



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: 18th March 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: 18th March 2003

THE PROSECUTOR

v.

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

SCHEDULING ORDER TO HOLD A HEARING

The Office of the Prosecutor:

Mr. Kenneth Scott

Counsel for the Accused:

Mr. Krešimir Krsnik, for Mladen Naletilić

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 “Motion for Stay of Further Deliberation of the Evidence & Expedited Request for the Taking of Further Evidence in Light of Newly Disclosure Material Provided by OTP” (“the Motion”) submitted on 12th March 2003 by the Defence Counsel of Mladen Naletilić (“the Accused”), in which the Defence calls for a “short stay of the deliberative process of the evidence” so as to allow for a proper assessment of this newly disclosed material (“the Material”);

NOTING the “Prosecutor’s Response to Radoš Diary Submission Dated 12th March 2003”, submitted on 14th March 2003, in which the Prosecution asserts that the Material, which had been in the Prosecution’s possession since March 1996 and consists of minutes in BCS of meetings of the HVO 3rd “Mijat Tomić” Battalion taken by Alojz Radoš, does *not* fall within the Rule 68 but was provided to the Defence out of abundant caution and good faith;

NOTING that Rule 68 of the Rules of Procedure and Evidence (“the Rules”) establishes a continuing obligation on the Prosecution to disclose to the Defence, without any specific time limit but as soon as practicable, the existence of any exculpatory material known to the Prosecution;

NOTING that, as a general rule, evidence other than exculpatory material may not be tendered after the final closure of the Trial proceedings in Court;

NOTING that the Defence does not specify whether or indeed how the recently disclosed material may suggest the innocence of the Accused;

FINDING, in the present circumstances, that it is appropriate to hold a hearing in order to ascertain the position of the Parties as to the possibly exculpatory nature of the Material, including for the Prosecution to clarify its reasons for submitting the Material if it did not think it was exculpatory, and for the Defence to establish *prima facie* that the Material falls under Rule 68 of the Rules by showing just where and how it contains exculpatory information;

NOTING that the Defence has already been in possession of the material for at least 13 days and that translation of the material is not needed in order for the Defence to expose the possibly exculpatory parts of the Material, for which reason the Chamber refuses at this point to stay the deliberations;

PURSUANT to Rule 54 of the Rules;

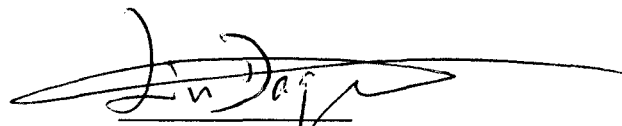
HEREBY SCHEDULES a hearing with the Prosecution and the Defence Counsel of the Accused Mladen Naletilić to take place on Thursday, 20th March 2003 at 4:30PM in Courtroom I in the presence of the Accused; and

ORDERS the Prosecution, at the scheduled hearing, to clarify its reasons for submitting the Material, and the Defence to establish *prima facie* that the Material falls under Rule 68 of the Rules by showing that it contains exculpatory information;

VACATES its Order of 27th February 2003 to pronounce the Judgement in this case on Monday, 24th March 2003.

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

Dated this eighteenth day of March 2003
At The Hague,
The Netherlands



Judge Liu Daqun
Presiding Judge

Seal of the Tribunal