

**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: 1 December 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: 1 December 2008

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON SREDOJE LUKIĆ REQUEST FOR
CERTIFICATION TO APPEAL DECISION OF
13 NOVEMBER 2008**

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 “Sredoje Lukić’s request for certification for appeal of the Trial Chamber’s ‘Decision on Prosecution’s request for admission of exhibit 65^{ter} 167’ dated 13 November 2008”, filed on 19 November 2008 (“Motion”);

CONSIDERING that the Prosecution has not yet filed a response to the Motion, but that a response will not be necessary for the Trial Chamber’s determination thereof;

NOTING the submission of the Defence of Sredoje Lukić (“Defence”) that the Chamber, in admitting into evidence a document referred to as Rule 65^{ter} number 167 (“exhibit”) on 13 November 2008, erred (1) by finding that the exhibit has sufficient *indicia* of reliability and *prima facie* probative value, and (2) “incorrectly applied the finding in *Delić* when generally concluding that “*prima facie* reliability can still be established despite the lack of an official stamp or a signature where the document is part of a larger compilation”;¹

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;²

NOTING the Defence submission that, as the exhibit goes to the acts and conduct of the Accused, the admission of that exhibit involves a matter that would significantly affect the fair and expeditious conduct of the proceedings;³

NOTING that the Defence, in relation to the first prong, further submits that “[d]ue to the need to conduct thorough investigations on the veracity of the report, the expeditiousness of the proceedings would become seriously affected”, that “[s]hould the interlocutory appeal be denied, the Defence will subsequently have to file for a stay in the proceedings in order to conduct the

¹ Motion, para. 12.

² *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.

³ Motion, paras 15 and 16.

necessary investigations”, and that “[i]n addition, the conduct of the proceedings will be affected as the Defence will have to call additional witnesses and challenge the allegations contained in [the exhibit]”;⁴

NOTING the Defence submission that, since the Prosecution has not submitted evidence to corroborate the exhibit, whose author cannot be cross-examined, “the Prosecutorial burden has now shifted to the Defence, affecting the Accused’s right to a fair trial”;⁵

CONSIDERING that the Chamber is not convinced that, if an exhibit relates to the acts and conduct of an accused, the mere admission into evidence of that exhibit necessarily involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING that the exhibit is relevant to the charges in the Indictment, that the exhibit has been on the Prosecution’s exhibit list since 19 August 2008,⁶ and consequently that the Defence has had sufficient time to prepare and conclude any investigations relating to the exhibit;

CONSIDERING that corroboration is not required for admission of documents pursuant to Rule 89 (C), but that lack of corroboration or cross-examination are factors to be taken into consideration when assessing the weight to be attached to such a document;

CONSIDERING that the admission into evidence of the exhibit does not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING that most arguments raised by the Defence in support of its request for certification are matters which are more properly addressed in closing arguments;

PURSUANT to Rule 54 and 73;


DENIES the Motion.

⁴ Motion, para. 18.

⁵ Motion, para. 17.

⁶ Decision on Prosecution motion to amend exhibit list, 19 August 2008.

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



Judge Patrick Robinson
Presiding.

Dated this first day of December 2008

At The Hague

The Netherlands

[Seal of the Tribunal]