

7298
AT

**UNITED
NATIONS**

IT-98-34-T
D7298-D7295
14 FEBRUARY 2003.



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 February 2003
Original: English

BEFORE THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Order of: 14 February 2003

PROSECUTOR

v.

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

ORDER

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 SEIZED OF the “Prosecution Final Trial Brief”, filed confidentially on 23 October 2002, the “Final Brief of the Accused Mladen Naletilić aka Tuta”, filed confidentially on 23 October 2002, and the “Final Trial Brief in the Defence of Vinko Martinović”, filed confidentially on 23 October 2002 (“the Final Briefs”);

CONSIDERING that the Defence for Mladen Naletilić and the Defence for Vinko Martinović failed to submit particular sentencing arguments in their Final Briefs and that the sentencing submissions by the Prosecution were not sufficiently detailed to satisfy the Chamber;

CONSIDERING that Rule 86 (C) of the Rules of Procedure and Evidence of the Tribunal (“the Rules”) obliges the parties to address “matters of sentencing in closing arguments”; that, however, during the closing arguments that took place from 28 to 31 October 2002 neither the Prosecution¹, nor the Defence for Mladen Naletilić² and the Defence for Vinko Martinović³ submitted any arguments on sentencing aspects to the Chamber;

CONSIDERING that Article 24 (2) of the Amended Statute of the International Criminal Tribunal for the Former Yugoslavia (“the Statute”) obliges the Chamber to take into account the individual circumstances of a person when deciding whether and what kind of sentence shall be imposed on that person;

CONSIDERING FURTHER that Rule 101(B) (i)–(iv) of the Rules requires the Chamber, in addition to taking into account the factors mentioned in Article 24 (2) of the Statute, to consider the following additional factors:

- (i) any aggravating circumstances;
- (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

¹ See Transcript, pp. 16581-16661 and pp. 16822-16852

² See Transcript, pp. 16662-16743 and pp. 16852-16869

³ See Transcript, pp. 16744-16820 and pp. 16870-16873

- (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute;

CONSIDERING that it is for the parties to submit to the Chamber detailed information and arguments in relation to each of the accused on these aspects and that the Chamber is obliged to take into consideration such information and arguments in the course of its deliberations pursuant to Rule 87 of the Rules;

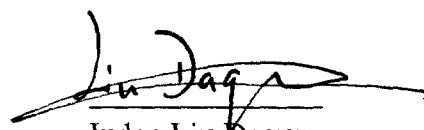
**FOR THE FOREGOING REASONS AND PURSUANT TO RULE 54 AND RULES 86 (C)
AND 101 (B) OF THE RULES;**

HEREBY ORDERS

1. The parties shall file detailed written submissions on sentencing considerations with the Chamber as of 21 February 2003.
2. The filings shall, in particular, address the following aspects with regard to each of the accused:
 - a. Information and arguments on the personal background of the accused, including family situation, occupation, financial status and other aspects the parties may deem relevant;
 - b. Information and arguments on the medical condition of the accused;
 - c. Information and arguments on a potential voluntary surrender of the accused;
 - d. Information and arguments on the behaviour of the accused before, during and after the trial and in the detention unit and any cooperation with the Prosecutor;
 - e. Information and arguments regarding any potential previous criminal record of the accused;
 - f. Information and arguments in relation to compassion for the victims of the alleged crimes;
 - g. Information and arguments in relation to the practice regarding prison sentences in the courts of the former Yugoslavia with regard to the crimes alleged by the Prosecution.

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

Dated this fourteenth day of February 2003,
At The Hague,
The Netherlands


Judge Liu Daqun
Presiding Judge

Seal of the Tribunal