



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

Order of: 11 September 2008

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**ORDER TO BOSNIA AND HERZEGOVINA
PURSUANT TO RULE 54 *BIS***

The Office of the Prosecutor

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

The Government of Bosnia and Herzegovina

via the Embassy of Bosnia and Herzegovina
to The Netherlands, The Hague

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”);

BEING SEISED of the “Motion of defence counsel for Sredoje Lukić pursuant to Rule 54 *bis* for a binding order directed at the Federation of Bosnia and Herzegovina for the production of evidence relevant to the case with Annexes A, A1, B, B1, C and C1”, filed on 17 June 2008 (“Motion”), whereby the Defence of Sredoje Lukić (“Defence”) requests the Trial Chamber to issue a binding order pursuant to Rule 54 *bis* of the Rules of Procedure and Evidence to the Federation of Bosnia and Herzegovina for the production of certain audio-visual material (“material”);

RECALLING that the Motion was initially filed on 7 November 2006 (“Original Motion”) and that at a Rule 65 *ter* conference held on 28 May 2008 the Defence was invited to refile the Original Motion with updated information concerning the efforts which the Defence had undertaken since the Original Motion in order to obtain the material;

RECALLING that on 23 July 2008 the Trial Chamber found that a response to the Motion from the Government of Bosnia and Herzegovina would be of assistance to the Trial Chamber’s determination of this matter;

RECALLING that the Trial Chamber to that end requested the Registrar to provide the Motion to the Government of Bosnia and Herzegovina and invited the Government of Bosnia and Herzegovina to file a response to the Motion by 18 August 2008;

NOTING that the Government of Bosnia and Herzegovina did not submit a response by that date;

CONSIDERING that pursuant to Rule 54 *bis* a party seeking a binding order must meet the following cumulative and mandatory conditions:

- to identify as far as possible the documents or information sought;
- to indicate how they are relevant to any matter in issue before the Trial Chamber and how they are necessary for a fair determination of that matter; and
- to explain which steps the requesting party has taken to secure the relevant State’s assistance;

CONSIDERING that a Trial Chamber’s decision on a Rule 54 *bis* request is a discretionary one;¹

¹ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108*bis*.2, Decision on request of the United States of America for review, 12 May 2005 (“*Milutinović* Decision”), para. 6, referring to *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-AR108*bis*, Decision on the request of the Republic of Croatia for review of a binding order, 9 September 1999, paras 19, 40.

CONSIDERING that the Defence has sufficiently identified the material sought as required by Rule 54 *bis*;²

CONSIDERING that the Defence has indicated that the material is relevant to the charges against its client, in particular the Pionirska Street incident, and that the material is necessary for a fair determination of this matter at trial;³

CONSIDERING that the Defence sought to obtain the material from the relevant organisations on several occasions since May 2006;⁴

CONSIDERING that the Defence has undertaken reasonable steps and exercised due diligence in attempting to obtain the audio-visual material;⁵

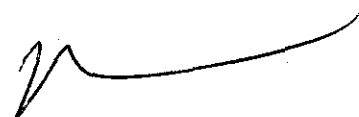
CONSIDERING that pursuant Article 29 of the Statute States “shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law” and “shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber”;

CONSIDERING that pursuant to Rule 2 the term “State” refers, *inter alia*, to the Federation of Bosnia and Herzegovina;

PURSUANT TO Article 29 of the Statute and Rule 54 *bis*;

GRANTS the Motion and **ORDERS** the Federation of Bosnia and Herzegovina to ensure the provision of the requested audio-visual material to the Defence within 14 days of this decision.

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]

² Motion, para. 9; Original Motion, para. 19. See also *Milutinović* Decision, para. 15, referring to *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108*bis*, Judgement on the request of the Republic of Croatia for review of the decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 32.

³ Motion, para. 10; Original Motion, paras 21-23.

⁴ Motion, Annexes A-C; Original Motion, Annexes A-F.

⁵ *Milutinović* Decision, para. 28.