



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: 26 May 2008

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson

Registrar: Mr. Hans Holthuis

Decision of: 26 May 2008

THE PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

Public

**DECISION ON SREDOJE LUKIĆ'S REQUEST FOR RECONSIDERATION OR, IN THE
ALTERNATIVE, CERTIFICATION TO FILE AN INTERLOCUTORY APPEAL ON THE
TRIAL CHAMBER'S DECISION OF 15 MAY 2008**

Office of the Prosecutor

Mr. Dermot Groome
Mr. Frédéric Ossogo
Ms. Laurie Sartorio
Mr. Stevan Cole
Ms. Francesca Mazzocco

Counsel for Mr. Milan Lukić

Mr. Bojan Sulejić
Mr. Jason Alarid

Counsel for Mr. Sredoje Lukić

Mr. Djuro Čepić
Mr. Jens Dieckmann

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”);

BEING SEISED of “Sredoje Lukić’s Request for Reconsideration of, or in the Alternative, Certification to file an Interlocutory appeal to ‘Decision on Prosecution’s Motion for an Order Requiring the Accused Sredoje Lukić to Clarify Alibi Notice Served under Rule 67 (A)(i)(a)’ with confidential Annex A” filed by counsel for the accused Sredoje Lukić (“Defence”) on 21 May 2008 (“Motion”),

NOTING that the Request relates to the Decision on Prosecution’s Motion for an Order Requiring the Accused Sredoje Lukić to Clarify Alibi Notice Served under Rule 67 (A)(i)(a) issued on 15 May 2008¹ (“Decision”) and was filed just two days before the expiry of the time-limit prescribed in the Decision for provision of the clarified alibi notices,

NOTING that the Decision requires the Defence to clarify: (1) in relation to the Pionirska Street incident, (a) “specifically where in Obrenovac the Accused claims to have been on 14 June 1992”² and (b) what other physical or documentary evidence, if any, remains to be provided to the Prosecution, so far as the Defence is able to assess at this point in time³; and (2) in relation to the Bikavac incident (a) where in Obrenovac the Accused claims to have been on 27 June 1992, including clarifying whether he was travelling on that date between Obrenovac and Višegrad and at which locations and at what times he claims to have been present in Obrenovac⁴; and (b) what other physical or documentary evidence, if any, remains to be provided to the Prosecution, so far as the Defence is able to assess at this point in time⁵,

NOTING that in a report provided by the Defence to the Senior Legal Officer on 28 March 2008, as directed by the pre-trial Judge at the status conference of 12 March 2008, the Defence confirmed to the Prosecution that in relation to the defence of alibi, “there is no further material evidence in

¹ Decision on Prosecution’s Motion for an Order Requiring the Accused Sredoje Lukić to Clarify Alibi Notice Served under Rule 67 (A)(i)(a) , 15 May 2008 (“Decision”).

² Decision, para. 10.

³ *Ibid.*, para. 13, Prosecution Motion, para. 22 (d).

⁴ Decision, para. 17.

⁵ *Ibid.*

possession of the Defence to present it [sic] to the Prosecutor in the moment”⁶, such that the Defence has voluntarily responded to the Prosecution on this issue, and has therefore already complied with that part of the Decision,

NOTING that the reasons given in support of the Request for reconsideration are: (a) that the Decision significantly affects the fairness of the proceedings; (b) that the clarifications ordered go beyond the legal obligations of the Defence under Rule 67 (B)(i)(a); (c) that the Decision is unreasoned; (d) that a narrow interpretation of the Rule would not impede or obstruct the preparation of the Prosecution case in any way; and (e) that the clarifications ordered in the Decision would “prejudice the right of the accused to a fair trial by forcing him to needlessly address certain specifications that should be adduced during the trial phase of the proceedings in terms of presenting [an] alibi defence”,

NOTING that the reasons given in motivation of the Request for Certification of leave to appeal are essentially the same⁷, coupled with the assertion that “by ordering the Defence to prematurely disclose information beyond the scope of Rule 67 (B)(i)(a), the rights of the Accused are placed in severe jeopardy, as his entire case risks being prejudiced”,

CONSIDERING that the criteria for reconsideration “have been clearly established by the Appeals Chamber ruling that ‘a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional circumstances if “a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice””⁸,

CONSIDERING that the arguments advanced by the Defence do not demonstrate a clear error of reasoning or potential injustice, such as to warrant a reconsideration of the decision by the Trial Chamber,

⁶ e:mail of 28 March 2008 from Mr. Dieckmann, co-counsel for Sredoje Lukić to Ms. Featherstone, Senior Legal Officer, copied to Prosecution.

⁷ Request para. 18.

⁸ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on the Prosecution Motion for Reconsideration, 23 August 2006, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3 [Confidential] Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, n.40.

CONSIDERING also that the purpose of a request for certification to appeal is not to show that an impugned decision is incorrectly reasoned but rather to demonstrate that the two cumulative conditions set out in Rule 73 (B) have been met,

CONSIDERING that the Decision does not involve an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial in that the arguments put forward by the Defence are general in nature and address the substance of the impugned Decision, rather than the criteria to be satisfied under Rule 73 (B),

CONSIDERING that the Decision does not affect the Defence's ability to present evidence of alibi defence at trial, as the question presently at issue is when shall this information be provided to the Prosecution; rather it permits the Prosecution, to the extent provided under the Rules, to investigate such alibi in advance,

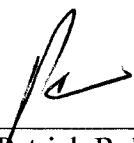
RECALLING that certain inferences may be drawn by the Trial Chamber that will hear the trial from any failure on the part of the Defence to comply fully with the requirements of the Rules relating to alibi,

CONSIDERING moreover that, in respect of the second requirement of Rule 73 (B), the Defence has failed to demonstrate that an immediate resolution of the matter by the Appeals Chamber would materially advance the proceedings,

FOR THE FOREGOING REASONS, pursuant to Rules 54 and 73 (B) of the Rules,

HEREBY DENIES the Motion in its entirety.

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



Judge Patrick Robinson
Presiding

Dated this twenty-sixth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]