



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

**DECISION ON LUKIĆ DEFENCE
(1) FIRST, SECOND, THIRD, AND FOURTH MOTIONS FOR FURTHER
ENLARGEMENT OF TIME IN RELATION TO MOTIONS FOR ADMISSION OF
DOCUMENTS FROM BAR TABLE AND
(2) MOTION FOR LEAVE TO FILE REPLIES**

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 (1) a “Motion of the Defence of the Accused Sreten Lukic to Enlarge Time for Filing of the Bar Table Motion,” filed 5 May 2008 (“**First Motion**”); (2) a partially confidential “Motion to Enlarge Time and to File Supplement to Original Motion of the Defence of the Accused Sreten Lukic Relative to Exhibit 6D614 – Portions Used with Defence Witnesses (With Confidential Annex A),” filed 20 May 2008 (“**Second Motion**”); (3) a “Motion for Enlargement of Time to Provide Translation of Documents,” filed by the Lukić Defence on 29 May 2008 (“**Third Motion**”); (4) a confidential “Motion for Enlargement of Time to File Final Bar Table Motion,” filed 30 May 2008 (“**Fourth Motion**”); and (5) “Motion of the Defence of the Accused Sreten Lukic for Leave to File Reply in Support of Bar Table Motion with Exhibits A and B,” filed 28 May 2008 (“**Motion for Leave to File Replies**”), and hereby renders its decision thereon.

First and Second Motions for Enlargement of Time

1. In the First Motion, the Lukić Defence requests a 48-hour extension of the time limit for it to file a motion for admission of documents from the bar table (“First Bar Table Motion”),¹ based upon the large amount of work that was required therefor. Various technical difficulties are also advanced for the late filing of the First Bar Table Motion.² In the Second Motion, the Lukić Defence, only after having been prompted by the Chamber, seeks a 15-day extension of time in which to comply with the deadline set by the Chamber for certain information regarding exhibit 6D614. The reasons for this request are substantially the same as those for the First Motion.³

2. Despite the large amount of work and various technical difficulties advanced, the Chamber is doubtful whether good cause has been demonstrated for an extension of time. The Lukić Defence has been advised, throughout its case, to prepare motions for the admission of documents from the bar table and not wait until the very end. Even when this advice was not heeded, and a reasonable deadline was set for the First Bar Table Motion, this deadline was not complied with, and a motion to extend was filed on the day of the deadline. Moreover, the Lukić Defence did not comply with the oral order to furnish all the necessary information in respect of 6D614 and had to

¹ Partially confidential Sreten Lukic’s Motion for Admission of Documents from the Bar Table and Motion to Exceed Word Limit for Filing with Confidential Annex A, 7 May 2008.

² First Motion, paras. 1–5, 7.

³ Second Motion, paras. 4–7.

be reminded by the Chamber to furnish this information and reminded to request a further extension of time.

3. Nevertheless, the Chamber considers that it would be in the interests of justice to allow the Lukić Defence to tender certain documents as evidence from the bar table and will therefore entertain the First Bar Table Motion, notwithstanding the unsatisfactory manner in which the Lukić Defence has chosen to litigate this matter.

Third Motion for Enlargement of Time

4. In the Third Motion, the Lukić Defence requests “at least” 14 more days in which to tender as evidence translations for documents in its defence case. The Third Motion fails to set forth how many documents are currently outstanding and how long it will take to translate them.

5. The Prosecution opposes the Third Motion, pointing out that (a) no clear indication of the number of documents or pages is given, (b) no reason is given for why the documents were not submitted prior to this point in the proceedings, and (c) the resulting delay to the proceedings would be unfair.⁴

6. The Chamber notes that a document, in general, must be translated into one of the two working languages of the Tribunal in order for the Chamber to assess its admissibility.⁵ The Lukić Defence was under an obligation to have disclosed to the parties all the exhibits it would seek to tender in its case since 15 June 2007.⁶ This included all translations of exhibits. This order was not complied with by the Lukić Defence, and the Chamber began efforts to facilitate the translation process by mediating between the Lukić Defence and the relevant sections of the Registry.

7. Five months after the lapse of the disclosure deadline, on 14 November 2007, in its “Order on Timing of Motions Prior to Winter Recess and Presentation of Lukić Defence Case,” the Chamber noted its concern that it appeared as though the Lukić Defence had still not submitted for translation many documents that it intended to tender as evidence during its case. Also in this Order, the Chamber noted that it may consider denying admission into evidence of any documents tendered by the Lukić Defence during its case that had not been translated, where the lack of

⁴ Prosecution Response to Sreten Lukić’s Motion for Enlargement of Time to Provide Translations, 2 June 2008.

⁵ Order on Procedure and Evidence, 11 July 2006, para. 8. The order was modified by the “Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence,” issued 16 August 2007.

⁶ Order on Close of Prosecution Case-in-Chief, Rule 98 *bis* Proceedings, and Defence Rule 65 *ter* Filings, 5 March 2007, para. 8(d)(ii) (“Each Accused shall, no later than 15 June 2007, ... file a list of exhibits he intends to offer in his case. The Accused shall serve upon the Prosecution copies of the exhibits so listed on the same date (translated into English, where necessary). Such exhibits may be uploaded to the eCourt system.”).

translation had been the result of a failure to submit documents for translation in an appropriate manner. Finally, the Chamber ordered the Lukić Defence to submit all of the documents upon its Rule 65 *ter* exhibit list, which were still untranslated, to the Conference and Language Services Section (“CLSS”) by Friday, 30 November 2007—essentially ordering the Lukić Defence to comply with a previous order that it had breached.

8. Throughout the defence case, the Chamber has adopted the practice of marking untranslated documents for identification, rather than simply rejecting them, and then allowing for translations to follow. This practice is, in actuality, an extension of the 15 June 2007 deadline, which is done on a case-by-case basis, in the interests of a fair and expeditious trial. Hundreds of documents have been admitted in this fashion. Based upon all the circumstances, the Chamber thought it appropriate to set a final date by which all outstanding translations must be submitted, and that date was set as 30 May 2008.⁷

9. It should be mentioned that CLSS has routinely delivered more than its maximum estimated number of pages to the Lukić Defence, and has assembled a special team in the last two weeks to translate even more documents. Moreover, the Office of Legal Aid and Detention has allocated additional funds to the Lukić Defence in order for it to hire its own, additional translator. Every effort has been made to assist the Lukić Defence in translating the documents it seeks to tender as evidence in its case. Based upon the foregoing, the Lukić Defence has already been granted an enlargement of nearly a year, and the Chamber therefore is of the view that no enlargement of time is warranted in the present circumstances.

10. In an email to CLSS attached to the Third Motion, the Lukić Defence states that “when we tried to assist the translation process by doing in house translations, the same were required to be sent to CLSS anyway, thereby increasing the work for all involved and making for an increase in the time required.” This seems to be a reference to the six witness statements tendered via Rule 92 *ter* whereby the Lukić Defence altered—incorrectly by inserting mistaken translations or portions with no corresponding original—official CLSS translations, left the official CLSS footer in the document, and then attempted to pass them off as official CLSS translations. This was only discovered through the diligence of the Prosecution, which brought it to the attention of the Chamber. Contrary to the comments of the Lukić Defence, the Chamber allows translations to be done “in-house” and does not require official CLSS translations for all documents; however, in the foregoing situation, the Chamber thought the most appropriate course of action was for the altered,

⁷ T. 26560–26561 (21 May 2008).

incorrect translations to be re-submitted to CLSS for translation.⁸ The Chamber ultimately admitted the documents into evidence.⁹ The above situation cannot therefore be cited as a justification for additional time.

11. On a final note, the Lukić Defence's argument that the Lazarević Defence received more time after the close of its case to submit outstanding translations attempts to turn the situation on its head: the Lukić Defence, by presenting its case last, was provided the maximum amount of time to obtain translations of its documents.

Fourth Motion for Enlargement of Time

12. In the Fourth Motion, the Lukić Defence requests a seven-day enlargement of the time in which it may tender from the bar table four documents from a Rule 70 provider. The Prosecution has indicated that it does not intend to respond to the Fourth Motion.

13. The Chamber notes that no adequate reason has been given to warrant a further extension of the time, bearing in mind the length of these proceedings to date. Nevertheless, on 2 June 2008, the Lukić Defence withdrew the Fourth Motion and lodged its second motion for the admission of these four documents from the bar table ("Second Bar Table Motion"), which have recently been received from a Rule 70 provider.¹⁰ The Chamber therefore will confirm the withdrawal of the Fourth Motion. The Chamber will decide the Second Bar Table Motion in due course, along with the First Bar Table Motion for admission of documents from the bar table, which is currently pending.

Motion for Leave to File Replies

14. On 28 May 2008, the Lukić Defence filed the Motion for Leave to File Replies, following the Prosecution and Pavković Responses to the First Bar Table Motion.¹¹ The Responses were filed on 20 and 21 May 2008, and therefore any motions for leave to file a reply were due on 26 and 27 May 2008. The Motion for Leave to File Replies is therefore out of time, and no motion to enlarge the time has been lodged. Moreover, the Chamber's "Order on Procedure and Evidence," issued 11 July 2006, directs that the "request for leave to file a reply should not include the

⁸ Decision on Lukić Request for Reconsideration of the Trial Chamber's Admission into Evidence of his Interview with the Prosecution (Exhibit P948), 22 May 2008.

⁹ Hearing, 21 May 2008.

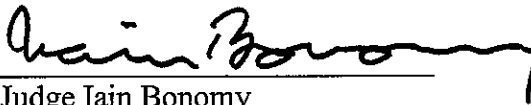
¹⁰ Partially confidential Sreten Lukic's Second Motion for Admission of Exhibits from the Bar Table (With Confidential Annex "A"), 2 June 2008.

¹¹ Motion of the Defence of the Accused Sreten Lukic for Leave to File Reply in Support of Bar Table Motion with Exhibits A and B, 28 May 2008.

substance of the reply, which should await the decision of the Chamber upon whether to grant such leave.”¹² The Lukić Defence has not complied with this direction. For the foregoing reasons, the Chamber will deny leave for the replies to be filed.

15. Accordingly, the Trial Chamber, pursuant to Rules 54, 126 *bis*, and 127 of the Rules of Procedure and Evidence of the Tribunal, hereby GRANTS the First and Second Motions; DENIES the Third Motion; CONFIRMS withdrawal of the Fourth Motion; and DENIES the Motion for Leave to File Replies.

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]

¹² Order on Procedure and Evidence, 11 July 2006, para. 11 (as modified by Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence, 16 August 2006).