

HC

**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: 22 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: 22 April 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**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 LIMITS,
WITH INCORPORATED SCHEDULING ORDER**

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 the “Defense request for additional time for final brief and closing argument and notice of non-availability”, filed publicly on 21 April 2009, with the calendar of lead counsel Mr. Jason Alarid for the period of October 2008 to June 2009 attached as a public annex (“Motion”), whereby the Defence of Milan Lukić requests, *inter alia*, the Trial Chamber to order:

- 1) that final trial briefs are to be filed on 11 May 2009;
- 2) that closing arguments are to be held in the week of 18 May 2009; and
- 3) “an equal allotment for closing argument of 180 to 240 minutes for the Defense and the OTP as related to the Milan Lukić counts in the Indictment”;¹

BEING ALSO SEISED of the Defence of Sredoje Lukić oral request of 21 April 2009 (“Request”), whereby the Defence of Sredoje Lukić requests permission to file a final trial brief in excess of the 60,000 words allowed by the “Practice direction on the length of briefs and motions” (“Practice Direction”);²

RECALLING that on 11 March 2009, the Trial Chamber ordered that final trial briefs pursuant to Rule 86(B) of the Rules of Procedure and Evidence (“Rules”) were to be filed by 3 April 2009, that any closing arguments pursuant to Rule 86(A) would be heard on 8 April 2009, and that each party would, unless otherwise determined, be given one hour for presentation of closing arguments;³

RECALLING that on 26 March 2009, the Trial Chamber amended the order of 11 March 2009 such that final trial briefs were to be filed by 15 April 2009 and that any closing arguments were to be heard on 21 April 2009;⁴

RECALLING that on 2 April 2009, the Defence of Milan Lukić filed a motion requesting substantially the same relief as is being requested in the Motion;⁵

¹ Motion, p. 10.

² Hearing, 21 April 2009, T. 7123-7124; Practice direction on the length of briefs and motions, 16 September 2005, IT/184 Rev. 2, para. (C)4.

³ Hearing, 11 March 2009, T. 5329.

⁴ Hearing, 26 March 2009, T. 6380.

⁵ Request for additional time for final brief and closing argument, filed publicly with a confidential annex on 2 April 2009, p. 12, attaching in the annex the calendar of Mr. Jason Alarid, for the period of September 2008 to May 2009.

RECALLING that on 7 April 2009, the Trial Chamber ordered that final trial briefs were to be filed by 22 April 2009 and that any closing arguments were to be heard on 27 April 2009; however, the Trial Chamber did not see any reason at that point in time to vary the time previously allotted to the parties' presentation of closing arguments;⁶

RECALLING that in the order of 7 April 2009, the Trial Chamber noted that several of the arguments of the Defence of Milan Lukić in the motion of 2 April 2009 had been raised in past requests for extension of time, but that it was sensitive to the Defence's situation, particularly in light of the fact that Mr. Alarid was absent;⁷

RECALLING that on 9 April 2009, the Defence of Milan Lukić requested that the Trial Chamber reconsider the order of 7 April 2009 and grant the relief originally sought, or, in the alternative, grant certification to appeal that order ("Reconsideration Motion");⁸

RECALLING that on 14 April 2009, during a scheduled recess in the trial, the Trial Chamber informed the parties via email that it had decided to deny the Reconsideration Motion and that written reasons for the decision were to follow;

NOTING the renewed arguments of the Defence of Milan Lukić, including in relation to the start of the trial and the assignment of lead counsel and co-counsel,⁹ the delayed preparation by the Defence for trial,¹⁰ motion practice in the case,¹¹ the size of the Prosecution team as compared with that of the Defence and attendant argument of inequality of arms,¹² the home practice of Mr. Alarid and his parents health situation,¹³ the shortage of time for preparation of final trial briefs and closing arguments,¹⁴ Mr. Alarid's unavailability from 27 April to 15 May 2009,¹⁵ and, more generally, the fairness of the proceedings;¹⁶

⁶ Hearing, 7 April 2009, T. 6971-6972.

⁷ Hearing, 7 April 2009, T. 6971-6972.

⁸ Milan Lukić's motion for reconsideration or certification to appeal the oral scheduling decision on the Defense request for additional time for final brief and closing argument, filed publicly on 9 April 2009, attaching in a confidential annex the calendar of lead counsel, Mr. Jason Alarid, for the period of April to May 2009.

⁹ Motion, paras 5, 13.

¹⁰ Motion, paras 5-7.

¹¹ Motion, paras 8, 18.

¹² Motion, paras 8-9.

¹³ Motion, paras 11, 16-17, 22-25.

¹⁴ Motion, paras 18-19-20-21.

¹⁵ Motion, para. 26.

¹⁶ Motion, paras 12-15, 18, 21.

CONSIDERING that a Trial Chamber has a discretionary power to reconsider a previous interlocutory decision if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice;¹⁷

CONSIDERING that, while the Trial Chamber's discretion enables it to reconsider any previous decision, it is not persuaded that previous scheduling orders concerning the filing of final trial briefs or closing arguments contain a clear error of reasoning;

CONSIDERING that motion practice has been prolific during the trial, particularly during the month of April 2009 when, until today, about 40 submissions have been filed;

CONSIDERING that, while the Defence of Milan Lukić initially did not manage to present its evidence in a time- and resource-efficient manner, causing interruptions to the proceedings and necessitating the granting by the Trial Chamber of extensions of time on several occasions, presentation of evidence by the Defence of Milan Lukić improved in March and April 2009;

CONSIDERING that more than one counsel is assigned to the parties to ensure both the capacity and ability to handle the fluctuating demands of the trial so as to enable the most efficient use of the resources of the Tribunal, while at the same time ensuring full respect of the rights of the accused;

CONSIDERING, further and in view of the importance of the solemn duties undertaken by counsel who appear before the Tribunal, that commitments of counsel that are not strictly related to counsel's duties may only in exceptional cases be considered relevant to requests to postpone;

CONSIDERING, as a consequence, that the Trial Chamber, being mindful of the demands placed upon Mr. Alarid as a result of the health situation of his parents, is unable to accept the arguments of the Defence of Milan Lukić regarding Mr. Alarid's home practice in support of the request for postponement;

CONSIDERING, however, that the principle of equality of arms between the parties, as an aspect of the right to a fair trial, "obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case";¹⁸

CONSIDERING, therefore, that to ensure equality of arms between the parties in the presentation of their respective case – specifically between, on the one hand, the Prosecution and the Defence of

¹⁷ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, Decision on request of Serbia and Montenegro for review of the Trial Chamber's decision of 6 December 2005, 6 April 2006, para. 25; *Juvenal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 204; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on the Prosecution motion for reconsideration, 23 August 2006, pp 3-4.

¹⁸ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras 44, 48, 50.

Sredoje Lukić whose cases-in-chief concluded in November and December 2008, respectively, and, on the other hand, the Defence of Milan Lukić, whose case-in-chief concluded on 21 April 2009 – it is necessary to reconsider the trial schedule in order to prevent an injustice;

NOTING the arguments of the Defence of Sredoje Lukić in favour of the Request, specifically that “in many cases, the Defence submitted much longer briefs” than allowed by the Practice Direction, that “this is a common criminal law case [...] different than other cases before this Tribunal”;¹⁹

CONSIDERING, in respect of the Request, that a party wishing to exceed the word limits laid down in the Practice Direction “must provide an explanation of the exceptional circumstances that necessitate the oversized filing”;²⁰

CONSIDERING that the Trial Chamber is not persuaded by the arguments of the Defence of Sredoje Lukić that there exist exceptional circumstances which necessitate the filing of final trial briefs in excess of 60,000 words;

CONSIDERING that the amended trial schedule, as set out in this Decision, will allow further time for the preparation of the final trial briefs;

CONSIDERING, also, that it is appropriate and in the interest of good case management to set deadlines for the filing of motions and responses to pending or future motions in order to ensure an orderly closure of the trial;

PURSUANT TO Rules 54 and 86 and paragraphs (C)4 and (C)7 of the Practice Direction;

GRANTS the Motion;

DENIES the Request; and

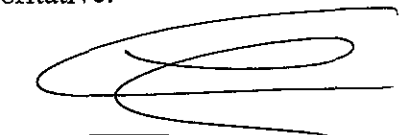
ORDERS as follows:

- Any responses to currently pending motions shall be filed no later than Thursday 23 April 2009;
- Any further motions shall be filed no later than Friday 24 April 2009 and any responses thereto by 12 noon on Monday 27 April 2009;
- Final trial briefs, not exceeding 60,000 words and in full compliance with the Practice Direction, shall be filed by 4 p.m. on Tuesday 12 May 2009;

¹⁹ Hearing, 21 April 2009, T. 7123-7124.

- Closing arguments, if any, will be heard on Tuesday 19 May 2009, at a time and in a courtroom to be determined; and
- Each party shall be allotted one hour for the presentation of closing arguments.

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



Judge Christine Van den Wyngaert

Dated this twenty-second day of April 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

²⁰ Practice Direction, para. (C)7.