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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: 5 May 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: 5 May 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON MILAN LUKIĆ'S FOURTH BAR TABLE
MOTION**

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 fourth motion to admit documents from the bar table”, filed publicly on 24 April 2009 (“Motion”), in which the Defence of Milan Lukić (“Defence”) requests admission into evidence of the following five documents:

- 1) Interpol arrest warrant for Milan Lukić, ERN number 1D22-0494-1D22-0496 (“document no. 1”);
- 2) “Documents evidencing time Milan Lukić was incarcerated/detained in Serbia/Bosnia”, ERN number 1D22-0995 (“document no. 2”);
- 3) “Video of Bakira Hašević Demonstration” (“document no. 3”);
- 4) “Purchase documents”, ERN number 1D22-0372-1D22-0378 (“document no. 4”);
- 5) RFA Response, attached in Annex A to the Motion (“document no. 5”);¹

RECALLING that on 22 April 2009 the Trial Chamber ordered that any further motions shall be filed no later than 24 April 2009 and that any responses thereto shall be filed by 12 noon on 27 April 2009 (“scheduling order”);²

NOTING that on 27 April 2009 the Prosecution filed a “preliminary response” to the Motion, in which it requests “summary dismissal” of the Motion (“Preliminary response”),³ and that on 28 April 2009 the Prosecution filed another response to the Motion “to supplement its preliminary response” (“Supplemental response”);⁴

NOTING the Prosecution submission that it was not provided with a courtesy copy of the Motion by the Defence on 24 April 2009, that the Motion was only distributed on 27 April 2009 at

¹ Motion, para. 1.

² Decision on the Defence of Milan Lukić request for additional time for final brief and closing argument and notice of non-availability, and on the Defence of Sredoje Lukić request for variation of word limit, filed publicly on 22 April 2009.

³ Prosecution preliminary response to “Milan Lukić’s fourth motion to admit documents from the bar table”, filed publicly on 27 April 2009 (“Preliminary response”), paras 5, 8.

⁴ Prosecution response to “Milan Lukić’s fourth motion to admit documents from the bar table”, filed publicly on 28 April 2009 (“Supplemental response”), para. 13.

11.05 a.m., and that it was, therefore, not in a position to adequately respond to the Motion by 12 noon on 27 April 2009;⁵

CONSIDERING that the Prosecution did not have a reasonable opportunity to respond to the Motion, and that it is just to recognise as validly filed the Supplemental response pursuant to Rule 127 of the Rules of Procedure and Evidence (“Rules”);

NOTING the Defence submission that the five documents, which are “presented in lieu of leading additional witnesses”, are relevant and probative and bear sufficient indicia of their reliability to meet the requirements for their admission from the bar table under Rule 89(C);⁶

NOTING the Prosecution submission that the Defence does not provide good reason for the admission of the five documents after the closure of evidence in this case or for an “acceptable derivation [*sic*] from the trial sequence set forth pursuant to Rule 85(A)”;⁷

NOTING the Prosecution submission that the Defence had opportunity to lead and authenticate the documents through live testimony and that admission of the documents at this stage would deprive the Prosecution of the opportunity to cross-examine witnesses as to the content of the documents;⁸

CONSIDERING that evidence need not be introduced through a witness in every circumstance and that the admission of evidence from the bar table is generally permitted pursuant to Rule 89(C), which provides that “[a] Chamber may admit any relevant evidence which it deems to have probative value”;⁹

CONSIDERING that, in order to have probative value, a tendered piece of evidence must display sufficient indicia of reliability;¹⁰

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 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 record as a whole;¹¹

⁵ Preliminary response, paras 3, 6, 7; Supplemental response, para. 13.

⁶ Motion, paras 2, 3.

⁷ Preliminary response, paras 4, 5; Supplemental response, para. 20.

⁸ Preliminary response, para. 5; Supplemental response, para. 19.

⁹ Decision on Milan Lukić’s motion for the admission of documents from the bar table, filed publicly on 9 April 2009, (“Decision on first bar table motion”), p. 6 with further references.

¹⁰ Decision on first bar table motion, p. 5 with further references.

¹¹ Decision on first bar table motion, pp 5-6 with further references.

NOTING the Defence submission that document no. 1 is “highly relevant and probative” and “instructive for the case of the Defense that this is a mistaken identity case”, as it contains a description which does not fit Milan Lukić;¹²

NOTING the Prosecution submission that the relevance of document no. 1 is “minimal” and its probative value is “marginally weak”, as it is not the “official charging instrument in this case” and does not specify the source of the description of Milan Lukić, which is accurate except for the eye colour;¹³

NOTING that the Prosecution further submits that the Defence had the opportunity to tender the document no. 1 with either VG-142, Ib Jul Hansen, or Defence witness Zoran Uščumlić, who “possessed sufficient experience in law enforcement to authenticate” the document, and that admission at this stage would deprive the Prosecution of the opportunity to “explain the method and procedure utilized in obtaining the information in the Arrest Warrant”;¹⁴

CONSIDERING that document no. 1, which contains several identification details of Milan Lukić, such as date and place of birth, father’s and mother’s names, description and identifying marks, is *prima facie* relevant and has probative value;

CONSIDERING that although document no. 1 may have been authenticated by one of the witnesses named by the Prosecution, the Defence is not generally precluded from requesting admission of document no. 1 from the bar table, as none of the witnesses was allegedly involved in the preparation of document no. 1;

CONSIDERING that the weight to be attached to document no. 1 will be determined at a later stage in view of the trial record as a whole;

NOTING the Defence submission that document no. 2 is “relevant and critical insofar as it demonstrates that Milan Lukić could not have been in Višegrad during the time periods when OTP witnesses stated that he was at Uzamnica mistreating them”;¹⁵

NOTING the Prosecution submission that it is unable to respond to the request for admission of document no. 2 as the document has not been disclosed to the Prosecution, is not on the Defence Rule 65 *ter* exhibit list, is not annexed to the Motion and not available in E-Court;¹⁶

¹² Motion, para. 4.

¹³ Supplemental response, para. 22.

¹⁴ Supplemental response, paras 23, 24.

¹⁵ Motion, para. 5.

¹⁶ Supplemental response, para. 25.

CONSIDERING that document no. 2 appears to be attached at the end of Annex A to the Motion;

CONSIDERING that document no. 2 is relevant to the charges in relation to the Uzamnica detention camp and has probative value as it purportedly specifies the time periods that Milan Lukić was detained, and that it, thus, constitutes alibi evidence;

CONSIDERING that document no. 2, which is a response from the Third Municipal Court in Belgrade, is dated 8 October 2008, and that the Defence has not provided any reason for requesting admission of the document at such a late stage of the proceedings;

CONSIDERING however, that it is in the interests of justice to allow admission of the document, as it is crucial to the alibi of Milan Lukić in relation to the Uzamnica camp charges;

CONSIDERING further that the Prosecution was put on notice that the Defence intended to obtain prison records to prove that Milan Lukić was in detention for a period of time relevant to the Uzamnica camp charges;¹⁷

NOTING the Defence submission that document no. 3, the video-recording of a demonstration, is “relevant and appropriate as it has interviews with Huso Kurspahić, mentioned in his cross-examination” and is also relevant in relation to another “submission seeking contempt proceedings against a third party”,¹⁸

NOTING the Prosecution submission that the video-recording is not on the Defence Rule 65 *ter* exhibit list and does not possess probative value;¹⁹

NOTING the Prosecution submission that the Defence has previously but unsuccessfully attempted to authenticate the video-recording through Huso Kurspahić, and elected not to call Bakira Hašević or other relevant witnesses and present the video-recording to them;²⁰

NOTING that document no. 3 was previously submitted by the Defence in a supplemental filing to an application requesting the initiation of contempt proceedings which remains pending;²¹

RECALLING that on 7 April 2009, the Trial Chamber did not allow the Defence to play the video-recording in court and present it to Huso Kurspahić, finding that document no. 3 is not relevant to these proceedings, and that it also denied a request for reconsideration of that decision;²²

¹⁷ Milan Lukić’s further submission in regard to defence of alibi, filed confidentially on 18 July 2008, para. 15.1.

¹⁸ Motion, para. 6.

¹⁹ Supplemental response, paras 30, 32.

²⁰ Supplemental response, paras 29, 31.

²¹ The application and the supplemental submissions were filed confidentially on 12 and 16 March 2009.

CONSIDERING therefore, that the request to admit document no. 3 from the bar table will also fail;

NOTING the Defence submission that document no. 4 consists of purchase documents that “corroborate the testimony of MLD17 as to where Milan Lukić was living during relevant portions of the indictment” and “rebut and refute the assertions of Prosecution witnesses that Milan Lukić was living in Obrenovac before the outbreak of the conflict”;²³

NOTING the Prosecution submission that document no. 4 does not corroborate the testimony of MLD17 as it is unclear whether it refers to the same address or building and because of other discrepancies, and that the reliability and authenticity of the document have not been established;²⁴

NOTING the Prosecution submission that as document no. 4 is offered in support of the alibi of Milan Lukić for 7 and 10 June 1992, admission of the document at this late stage would prejudice the Prosecution;²⁵

CONSIDERING that as document no. 4, a contract between “Energoprojekt – Visokogradnja d.d. Novi Beograd” and Milan Lukić concerning the “[b]uilding and sale of a flat in Bežanijska Kosa housing estate, local commune III, Novi Beograd”, bears a stamp and signatures of both the buyer and the seller, it is *prima facie* reliable and of probative value;

CONSIDERING that document no. 4 is relevant to the testimony of MLD17, who gave evidence about Milan Lukić’s apartment and referred to the location “Bežanijska Kosa”;²⁶

CONSIDERING that the ultimate weight to be attached to document no. 4 will be determined at a later stage in view of the trial record as a whole;

NOTING the Defence submission that document no. 5, an RFA response from the authorities of Bosnia and Herzegovina, is relevant as it “indicates 2 named victims from Varda who are not registered in the records of Višegrad, which raises the possibility that they never existed”;²⁷

NOTING the Prosecution submissions that it is unable to respond to the request for admission of document no. 5 as the RFA response attached in Annex A is from Serbia and does not name any

²² Oral order, 7 April 2009, T. 6907.

²³ Motion, para. 7.

²⁴ Supplemental response, paras 33, 34, 36.

²⁵ Supplemental response, para. 35.

²⁶ Hearing, 4 February 2009, T. 4698.

²⁷ Motion, para. 8.

victims from Varda, and that the other seven-page document attached in Annex A is not provided in a working language of the Tribunal;²⁸

RECALLING that the RFA response attached in Annex A appears to be the requested document no. 2;

CONSIDERING that as the Defence has not provided a translation of the other seven-page document attached in Annex A, the Trial Chamber is unable to consider the Motion in respect of this document;

PURSUANT TO Rules 89(C) and 127;


GRANTS the Motion **IN PART**;

ADMITS into evidence documents nos 1, 2 and 4, Judge David dissenting with regard to document no. 2;

DISMISSES the request for admission into evidence of document no. 5 without prejudice to the Defence providing a translation into a working language of the Tribunal by 4 p.m. on 11 May 2009; and

DENIES the Motion with regard to document no. 3.

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



Judge Patrick Robinson
Presiding

Dated this fifth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁸ Supplemental response, paras 37, 38.