



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: 12 September 2006

Original: English

BEFORE THE REFERRAL BENCH

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

Registrar: Mr. Hans Holthuis

Order of: 12 September 2006

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

**ORDER ON PENDING SUBMISSIONS AND ON
USE OF TIME DURING MOTION HEARING**

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 Government of Bosnia and Herzegovina

per: The Embassy of Bosnia and Herzegovina
to the Netherlands, The Hague

The Government of Argentina

per: The Embassy of Argentina
to the Netherlands, The Hague

The Government of Serbia

per: The Embassy of Serbia
to the Netherlands, The Hague

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”);

BEING SEISED OF 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 (together, “co-Accused”) to the authorities of Bosnia and Herzegovina pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

NOTING the “Order for Written Submissions and Scheduling Order for Hearing” of 30 June 2006 (“Original Scheduling Order”), in which the Referral Bench ordered the parties, and invited the Government of Bosnia and Herzegovina, to file written submissions in respect of the Referral Request addressing the gravity of the crimes alleged against the co-Accused, their level of responsibility, and the compatibility of the legal system of Bosnia and Herzegovina with Rule 11 *bis*(B) of the Rules; and the “Order Re-Scheduling Hearing” of 4 July 2006, in which the Referral Bench set the time limit for filing these submissions as 9 August 2006;

NOTING the “Second Order Re-Scheduling Hearing” of 9 August 2006, in which the Referral Bench ordered the parties, and invited the Governments of Bosnia and Herzegovina and Argentina, to appear at a hearing scheduled for Friday, 15 September 2006, at 2:15 p.m. in Courtroom III of the Tribunal, to make oral submissions;

NOTING the following written submissions addressing the merits of the Referral Request (“Written Referral Submissions”):

- a. “Defence Counsel’s Response to Request by the Prosecutor under Rule 11 *bis*,” filed by Sredoje Lukić on 21 November 2005;
- b. “Prosecutor’s Application for Leave to File a Reply and Reply to [the Sredoje Lukić] Defence Response to Rule 11 *bis* Request,” filed on 28 November 2005;
- c. “Response of Defense Counsel for Milan Lukić to Request by Prosecutor under Rule 11 *bis*”, filed on 26 May 2006;
- d. “Sredoje Lukić’s Defence Written Submission pursuant to Referral Bench’s Order of 30 June 2006”, filed on 17 July 2006;
- e. “Prosecutor’s Submissions pursuant to Order of 30 June 2006”, filed on 28 July 2006;
- f. “Submission of Defence Counsel for Milan Lukić pursuant to Order of 30 June 2006”, filed on 4 September 2006, nearly one month after the expiration of the 9 August 2006 time limit (“Milan Lukić Written Submission”); and

- g. “Response of the Government of Bosnia and Herzegovina (BiH) to Questions Posed by the Referral Bench in Its Order of 30 June 2006”, filed on 9 August 2006 (“Bosnia and Herzegovina Written Submission”), and again on 4 September 2006 with some additional information;¹

BEING ALSO SEISED OF a “Request to Accept Untimely Submission of Defence Counsel for Milan Lukić pursuant to Order of 30 June 2006”, filed on 4 September 2006 (“Milan Lukić Request”), in which Milan Lukić requests the Referral Bench to recognise as validly filed, pursuant to Rule 127(A)(ii) of the Rules, the Milan Lukić Written Submission;² and contends that “[t]he tardy submission is essential to the proper representation of [Milan Lukić]”, and “its exclusion would be unjust and would greatly prejudice [Milan Lukić]”;³

NOTING the “Prosecutor’s Response to ‘Request to Accept Untimely Submission of Defence Counsel for Milan Lukić pursuant to Order of 30 June 2006’”, filed on 7 September 2006, in which the Prosecution states that it does not oppose the relief sought in the Milan Lukić Request;

CONSIDERING that recognising the Milan Lukić Written Submission as validly filed will serve the interests of justice;

BEING ALSO SEISED OF “Serbia’s Submission in the Proceedings under Rule 11 *bis*”, filed on 4 September 2006 (“Serbia Written Submission”), in which the Government of Serbia requests the referral of this case to its authorities pursuant to Rule 11 *bis*, and states that “Serbia is ready to appear before the Trial Chamber, should the Trial Chamber require further information”;⁴

BEING ALSO SEISED OF the “Request of Milan Lukic to Invite State of Serbia to Attend 11 *bis* Hearing”, filed on 12 September 2006, in which Milan Lukić requests the Referral Bench to invite the Government of Serbia to attend the motion hearing so that it may make submissions on the merits of the Referral Request;

NOTING that, in the Original Scheduling Order, the Referral Bench held that, “in the absence of a request by the Government of Serbia to make submissions in this matter, the Referral Bench

¹ The 4 September 2006 version of this submission contains additional information in the section entitled “Other Issues of Relevance” and in footnote 7.

² Milan Lukić Request, paras. 16–18.

³ *Ibid.* para. 14.

⁴ Serbia Referral Submission, para. 6.

does not deem it necessary, at this time, to invite written or oral submissions from that Government”;⁵

CONSIDERING that, in light of the Serbia Written Submission, the Referral Bench would be prepared to receive oral submissions from the Government of Serbia should that Government wish to advance submissions that are not duplicative of those already made in the Serbia Written Submission;

BEING ALSO SEISED OF a submission of the Government of Bosnia and Herzegovina, filed on 7 September 2006 (“Bosnia and Herzegovina Request”), listing the names of its representatives who will attend and requesting that they be allowed to appear at the motion hearing via video-conference link;

CONSIDERING that, while the Bosnian representatives are welcome to appear via video-conference link, if they prefer to appear in person, this preference needs to be communicated to the Referral Bench and the Registry of the Tribunal in an expeditious manner, along with a revised list of the representatives who will attend;

CONSIDERING that the Referral Bench and the Registry would also benefit from a list of the names of the representatives of the Government of Serbia and the Government of Argentina who will attend the motion hearing;

CONSIDERING that the Written Referral Submissions present in great detail the substantive arguments of the Prosecution, Milan Lukić, Sredoje Lukić, the Government of Bosnia and Herzegovina, and the Government of Serbia, and that, due to time constraints, oral submissions at the motion hearing must be reserved for arguments that have not already been made in the Written Referral Submissions;

RECALLING that the Referral Bench has specifically requested the presence of the Government of Argentina in order to indicate whether it shares the provisional view of the Bench, detailed in the Original Scheduling Order, about the intended effect of the decision of the Federal Court of Argentina of 10 January 2006 ordering the surrender of Milan Lukić to the Tribunal (“Argentine Decision”);⁶

⁵ Original Scheduling Order, p. 3.

⁶ In the Original Scheduling Order, the Referral Bench expressed the provisional view that

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

HEREBY ORDERS AS FOLLOWS:

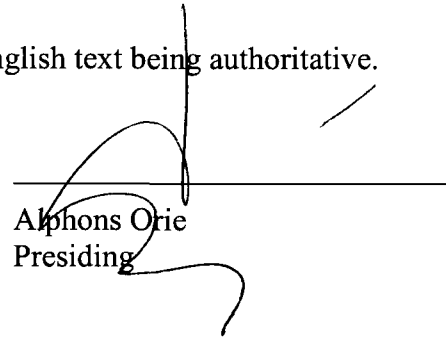
1. At the motion hearing scheduled for 15 September 2006, the parties, the Government of Bosnia and Herzegovina, and the Government of Serbia if it wishes to make oral submissions, shall restrict their oral submissions to arguments not already made in the Written Referral Submissions.
2. The parties and Government representatives shall abide by the following time limits for making their respective presentations at the motion hearing, and the co-Accused are urged to work out between themselves an equitable distribution of their allotted time, failing which the Bench will determine how the time shall be divided between them:
 - a. Prosecution: 15 minutes
 - b. Government of Argentina: 15 minutes
 - c. Government of Bosnia and Herzegovina: 15 minutes
 - d. Government of Serbia: 15 minutes
 - e. Co-Accused: 40 minutes
3. The Governments of Argentina and Serbia are requested to file, no later than Wednesday, 13 September 2006, lists setting forth their respective representatives who will attend the motion hearing.
4. The Bosnia and Herzegovina Request is granted, but should the Government of Bosnia and Herzegovina wish instead that its representatives attend the motion hearing in person, the Referral Bench requests that it communicate this preference to the Bench no later than Wednesday, 13 September 2006, and file a revised list of the representatives who will attend.
5. Milan Lukić is granted leave to file the untimely Milan Lukić Submission.

the Argentine Decision intends that the Tribunal should try Milan Lukić at the seat of the Tribunal for the acts referred to in the present Indictment, either on the present or equivalent charges, or that the Tribunal may exercise its powers, pursuant to the Statute of the Tribunal, Rule 11 *bis* of the Rules, and Resolutions 1534 (2004) and 1503 (2003) of the Security Council of the United Nations, to refer Milan Lukić for trial by a national court with appropriate jurisdiction, but should not, without prior authorisation of the State of Argentina, refer Milan Lukić in order for him to be charged, prosecuted, or harassed for previous acts that are different from those constituting the crimes for which he was surrendered to this Tribunal, or equivalent crimes[.]

Original Scheduling Order, p. 3.

6. The Referral Bench accepts as validly filed the Bosnia and Herzegovina Written Submission filed on 4 September 2006, and considers it as replacing the nearly identical submission filed on 9 August 2006.
7. The Registry shall transmit to the Government of Serbia, no later than Wednesday, 13 September 2006, copies of the following:
 - a. the Second Amended Indictment of 17 November 2005;
 - b. the Referral Request;
 - c. the Written Referral Submissions;
 - d. the Original Scheduling Order;
 - e. the “Order Re-Scheduling Hearing” of 4 July 2006;
 - f. the “Second Order Re-Scheduling Hearing” of 9 August 2006;
 - g. the “Order on Operative Indictment and Further Filings” of 30 June 2006; and
 - h. the “Registry Submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence regarding the Referral Bench’s Order to File the Decision of the Federal Court of Argentina”, filed on 7 July 2006.
8. The Registry shall transmit this Order immediately to the Government of Bosnia and Herzegovina, the Government of Argentina, and the Government of Serbia.

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



Alphons Orie
Presiding

Dated this twelfth day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]