



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: 10 July 2009
Original: English

IN TRIAL CHAMBER III

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

Registrar: Mr. John Hocking

Decision of: 10 July 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC WITH TWO PUBLIC AND ONE CONFIDENTIAL ANNEXES

**DECISION ON PROSECUTION'S MOTION TO
CHANGE PRIVATE/CLOSED SESSION TESTIMONY
AND 92 *TER* STATEMENTS ADMITTED UNDER SEAL
TO PUBLIC STATUS**

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 the following applications:

(1) “Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status”, filed with confidential annexes on 1 April 2009 (“Motion”), wherein the Prosecution requests to change the status from confidential to public of (a) portions of closed or private session testimony in the present case and (b) certain statements submitted pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence (“Rules”) of witnesses who testified in the present case;¹

(2) “Corrigendum to Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status”, filed with confidential annexes on 3 April 2009, whereby the Prosecution refiled the Motion adding coloured highlights in Annex A and removing two Rule 92 *ter* statements from Annex B which have already been admitted as public exhibits in the present case;

(3) Prosecution’s “Supplement to Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status”, filed confidentially with a confidential annex on 16 April 2009 (“First Supplement”), whereby the Prosecution requests to supplement the Motion and change the status from confidential to public of portions of the statements of (a) one additional Prosecution witness and (b) three witnesses for the Defence of Milan Lukić;²

(4) Prosecution’s “Second supplement to Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status”, filed confidentially with a confidential annex on 17 April 2009 (“Second Supplement”), whereby the Prosecution requests to change the status from confidential to public of portions of the statements of (a) a further 13 Prosecution witnesses and (b) one Chamber witness;³

(5) Prosecution’s “Third Supplement to Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status” filed confidentially with confidential annexes A, B and C on 20 April 2009 (“Third Supplement”), whereby the Prosecution submitted proposals for “public redacted versions of witness statements that are currently admitted

¹ Motion, para. 5.

² First Supplement, p. 2.

³ Second Supplement, p. 2.

as exhibits under seal and transcripts of testimony taken in private session, all of which the Prosecution seeks to have changed from under seal/private status to public status”;⁴ and

(6) Prosecution’s “Corrigendum to annex A to Third Supplement to Prosecution’s motion to change private/closed session testimony and 92 *ter* statements admitted under seal to public status” filed confidentially with confidential annex A on 23 April 2009, whereby the Prosecution submits a redacted version of Exhibit 1D223 to replace the non-redacted version of this exhibit which was submitted with the Third Supplement;

together referred to as the “Prosecution Submissions”

NOTING that the Prosecution Submissions seek to change the status, from confidential to public, of (i) the highlighted portions of the transcripts detailed in Annex A (the “Transcripts”) and (ii) the 92 *ter* statements detailed in Annex B (the “Statements”);

NOTING that neither the Defence of Milan Lukić nor the Defence of Sredoje Lukić has filed a written response to the Prosecution Submissions but that the Defence of Sredoje Lukić raised an objection orally on 21 April 2009 in relation to the Third Supplement;⁵

NOTING the Prosecution’s submission that the change of status of the Transcripts and the Statements can be achieved “with minimal redactions”;⁶

NOTING the Prosecution’s submission that it has:

carefully reviewed the private/closed session testimony of Prosecution witnesses and 92*ter* statements of Prosecution witnesses that were admitted under seal [and has] determined that portions of the private/closed testimony of 16 Prosecution witnesses and 13 statements admitted under seal can be transferred into public session without compromising the protection of witnesses;⁷

NOTING the Prosecution’s submission that Article 20(4) of the Statute and Rule 78 of the Rules together result in a presumption that “evidence will be in the public domain unless a justification is established to keep the evidence confidential”;⁸

CONSIDERING that the principle of publicity of the proceedings is of paramount importance to the public perception of the judicial process in ensuring not only that justice is done but also that it is seen to be done;

⁴ Third Supplement, p. 2.

⁵ Hearing, 21 April 2009, T.7122 – T.7123.

⁶ Motion, para. 4.

⁷ Motion, para. 4.

⁸ Motion, para. 2.

CONSIDERING that, pursuant to Article 20(4) of the Statute, hearings are to be public unless the Trial Chamber decides to hold *in camera* proceedings in accordance with the Rules;

CONSIDERING that, pursuant to Rule 78, all proceedings before a Trial Chamber, other than its deliberations, shall be in public unless otherwise provided, and that pursuant to Rule 81(B) the Trial Chamber, after giving due consideration to any matters relating to witness protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist;

CONSIDERING that Article 20(1) of the Statute requires the Trial Chamber to ensure that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses, and that, to this end, Rule 75 enables a Judge or a Chamber to order appropriate measures for the privacy and protection of victims and witnesses provided that the measures are consistent with the rights of the accused;

CONSIDERING that, with the exception of the sections of the transcripts of VG-115 on 28 August 2008, of VG-082 on 22 September 2008 and of VG-024 on 3 November 2008, the Trial Chamber accepts the unchallenged assertion by the Prosecution that public disclosure of the highlighted sections of the Transcripts would not prejudice or impact upon any measures of witness protection and therefore that it is appropriate for the status of those portions of the Transcripts to be changed from closed or private session to public session;

CONSIDERING that the disclosure of the proposed sections of the transcripts of VG-115 on 28 August 2008, of VG-082 on 22 September 2008 and of VG-024 on 3 November 2008 without further redaction could compromise the identity of protected witnesses and that the status of these three transcripts will, therefore, remain unchanged;

CONSIDERING that, in relation to the Statements, the Trial Chamber is unable to assess the implications for the protection of the witnesses concerned based solely on the material submitted by the Prosecution, in view of the fact that, in several instances, the proposed redactions appear to be inadequate to ensure the protection of the identity of witnesses;

CONSIDERING, therefore, that the Trial Chamber is not persuaded that it should exercise its discretion to order disclosure under Rule 81(B);

PURSUANT to Rules 73, 75(J) and 81(B) of the Rules;

GRANTS the Motion **IN PART**,

ORDERS the status of the highlighted sections of the following pages of the trial transcript to be changed from confidential to public, subject to the changes made in confidential Annex C:

Date of testimony	Witness	Page numbers
10 July 2008	VG-014	T. 284, T. 285, T. 286, T. 341, T. 342
11 July 2008	VG-079	T. 432, T. 433, T. 438, T. 439
27 August 2008	VG-115	T. 671, T. 672, T. 673, T. 674, T. 675, T. 680, T. 681, T. 682
28 August 2008	VG-115	T. 694, T. 695, T. 697, T. 698, T. 699, T. 701, T. 702, T. 703, T. 704, T. 705, T. 706, T. 712, T. 713, T. 716, T. 717, T. 718, T. 722, T. 723, T. 728, T. 729, T. 730
29 August 2008	VG-115	T. 780, T. 781
1 September 2008	VG-061	T. 893, T. 894
1 September 2008	VG-038	T. 944, T. 945, T. 946, T. 947, T. 951, T. 952, T. 953, T. 954, T. 955, T. 956
3 September 2008	VG-013	T. 1046, T. 1047, T. 1048, T. 1073, T. 1074, T. 1075, T. 1076, T. 1131
5 September 2008	VG-084	T. 1252
5 September 2008	VG-018	T. 1314, T. 1315, T. 1316, T. 1317, T. 1318, T. 1319, T. 1320
11 September 2008	VG-058	T. 1592, T. 1593, T. 1594, T. 1595, T. 1601, T. 1602, T. 1604, T. 1605, T. 1606, T. 1607
22 September 2008	VG-082	T. 2058, T. 2059, T. 2060, T. 2061
23 September 2008	Islam Kustura	T. 2189
24 September 2008	Islam Kustura	T. 2268, T. 2269, T. 2270, T. 2282, T. 2283
9 October 2008	VG-017	T. 2696, T. 2697, T. 2698
27 October 2008	VG-042	T. 2808, T. 2809, T. 2810, T. 2811, T. 2812, T. 2813, T. 2814, T. 2815, T. 2819, T. 2820, T. 2821, T. 2822, T. 2823, T. 2853, T. 2854, T. 2855, T. 2856
27 October 2008	VG-064	T. 2878, T. 2879
28 October 2008	VG-065	T. 2882
29 October 2008	VG-133	T. 3045, T. 3046, T. 3047, T. 3048, T. 3049, T. 3050, T. 3051, T. 3052, T. 3053, T. 3054, T. 3058, T. 3059, T. 3060, T. 3061, T. 3062, T. 3063, T. 3064
3 November 2008	VG-024	T. 3244, T. 3245, T. 3263, T. 3264, T. 3265, T. 3267, T. 3270, T. 3271, T. 3272, T. 3273, T. 3274, T. 3277, T. 3278, T. 3279, T. 3284, T. 3285
4 November 2008	VG-024	T. 3304
4 February 2009	MLD-17	T. 4714, T. 4715, T. 4716, T. 4717, T. 4718, T. 4719, T. 4720, T. 4721
25 February 2009	MLD-19	T. 4795, T. 4796, T. 4802, T. 4803, T. 4804, T. 4805, T. 4806
3 March 2009	MLD-19	T. 4904, T. 4905, T. 4906, T. 4907, T. 4908, T. 4909, T. 4911, T. 4912, T. 4913, T. 4914, T. 4915, T. 4916, T. 4950, T. 4951, T. 4952
4 March 2009	MLD-24	T. 5021, T. 5022, T. 5023, T. 5024, T. 5042, T. 5043, T. 5044, T. 5091, T. 5092
27 March 2009	Cliff Jenkins	T. 6453, T. 6454, T. 6495, T. 6496
3 April 2009	VG-146	T. 6709, T. 6710, T. 6711, T. 6712, T. 6713
6 April 2009	VG-136,	T. 6813, T. 6814, T. 6815, T. 6816

7 April 2009	Huso Kurspahić	T. 6908, T. 6909, T. 6910
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ORDERS that the status of the proposed highlighted sections of certain transcript pages in this case be amended as set out in confidential Annex C to this Decision;

DENIES the remainder of the Motion; and

ORDERS the Prosecution, within 7 days of the date of this Decision, to provide the Registry with electronic versions of all transcript pages to which this Decision applies, amended as indicated, and clearly indicating in the header that the material has been released pursuant to this Decision.

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



Judge Patrick Robinson
Presiding

Dated this tenth day of July 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEX A

ANNEX A

Transcripts

Date of testimony	Witness	Page numbers
10 July 2008	VG-014	T. 284, T. 285, T. 286, T. 341, T. 342
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3 September 2008	VG-013	T. 1046, T. 1047, T. 1048, T. 1073, T. 1074, T. 1075, T. 1076, T. 1131
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11 September 2008	VG-058	T. 1592, T. 1593, T. 1594, T. 1595, T. 1601, T. 1602, T. 1604, T. 1605, T. 1606, T. 1607
22 September 2008	VG-082	T. 2058, T. 2059, T. 2060, T. 2061
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9 October 2008	VG-017	T. 2696, T. 2697, T. 2698
27 October 2008	VG-042	T. 2808, T. 2809, T. 2810, T. 2811, T. 2812, T. 2813, T. 2814, T. 2815, T. 2819, T. 2820, T. 2821, T. 2822, T. 2823, T. 2853, T. 2854, T. 2855, T. 2856
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3 November 2008	VG-024	T. 3244, T. 3245, T. 3263, T. 3264, T. 3265, T. 3267, T. 3270, T. 3271, T. 3272, T. 3273, T. 3274, T. 3277, T. 3278, T. 3279, T. 3284, T. 3285
4 November 2008	VG-024	T. 3304
4 February 2009	MLD-17	T. 4714, T. 4715, T. 4716, T. 4717, T. 4718, T. 4719, T. 4720, T. 4721
25 February 2009	MLD-19	T. 4795, T. 4796, T. 4802, T. 4803, T. 4804, T. 4805, T. 4806
3 March 2009	MLD-19	T. 4904, T. 4905, T. 4906, T. 4907, T. 4908, T. 4909, T. 4911, T. 4912, T. 4913, T. 4914, T. 4915, T. 4916, T. 4950, T. 4951, T. 4952
4 March 2009	MLD-24	T. 5012, T. 5013, T. 5014, T. 5015, T. 5016, T. 5017, T. 5021, T. 5022, T. 5023, T. 5024, T. 5042, T. 5043, T. 5044, T. 5091, T. 5092
5 March 2009	MLD-24	T. 5116, T. 5117

27 March 2009	Cliff Jenkins	T. 6453, T. 6454, T. 6495, T. 6496
2 April 2009	Stoja Vujicić	T. 6667, T. 6668
3 April 2009	VG-146	T. 6709, T. 6710. T. 6711. T. 6712, T. 6713
6 April 2009	VG-136,	T. 6813, T. 6814, T. 6815, T. 6816
7 April 2009	Huso Kurspahić	T. 6908, T. 6909, T. 6910

ANNEX B

ANNEX B

Statements

Witness	Date
VG-014	5 February 1998
VG-097	26 March 2001
VG-084	20 January 2001
Esmā Kurspahić	4 February 1998
VG-078	23 January 2001
Hajrudin Jamak	26 January 2001
VG-064	15 June 2000
VG-025	12 February 1998
VG-025	17 December 1998
VG-025	15 April 2008
MLD-10 (Exhibit P215)	23 June 2008
MLD-4 (Exhibit P236)	7 April 2008
MLD-24 (Exhibit P254)	24 June 2008
MLD-24 (Exhibit P255)	8 May 2000
VG-136 (Exhibit P330)	15 July 1996
VG-136 (Exhibit P331)	17 December 2003
VG-014 (Exhibit 1D1)	<i>Redacted</i>
VG-115 (Exhibit 1D18)	10 September 2000
VG-032 (Exhibit 1D31)	1 October 1998
VG-101 (Exhibit 1D36)	<i>Redacted</i>
VG-058 (Exhibit 1D41)	15 May 2000
VG-058 (Exhibit 1D43)	20 April 2008
VG-035 (Exhibit 1D44)	5 October 1998
VG-089 (Exhibit 1D48)	31 January 2001
VG-119 (Exhibit 1D59)	<i>Redacted</i>
VG-119 (Exhibit 1D60)	<i>Redacted</i>
VG-017 (Exhibit 1D63)	14 February 1998
VG-017 (Exhibit 1D64)	15 April 2008
VG-024 (Exhibit 1D79)	<i>Redacted</i>
VG-024 (Exhibit 1D80)	<i>Redacted</i>
Hamdija Vilić (Exhibit 1D91)	18 September 2008

VG-038 (Exhibit 2D04)	<i>Redacted</i>
VG-024 (Exhibit 2D35)	<i>Redacted</i>
CW2 (Exhibit P336)	6 August 2008
VG-146 (Exhibit 1D222)	Undated
VG-084 (Exhibit P74)	20 January 2001
VG-064 (Exhibit P159)	13 June 2000