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26 November 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: 26 November 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: 26 November 2008

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**ORDER PURSUANT TO RULE 73 *TER*
OF THE RULES OF PROCEDURE AND EVIDENCE**

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 and Mr. Dragan Ivetić 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”);

NOTING “Milan Lukić’s submission pursuant to Rule 65 *ter* (G)”, filed confidentially on 19 November 2008 with two annexes (“Milan Lukić Submission”), wherein the Defence of Milan Lukić states that it intends to call 124 witnesses, with an estimated time for examination-in-chief of 172.5 hours,¹ and that it intends to offer 69 documents into evidence;²

NOTING that the Defence of Milan Lukić submits that its list of witnesses is “over-inclusive and, from a perspective of notice, represents all those who the Defence believes may be necessary to call to present its case in full”, and that “should records be admitted based on self-sustaining authenticity, there may not be need to call certain custodians;”³

NOTING “Sredoje Lukić’s Rule 65 *ter* submission”, filed confidentially on 19 November 2008 with two annexes (“Sredoje Lukić Submission”), wherein the Defence of Sredoje Lukić states that it intends to call four witnesses, all to be heard pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) with an estimated time for examination-in-chief of “approximately 2 hours”,⁴ and that it intends to offer 32 documents into evidence;⁵

NOTING “Sredoje Lukić’s motion for admission of witness statements pursuant to Rule 92 *ter* with confidential Annexes A-D”, filed on 24 November 2008 (“Sredoje Lukić Rule 92 *ter* Motion”);

NOTING that the parties’ submissions on this matter were filed confidentially;

CONSIDERING, however, that it is not necessary that the present Order be confidential and that matters relating to scheduling and the proper management of the trial shall be public;

RECALLING that in its decision of 18 November 2008 the Trial Chamber determined that the defence case for Sredoje Lukić would begin on Monday 1 December 2008 and that the Defence of Milan Lukić must be ready to present its case immediately following that of the Defence of Sredoje Lukić;⁶

¹ Milan Lukić Submission, para. 2 and Annex A.

² Milan Lukić Submission, Annex B.

³ Milan Lukić Submission, para. 1.

⁴ Sredoje Lukić Submission, para. II, Annex A.

⁵ Sredoje Lukić Submission, Annex B.

⁶ Decision on Milan Lukić’s motion for extension of time to prepare the defence case-in-chief, 18 November 2008.

RECALLING that, at the pre-trial conference held on 9 July 2008 pursuant to Rule 73 *bis* of the Rules, the Trial Chamber determined that the Prosecution was to call no more than 45 witnesses and to present its evidence-in-chief within 60 hours;⁷

NOTING that the Prosecution used approximately 50 hours for examination-in-chief;

NOTING that the number of witnesses proposed by the Defence of Milan Lukić is significantly more than the number of witnesses that the Prosecution was permitted to call, that the Defence requests more than three times the time actually used by the Prosecution and close to triple the time allotted to the Prosecution, and that, were the Trial Chamber to grant the request of the Defence of Milan Lukić, its case would conclude only in the second half of 2009;

CONSIDERING that in the opinion of the Trial Chamber the number of witnesses proposed by the Defence of Milan Lukić is unduly large and that the interests of a fair and expeditious trial, as mandated by Article 20 of the Statute, are in the circumstances of this case, served by allowing the Defence of Milan Lukić to call the same number of witnesses as the Prosecution and to present its evidence-in-chief within the same amount of time as allotted to the Prosecution, that is 60 hours, even though the Prosecution actually used less time;

CONSIDERING that it is not necessary for the Chamber to exercise its discretion pursuant to Rule 73 *ter* in relation to the Sredoje Lukić Submission;

PURSUANT TO Rule 65 *ter* and Rule 73 *ter* of the Rules;

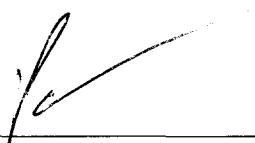
DETERMINES that the Defence of Sredoje Lukić may call four witnesses and that the time available for examination-in-chief of these witnesses shall be two hours, subject to the Chamber's decision on the Sredoje Lukić Rule 92 *ter* Motion;

DETERMINES that the Defence of Milan Lukić may call 45 witnesses and that the time available for the examination-in-chief of these witnesses shall be 60 hours, so that the Defence will conclude the presentation of its evidence no later than Friday 6 March 2009; and

ORDERS the Defence of Milan Lukić to file an updated witness list pursuant to Rule 65 *ter*(G) in compliance with this Order by Tuesday 2 December 2008, 1600 hours.

⁷ Pre-trial conference, 9 July 2008, T. 202.

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



Judge Patrick Robinson
Presiding

Dated this twenty-sixth day of November 2008

At The Hague

The Netherlands

[Seal of the Tribunal]