

UNITED
NATIONS

IT-98-32/1-T
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19 January 2009

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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: 19 January 2009

Original: English

IN TRIAL CHAMBER III

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

Acting Registrar: Mr. John Hocking

Decision of: 19 January 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON DEFENCE REQUEST FOR
CLARIFICATION OF DECISION PURSUANT TO
RULE 98BIS**

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”);

BEING SEISED of “Milan Lukić’s motion for clarification of the Trial Chamber’s Rule 98*bis* decision as to evidence of the chapeau elements”, filed on 16 December 2008 (“Motion”);

RECALLING that on 13 November 2008 the Trial Chamber gave an oral ruling pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”) (“Rule 98 *bis* Decision”), in which it found, *inter alia*, that for the purposes of Rule 98 *bis* the general requirements for the applicability of Article 3 and Article 5 of the Statute of the Tribunal (“chapeau elements”) are met;¹

NOTING that the Defence of Milan Lukić (“Defence”) requests the Trial Chamber to provide “clarification of the establishment of the chapeau elements in the Prosecution case-in-chief, primarily in what specific units Milan Lukić was operating in [*sic*] and under whose command, and what evidence of intent was shown to link these crimes to any existing basis of an armed conflict in June 1992”;²

NOTING the Defence submission that the Trial Chamber, in the Rule 98 *bis* Decision, “gave some brief and general analysis to the chapeau elements and their application to the evidence presented by the Prosecution, but did not give any detail particularly as to the case that Milan Lukić had to answer as to his alleged participation in Indictment crimes as part of a ‘widespread and systematic’ campaign by Serb organs, and his role, if any, in the same organs”;³

NOTING the Defence submission that, contrary to the Trial Chamber’s finding, the Prosecution did not present evidence during its case-in-chief indicating that the chapeau elements for the applicability of Article 3 and Article 5 of the Statute are met;⁴

NOTING the Prosecution response to the Motion, filed on 22 December 2008,⁵ whereby the Prosecution submits that the Motion is “untimely and wholly without merit”, and that the Motion is, in effect, a request for a reopening of the Rule 98 *bis* stage or reconsideration of the Trial Chamber’s Rule 98 *bis* Decision;⁶

¹ Hearing, 13 Nov 2008, T. 3583-3585.

² Motion, para. 8.

³ Motion, para. 2.

⁴ Motion, paras 4-7.

⁵ Prosecution response to “Milan Lukić’s motion for clarification of the Trial Chamber’s Rule 98*bis* decision as to evidence of the chapeau elements”, filed on 22 Dec 2008 (“Response”).

⁶ Response, paras 8, 13-14.

NOTING the Prosecution's submission that "[t]he evidence presented by the Prosecution clearly meets the standard under Rule 98 *bis*, and the Trial Chamber ruled accordingly";⁷

CONSIDERING that, in order to challenge a decision rendered by a Chamber, a party may either request certification to appeal the decision pursuant to Rule 73(B) or request reconsideration of the decision;

CONSIDERING that, pursuant to Rule 73(C) of the Rules, a party that wishes to appeal an oral decision of a Chamber may request certification to appeal the decision within seven days of the date of the decision;

CONSIDERING that the Motion was filed 32 days after the time-limit pursuant to Rule 73(C) had expired;

CONSIDERING that a Trial Chamber may, in exceptional circumstances, reconsider a prior decision if "a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice";⁸

CONSIDERING that the Defence has not demonstrated either that there is a clear error of reasoning in the Rule 98 *bis* Decision, or that it is necessary to reconsider the Decision in order to prevent an injustice;

CONSIDERING further that the Chamber, acting *proprio motu*, is unable to identify any reason which would require a reconsideration of the Rule 98 *bis* Decision in relation to the findings concerning the chapeau elements for applicability of Article 3 and Article 5;

CONSIDERING, lastly, that the issues raised by the Defence are matters of evidence which may be addressed, *inter alia*, through Defence witnesses or in closing argument;

PURSUANT to Rule 54 and Rule 73(C) of the Rules;

DISMISSES the Motion.

⁷ Response, para. 10.

⁸ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on the Prosecution motion for reconsideration, 23 Aug 2006, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108*bis*.3, Confidential decision on request of Serbia and Montenegro for review of the Trial Chamber's decision of 6 December 2005, 6 Apr 2006, para. 25, n. 40. See also Decision on motion for reconsideration of decision to preclude VG-094's testimony, 18 Dec 2008, para. 26.

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



Judge Patrick Robinson
Presiding

Dated this nineteenth day of January 2009

At The Hague

The Netherlands

[Seal of the Tribunal]