



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: 9 June 2008

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson
Judge Krister Thelin
Judge Pedro David

Registrar: Mr. Hans Holthuis

Decision of: 9 June 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 AND ON MILAN LUKIĆ'S MOTION
TO EXTEND DEADLINES, NOTICE OF JOINDER IN MOTION TO RECONSIDER
DECISION OR IN THE ALTERNATIVE FOR CERTIFICATION FOR APPEAL**

Office of the Prosecutor

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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 Response and Motion for Clarification of Defence Pre-trial Briefs’” filed by counsel for the accused Sredoje Lukić (“Sredoje Lukić Defence”) on 22 May 2008¹ (“Sredoje Lukić Request”) and “Milan Lukić’s Motion to Extend Deadlines, Notice of Joinder in Motion to Reconsider Decision, or in the Alternative, for Certification for Appeal and Milan Lukić’s Motion for More Time in Advance of Clarification of Notice Pursuant to Rule 67(A)(i)(a), to Ensure a Fair Trial with Confidential Annexes A, B, and D and ex parte Annex C” filed on a confidential basis by counsel for the accused Milan Lukić (“Milan Lukić Defence”) on 28 May 2008² (Milan Lukić Motion”), and the Prosecution Opposition to the Sredoje Lukić Request filed on 29 May 2008,

NOTING that the Sredoje Lukić Request and the Milan Lukić Motion both relate to the “Decision on Prosecution’s Response and Motion for Clarification of Defence Pre-Trial Briefs”, issued on 15 May 2008³ (“Decision”) which required the two Defence teams to file further submissions pursuant to Rule 65 *ter* (F) by 29 May 2008,

NOTING that requests by the Milan Lukić Defence for extension of time to extend the deadlines for submission of the defence pre-trial briefs have already been addressed by this Trial Chamber on at least two occasions,⁴

NOTING in addition, that, as indicated in its title, the Milan Lukić Motion also includes two other requests for extension of time, the first being a request for additional time⁵ to comply with the Trial

¹ Sredoje Lukić’s Request for Reconsideration of, or in the Alternative, Certification to file an Interlocutory Appeal to “Decision on Prosecution’s Response and Motion for Clarification of Defence Pre-trial Briefs”, 22 May 2008 (“Sredoje Lukić Request”).

² Milan Lukić’s Motion to Extend Deadlines, Notice of Joinder in Motion to Reconsider Decision, or in the Alternative, for Certification for Appeal and Milan Lukić’s Motion for More Time in Advance of Clarification of Notice Pursuant to Rule 67(A)(i)(a), to Ensure a Fair Trial with Confidential Annexes A, B, and D and ex parte Annex C”, dated 23 May 2008, filed confidentially 28 May 2008, (“Milan Lukić Motion”).

³ Decision on Prosecution’s Response and Motion for Clarification of Defence Pre-Trial Briefs, 15 May 2008, filed 16 May 2008 (“Decision”).

⁴ Decision on Prosecution Motion to amend Rule 65 *ter* witness list and on related submissions, 22 April 2008, para. 19; [Confidential] Decision on the Prosecution’s Motion for an Order Requiring the Accused Milan Lukić to Clarify Alibi Notice Served under Rule 67 (A)(i)(a) and on the Defence of Milan Lukić’s Second Motion Concerning Protective Measures for Alibi Witnesses, 8 May 2008 (“Alibi Decision”), para. 23.

Chamber's confidential Decision of 8 May 2008⁶ and the second being a request for "a stay in response and appeal deadlines" pending final assessment by the Registrar of the International Tribunal of matters relating to funding for the Milan Lukić Defence (together "the Milan Lukić Requests for Extension of Time"),

NOTING further that the Milan Lukić Motion includes three additional requests relating to matters pertaining to the preparation of the defence ("the Milan Lukić Additional Requests"),

CONSIDERING, as a preliminary matter, that it is more appropriate for the Trial Chamber to address the subject matter of the Milan Lukić Requests for Extension of Time and the Milan Lukić Additional Requests in a separate decision,

NOTING that the reasons given in support of the Sredoje Lukić Request insofar as it relates to reconsideration are that the findings in the Decision are ill-founded and flawed⁷ and that "as such will have a perilous potency of prejudicing the right of the Accused to a fair and expeditious trial"⁸, without further specification,

NOTING that the only reason given in motivation of the Sredoje Lukić Request insofar as it relates to certification of leave to appeal is that the Decision significantly affects the fairness and expeditiousness of the trial⁹, without further explanation, coupled with the assertion that "by ordering the Defence to needlessly and prematurely disclose information regarding the Defence case which goes beyond the scope of Rule 65 *ter* (F), the rights of the Accused are placed in severe jeopardy, as his entire case risks being prejudiced"¹⁰,

NOTING that the Milan Lukić Motion was filed more than seven days after the issue of the Decision and is therefore not timely filed pursuant to Rule 73 (C),

CONSIDERING therefore that the part of the Milan Lukić Motion seeking certification for leave to appeal fails on this ground,

⁵ Milan Lukić Motion, para. 5.

⁶ Alibi Decision, *supra* n. 2.

⁷ Sredoje Lukić Request, paras 7 and 8.

⁸ *Ibid.*, para. 11.

⁹ *Ibid.*, para. 14.

NOTING that the reasons given in support of the Milan Lukić Motion for reconsideration are said to be based on “the protection of potential witnesses and the guarantees of a right to a fair trial pursuant to international law and the rules of this International Tribunal”¹¹, without further specification as to how such rights are alleged to have been prejudiced,

NOTING the submissions of the Prosecution asserting that, as regards reconsideration, the Sredoje Lukić Request for reconsideration is “nothing more than a repeat of the Accused’s argument against providing information regarding his defence”¹² and that the request for certification for leave to appeal does not “explain how complying with the Decision will prejudice his case nor how the fair and expeditious conduct of the proceedings or outcome of the trial will be affected”, nor has the accused “articulated any arguments in support of the need for an immediate resolution of this matter by the Appeals Chamber”¹³,

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’”¹⁴,

CONSIDERING that the arguments advanced by both the Sredoje Lukić Defence and the Milan Lukić 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,

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, regarding the Sredoje Lukić Request, the Decision does not involve an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of

¹⁰ Ibid., para. 15.

¹¹ Milan Lukić Motion, para. 11.

¹² Prosecution’s Opposition to “Sredoje Lukić’s Request for Reconsideration of, or in the Alternative, Certification to file an Interlocutory Appeal to ‘Decision on Prosecution’s Response and Motion for Clarification of Defence Pre-trial Briefs’”, 29 May 2008, para. 12.

¹³ Ibid., para. 14.

¹⁴ *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

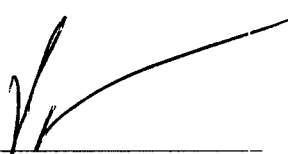
the trial in that the arguments put forward by the Sredoje Lukić Defence are general in nature and do not address the criteria to be satisfied under Rule 73 (B),

CONSIDERING moreover that, in respect of the second requirement of Rule 73 (B), the Sredoje Lukić 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 Sredoje Lukić Request in its entirety, **DENIES** the Milan Lukić Motion insofar as it relates to reconsideration or certification for leave to appeal, **ORDERS** the Milan Lukić Defence and the Sredoje Lukić Defence to file, no later than Wednesday 11 June 2008, the further submissions required by the Decision of 15 May 2008 and **REMAINS SEISED** of the Milan Lukić Requests for Extension of Time and the Milan Lukić Additional Requests.

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



Judge Patrick Robinson
Presiding

Dated this ninth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

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.