



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-05-87-T
Date: 5 October 2007
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Decision of: 5 October 2007

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON PROSECUTION REQUEST FOR DISCLOSURE OF
FURTHER INFORMATION REGARDING WITNESSES TO BE CALLED BY
LAZAREVIĆ AND LUKIĆ DEFENCES**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS TRIAL 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 (“Tribunal”) is seised of the “Prosecution’s Request for an Order to Compel Lazarević and Lukić Defence Teams to Provide Further Information re Defence Witnesses”, filed on 21 September 2007 (“Motion”), and hereby renders its decision thereon.

1. In its Motion, the Prosecution seeks the Trial Chamber’s assistance to compel (a) the Lazarević Defence to provide the Prosecution with the fathers’ names of persons on its witness list and (b) the Lukić Defence to provide the dates of birth and fathers’ names of the persons on its witness list.¹ The Prosecution contends that it requires this information in order to conduct electronic searches for information on these witnesses and prepare for cross-examination.² Notably, it is only after three unsuccessful attempts to obtain the information informally, to which there was no reply, that the Prosecution is seeking formal assistance from the Chamber.³

2. In the interest of expediting the matter, on 25 September 2007, the Chamber issued its “Order Pursuant to Rule 127”, in which it reduced the amount of time within which responses, if any, to the Motion were to be filed and gave the relevant Defence teams until 28 September 2007 to do so. In fact, on 23 September 2007, the Lazarević Defence had already contacted the Prosecution indicating that it would provide the requested materials no later than 26 September 2007.⁴ As indicated, on 26 September 2007, the Lazarević Defence furnished the Prosecution with a list of fathers’ names of the persons listed on its Rule 65 *ter* witness list.⁵

3. On 28 September 2007, the Lukić Defence submitted its response to the Motion, requesting that the Chamber not order it to submit the aforementioned witness information to the Prosecution.⁶ Principally, the Lukić Defence argues that, while the Prosecution is entitled to the disclosure of certain information concerning witnesses, including pseudonyms and a summary of their expected testimony, pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence of the Tribunal, the Lukić Defence is not required to provide a witness’s birth date or father’s name as it is beyond the requirements enumerated in Rule 65 *ter*.⁷ Moreover, the Lukić Defence asserts that to require as much would be unduly burdensome.⁸ Additionally, the Lukić Defence contends that (a) the

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, para. 2.

⁴ Email from Lazarević Defence to Prosecution, 23 September 2007.

⁵ Email from Lazarević Defence to Prosecution, 26 September 2007.

⁶ Sreten Lukić’s Response to the Prosecution’s Motion of 21 September, 2007. [sic] With Exhibit 1, 28 September 2007 (“Response”), para. 6.

⁷ Response, para. 3.

⁸ Response, para. 3.

Prosecution already has knowledge of multiple individuals from its Rule 65 *ter* list from past proceedings, (b) the Lukić Defence does not have the resources to extract additional information from witnesses when the Prosecution is already in possession of such information, and (c) the Lukić Defence has specified the position held by each witness and there are no known circumstances where individuals with identical first and last names held the same post within the MUP of the Republic of Serbia.⁹ Finally, the Lukić Defence notes that it has made a showing of its good faith efforts to compile the requested information by attaching a list of witnesses whose birth dates and fathers' names were ascertainable from information already in the possession of the Lukić Defence.¹⁰

4. Rule 65 *ter* (G)(i) provides that the defence must file a list of witnesses that it intends to call with: (a) the name or pseudonym of each witness; (b) a summary of the facts on which each witness will testify; (c) the points in the indictment as to which each witness will testify; (d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count; (e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and (f) the estimated length of time required for each witness and the total time estimated for presentation of the defence case.

5. The issue of a Chamber ordering disclosure over and beyond that specifically enumerated in Rule 65 *ter* (G) arose in the *Dragomir Milošević* trial; in that case, the Chamber noted that “there appears to be no consistent practice within the Tribunal regarding a minimum amount of information that is to be included in the Rule 65 *ter* summaries” and ended up ordering, pursuant to Rules 54 and 65 *ter*, that the Defence disclose the same information that the Prosecution in the instant case is requesting.¹¹

6. The Chamber considers that it is in the interest of justice for the Prosecution to be afforded adequate opportunity to prepare for cross-examination and that the Defence's Rule 65 *ter* filings are an important means by which to accomplish this procedural fairness. This Chamber also agrees with the approach of the Chamber in *Dragomir Milošević* and considers that it is within the authority given to a Chamber under the Rules of Procedure and Evidence of the Tribunal to order Defence disclosure in addition to that detailed in Rule 65 *ter* (G), in order to enable the Prosecution to adequately prepare for cross-examination. In this case, the Prosecution has indicated that it does

⁹ Response, para. 7.

¹⁰ Response, para. 4, Exhibit 1.

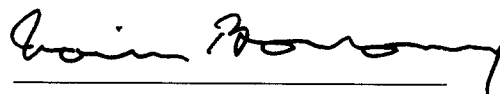
¹¹ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on the Prosecution's Motion for Defence Compliance with Rule 65 *ter* (G), 26 June 2007, pp. 3–5 (Judge Patrick Robinson dissenting).

not intend to seek interviews with any of the witnesses to be called by the Lukić Defence;¹² this fact makes it all the more important for the Prosecution to be able to run efficient and accurate searches on its electronic databases in order to adequately prepare for cross-examination. Furthermore, while the Prosecution may already have knowledge of some of the persons named on the Lukić Defence's witness list, this does not lead to the conclusion that the Prosecution has similar information about any other witnesses; in any case, such a fact would not be determinative of the Motion because the requested additional information would still increase the efficiency and accuracy of the Prosecution's contemplated searches. The Chamber therefore considers it appropriate, in this particular case, to order the disclosure sought.

7. As a final matter, the Chamber notes that the Lazarević Defence has been able to comply with the Prosecution's request, a fact tending to undermine the Lukić Defence's argument that it is unduly burdensome for it to also comply with the same. The Chamber also notes, with appreciation, the Lukić Defence's efforts to date to disclose the requested information for some of the witnesses to the Prosecution.

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 65 *ter* (G), hereby DISMISSES as moot the Motion in respect of the Lazarević Defence, GRANTS the Motion in respect of the Lukić Defence, and ORDERS the Lukić Defence to disclose to the Prosecution, by no later than 30 November 2007, the dates of birth and fathers' names of the persons named in its Rule 65 *ter* witness list.

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



Judge Iain Bonomy
Presiding

Dated this fifth day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² T. 14618 (29 August 2007).