



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-98-32/1-PT

Date: 30 June 2006

Original: English

BEFORE THE REFERRAL BENCH

Before: Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Order of: 30 June 2006

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

ORDER ON OPERATIVE INDICTMENT AND FURTHER FILINGS

Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Mark Harmon
Ms. Susan Somers

Counsel for Milan Lukić

Mr. Alan L. Yatvin

Counsel for Sredoje Lukić

Mr. Đuro Čepić

THE REFERRAL BENCH 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 (“Tribunal”);

NOTING the “Request by the Prosecutor under Rule 11 *bis*”, filed on 1 February 2005 (“Referral Request”), in which the Prosecution requests the referral of the case against Sredoje Lukić and Milan Lukić (collectively, “Accused”) to the authorities of Bosnia and Herzegovina pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹

NOTING the “Decision on Prosecutor’s Motion to Suspend Consideration of Rule 11 *bis* Request”, issued on 15 December 2005, in which the Referral Bench granted a suspension of Rule 11 *bis* proceedings in this case pending the transfer of Milan Lukić to the Tribunal from Argentina;² that Milan Lukić was transferred on 21 February 2006;³ and that Rule 11 *bis* proceedings in this case therefore resumed on 21 February 2006;

BEING SEISED OF the “Prosecutor’s Motion for Directions from the Referral Bench”, filed on 2 June 2006 (“Motion”), in which the Prosecution seeks guidance from the Referral Bench as to the following:

- a. whether further submissions regarding the referral of Case No. IT-98-32/1 should be based on the amended indictment of 27 February 2006 (“Second Amended Indictment”), as opposed to the amended indictment of 12 July 2001 (“Amended Indictment”), which governed the proceedings when the Prosecution’s request for referral pursuant to Rule 11 *bis* was made on 1 February 2005, and to which Milan Lukić continues to refer as the operative indictment;⁴
- b. if the Second Amended Indictment is acknowledged as the operative indictment in this case, whether the Prosecution must withdraw the Referral Request and re-file it on the basis of the Second Amended Indictment;⁵ and
- c. whether the Accused will be permitted to file further submissions based on the Second Amended Indictment, and whether the Prosecution will be permitted to file a consolidated reply to such submissions;⁶

¹ Referral Request, p. 2 & para. 45. The Referral Bench became seized of Rule 11 *bis* proceedings in this case by virtue of an order dated 2 February 2005. *See Prosecutor v. Lukić and Lukić*, Case No. IT-98-32-I, Order Appointing a Trial Chamber for the Purpose of Determining whether an Indictment Should Be Referred to Another Court under Rule 11*bis*, 2 February 2005, p. 2. *See also Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-I, Certificate [of the Registrar], 26 June 2006, p. 1 (assigning the new case number IT-98-32/1 to this case).

² *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT (“*Lukić and Lukić*”), Decision on Prosecutor’s Motion to Suspend Consideration of Rule 11 *bis* Request, 15 December 2005, p. 2.

³ *Lukić and Lukić*, Order on Defence Motion for Further Extension of Time to File Response, 17 May 2006, p. 1 n. 1.

⁴ Motion, paras. 1–2, 6, 9. *See also Lukić and Lukić*, Response of Defence Counsel for Milan Lukić to Request by Prosecutor under Rule 11*bis*, 26 May 2006, para. 10 (contending that the Amended Indictment is the operative indictment for purposes of the Referral Request).

⁵ Motion, para. 8.

NOTING that the Accused have not yet responded to the Motion, and that the time limit specified in Rule 126 *bis* of the Rules has elapsed;

NOTING that, subsequent to the filing of the Referral Request, further amendments to the Amended Indictment were granted by the Trial Chamber seized of this case, in respect of Sredoje Lukić on 1 February 2006,⁷ and in respect of Milan Lukić on 22 March 2006;⁸

CONSIDERING that, as the Appeals Chamber has held, the Referral Bench must base its considerations concerning the referral of a case on the operative indictment, and that there must remain no further pending challenges to the indictment pursuant to Rule 72 of the Rules;⁹

CONSIDERING that all of Sredoje Lukić's challenges to the Second Amended Indictment were rejected in the Trial Chamber's decision of 11 May 2006;¹⁰ that while Milan Lukić has not yet made challenges to the Second Amended Indictment pursuant to Rule 72 of the Rules, the time limit for him to make such challenges has elapsed;¹¹ and that, in its 11 May 2006 decision, the Trial Chamber acknowledged that the Second Amended Indictment had by then become "the operative indictment against both Accused";¹²

⁶ *Ibid.*, para. 9.

⁷ *Lukić and Lukić*, Decision Granting Prosecution's Motion to Amend Indictment and Scheduling Order for Further Appearance, 1 February 2006, para. 22.

⁸ *Lukić and Lukić*, Decision Granting Prosecution's Motion to Amend Indictment with Regard to Milan Lukić, 22 March 2006, p. 2.

⁹ *Prosecutor v. Todović*, Case No. IT-97-25/1-AR11*bis*.1, Decision on Rule 11*bis* Referral, 23 February 2006, para. 14.

¹⁰ *Lukić and Lukić*, Decision on the Form of the Indictment, 11 May 2006 ("May 2006 Decision"), para. 10.

¹¹ See Rule 72 of the Rules (providing that preliminary motions challenging the indictment must be made not later than 30 days after disclosure by the Prosecutor to the defence of the indictment's supporting material).

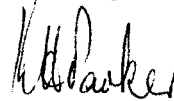
¹² May 2006 Decision, *supra* note 10, para. 1.

PURSUANT TO Rules 11 *bis*(H), 54, and 127 of the Rules,

HEREBY ACKNOWLEDGES that the Second Amended Indictment is the operative indictment in respect of both Accused for purposes of considering whether referral under Rule 11 *bis* of the Rules is to take place, and **ORDERS AS FOLLOWS**:

1. Unless otherwise ordered, the parties shall base any and all future submissions to the Referral Bench in this case on the Second Amended Indictment.
2. The parties shall not re-file any submissions previously filed on the basis of the Amended Indictment, but they shall be prepared, at the 12 July 2006 oral hearing before the Referral Bench,¹³ to address the Bench on any material changes to their respective cases made necessary by the replacement of the Amended Indictment with the Second Amended Indictment.
3. The Motion is denied in all other respects.

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



Judge Kevin Parker

Dated this thirtieth day of June 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ See *Lukić and Lukić*, Order for Written Submissions and Scheduling Order for Hearing, 30 June 2006, p. 5 (scheduling the oral hearing for 12 July 2006 at 9:30 a.m.).