



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-98-34-T
Date: 14 November 2001
Original: English

BEFORE TRIAL CHAMBER I SECTION A

Before: Judge Liu Daqun, Presiding
Judge Maureen Harding Clark
Judge Fatoumata Diarra

Registrar: Mr. Hans Holthuis

Order of: 14 November 2001

PROSECUTOR

v.

MLADEN NALETILIĆ aka "TUTA"
and
VINKO MARTINOVIĆ aka "ŠTELA"

**DECISION ON ACCUSED NALETILIĆ'S REASONS WHY DOCUMENTS
SEIZED PER SEARCH WARRANT ARE INADMISSIBLE**

The Office of the Prosecutor:

Mr. Kenneth Scott

Counsel for the Accused:

Mr. Krešimir Krsnik, for Mladen Naletilić
Mr. Branko Šerić, for Vinko Martinović

TRIAL CHAMBER I, SECTION A (“the 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 (“the Tribunal”):

BEING SEISED OF the “Accused Naletilić’s Reasons why Documents Seized per Search Warrant are Inadmissible”, filed confidentially by Counsel for Mladen Naletilić on 6 November 2001 (“the Motion”);

NOTING that the Motion argues that: i) “[t]he Tribunal has no jurisdiction to issue search warrants”; ii) “[e]xcessive force was used in execution of the search warrant”; and iii) “[t]he search warrant was overbroad”;

NOTING that “The Naletilić Defence Request for all Documents Relating to Search Warrant Issued on the 18th September 1998 and Signed by the Honorable Judge Richard May”, filed confidentially by Counsel for Mladen Naletilić on 28 September 2001, and the “Defence Supplement to Request for Search Warrant Material, filed by Counsel for Mladen Naletilić on 9 October 2001, did not challenge the jurisdiction of the Tribunal to issue search warrants and the execution of the search warrant;

NOTING the Chamber’s “Order Relating to Request for all Documents Relating to Search Warrant Issued on the 18th September 1998 and Signed by the Honorable Judge Richard May and Decision on Motion for Extension of Time to File Objections Concerning Admissibility of Evidence Seized Pursuant to Search Warrant”, issued confidentially on 1 November 2001;

CONSIDERING the “Decision Stating Reasons for Trial Chamber’s Ruling of 1 June 1999 Rejecting Defence Motion to Suppress Evidence”, issued on 25 June 1999 in the Kordić case (the “Kordić Decision”), concerning the same “Order and Search Warrant”, issued on 18 September 1998;

CONSIDERING that in the “Decision on Application for Leave to Appeal” of the Kordić Decision, issued on 23 August 1999, the Appeals Chamber denied the Application for Leave to Appeal stating that “the search and seizure at issue were conducted by the Prosecution pursuant to a search warrant issued by a Judge of the Tribunal in conformity with the Rules”;

CONSIDERING that Rule 54 of the Rules of Procedure and Evidence (“the Rules”) provides that “... a Judge or a Trial Chamber may issue such orders ... as may be necessary for the purposes of an investigation ...”;

CONSIDERING that Rule 2 of the Rules defines “investigation” as “all activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence”;

CONSIDERING that Article 18 of the Statute and Rule 39 of the Rules empower the Prosecutor to execute search and seizure warrants in providing that “... the Prosecutor may ... collect evidence and conduct on-site investigations” (Rule 39);

CONSIDERING that the Statute and the Rules provide the power for the issuance and execution of search warrants;

CONSIDERING that Rule 39 of the Rules of Procedure and Evidence provides that “[i]n the conduct of an investigation, the Prosecutor *may* ... seek, to that end, the assistance of any State authority concerned ...”, which means that she is not obliged to do so in every circumstance;

CONSIDERING that pursuant to Article 29 of the Statute “all States have an obligation to lend cooperation and judicial assistance to the International Tribunal including the obligation to comply with the provisions of an order issued by the International Tribunal for the search of certain premises; this obligation is also embodied in Security Council Resolution 827 (1993), paragraph 4”.¹

CONSIDERING that a complaint regarding the use of force is primarily a matter for the Government of that country but that in any event, the attached statements and photographs do not show any excessive force;

CONSIDERING that the search and seizure carried out by the Prosecution was within the powers of the Prosecution provided for in the Statute and the Rules;

CONSIDERING that the Order and Search Warrant also relates to other investigations and that this Chamber has viewed the attachment and is satisfied that the Order and Search Warrant is sufficiently precise;

¹ See Kordić Decision.

CONSIDERING FURTHER that the Chamber has already ruled on the Naletilić Defence Request for all Documents Relating to Search Warrant Issued on the 18th September 1998 and Signed by the Honorable Judge May and given its reasons for refusing it. This Chamber notes that at that stage the Defence of Naletilić raised no question on the **Jurisdiction** of the Court to issue the warrant nor was any issue raised as to the **execution** of the warrant. The Chamber disapproves of the raising of contradictory positions in the two motions and considers the practice inappropriate;

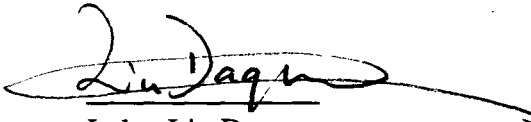
FOR THE FOREGOING REASONS

PURSUANT TO Articles 18 (2) and 29 of the Statute and Rules 39 and 54 of the Rules;

DENIES the Motion.

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

Dated this fourteenth day of November 2001,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]