



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: 15 April 2002
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: 15 April 2002

PROSECUTOR

v.

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

**DECISION ON THE PROSECUTION MOTION TO PRECLUDE DEFENCE
WITNESSES DAMIR ZORIĆ AND MILAN KOVAČ FROM TESTIFYING**

The Office of the Prosecutor:

M. Kenneth Scott
M. Douglas Stringer
M. Vassily Poriouvaev
M. Roeland Bos

Counsel for the Accused:

Mr Krešimir Krsnik, for Mladen Naletilić
M. 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 SEIZED OF the “Prosecution’s Motion to preclude Defence Witnesses Damir Zorić and Milan Kovač from testifying”, filed on 10 April 2002 (“the Motion”);

NOTING the “Accused Naletilić’s Response to Prosecutor’s Motion to preclude witnesses from testifying”, filed on 12 April 2002 (“the Response”);

HAVING HEARD the arguments of the parties on the matter on 12 April 2002;

NOTING the “Scheduling Order”, issued on 5 February 2002, in which this Chamber directed the Defence to file their provisional list of witnesses with a summary of their respective testimony as of 1 March 2002;

NOTING the “Order in respect of Pre-Defence filings” issued on 12 March 2002, in which the Chamber ordered, *inter alia*, that Counsel for Naletilić file additional information about how the witnesses they intend to call relate to the accused, prior to the Pre-Defence Conference on 20 March 2002;

NOTING the “Naletilić Pre-Defence Supplemental Rule 65 *ter* Filings”, filed confidentially on 15 March 2002, pursuant to the Trial Chamber’s Order dated 12 March 2002;

NOTING further the “Naletilić revised, supplemented, Rule 65 *ter* Filings for the first ten Witnesses and Suggestions”, filed confidentially on 21 March 2002;

NOTING also the “List of Defence Witnesses and Order of Testimony per Trial Chamber Order and Supplement to Provisional Rule 65 *ter* Filing”, filed confidentially on 4 April 2002, and the Supplement to the said List, filed confidentially on 5 April 2002;

NOTING that in the Motion, the Prosecution requests that the Trial Chamber precludes two witnesses from testifying on the ground that the Naletilić Defence failed to comply with Rule 65 *ter* (G) of the Rules of Procedure and Evidence (“the Rules”) as well as with this Chamber’s previous rulings;

NOTING that in the Response, the Naletilić Defence submits that the disputed summaries are accurate, that the Prosecution should not have waited until the witnesses arrived to The Hague to file its Motion and invokes the fundamental right of the Defence to present its case;

CONSIDERING that Rule 65 *ter* (G), in relevant part, provides that the Defence shall file a list of witnesses that it intends to call with a summary of the facts on which each witness will testify and the points in the indictment as to which each witness will testify;

CONSIDERING that while the Chamber understands that the two witnesses concerned would testify more in relation with the background and general circumstances of the case, as well as on issues in relation with the internationality of the conflict, it remains that the two disputed summaries do not indicate specifically enough on which facts the witnesses are going to testify, nor how the testimonies relate to the accused; that they therefore comply with neither Rule 65 *ter* (G) nor the Order issued by this Trial Chamber on 12 March 2002;

NOTING that Article 21 paragraph 4 (e) of the Statute reads in its relevant part that an accused has the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

REMINDING the Defence that Rule 65 *ter* (N) of the Rules allows for the Trial Chamber to impose sanctions on a party which fails to perform its obligations pursuant to the present Rule, and that those sanctions may include the exclusion of testimonial or documentary evidence;

REMINDING the Defence also that Rule 68 *bis* of the Rules provide that the Trial Chamber may decide on sanctions to be imposed on a party which fails to perform its disclosure obligations;

CONSIDERING that from the jurisprudence of this Tribunal, the moving party should exhaust all reasonable avenues before moving for relief and that the most extreme forms of relief should be imposed only in egregious circumstances;

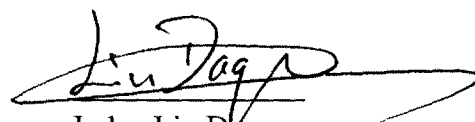
NOTING further that, during the hearing on 12 April 2002, the Prosecution put forward as alternatives less severe remedies, such as the postponement of the testimony or of the cross-examination of the witness by the Prosecution;

PURSUANT to Article 21 paragraph 4 (e) of the Statute and to Rules 54, 65 *ter* and 68 *bis* of the Rules,

HEREBY ORDERS

1. the Defence to supplement the summaries of those two testimonies by Wednesday 24 April 2002, by indicating on which legal or factual circumstances the witnesses will testify, and how their testimonies relate to the accused in the present case;
2. that the testimonies of those two witnesses be postponed until no less than one week after the filing of properly supplemented summaries;

Dated this fifteenth day of April 2002,
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

[Seal of the Tribunal]