

**BEFORE TRIAL CHAMBER I SECTION A**

**Before:**

**Judge Liu Daqun, Presiding  
Judge Maureen Harding Clark  
Judge Fatoumata Diarra**

**Registrar:**

**Mr. Hans Holthuis**

**Order of:**

**18 October 2001**

**PROSECUTOR**

v.

**MLADEN NALETILIC aka "TUTA"  
and  
VINKO MARTINOVIC aka "STELA"**

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**DECISION ON DEFENCE'S MOTION CONCERNING TRANSLATION OF ALL DOCUMENTS**

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**The Office of the Prosecutor:**

**Mr. Kenneth Scott**

**Counsel for the Accused:**

**Mr. Kresimir Krsnik, for Mladen Naletilic  
Mr. Branko Seric, for Vinko Martinovic**

**TRIAL CHAMBER I, SECTION A** ("the 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 ("the Tribunal"):

**BEING SEISED OF** the oral motion on 11 September 2001 by Counsel for Mladen Naletilic for translation into BCS of all items of evidence submitted by the Prosecutor;

**NOTING** the Chamber's oral request on 11 September 2001 to the parties to make written submissions;

**NOTING** the "Defence Opinion Concerning Translation of All Documents" filed by Counsel for Mladen Naletilic on 17 September 2001 ("the Opinion");

**NOTING** the "Prosecutor's Submission Concerning Translation of Non-BCS Documentary Exhibits into BCS" filed on 17 September 2001 ("the Submission");

**CONSIDERING** that, in the Opinion, Counsel for Mladen Naletilic requests translation of all documents, intended to be tendered and subsequently admitted by the Prosecutor, into the language the accused

understands, in order for him to properly prepare and present his defence;

**CONSIDERING** that, in the Opinion, Counsel for Mladen Naletilic submits that the accused has a right to a fair trial pursuant to Article 21 (4) of the Statute of the Tribunal ("the Statute"), and that a fair trial is not guaranteed by the fact that Counsel understands and speaks English;

**CONSIDERING FURTHER** that Counsel for Mladen Naletilic submits that the accused has the right to understand the content of documents, "which are used to prosecute him for serious crimes"; that Counsel refers to the "Decision on Defence Application for Forwarding Documents in the Language of the Accused" (*Prosecutor v. Zejnil Delalic*, IT- 96-21-T, 25 September 1996), ("the Delalic Decision");

**CONSIDERING** that, in the Submission, the Prosecutor argues that the translation of documents, according to Rule 66 (A) of the Rules of Procedure and Evidence ("the Rules"), is limited to the supporting material accompanying the indictment, all prior statements obtained by the Prosecutor from the accused, witness statements and Rule 92 *bis* statements;

**NOTING** that the Prosecutor submits that the Delalic Decision has not been followed as Tribunal practice;

**NOTING FURTHER** that the Prosecutor submits that Counsel for Mladen Naletilic never requested the disclosure of documents pursuant Rule 66 (B) of the Rules and that the Prosecutor, on her own initiative, made available to the Counsel for Mladen Naletilic seventeen binders of potential Prosecution exhibits;

**CONSIDERING** that although Rule 3 (A) of the Rules provides that the working languages of the Tribunal are English and French, the Chamber is aware that the application of this Rule must be consistent with the right of the accused to a fair trial; that Article 21 (4) of the Statute, in relevant parts provides:

**Article 21**  
**Rights of the accused**

1. All persons shall be equal before the International Tribunal.

...

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

...

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

**CONSIDERING** that the Prosecutor has provided Counsel for Mladen Naletilic with a copy in BCS of all material required pursuant to Rule 66 (A) of the Rules and that the Prosecutor was not requested to disclose the seventeen binders referred to above but did so with a view to facilitate the proceedings;

**CONSIDERING** that neither Article 21 of the Statute nor Rule 3 of the Rules explicitly entitle the accused to receive all documents from the Prosecutor in a language he understands;

**CONSIDERING** that the guarantees provided in Article 21 (4) of the Statute do not extend to all documents, but only to evidence, which forms the basis of the determination by the Chamber of the charges against the accused; and that this right is ensured, *inter alia*, by the fact that all evidence admitted at trial is provided in a language the accused understands;

**FOR THE FOREGOING REASONS**

**DECIDES** that, all exhibits which the parties intend to submit for admission shall be available in a language the accused understands, as well as in at least one of the official languages of the Tribunal at the time of it being submitted to the Chamber for admission and that it is the responsibility of the party, intending to submit the document, to ensure that such translations are available;

**STATES** that this decision shall enter into effect on 12 November 2001 and that, in the meantime, both parties shall strive to provide appropriate translations as soon as practicable;

**DECIDES** that from 12 November 2001 onwards, a document, which is not in a language the accused understands as well as at least one of the official languages of the Tribunal, as ordered above, may not be submitted to the Chamber for admission.

**DECIDES** that the documents already submitted to the Chamber for admission which does not exist in a language the accused understands shall be translated as soon as practicable;

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

Dated this eighteenth day of October 2001,  
At The Hague,  
The Netherlands

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Judge Liu Daqun  
Presiding Judge

**[Seal of the Tribunal]**