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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: 10 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: **10 June 2008**

PROSECUTOR

v.

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

PUBLIC

DECISION ON LUKIĆ DEFENCE MOTION FOR RECONSIDERATION OF DENIAL OF EXTENSION OF TIME AND LEAVE TO FILE REPLIES

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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 seised of "Sreten Lukic's Motion for Reconsideration," filed 6 June 2008 ("Motion"), and hereby renders its decision thereon.

1. In the Motion, the Lukić Defence requests the Trial Chamber to reconsider its "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," issued 2 June 2008 ("Decision"). In this Decision, the Chamber denied the Lukić Defence request for "at least" 14 more days in which to tender as evidence translations for documents in its defence case[1] and request for leave to file two replies.[2]

2. The legal standard for reconsideration is as follows: "a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.'"[3] The two matters will be discussed below in turn.

Denial of extension of time to submit additional translations

3. The Lukić Defence argues that the Chamber has relied upon erroneous information in the Decision, specifically in paragraph 7 thereof. Paragraphs 6–9 of the Decision state as follows:

> 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.[4] 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*.[5] 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.
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> 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

[1] Motion for Enlargement of Time to Provide Translation of Documents, 29 May 2008.

[2] 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.

[3] *See* Decision on Prosecution Motion for Reconsideration of Oral Decision Dated 24 April 2007 Regarding Evidence of Zoran Lilić, 27 April 2007, para. 4.

[4] 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.

[5] 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.").

> 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 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.
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> 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.[6]
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> 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.
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> [Emphasis added.]

4. The Chamber has reviewed its decision and finds everything therein to be accurate. The Lukić Defence does not seem to comprehend that it was under an obligation to submit all the documents it sought to tender during its case, *as well as all the translations of those documents*, on 15 June 2007. If it had to submit all the translations by 15 June 2007, then *a fortiori* it would have been necessary for the Lukić Defence to have had them translated prior to that date. The Lukić Defence's reference to 30 November 2007 is therefore beside the point.

5. The Lukić Defence states that it "had been meeting with the CLSS staff before the Court's order to try to work out a solution to try and ensure that documents of greater importance were translated" and that the Chamber's 14 November Order scuttled these efforts. This is simply not true. First, the Chamber's order only dealt with documents that had not been translated yet, *i.e.*, documents for which the Lukić Defence was already in breach. Instead of simply rejecting all of them as potential evidence, the Chamber was still willing to entertain their admission, once they were translated. Second, the Chamber was endeavouring to break an apparent "stalemate" between the Lukić Defence and CLSS over the fact that the Lukić Defence had submitted an unrealistic

[6] T. 26560–26561 (21 May 2008).

number of documents to CLSS, for which CLSS was seeking a prioritisation so that the Lukić Defence's most important documents would be translated. After the Chamber's intercession, a solution was fashioned, and CLSS proceeded to produce translations at an accelerated rate. The Chamber also held a meeting with the Lukić Defence and OLAD over the provision of additional resources so that the Lukić Defence could hire a translator to handle additional documents that were rejected by CLSS due to capacity constraints.

6. The fact that the other co-Accused were given priority over the Lukić Defence *at a specific time period in the case* is a normal, accepted practice followed in all other multi-accused trials at the Tribunal and makes it possible for all the defence teams to be treated equally. This system enables an accused whose case is presented earlier than another accused to have his or her documents ready for tender during his or her defence case. Moreover, the "Registry Policy Governing Translation Services Provided by the Registry," issued 16 November 2006, clearly states that the parties "are urged to allow reasonable time for [the Office of the Document Management] and CLSS to do their work in the most efficient and effective management possible." As stated on previous occasions, the Lukić Defence's position as the last to present its case has afforded it the maximum time to ready its case, not the opposite.

7. The Lukić Defence has therefore given no specific information to substantiate its request for reconsideration. The Lukić Defence has been provided with more time and resources than any other Accused. The intervention of the Chamber and the efforts of CLSS and OLAD have enabled the Lukić Defence to have as many documents translated as it did, despite the unsatisfactory manner in which the Lukić Defence has pursued these matters. It is remarkable that the Lukić Defence would seek to characterise the labours of the Chamber and the Registry as forces of injustice set against it.

8. Moreover, to place this matter into better perspective, the Lukić Defence has already been granted three extensions of time in this matter—a 48-hour extension for its bar table motion, a 15-day extension for information pertaining to exhibit 6D614, and a 25-day extension for additional Rule 70 documents, the last of which was granted by the Chamber *ex proprio motu*. The Chamber is thus of the view that there has been no undue prejudice to the Lukić Defence in connection with these matters.

Denial of leave to file replies

9. The Lukić Defence claims that its motion for leave to file replies was filed in a timeous manner, and that the Chamber's practice of disallowing a substantive reply prior to a decision on whether to grant leave to file the reply is "a harsh remedy" and a "drastic measure".

10. The Chamber notes the following Rules:

> **Rule 126**
> **General Provisions**
>
> (A) Where the time prescribed by or under these Rules for the doing of any act is to run as from the occurrence of an event, that time shall begin to run *as from the date of the event.*
>
> (B) Should the last day of a time prescribed by a Rule or directed by a Chamber fall upon a day when the Registry of the Tribunal does not accept documents for filing it shall be considered as falling on the first day thereafter when the Registry does accept documents for filing.
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> [Emphasis added.]

> **Rule 126 *bis***
> **Time for Filing Responses to Motions**
>
> Unless otherwise ordered by a Chamber either generally or in the particular case, a response, if any, to a motion filed by a party shall be filed within fourteen days of the filing of the motion. A reply to the response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber.

11. Moreover, the "Order on Procedure and Evidence," issued on 11 July 2006, states, in relevant part, as follows:

> Replies to responses will not be accepted by the Chamber unless on good cause shown. A party wishing to make such a reply must seek the leave of the Chamber to do so, specifying why the circumstances which amount to good cause. Should a party seek leave from the Chamber to file a reply, it should do so within three days from the expiration of the fourteen day deadline for the filing of responses. *The request for leave to file a reply should not include the substance of the reply, which should await the decision of the Chamber upon whether to grant such leave.*[7]

12. 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.[8] 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

[7] 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) (emphasis added).

[8] 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.

May 2008. The practice in this trial for almost two years has been to interpret Rule 126 as including the day of filing in the time for responses and replies. The Chamber has reminded the Lukić Defence of this practice before.[9] Therefore, the deadlines outlined above are accurate. The Lukić Defence is therefore incorrect when it states that the Chamber shortened the deadline to six days. It was always open to the Lukić Defence to seek additional time for the request for leave to file the replies.

13. Moreover, even if the motion had been filed in a timely manner, the Chamber still would have denied it for the second reason stated in the Decision, namely that the substantive replies were included with the request for leave to file the replies, contrary to the long-standing "Order on Procedure and Evidence". Contrary to the Lukić Defence claims, the Chamber routinely denies requests for leave to file a reply that have not complied with this procedural guideline:

a. Decision on Joint Ojdanić and Lukić Request to Call Živojin Aleksić and Dušan Mladenovski, 3 April 2008, para. 9 (denying leave to Ojdanić and Lukić Defences to file reply);

b. Decision on Milutinović Motion for Temporary Provisional Release, 7 December 2007, para. 4 (denying leave to Milutinović Defence to file reply);

c. Decision on Ojdanić Motion for Video-Conference Link for Jovan Milanović, 24 August 2007, para. 8 (denying leave to Ojdanić Defence to file reply);

d. Decision on Ojdanić Motion for Variation of Time Limit and for Hearing Pursuant to Rule 54 *bis*, 5 April 2007, para. 6 (disallowing replies); and

e. Decision on Evidence Tendered Through Witness K82, 3 October 2006 (noting that motion for leave to file reply did not comport with the guidelines and was rendered moot).

The Lukić Defence's citation of an isolated instance where the Chamber *specifically requested* a party to file a reply has nothing to do with the instant matter.

[9] Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Witness List to Add Shaun Byrnes, 11 December 2006, para. 3 (holding that fourteen-day response time includes day of filing, as per Rules 126(A) and 126 *bis*).

14. Accordingly, the Trial Chamber, pursuant to Rules 54, 126, and 126 *bis* of the Rules of Procedure and Evidence of the Tribunal, considers that the Lukić Defence has not demonstrated that this is an exceptional case where there has been a clear error of reasoning or that it is necessary to reconsider the Decision in order to prevent injustice, and hereby DENIES the Motion.

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

Judge Iain Bonomy
Presiding

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

[Seal of the Tribunal]