

IT-98-32/1-T  
D5577 - D5574  
05 November 2008

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**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: 5 November 2008

Original: English

**IN TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Christine Van den Wyngaert  
Judge Pedro David

**Registrar:** Mr. Hans Holthuis

**Decision of:** 5 November 2008

**PROSECUTOR**

*v.*

**MILAN LUKIĆ  
SREDOJE LUKIĆ**

***PUBLIC***

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**DECISION ON DEFENCE MOTION FOR  
RECONSIDERATION, OR, CERTIFICATION TO  
APPEAL ORAL RULING ON SCHEDULING  
RULE 65 *TER* SUBMISSIONS AND DEFENCE CASE**

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**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 “Milan Lukić’s motion for reconsideration or certification to appeal the oral scheduling decision” filed confidentially by the Defence for Milan Lukić on 16 October 2008 (“Motion”), whereby the Milan Lukić Defence requests reconsideration, or in the alternative, leave to appeal the Trial Chamber’s oral ruling of 9 October 2008 granting a delay for the filing of the Defence Rule 65*ter* lists until 13 November 2008, allowing the Defence case to start one week later than originally scheduled, and ordering the Defence of Sredoje Lukić to present its case, if any, before the Milan Lukić Defence case;<sup>1</sup>

**NOTING** that the Milan Lukić Defence requests that the Chamber either: (1) grant a postponement of another two months for the filing of the Rule 65 *ter* Defence submissions and the start of the Defence case<sup>2</sup>, or (2) in the alternative, grant leave to appeal the Chamber’s oral ruling of 9 October 2008;

**NOTING** the “Prosecution response to ‘Milan Lukić’s motion for reconsideration or certification to appeal the oral scheduling decision’”, filed on 30 October 2008, whereby the Prosecution opposes the Motion, highlights the procedural history to the Motion and responds to “mischaracterisations” made by the Milan Lukić Defence in its Motion;

**RECALLING** that on 22 September 2008, the Trial Chamber had given its original ruling regarding the scheduling of the Defence case,<sup>3</sup> and that on the same day, the Milan Lukić Defence requested reconsideration, or in the alternative, certification to appeal the Chamber’s oral ruling of 22 September 2008;<sup>4</sup>

**RECALLING** that the Trial Chamber, by its oral ruling of 9 October 2008, had reconsidered its oral decision of 22 September 2008, adapting the schedule to accommodate the Milan Lukić Defence in order for it to have adequate time to prepare its case;

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<sup>1</sup> Hearing, 9 October 2008, T.2763-2764.

<sup>2</sup> The start of the Defence case would thereby be postponed until 13 January 2008.

<sup>3</sup> Hearing, 22 September 2008, T. 2013.

<sup>4</sup> Milan Lukić’s request for reconsideration or certification to appeal the oral ruling dictating absence of a break between the Prosecution and Defence cases, 22 September 2008.

**CONSIDERING** that a Trial Chamber has an inherent discretionary power to reconsider a previous decision “if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice”.<sup>5</sup>

**CONSIDERING** that the Milan Lukić Defence has not proffered any new substantial arguments in relation to its submissions of 22 September 2008, and that the Chamber is not persuaded by the Milan Lukić Defence that the Chamber’s ruling of 9 October 2008 would occasion an injustice;

**CONSIDERING** that pursuant to Rule 73(B), the Chamber may grant certification of an interlocutory appeal if the impugned decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial (“first prong”) and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings (“second prong”);

**CONSIDERING** that both prongs must be met in order for certification to be granted;<sup>6</sup>

**CONSIDERING** that, although the Motion is entirely focused on showing that the matter is one that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, no attempt is made to show how the Chamber’s ruling of 9 October involves an issue for which an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**CONSIDERING** that, in the Trial Chamber’s view, an immediate resolution by the Appeals Chamber will not materially advance the proceedings;

**CONSIDERING**, therefore, that the Defence request for certification fails;

**PURSUANT** to Rule 54 and 73;

**DENIES** the Motion.

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<sup>5</sup> *Juvenal Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, 23 May 2005 (“*Kajelijeli Appeal Judgement*”), para. 204; citing *Nahimana et al v. The Prosecutor*, ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza’s Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005, p. 2; *Rasim Delić* Decision, pp. 3-4; *Slobodan Milošević*, Decision, para. 25, footnote 40 citing the *Kajelijeli Appeal Judgement*, paras 203-204.

<sup>6</sup> *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecution request for certification for interlocutory appeal of ‘Decision on Prosecutor’s motion seeking leave to amend the indictment’”, 12 January 2005, p. 1.

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



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Judge Patrick Robinson  
Presiding

Dated this fifth day of November 2008

At The Hague

The Netherlands

**[Seal of the Tribunal]**