



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: 9 April 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: 9 April 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON MILAN LUKIĆ'S MOTION
FOR THE ADMISSION OF DOCUMENTS
FROM THE BAR TABLE**

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 admission of documents from the bar table”, filed on 24 March 2009 (“Motion”) by the Defence for Milan Lukić (“Defence”), in which it requests the admission into evidence of:

- (i) Documents related to the personal and military record for Vlatko Trifković (with ERN number 1D22-0548) together with the English translation of those documents (with ERN number 1D22-0555 (both attached as Exhibit B to the Motion) (“Vlatko Trifković Documents”));¹
- (ii) Documents related to the military record of Milan Lukić (with ERN number 1D22-0567) together with the English translation of those documents (with ERN number 1D22-0572) (both attached as part of Exhibit C to the Motion) (“Milan Lukić’s Military Record”);²
- (iii) Certificate of evidence of military service for Milan Lukić and Sredoje Lukić (with ERN number 1D22-0577) together with the English translation thereof (with ERN number 1D22-0580) (both attached as part of Exhibit C to the Motion) (“Certificates of Military Service”);³
- (iv) Sredoje Lukić’s record (with ERN number 1D22-0583) together with the English translations thereof (with ERN number 1D22-0589) (both attached as part of Exhibit C to the Motion) (“Sredoje Lukic’s Record”);⁴ and
- (v) The military service book of Milan Lukić (with ERN number 1D22-4090) which is listed on the Defence Rule 65 *ter* exhibit list (“Military Service Book”);⁵

NOTING that on the 26 March 2009, the Trial Chamber ordered that the Prosecution file an expedited response to the Motion by 4.00 p.m. on 1 April 2009, pursuant to Rule 127 of the Rules of Procedure and Evidence (“Rules”) and that on 1 April 2009 the Prosecution filed a response (“Response”);⁶

¹ Motion, paras 1, 7; Annex B.

² Motion, paras 1, 7; Annex C.

³ Motion, paras 1, 7; Annex C.

⁴ Motion, paras 1, 7; Annex C.

⁵ Motion, paras 1, 7; Annex C.

⁶ Prosecution response to Milan Lukić’s motion for admission of documents from the bar table with annexes A and B, filed on 1 April 2009 (“Response”).

NOTING that three additional issues will be addressed by the Trial Chamber before the question of the admission of the documents as sought by the Defence will be determined, namely: (i) a clarification of which documents the Defence is seeking to admit into evidence; (ii) prior disclosure of these documents by the Prosecution to the Defence; and, (iii) a submission filed by the Defence for Sredoje Lukić replying to the Response (“Additional Issues”);

NOTING the Prosecution’s submissions in the Response that the Motion requests the admission of four documents and the Military Service Booklet of Milan Lukić (“Listed Documents”) but also attaches eighteen other documents in Annex B⁷ and Annex C⁸ (“Unlisted Documents”) that are not requested for admission by ERN, are commingled with the listed documents, are not on the Defence Rule 65 *ter* exhibit list, contain documents with no translation or translation issues, and contain two documents that are not legible, and that it is not clear whether the Defence is seeking admission of the Unlisted Documents or “including them with respect to other allegations”;

CONSIDERING that the Unlisted Documents form part of the exhibits sought to be admitted by the Defence, that the Defence is, therefore, seeking to admit into evidence all the documents attached to Annex B and Annex C and that the ERN number provided by the Defence relates only to the first page of multi-page exhibits, so that:

- (i) The Vlatko Trifković documents can be identified as those pages with the following ERN numbers: 1D22-0548, 1D22-0549, 1D22-0550, 1D22-0551, 1D22-0552, 1D22-0553 and 1D22-0554 (with translations 1D22-0555, 1D22-0556, 1D22-0557, 1D22-0558, 1D22-0559, 1D22-0560, 1D22-0561, 1D22-0562, 1D22-0563, 1D22-0564, 1D22-0565, 1D22-0566);
- (ii) Milan Lukić’s Military Record can be identified as those pages with the following ERN numbers: 1D22-0567, 1D22-0568, 1D22-0569, 1D22-0570, 1D22-0571 (with translations 1D22-0572, 1D22-0573, 1D22-0574, 1D22-0575, 1D22-0576);
- (iii) The Certificates of Military Service can be identified as those page with the following ERN numbers: 1D22-0577, 1D22-0578, 1D22-0579 (with translations 1D22-0580, 1D22-0581 and 1D22-0582);

⁷ The unlisted documents referred to by the Prosecution in relation to Annex B are 1D22-0549 (translation 1D22-0558); 1D22-0550 (translation 1D22-0559); 1D22-0551 (translation 1D22-0562); 1D22-0552 (translation 1D22-0564); 1D22-0553 (translation 1D22-0561, 1D22-0565); 1D22-0554 (translation 1D22-0566), see Response, paras 20-26.

⁸ The unlisted documents referred to by the Prosecution in relation to Annex C are 1D22-0568 (translation 1D22-0573); 1D22-0569 (translation 1D22-0574); 1D22-0570 (translation 1D22-0575), 1D22-0571 (translation 1D22-0576); 1D22-0578 (translation 1D22-0581), 1D22-0579 (translation 1D22-0582), 1D22-0584 (translation 1D22-0590), 1D22-0585 (translation 1D22-0591) and 1D22-0588 (translation 1D22-0594), see Response, paras 27-29.

- (iv) Sredoje Lukić's Record can be identified as those pages with the following ERN numbers: 1D22-0583, 1D22-0584, 1D22-0585, 1D22-0586, 1D22-0587, 1D22-0588 (with translations 1D22-0589, 1D22-0590, 1D22-0591, 1D22-0591, 1D22-0591, 1D22-0591);

CONSIDERING that although it would have greatly aided the Prosecution, and the Trial Chamber, if the Defence had provided the full ERN range of each document that it was asking the Chamber to admit, the documents sought to be admitted by the Defence are identifiable and include all the pages appended to Annexes B and C of the Motion;

NOTING the Defence submission that when it requested the various documents listed in the Motion from the Municipality of Višegrad, the Defence was informed that "multiple responses and supporting documentation had already been prepared by and sent by those officials to the Office of the Prosecution at this Tribunal", and that "[t]o the knowledge of the Defence, no such documentation was ever made available" to it in this form;⁹

NOTING the Defence submission that if the "Prosecution cannot show that the foregoing documents were disclosed to the Defence", "the Prosecution ought to be asked to show cause for the same, and disclose why they were not identified with specificity given the Rule 68 nature of the documentation", and that if the documents were never disclosed, sanctions should be considered;¹⁰

NOTING that the Prosecution did not address in any detail the Defence's submissions with regard to Rule 68;

NOTING that on 9 April 2009, the Defence requested leave to reply to the Response and, in the Reply, it requested the Trial Chamber to consider the sanction of "Mistrial and Dismissal" of the Prosecution case due to the Prosecution's failure to disclose documents to the Defence;¹¹

NOTING that Rule 126 *bis* of the Rules states that a "reply to the response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber";

CONSIDERING that since the Defence have filed the Reply eight days after the filing of the Response, it is filed out of time and, therefore, the Trial Chamber is not required to take action in respect of the Reply, and the Reply should be dismissed;

⁹ Motion, para. 5.

¹⁰ Motion, para. 9.

¹¹ Milan Lukić's request to reply and reply to the Prosecution's response to Milan Lukić's motion for admission of documents from the bar table, 9 April 2009 ("Reply").

CONSIDERING that the Trial Chamber is unable to determine whether the Prosecution has breached its disclosure obligations but reminds the Prosecution that it must comply with its disclosure obligations as clearly set out in the Rules;

NOTING the Prosecution submission that certain documents sought to be admitted by the Defence are relevant to demonstrating a link between unit 7158 and the paramilitary group known as the “White Eagles” or the “Avengers”;¹²

NOTING that on 2 April 2009, the Defence of Sredoje Lukić requested leave to file a submission in respect of the Response, in which it requested the Trial Chamber not to take into account in its deliberations the submissions made by the Prosecution that there is an alleged link between the unit 7158 and the paramilitary group known as the “White Eagles” or the “Avengers” (“Sredoje Lukić Submission”);¹³

NOTING that the Prosecution’s submission regarding the link between unit 7158 and the paramilitary group known as the “White Eagles” or the “Avengers” was also opposed by the Defence in the Reply;¹⁴

CONSIDERING that none of the documents sought to be admitted by the Defence contain any reference to the “White Eagles” or the “Avengers” and that, although the Prosecution’s argument is improperly made, the Trial Chamber is not required to take any action in respect of the Sredoje Lukić Submission and the Sredoje Lukić Submission should, therefore, be dismissed;

CONSIDERING that, pursuant to Rule 89(C) of the Rules, “[a] Chamber may admit any relevant evidence which it deems to have probative value” and that in order to have probative value a tendered piece of evidence must display sufficient indicia of reliability;¹⁵

CONSIDERING that, at the admissibility stage of a piece of evidence, a *prima facie* showing of relevance and reliability is sufficient and that the final assessment of the relevance and reliability of

¹² Response, paras 14, 15, 17, 27 and 28.

¹³ Sredoje Lukić’s Defence submission with regard to “Prosecution response to “Milan Lukić’s motion for the admission of documents from the bar table with annexes A and B” dated 1 April 2009, filed 2 April 2009.

¹⁴ Reply, para. 11.

¹⁵ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, Decision on joint interlocutory appeal concerning the status of Richard Butler as an expert witness, 30 January 2008 (“*Popović* Interlocutory Appeal Decision”), para. 22; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on the Prosecution’s motion for admission of exhibits from the bar table, motion to amend the bar table motion, and oral motion for admission of additional exhibit (“*Popović* Admission Decision”), 14 March 2008, para. 15; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR.73.2, Decision on appeal regarding statement of a deceased witness, 21 July 2000, para. 24.

the piece of evidence is made at a later stage in the course of determining the weight to be attached to the evidence in view of the trial records as a whole;¹⁶

CONSIDERING that evidence does not need to be introduced through a witness in every circumstance and that the admission of evidence from the bar table is generally permitted;¹⁷

NOTING the Defence submissions that the Vlatko Trifković documents are relevant to Vlatko Trifković's death and thus relevant to the Defence alibi for the Pionirska Street fire, and that they "bear a signature and multiple official stamps that are indicia of their authenticity";¹⁸

NOTING the Prosecution submission that 1D22-0548 of the Vlatko Trifković documents consists of internal correspondence between the Government of the Republika Srpska and the Višegrad Municipality and has no relevance to the proceedings;¹⁹

NOTING the Prosecution submission that 1D22-0549 of the Vlatko Trifković documents is a record of military service of Vlatko Trifković between 11 April 1983 and 18 May 1964, that 1D22-0550 and 1D22-0551 indicate that Vlatko Trifković was a member of the army in 1984, and that these documents are, therefore, neither relevant to Vlatko Trifković's military service in 1992, nor to his alleged involvement in the Kopito operation;²⁰

NOTING the Prosecution submission that it has not been provided with an English translation for the page with ERN reference 1D22-0552 or with the B/C/S original of the page with ERN reference 1D22-0564 of the Vlatko Trifković documents;²¹

NOTING the Prosecution submission that the page with ERN reference 1D22-0553 of the Vlatko Trifković documents has not been authenticated by the Defence;²²

NOTING the Prosecution submission that the date of document 1D22-0554, which is the original B/C/S version of the finding of a doctor at the Višegrad Health Centre, that Vlatko Trifković was

¹⁶ *Popović* Interlocutory Appeal Decision, para. 22; *Popović* Admission Decision, para. 17; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution submission on the admission of documentary evidence, 16 January 2008 ("*Delić* Decision"), para. 8; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, Decision on Prosecution's motion for admission of exhibits from the bar table with confidential annexes A to E, 14 May 2007, para. 11.

¹⁷ *Delić* Decision, para. 9. See also *Prosecutor v. Milan Milutinović et al.*, Case No. IT-0587-T, Decision on Prosecution motion to admit documentary evidence, 10 October 2006, para. 18.

¹⁸ Motion, paras 6-7.

¹⁹ Response, para. 14.

²⁰ Response, paras 20-21.

²¹ Response, para. 22.

²² Response, para. 23.

killed due to gunshot wounds and exposure to fire, is unclear and that the relevance of the document has not been made out;²³

NOTING that, as a result of its submissions detailed above, the Prosecution requests that the Trial Chamber deny the Motion with respect to B/C/S pages with ERN reference numbers 1D22-0548, 1D22-0549, 1D22-0550, 1D22-0551, 1D22-0552, 1D22-0553, 1D22-0554 of the Vlatko Trifkovic documents, together with their corresponding English translations;²⁴

CONSIDERING that the Trial Chamber is satisfied that the English translation of 1D22-0552 is 1D22-0562 and 1D22-0563, and 1D22-0553 is translated by 1D22-0564 and 1D22-0565, and that 1D22-0561 and 1D22-0564 are duplicate translations;

CONSIDERING that the Defence has failed to establish the relevance of 1D22-0549, 1D22-0550, 1D22-0551, 1D22-0552 and 1D22-0553 to its alibi case for the Pionirska Street fire;

CONSIDERING that despite the illegibility of the date on 1D22-0554, it demonstrates a *prima facie* showing of relevance and reliability and should, therefore, be admitted into evidence;

CONSIDERING that 1D22-0548 is relevant to illustrating the authenticity of 1D22-0554 and should, therefore, be admitted into evidence;

NOTING the Defence submission that Milan Lukić's Military Record, the Certificates of Military Service and Sredoje Lukić's Record are "relevant, probative and critical as they confirm that Milan Lukić was a member of the legitimate security forces of the Republika Srpska, mobilized in the same";²⁵

NOTING that, excepting the pages with ERN numbers 1D22-0586 and 1D22-0587, which the Prosecution submits are not legible,²⁶ the Prosecution does not oppose the authenticity of Milan Lukić's Military Record, the Certificates of Military Service or Sredoje Lukić's Record, and it does not oppose their addition to the Defence Rule 65*ter* exhibit list or their admission into evidence;²⁷

CONSIDERING that documents 1D22-0586 and 1D22-0587 are not legible,²⁸ but that Milan Lukić's Military Record, the Certificates of Military Service and Sredoje Lukić's Record

²³ Response, paras 24-26.

²⁴ Response, para. 30.

²⁵ Motion, para. 7 (b).

²⁶ See also Response, para. 29

²⁷ Response, para. 27

²⁸ See also Response, para. 29

demonstrate a *prima facie* showing of relevance and reliability and should, therefore, be admitted into evidence;

NOTING the Defence submissions that the Military Service Book should be admitted as it bears official stamps and is verified by the information contained in “these official responses from the Višegrad Municipality”, and that the original of the Military Service Book was made available to the Prosecution and “no objections having been made in the intervening time period”;²⁹

NOTING that the Prosecution opposes the admission of the Military Service Book as it “does not have a translation of this exhibit despite numerous requests”;³⁰

CONSIDERING that the Trial Chamber is not in a position to assess the relevance or reliability of the Military Service Book which has not been translated;

PURSUANT TO Rule 89(C) of the Rules;

GRANTS the Defence Motion **IN PART**;

ORDERS that the following documents are admitted into evidence:

Name of documents	ERN number of BCS original	ERN number of English translation
Vlatko Trifković Documents	1D22-0548	1D22-0555
	1D22-0554	1D22-0566
Milan Lukić's Military Record	1D22-0567	1D22-0572
	1D22-0568	1D22-0573
	1D22-0569	1D22-0574
	1D22-0570	1D22-0575
	1D22-0571	1D22-0576

²⁹ Motion, para. 8.

³⁰ Response, para. 13.

Certificates of Military Service	1D22-0577	1D22-0580
	1D22-0578	1D22-0581
	1D22-0579	1D22-0582
Sredoje Lukić's Record	1D22-0583	1D22-0589
	1D22-0584	1D22-0590
	1D22-0585	1D22-0591
	1D22-0588	1D22-0594

DENIES the Defence Motion in respect of the Vlatko Trifković Documents with ERN numbers 1D22-0549, 1D22-0550, 1D22-0551, 1D22-0552 and 1D22-0553 (with translations 1D22-0556, 1D22-0557, 1D22-0558, 1D22-0559, 1D22-0560, 1D22-0561, 1D22-0562, 1D22-0563, 1D22-0564, 1D22-0565);


DENIES the Motion in respect of 1D22-0586 and 1D22-0587 (translations 1D22-0592 and 1D22-0593) without prejudice to the Defence filing legible versions of these pages;

DENIES the Motion in respect of the Military Service Book, without prejudice to the Defence filing a translation of the Military Service Book;

DISMISSES the Sredoje Lukić Submission;

DISMISSES the Reply.

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


Judge Patrick Robinson
Presiding

Dated this ninth day of April 2009

At The Hague

The Netherlands

[Seal of the Tribunal]