



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-A
Date: 4 August 2011
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mehmet Güney, Pre-Appeal Judge
Registrar: Mr. John Hocking
Order of: 4 August 2011

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**FURTHER ORDER ON DISCLOSURE OF PORTIONS OF
PRIVATE/CLOSED SESSION TRANSCRIPTS**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Milan Lukić:

Mr. Tomislav Višnjić
Mr. Dragan Ivetić

Counsel for Sredoje Lukić:

Mr. Đuro J. Čepić
Mr. Jens Dieckmann

I, MEHMET GÜNEY, Judge of the Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in the present case;

RECALLING that on 20 July 2009, Trial Chamber III (“Trial Chamber”) rendered its judgement in the present case,¹ and that three appeals against the Trial Judgement are currently under consideration by the Appeals Chamber;²

NOTING that the Trial Chamber ordered on 22 January 2009³ and on 10 July 2009⁴ that certain private/closed session sections of trial transcripts be made public;⁵ and that the 22 January 2009 Order and the 10 July 2009 Decision contradict one another, in part, with respect to which private/closed session sections of transcripts dated 27, 28, 29 August 2008 and 1, 3, 5 September 2008, (“Affected Transcripts”) should be made public;⁶

NOTING that in the “Order on Disclosure of Portions of Private/Closed Session Transcripts”, filed on 16 June 2011 (“Transcripts Order”), I informed the parties that certain parts of private/closed session transcripts contained in the Affected Transcripts may be disclosed as outlined in the Annex to the Transcripts Order, and that I ordered the parties to inform the Appeals Chamber by 15 July 2011 should they consider that any portion of the Affected Transcripts warrant confidential status;⁷

NOTING that neither Milan Lukić nor Sredoje Lukić responded to the Transcripts Order;

CONSIDERING that the Prosecution responded to the Transcripts Order, (i) agreeing that all portions of the Affected Transcripts as listed in the Annex to the Transcripts Order should be public;⁸ (ii) requesting that further portions of the Affected Transcripts in addition to those

¹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Trial Judgement, 20 July 2009 (“Trial Judgement”).

² Prosecution Notice of Appeal, 19 August 2009; Milan Lukic’s [sic] Amended Notice of Appeal, 26 November 2009 (filed by Counsel for Milan Lukić as Annex 1 to Milan Lukic’s [sic] Motion to Vary His Notice of Appeal, 26 November 2009). *See also* Decision on Milan Lukić’s Motion to Amend his Notice of Appeal, 16 December 2009; Notice of Appeal on Behalf of Sredoje Lukić, 19 August 2009.

³ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Disclose Portions of the Transcript, 22 January 2009 (“22 January 2009 Order”).

⁴ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution’s Motion to Change Private/Closed Session Testimony and 92 *ter* Statements Admitted Under Seal to Public Status, 10 July 2009 (“10 July 2009 Decision”).

⁵ 22 January 2009 Order, p. 3; 10 July 2009 Decision, p. 4.

⁶ The transcripts contain the testimonies of four protected witnesses: VG115 (27, 28 and 29 August 2008); VG038 (1 September 2008); VG013 (3 September 2008); VG018 (5 September 2008)..

⁷ Transcripts Order, p. 2.

⁸ Prosecution’s Submission on the Pre-Appeal Judge’s Order on Disclosure of Portions of Private/Closed Session Transcripts (confidential and urgent), 1 July 2011 (“Prosecution Submission”), paras 1, 18.

mentioned in the Annex should be made public (“First Prosecution Request”);⁹ and (iii) requesting that the Appeals Chamber order that inadequately redacted versions of the Affected Transcripts which were already publicly available on the Tribunal website through the Tribunal Court Records database (“ICR Database”) be removed immediately (“Second Prosecution Request”);¹⁰

CONSIDERING that on 1 July 2011, the Registry informed a Senior Legal Officer in the Appeals Chamber that as a result of the Prosecution’s notification that the Affected Transcripts were publicly accessible, they were removed from the ICR Database on the same day and that therefore the Second Prosecution Request is moot;

CONSIDERING that some portions of the Affected Transcripts, detailed in the Prosecution Submission but not mentioned in the Annex to the Transcripts Order, do not reveal confidential information and therefore can be public (“further public portions of the Affected Transcripts”),¹¹ while other portions shall remain confidential as they may allow for the identification of Witness VG115;¹²

RECALLING that by virtue of Rules 78 and 107 of the Rules of Procedure and Evidence (“Rules”), all proceedings before the Tribunal, other than deliberations, shall be held in public, unless otherwise provided;¹³

CONSIDERING that for the foregoing reasons, portions of private/closed session testimonies contained in the Affected Transcripts can be disclosed as outlined in the Annex to the present order, without revealing the identity of protected witnesses;

PURSUANT TO RULES 54, 78 AND 107 OF THE RULES,

GRANT, in part, the First Prosecution Request;

DISMISS the Second Prosecution Request as moot;

SET ASIDE the 22 January 2009 Order and the 20 July 2009 Decision to the extent that they refer to the Affected Transcripts¹⁴ while in all other respects, the 22 January 2009 Order and the 20 July 2009 Decision will remain effective;¹⁵

⁹ Prosecution Submission, paras 3, 19.

¹⁰ Prosecution Submission, paras 2, 20.

¹¹ See Prosecution Submission, paras 7-8, 11, 13, 16.

¹² See Prosecution Submission, paras 13, 16.

¹³ See *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 7.

¹⁴ Transcripts Order, p. 2.

INSTRUCT the Registry to implement, as soon as practicable, the changes set out in the Annex to this order, and, subject to post-session redactions,¹⁶ to make the open session portions of the Affected Transcripts available to the public; and

DENY the remainder of the First Prosecution Request.

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


Judge Mehmet Güney,
Pre-Appeal Judge

Dated this fourth day of August 2011
At The Hague,
The Netherlands

[Seal of the Tribunal]

¹⁵ *Ibid.*

¹⁶ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 664 (lines 14-17); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 678 (line 3)-679 (line 2); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 684 (lines 15-19); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 686 (lines 14-18); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 687 (lines 14-21); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 27 August 2008, relating to T. 689 (lines 3-14). *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Order to Redact the Public Transcript and the Public Broadcast of a Hearing, filed confidentially on 5 September 2008, relating to T. 828 (lines 12-17).

Annex

In the transcript of 5 September 2008, the following shall be changed from confidential to public status:

- the section from page 1252, line 3 (starting with “And of course”), to page 1252, line 25 (ending with “for a”);
- the section from page 1314, line 1 (starting with “So then”), to page 1314, line 2 (ending with “leave.”);
- the section from page 1314, line 3 (starting with “so I”), to page 1320, line 8 (ending with “number 84...”);

In the transcript of 3 September 2008, the following shall be changed from confidential to public status:

- the section from page 1046, line 11 (starting with “I’m going”), to page 1048, line 21 (ending with “objection”);
- the section from page 1073, line 1 (starting with “confirmed its”), to page 1076, line 7 (ending with “alert to”);

In the transcript of 1 September 2008, the following shall be changed from confidential to public status:

- the section from page 893, line 1 (starting with “JUDGE ROBINSON: Very well.” to page 894, line 25 (ending with “police force.”);
- the section from page 943, line 24 (starting with “To go”), to page 944, line 25 (ending with “Hotel.”);
- the section from page 945, line 4 (starting with “Could you”), to page 948, line 1 (ending with “session”);
- the section from page 951, line 7 (starting with “Witness VG-38”), to page 952, line 22 (ending with “Yes.”);
- the section from page 953, line 21 (starting with “Yes, Mr. Ossogo”), to page 956, line 20 (ending with “Your Honour.”);

In the transcript of Friday 29 August 2008; the following shall be changed from confidential to public status:

- the section from page 780, line 1 (starting with "Q. Yes,"), to page 782, line 14 (ending with "house.");
- the section from page 782, line 14 (starting with "I was on"), to page 783, line 1 (ending with "group");
- the section from page 783, line 7 (starting with "Q. Unlike"), to page 783, line 9 (ending with "that");
- the section from page 783, line 10 (starting with "Nonetheless"), to page 784, line 12 (ending with "Yes, I can");
- the section from page 784, line 21 (starting with "Q. Madam"), to page 784, line 25 (ending with "survivors.");

In the transcript of Thursday 28 August 2008, the following shall be changed from confidential to public status:

- the section from page 694, line 1 (starting with "where you"), to page 695, line 6 (ending with "visit you,");
- the section from page 695, line 9 (starting with "Q. What"), to page 695, line 25 (ending with "much.");
- the section from page 696, line 1 (starting with "Witness VG-115"), to page 696, line 3 (ending with "group");
- the section from page 696, line 3 (starting with "and pushed"), to page 696, line 9 (ending with "Lukic");
- the section from page 696, line 10 (starting with "MR. ALARID:"), to page 696, line 11 (ending with "Lukic");
- the section from page 696, line 13 (starting with "What he did"), to page 696, line 14 (ending with "Lukic");
- the section from page 696, line 16 (starting with "THE WITNESS:"), to page 696, line

- 16 (ending with "Lukic");
- the section from page 696, line 17 (starting with "often"), to page 696, line 18 (ending with "making plans.");
 - the section from page 696, line 18 (starting with "I saw"), to page 696, line 19 (ending with "people");
 - the section from page 696, line 19 (starting with "and they"), to page 696, line 20 (ending with "take away");
 - the section from page 696, line 20 (starting with "There were"), to page 696, line 21 (ending with "alike.");
 - the section from page 696, line 22 (starting with "and I was"), to page 696, line 24 (ending with "taken away");
 - the section from page 697, line 1 (starting with "But Milan"), to page 697, line 2 (ending with "three");
 - the section from page 697, line 2 (starting with "and take"), to page 697, line 2 (ending with "away");
 - the section from page 697, line 5 (starting with "JUDGE ROBINSON:"), to page 697, line 10 (ending with "but somebody");
 - the section from page 697, line 11 (starting with "and shouted"), to page 697, line 15 (ending with "to be saved,");
 - the section from page 697, line 17 (starting with "When they"), to page 697, line 22 (ending with "at any time.");
 - the section from page 698, line 5 (starting with "I soon"); to page 698, line 24 (ending with "Aljic");
 - the section from page 699, line 1 (starting with "Q. Could you"), to page 699, line 4 (ending with "Subasics,");
 - the section from page 699, line 5 (starting with "Pasan and Aisa Subasic"), to page 699, line 5 (ending with "were");

- the section from page 699, line 5 (starting with “nearby”), to page 699, line 5 (ending with “Bikavac”);
- the section from page 699, line 6 (starting with “Those two - -”), to page 699, line 11 (ending with “living in”);
- the section from page 699, line 12 (starting with “I went”), to page 699, line 24 (ending with “Aljic”);
- the section from page 699, line 25 (starting with “And then”), to page 700, line 1 (ending with “plum trees”);
- the section from page 700, line 13 (starting with “Now, Mr. Ossogo”), to page 701, line 10 (ending with “Aljic?”);
- the section from page 701, line 12 (starting with “from where”), to page 701, line 21 (ending with “very well”);
- the section from page 701, line 21 (starting with “Among them”), to page 702, line 3 (ending with “Simsic”);
- the section from page 702, line 3 (starting with “an”), to page 702, line 6 (ending with “there.”);
- the section from page 702, line 7 (starting with “he was a student”), to page 702, line 19 (ending with “there.”);
- the section from page 702, line 21 (starting with “I don’t know”), to page 703, line 1 (ending with “very well”);
- the section from page 703, line 1 (starting with “who”), to page 703, line 13 (ending with “please.”);
- the section from page 703, line 15 (starting with “It was”), to page 703, line 24 (ending with “Djulka Turjacinin”);
- the section from page 703, line 24 (starting with “and she”), to page 705, line 7 (ending with “very well”);
- the section from page 705, line 8 (starting with “So of”) to page 706, line 15 (ending

with “this dramatic event occurred.”);

- the section from page 712, line 9 (starting with “Q. Witness VG-115”) to page 713, line 21 (ending with “a pretty girl.”);
- the section from page 716, line 3 (starting with “MR. OSSOGO: [Interpretation]”) to page 719, line 4 (ending with “this woman?”);
- the section from page 719, line 7 (starting with “He needed”) to page 719, line 23 (ending with “accountancy service.”);
- the section from page 719, line 23 (starting with “Amela Gacka”) to page 720, line 6 (ending with “brother”);
- the section from page 720, line 8 (starting with “Q. You say”) to page 722, line 13 (ending with “person.”);
- the section from page 720, line 14 (starting with “I knew”) to page 720, line 20 (ending with “Republika Srpska.”);
- the section from page 722, line 24 (starting with “Q. And --”) to page 723, line 8 (ending with “The Avenger.”);
- the section from page 723, line 10 (starting with “Q. I haven’t said”) to page 723, line 16 (ending with “justice.”);
- the section from page 724, line 12 (starting with “A. I say to you”) to page 724, line 15 (ending with “now.”);
- the section from page 724, line 16 (starting with “I fear them”) to page 724, line 25 (ending with “Lukic.”);
- the section from page 725, line 1 (starting with “Visegrad”) to page 725, line 12 (ending with “hate you.”);
- the section from page 725, line 13 (starting with “that you”) to page 725, line 19 (ending with “crimes.”);
- the section from page 725, line 19 (starting with “is not”) to page 725, line 24 (ending with “leave town.”);

- the section from page 726, line 1 (starting with “Q: Ma’am”) to page 727, line 10 (ending with “Visegrad.”);
- the section from page 727, line 14 (starting with “Q. Now,”) to page 728, line 14 (ending with “returning”);
- the section from page 728, line 14 (starting with “and”) to page 729, line 2 (ending with “returning”);
- the section from page 729, line 3 (starting with “via the”) to page 730, line 7 (ending with “back”);
- the section from page 730, lines 7/8 (starting with “and on”) to page 731, line 2 (ending with “centre”);
- the section from page 731, line 2 (starting with “so I”) to page 731, line 4 (ending with “people.”);
- the section from page 731, line 7 (starting with “Don’t take”) to page 731, line 10 (ending with “care.”);
- the section from page 731, line 20 (starting with “And the”) to page 731, line 22 (ending with “their job”);
- the section from page 731, line 22 (starting with “I couldn’t”) to page 732, line 5 (ending with “12, please.”);
- the section from page 732, line 8 (starting with “JUDGE ROBINSON: Thank you”) to page 733, line 14 (ending with “he’d been a local”);
- the section from page 733, line 14 (starting with “and he was”) to page 739, line 3 (ending with “man”);
- the section from page 739, line 6 (starting with “Similarly, as”) to page 739, line 24 (ending with “people”);
- the section from page 739, line 25 (starting with “A. Yes,”) to page 740, line 2 (ending with “man.”);
- the section from page 744, line 12 (starting with “Mr. Alarid”) to page 745, line 21

(ending with "time.");

- the section from page 760, line 23 (starting with "Q. Where") to page 762, line 22 (ending with "Very well, yes.");

In the transcript of Wednesday 27 August 2008, the following shall be changed from confidential to public status:

- the section from page 671, line 14 (starting with "Q. I'd like") to page 672, line 20 (ending with "town.");
- the section from page 673, line 1 (starting with "Q. We will") to page 673, line 4 (ending with "you answered");
- the section from page 673, line 7 (starting with "He was shocked") to page 673, line 9 (ending with "him.");
- the section from page 673, line 10 (starting with "That's it.") to page 674, line 17 (ending with "yes.");
- the section from page 675, line 3 (starting with "or what") to page 675, line 7 (ending with "first floor;");
- the section from page 675, line 9 (starting with "So they") to page 675, line 13 (ending with "been given.");
- the section from page 680, line 1 (starting with "Nearby,") to page 680, line 9 (ending with "Veletovac");
- the section from page 680, line 11 (starting with "Q. Witness VG-115") to page 680, to page 680, line 16 (ending with "very much."); and
- the section from page 680, line 17 (starting with "to the best") to page 682, line 4 (ending with "them away.").