

IT-98-32/1-T
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11 September 2008

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UNITED
NATIONS



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-T

Date: 11 September 2008

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Christine Van den Wyngaert
Judge Pedro David

Registrar: Mr. Hans Holthuis

Decision of: 11 September 2008

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION TO UPDATE
RULE 65 TER SUMMARIES**

The Office of the Prosecutor

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

Counsel for the Accused

Mr. Jason Alarid for Milan Lukić
Mr. Đuro Čepić and Mr. Jens Dieckmann for Sredoje Lukić

TRIAL CHAMBER III (“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 Motion to update 65 *ter* summaries, filed confidentially on 20 August 2008 (“Motion”), wherein the Prosecution seeks leave to file additions to its previously filed Rule 65 *ter* summaries.¹

A. Relevant procedural history

1. On 2 September 2008, the Defence of Sredoje Lukić (“Sredoje Lukić Defence”) responded to the Motion (“Sredoje Lukić Response”).² On 3 September 2008, the Defence of Milan Lukić (“Milan Lukić Defence”) responded to the Motion (“Milan Lukić Response”).³ On 9 September 2008, the Prosecution sought leave to reply and replied to the Defence responses.⁴

2. On 5 and 9 September 2008, Witnesses VG-018 and VG-101 gave testimony which included information which is subject to the current motion. The Chamber notes that neither Defence team at any time objected to this course of action.⁵ Therefore, the Chamber considers that the request to update the summaries of VG-018 and VG-101 has become moot.

B. Arguments of the parties

3. The Prosecution seeks to update the Rule 65 *ter* summaries of Witnesses VG-011, VG-013, VG-035, VG-063, VG-078 and VG-094. It submits that the aim of its Motion is to “supplement the previously filed 65*ter* Summaries so that they more accurately reflected the evidence the witnesses will provide in court.”⁶ The additional information to be given by the aforementioned witnesses is specifically intended to rebut the alibis presented by the Accused.⁷ The Prosecution submits that all of the information that it seeks to add to the Rule 65 *ter* summaries stems from the witnesses’ statements or prior testimony and has been previously disclosed to the Defence under Rule 66 (A)(ii).⁸ Most of the additional evidence relates to crimes of sexual violence allegedly committed by the Accused in Višegrad on days that they claim to have been elsewhere.⁹

¹ Prosecution list of witnesses pursuant to Rule 65*ter*, 14 March 2008.

² Sredoje Lukić response to “Prosecution motion to update 65*ter* summaries”, filed confidentially on 2 September 2008.

³ Milan Lukić joinder of Sredoje Lukić’s response to “Prosecution motion to update 65*ter* summaries”, filed confidentially on 3 September 2008.

⁴ Prosecution request for leave to reply and reply to Defence response to motion to update 65 *ter* summaries, 9 September 2008.

⁵ Hearing, 5 September 2008, (testimony of Witness VG-018); Hearing, 9 September 2008 (testimony of Witness VG-101).

⁶ Motion, para. 1.

⁷ Motion, paras 3 and 4.

⁸ Motion, para. 2.

⁹ Motion, para. 3.

4. The Sredoje Lukić Defence opposes the motion, and argues that “The Prosecution’s ultimate objective is to introduce allegations concerning rape and sexual violence allegedly committed by the Accused and his Co-Accused in the instant proceedings”.¹⁰ It also argues that the Prosecution tries to introduce evidence which is not related to the rebuttal of the Defence alibi(s), or evidence on which the 65^{ter} summary is vague.¹¹ Further, the Defence claims that it:

would in fact find itself in a more disadvantaged position if the instant Prosecution Motion was granted than if the ‘Prosecution Motion Seeking Leave to Amend the Second Amended Indictment’ had been granted. While the Defence would have been entitled under Rule 50 (C) of the Rules to request a postponement of the date for trial to ensure adequate time for the preparation of the defence if the Indictment had been amended, if the instant Motion was granted the Defence would not be entitled to do so.¹²

Therefore, the Defence argues, it will not have adequate time and facilities to for the preparation of its defence.¹³ The Milan Lukić Defence joined the Sredoje Lukić Response.¹⁴

5. In its reply, the Prosecution affirms that it was not its intention to “add specific charges and evidence of rape”, but that:

the Prosecution’s intention is only to introduce evidence that the Accused were present in places other than the ones they claim to have been. Some, though not all, of that evidence involves evidence that during the time they claim to have been elsewhere, they were actually raping women.¹⁵

The Prosecution rebuts the Defence claim that, were the motion to be granted, the Defence would be in a “more disadvantaged position” than if the proposed amendments to the indictment would have been granted. In this respect, the Prosecution submits that “while the Accused would have had more time to investigate, he also would have been exposed to additional charges”.¹⁶

C. Discussion

6. On 8 July 2008, the Trial Chamber denied the Prosecution’s request to include five new counts in the indictment.¹⁷ The Prosecution’s request for certification to appeal the decision was denied on 19 August 2008.¹⁸ The Trial Chamber recalls that an indictment represents the primary

¹⁰ Sredoje Lukić Response, para. 5.

¹¹ Sredoje Lukić Response, paras 8, 9.

¹² Sredoje Lukić Response, para. 7.

¹³ Sredoje Lukić Response, para. 7.

¹⁴ Milan Lukić Response,

¹⁵ Reply, para. 3.

¹⁶ Prosecution Reply, para. 6.

¹⁷ Decision on Prosecution motion seeking leave to amend the second amended indictment and on Prosecution motion to include UN Security Council resolution 1820 (2008) as additional supporting material to proposed third amended indictment as well as on Milan Lukić’s request for reconsideration or certification of the pre-trial Judge’s order of 19 June 2008, 8 July 2008.

¹⁸ Decision on Prosecution motion for certification to appeal the Trial Chamber’s decision on Prosecution motion to amend the second amended indictment, 19 August 2008.

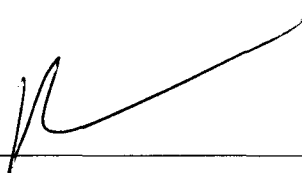
accusatory instrument,¹⁹ and that new charges are not introduced through the addition of information to Rule 65 *ter* summaries. The Prosecution submits that, in order to rebut the Defence alibi, it is necessary to present the additional evidence through Witnesses VG-011, VG-013, VG-035, VG-063, VG-078 and VG-094. The Chamber recalls that during the pre-trial conference on 9 July 2008, the Trial Chamber ordered the Prosecution to lead during its case-in-chief any evidence in rebuttal of the Defence's alibi evidence ("9 July Order").²⁰

7. The Chamber notes that the Defence has been on notice of the Prosecution's intention to lead the proposed additional evidence in order to rebut the Defence alibis since at least 16 June 2008.²¹ Having examined the proposed additional testimony of each of these witnesses, the Trial Chamber considers the Prosecution has shown good cause for its request to add the proposed information to its Rule 65 *ter* summaries.

D. Disposition

For the foregoing reasons, the Trial Chamber **GRANTS** the Motion.

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



Judge Patrick Robinson
Presiding

Dated this eleventh day of September 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁹ See Rules 47 to 53 *bis*.

²⁰ Decision on prosecution motion seeking leave to amend the second amended indictment and on Prosecution motion to include UN Security Council resolution 1820 (2008) as additional supporting material to proposed third amended indictment as well as on Milan Lukić's request for reconsideration or certification of the pre-trial Judge's order of 19 June 2008

²¹ Prosecution motion seeking leave to amend the second amended indictment, 16 June 2008.