned proceedings.

in Objection to the “Prosecution’s Second Submission with Annex in Response to 6 June 2006 Order on Prosecution’s Motion to Admit Document Evidence”, 4 August 2006, pp. 11, 29 (Rule 65 *ter* number 4.564).

⁵ Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 52(1)(hh).

⁶ *E.g.*, Decision on Use of Prosecution Interviews of Accused, 20 March 2008.

6. Accordingly, the Trial Chamber, pursuant to Rules 42, 43, 54, and 89 of the Rules of Procedure and Evidence of the Tribunal, hereby DENIES the Motion.

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

Judge Iain Bony
Presiding

Dated this second day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]