



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-09-92-T
Date: 15 August 2012
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 15 August 2012

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON PROSECUTION REQUEST TO AMEND ITS
RULE 65 TER LISTS IN LIGHT OF THE DEFENCE'S ALIBI
NOTICE**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

TRIAL CHAMBER I 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 (“Chamber”);

BEING SEISED of the Prosecution’s request to add at least 14 witnesses and 32 documents to its Rule 65 *ter* lists, to be presented in rebuttal of the expected alibi evidence (“Request”);¹

NOTING that the Defence did not respond to the Request;

NOTING that the Prosecution has fulfilled its obligations under Rule 67 (B) (ii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”);²

NOTING that the Appeals Chamber has held that “the Prosecution cannot be required to present alibi rebuttal evidence during its case in chief simply because the Defence has provided notice of alibi” and that if that was the case “the Prosecution would [...] be forced to pre-empt the exact details of the Defence’s alibi evidence without having heard [...] it in court”;³

NOTING that Rule 85 (A) of the Rules provides for the general order of the presentation of evidence which can only be varied in the interests of justice;

CONSIDERING that the Chamber would be in a better position to assess the Prosecution’s submissions in support of a request to present rebuttal evidence after having heard the Defence’s alibi evidence;

CONSIDERING that the Chamber remains uncertain as to the exact meaning of an alibi defence in the context of an alleged joint criminal enterprise, also in view of the absence of any further clarification by the Defence to date;⁴

CONSIDERING ALSO that the Defence can still decide not to present any alibi evidence;

CONSIDERING THEREFORE that pre-emptively leading evidence countering a possible, future alibi defence would not be in the interests of trial expediency and efficiency;

¹ Prosecution’s Submission Pursuant to Rule 67 (B) (ii), 16 March 2012 (Confidential) (“Submission”). This followed two Defence submissions on Rule 67 (B), filed on 23 January and 16 February 2012.

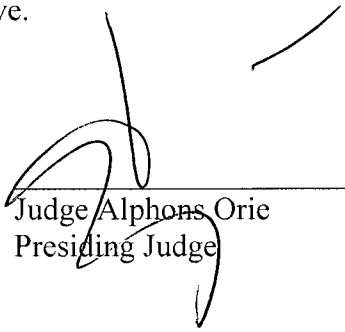
² To the extent that additional evidence is discovered or identified at a later stage, it will be subject to disclosure in accordance with Rule 67 (D) of the Rules.

³ *Prosecutor v. Lukić & Lukić*, Case no. IT-98-32/1/AR73.1, Decision on Prosecution Appeal Against Trial Chamber Order to Call Alibi Rebuttal Evidence During the Prosecution’s Case in Chief, 16 October 2008, para. 24.

⁴ See 26 March 2012 Rule 65 *ter* conference, T. 330-332 (closed session); see also Submission, paras 4, 6-7.

HEREBY DENIES the Request as premature.

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



Judge Alphons Orie
Presiding Judge

Dated this Fifteenth of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]