



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-00-41-PT  
Date: 20<sup>th</sup> November 2002  
Original: English

**BEFORE TRIAL CHAMBER I**

**Before:** Judge Liu Daqun, Presiding  
Judge Amin El Mahdi  
Judge Alphons Orie

**Registrar:** Mr. Hans Holthuis

**Decision of:** 20<sup>th</sup> November 2002

**PROSECUTOR**

**v.**

**PAŠKO LJUBIČIĆ**

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**DECISION ON THE DEFENCE COUNSEL'S REQUEST FOR  
TRANSLATION OF ALL DOCUMENTS**

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**The Office of the Prosecutor:**

**Mr. Mark Harmon  
Ms. Magda Karagiannakis**

**Counsel for the Accused:**

**Mr. Tomislav Jonjić**

**TRIAL CHAMBER I**, (“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 Defence Motion Concerning the Translation of Documents of 19 September 2002 (“the Motion”), whereby the Defence requests that: (1) all documents, especially disclosure material and evidence, be submitted to the Defence in the Bosnian, Croatian or Serb language (“BCS”); (2) any time-limit related to submission of documents be counted from the date of submission to the Defence in the Croatian language; and (3) that the Prosecution be obliged to submit to the Defence, within a reasonable term, the translations in BCS of all those documents and disclosure material which have already and only been submitted in the official languages of the Tribunal;

**NOTING** the Prosecution’s response of 3 October 2002 to Defence Motion Concerning the Translation of Documents (“the Response”) whereby the Prosecution submits, *inter alia*, that: (1) an order to oblige the Prosecution to make all disclosure available in Bosnian/Croatian/Serb (“BCS”) would run contrary to the efficient administration of Justice as it would delay the progress of the case; (2) its duty to disclose items in the Accused’s own language is limited to items listed in Rule 66(A) of the Rules of Procedure and Evidence (the “Rules”); (3) it has already complied with its duties to disclose in BCS all items under Rule 66(A)(i) and that much of the material disclosed pursuant to Rule 66(A)(ii) has already been provided to the Defence in BCS; and (4) that the Prosecution will continue to comply with its duty to disclose in BCS items enumerated in Rule 66(A)(ii);

**NOTING** the Defence Counsel’s reply of 16 October 2002 (“the Reply”), in which the Defence further substantiates its Motion in asserting that the efficient administration of justice must not prevail over the right of the Accused to a fair trial, and in maintaining that all material under Rule 66(A)(ii) had still not been provided in BCS;

**NOTING** the earlier practice of this Tribunal as well as that of the International Criminal Tribunal for Rwanda (the ICTR) regarding the question of translation of documents into a language understood by the Accused;<sup>1</sup>

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<sup>1</sup> See, for example, The *Prosecutor v. Delalić et al.*, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, Case IT-96-21-T (“the Celibići decision”); The *Prosecutor v. Milošević*, Decision on Prosecution Motion for Permission to Disclose Witness Statements in English, 19 September 2001, Case IT-99-37-PT); The *Prosecutor v. Naletilić & Martinović*, Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, Case IT-98-34-T; The *Prosecutor v. Muhimana*, Decision on Defence Motion to Have All Prosecution and Procedural Documents Translated into Kinyarwanda, the Language of the Accused, and into French, the Language of his Counsel, 6 November 2001, Case ICTR-95-1-B-I; and The *Prosecutor v.* Case No.: IT-00-41-PT 2 20<sup>th</sup> November 2002

**NOTING** that, pursuant to the Statute and the Rules, and based on the mainstream of the existing judicial practice as referred to above, the current general standard regarding translation of documents during the *pre-trial stage* of the proceedings requires that the following material be submitted to the Accused in a language he understands:

- a copy of the *indictment* according to Article 21, par. 1 and par. 4(a) of the Statute and Rule 53bis(B) in combination with Rule 47(G) of the Rules;
- a copy of the *supporting material* which accompanied the indictment against the accused and all prior *statements obtained by the Prosecutor from the Accused*, irrespective of whether these items will be offered at trial, in accordance with Rule 66(A)(i) of the Rules;
- *Statements of all witnesses* (either in hard copy or in audio format) whom the Prosecutor intends to call to testify at trial along with all *written statements* taken in accordance with Rule 92bis, and *statements of additional Prosecution witnesses* when a decision is made to call those witnesses, see Rule 66(A)(ii) of the Rules;
- *Discovery material* which appeared in a language understood by the Accused at the time it came under the Prosecution's custody or control, pursuant to Rule 66(B) of the Rules;
- *Exculpatory material* disclosed by the Prosecutor according to Article 68 of the Rules; and
- *Written decisions and orders* rendered by the Tribunal.

**CONFIRMING** that the effective date of filing of the material listed out above shall be the date of filing in one of the official languages of the Tribunal, but that all statutory time-limits for responses in relation to this material shall be the date of filing of the translation in the language understood by the Accused;<sup>2</sup>

**NOTING**, that during the *trial stage*, the incumbent Chamber may direct the Prosecutor to tender exhibits or the relevant parts of such exhibits (either in hard copy or in audio format) in a language understood by the Accused;

**NOTING** that, while the Tribunal is committed to ensuring the Accused's right to a fair and expeditious trial, translation in advance of each and every document into BCS beyond what is required under the Statute and the Rules, may seriously jeopardize the Accused's right to an expeditious trial because of the very substantial time and resources required for translation of all documents;

**NOTING**, furthermore, that at least one of the Defence counsels is presumed to be fluent in one of the official languages of the Tribunal and should be capable of fully participating in the proceedings;

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*Kordić and Čerkez*, Appeals Chamber's Order on Paško Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits, 19 July 2002, Case IT-95-14/2-A.

<sup>2</sup> See the "Celibići-decision", par. 11 at page 6.

**NOTING** that, during the Status Conference on 26 September 2002, the Prosecution confirmed its willingness to co-operate with the Defence and stated that not only had it complied with its obligations by submitting to the Defence in BCS all supporting material under Rule 66(A)(i) and almost all of the audio-tapes with witness statements in BCS under Rule 66(A)(ii) of the Rules, asserting that the few remaining tapes would be handed over to the Defence as soon as they were recovered from the Registry and had been redacted by the Prosecution, it had also disclosed to the Defence a number of other exhibits and documents in BCS beyond its obligations under the Statute and the Rules;<sup>3</sup>

**NOTING** that, while the Defence Counsel had confirmed during the Status Conference that all of the said material had indeed been received from the Prosecutor in BCS and that the Defence had not requested further submission in BCS of any *specific* trial material under Rule 66(A) (other than the few remaining tapes), the Defence Counsel had nevertheless declared that he wanted to have the issue of translation settled in principle as a *general* matter;<sup>4</sup>

**FINDING** that, apart from the few tapes which the Prosecution has already vowed to submit, the substance of the Motion has been exhausted by the Prosecutor's compliance with its obligations to provide evidence in BCS to the extent in which this is required under present state of law; and that, consequently, a ruling on this issue is not necessary for the purposes of an investigation or for the preparation or conduct of the trial;

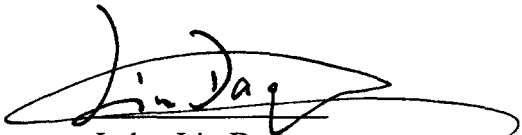
**PURSUANT** to Rule 54 of the Rules;

**FOR ALL OF THE ABOVE REASONS,**

**HEREBY DENIES** the Motion.

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

Dated this twentieth day of November 2002,  
At The Hague,  
The Netherlands

  
Judge Liu Daqun  
Presiding Judge

**[Seal of the Tribunal]**

<sup>3</sup> See *Transcripts*, pages 58-61 and page 70; Status Conference held on 26 September 2002.

<sup>4</sup> *Ibidem*, pages 61-63 and pages 67-69.